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ALBANY, NEW YORK

June 25, 1997

10:15 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

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

2 ACTING PRESIDENT KUHL: The
3 Senate will come to order. Ask the members to
4 find their chairs, staff to find their places.
5 Ask everybody in the chamber to rise and join
6 with me in saying the Pledge of Allegiance to
7 the Flag, and please remain standing for the
8 prayer.

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

11 We're very pleased to be joined
12 by the Reverend Amy Perkins, whose husband was
13 with us yesterday, who comes from the Bethany
14 Presbyterian Church in Menands.

15 Reverend Perkins.

16 REVEREND AMY PERKINS: Let us
17 pray.

18 Great and Almighty God, God of
19 all grace and mercy, throughout history You have
20 called men and women, our forefathers and fore
21 mothers, to be leaders of Your people. Grant
22 these, our leaders, Your wisdom, Your discern
23 ment, Your power, Your truth and Your righteous
24 ness, through the gift of Your Holy Spirit. We
25 pray all of this in the name of our son -- of

1 Your son, Jesus Christ, our Lord and Savior.

2 Amen.

3 THE PRESIDENT: Reading of the
4 Journal.

5 THE SECRETARY: In Senate,
6 Tuesday, June 24th. The Senate met pursuant to
7 adjournment. The Journal of Monday, June 23rd,
8 was read and approved. On motion, Senate
9 adjourned.

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

13 Presentation of petitions.
14 Messages from the Assembly.
15 Messages from the Governor.
16 Reports of standing committees.
17 Reports of select committees.
18 Communications and reports from
19 state officers.

20 Motions and resolutions.

21 The Chair recognizes Senator
22 Hannon.

23 SENATOR HANNON: Yes, Mr.
24 President.

25 On behalf of Senator Skelos,

1 would you please remove the sponsor's star from
2 Calendar Number 223.

3 ACTING PRESIDENT KUHL: At the
4 request of the sponsor, the star will be removed
5 on Calendar Number 223.

6 Senator Hannon.

7 SENATOR HANNON: And also on
8 behalf of Senator Stafford, please remove the
9 sponsor's star from Calendar Number 904.

10 ACTING PRESIDENT KUHL: Star will
11 be removed on Calendar Number 904 at the request
12 of the sponsor.

13 Senator Bruno.

14 SENATOR BRUNO: Mr. President, I
15 believe that there is a privileged resolution at
16 the desk by Senator Leibell. I would ask that
17 the title only be read and move for its
18 immediate adoption.

19 ACTING PRESIDENT KUHL: Secretary
20 will read the title to the privileged resolution
21 by Senator Leibell.

22 THE SECRETARY: By Senator
23 Leibell, Legislative Resolution honoring the
24 life of Michael Eric Neuner, Sr.

25 ACTING PRESIDENT KUHL: Question

1 is on the resolution. All those in favor
2 signify by saying aye.

3 (Response of "Aye.")

4 Opposed nay.

5 (There was no response.)

6 The resolution is adopted.

7 Senator Bruno, that brings us to
8 the calendar.

9 SENATOR BRUNO: Can we take up
10 the non-controversial at this time, Mr.
11 President.

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

14 THE SECRETARY: Calendar Number
15 78, by Senator Wright, Senate Print 731-A, an
16 act to legalize, ratify and confirm.

17 ACTING PRESIDENT KUHL: Lay the
18 bill aside.

19 THE SECRETARY: Calendar Number
20 124, by Senator Johnson, Senate Bill Number 738
21 A, an act to amend the Education Law, in
22 relation to prohibiting financing municipal
23 organizations.

24 SENATOR PATERSON: Lay aside,
25 please.

1 ACTING PRESIDENT KUHL: Lay the
2 bill aside.

3 THE SECRETARY: Calendar Number
4 232, by Senator Velella, Senate Print 18-B, an
5 act to amend the Insurance Law, in relation to
6 binding by excess line brokers.

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

9 THE SECRETARY: Section 3. This
10 act shall take effect in 180 days.

11 ACTING PRESIDENT KUHL: Call the
12 roll.

13 (The Secretary called the roll.)

14 THE SECRETARY: Ayes 37.

15 ACTING PRESIDENT KUHL: The bill
16 is passed.

17 THE SECRETARY: Calendar Number
18 280, by Senator Johnson, Senate Print 2514-A, an
19 act to amend the Real Property Tax Law, in
20 relation to liability.

21 SENATOR PATERSON: Lay aside,
22 please.

23 ACTING PRESIDENT KUHL: Lay the
24 bill aside.

25 THE SECRETARY: Calendar Number

1 306, by Senator Skelos, Senate Print 1983-A, an
2 act to amend the Domestic Relations Law, in
3 relation to any action or proceedings involving
4 the custody of a child.

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

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

9 ACTING PRESIDENT KUHL: Call the
10 roll.

11 (The Secretary called the roll.)

12 THE SECRETARY: Ayes 37.

13 ACTING PRESIDENT KUHL: The bill
14 is passed.

15 THE SECRETARY: Calendar Number
16 332, by member of the Assembly Sweeney, Assembly
17 Print 3221, an act to amend the Election Law.

18 SENATOR PATERSON: Lay aside.

19 ACTING PRESIDENT KUHL: Lay the
20 bill aside.

21 THE SECRETARY: Calendar Number
22 339, by Senator Holland, Senate Print 453-C, an
23 act to amend the Insurance Law, in relation to
24 the settlement.

25 ACTING PRESIDENT KUHL: The bill

1 is high. Lay the bill aside.

2 THE SECRETARY: Calendar Number
3 390, by Senator Rath, Senate Print 1745, an act
4 to amend the Education Law, in relation to
5 requirement for written prescriptions.

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

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

11 ACTING PRESIDENT KUHL: Call the
12 roll.

13 (The Secretary called the roll.)

14 THE SECRETARY: Ayes 37.

15 ACTING PRESIDENT KUHL: The bill
16 is passed.

17 THE SECRETARY: Calendar Number
18 394, by Senator LaValle, Senate Print 3201, an
19 act to amend the Education Law, in relation to
20 proceedings in cases of professional misconduct.

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

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

25 ACTING PRESIDENT KUHL: Call the

1 roll.

2 (The Secretary called the roll.)

3 THE SECRETARY: Ayes 37.

4 ACTING PRESIDENT KUHL: The bill
5 is passed.

6 THE SECRETARY: Calendar Number
7 492, by member of the Assembly Tocci, Assembly
8 Print 2017, an act to amend the Public Health
9 Law, in relation to composition and purpose of
10 the tick-borne disease.

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

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

15 ACTING PRESIDENT KUHL: Call the
16 roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes 37.

19 ACTING PRESIDENT KUHL: The bill
20 is passed.

21 THE SECRETARY: Calendar Number
22 498, by Senator Maziarz, Senate Print 403-A, an
23 act to amend the Executive Law, in relation to
24 requiring the use of child-proof locks.

25 ACTING PRESIDENT KUHL: Secretary

1 will read the last section.

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

4 SENATOR PATERSON: Lay aside,
5 please.

6 ACTING PRESIDENT KUHL: Lay the
7 bill aside.

8 THE SECRETARY: Calendar Number
9 633, by Senator Tully, Senate Print 4111-A, an
10 act to amend Chapter 521 of the Laws of 1994.

11 ACTING PRESIDENT KUHL: Lay the
12 bill aside.

13 THE SECRETARY: Calendar Number
14 643, by Senator Seward, Senate 3585, an act to
15 amend the Energy Law, in relation to transfer of
16 certain functions.

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

19 THE SECRETARY: Section 17. This
20 act shall take effect October 1st.

21 THE SECRETARY: Ayes 37.

22 ACTING PRESIDENT KUHL: Call the
23 roll.

24 (The Secretary called the roll.)

25 ACTING PRESIDENT KUHL: The bill

1 is passed.

2 THE SECRETARY: Calendar Number
3 784, by Senator Maziarz, Senate Print 5081-A, an
4 act to amend the Social Service Law, in relation
5 to establishing.

6 ACTING PRESIDENT KUHL: Lay the
7 bill aside.

8 THE SECRETARY: Calendar Number
9 801, by Senator Stafford, Senate Print 5178-A,
10 an act to amend the Education Law, in relation
11 to authorizing.

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

14 THE SECRETARY: Calendar Number
15 855, by Senator Meier, Senate Print 3307-B, an
16 act to amend the Criminal Procedure Law, in
17 relation to power of federal enforcement
18 officers.

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

21 THE SECRETARY: Calendar Number
22 928, by Senator Marcellino, Senate Print 4127,
23 an act to amend the Environmental Conservation
24 Law, in relation to establishing restrictions on
25 the feeding of waterfowl.

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

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

5 ACTING PRESIDENT KUHL: Call the
6 roll.

7 (The Secretary called the roll.)

8 THE SECRETARY: Ayes 37.

9 ACTING PRESIDENT KUHL: The bill
10 is passed.

11 THE SECRETARY: Calendar Number
12 982, by Senator Saland, Senate Print 2703-B, an
13 act to amend the Vehicle and Traffic Law, in
14 relation to a parking system.

15 ACTING PRESIDENT KUHL: Home rule
16 message is not at the desk. Lay the bill
17 aside.

18 THE SECRETARY: Calendar Number
19 1012, by Senator Levy, Senate Print 4817, an act
20 to amend the Vehicle and Traffic Law, in
21 relation to requiring the successful passage of
22 a vision test.

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

25 THE SECRETARY: Section 2. This

1 act shall take effect April 1st.

2 ACTING PRESIDENT KUHL: Call the
3 roll.

4 (The Secretary called the roll.)

5 THE SECRETARY: Ayes 37.

6 ACTING PRESIDENT KUHL: The bill
7 is passed.

8 THE SECRETARY: Calendar Number
9 1056, by Senator LaValle, Senate Print 4484-A,
10 an act to establish the Long Island Groundwater
11 Resource Institute at the Marine Resource
12 Center.

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

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

17 ACTING PRESIDENT KUHL: Call the
18 roll.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes 39.

21 ACTING PRESIDENT KUHL: The bill
22 is passed.

23 THE SECRETARY: Calendar Number
24 1135, by Senator Kuhl, Senate Print 2244-A.

25 SENMATOR PATERSON: Lay aside.

1 THE SECRETARY: An act to amend
2 the General Municipal Law.

3 ACTING PRESIDENT KUHL: Lay the
4 bill aside.

5 THE SECRETARY: Calendar Number
6 1349, by Senator Tully, Senate Print 5320-C, an
7 act to amend the Public Health Law, in relation
8 to establishing cancer detection and education
9 advisory council.

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

12 THE SECRETARY: Section 7. This
13 act shall take effect in 180 days.

14 ACTING PRESIDENT KUHL: Call the
15 roll.

16 (The Secretary called the roll.)

17 THE SECRETARY: Ayes 39.

18 ACTING PRESIDENT KUHL: The bill
19 is passed.

20 THE SECRETARY: Calendar Number
21 1369, by Senator Skelos, Senate Print 5098, an
22 act to amend Chapter 879 of the Laws of 1936.

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

25 THE SECRETARY: Section 9. This

1 act shall take effect June 30th.

2 ACTING PRESIDENT KUHL: Call the
3 roll.

4 (The Secretary called the roll.)

5 THE SECRETARY: Ayes 39.

6 ACTING PRESIDENT KUHL: The bill
7 is passed.

8 THE SECRETARY: Calendar Number
9 1373, by Senator Montgomery, Senate Print
10 5374-A, an act to amend the Agriculture and
11 Markets Law, in relation to injuring a guide dog
12 or a hearing dog.

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

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

18 ACTING PRESIDENT KUHL: Call the
19 roll.

20 (The Secretary called the roll.)

21 THE SECRETARY: Ayes 39.

22 ACTING PRESIDENT KUHL: The bill
23 is passed.

24 THE SECRETARY: Calendar Number
25 1379, by the Committee on Rules, Senate Print

1 5506, an act in relation to granting Tier I
2 retirement status.

3 ACTING PRESIDENT KUHL: Lay the
4 bill aside.

5 THE SECRETARY: Calendar 1382, by
6 Senator Levy, Senate Print 5513, an act to amend
7 the Public Authorities Law, in relation to
8 extending.

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

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

13 ACTING PRESIDENT KUHL: Call the
14 roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes 40.

17 ACTING PRESIDENT KUHL: The bill
18 is passed.

19 THE SECRETARY: CALENDAR NUMBER
20 1383, by Senator Levy, Senate Print 5514, an act
21 to amend Chapter 56 of the Laws of 1993.

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

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

1 ACTING PRESIDENT KUHL: Call the
2 roll.

3 (The Secretary called the roll.)

4 THE SECRETARY: Ayes 40.

5 ACTING PRESIDENT KUHL: The bill
6 is passed.

7 THE SECRETARY: Calendar Number
8 1384, by Senator Goodman, Senate Print 5523, an
9 act to amend the Alcoholic Beverage Control Law,
10 relation to modifying.

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

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

15 ACTING PRESIDENT KUHL: Call the
16 roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes 40.

19 ACTING PRESIDENT KUHL: The bill
20 is passed.

21 SENATOR PADAVAN: No.

22 THE SECRETARY: Calendar 1392 -

23 SENATOR PADAVAN: In the
24 negative.

25 ACTING PRESIDENT KUHL: Senator

1 Padavan, you wish to be recorded in the negative
2 on Calendar Number 1384?

3 SENATOR PADAVAN: That is
4 correct, Mr. President.

5 ACTING PRESIDENT KUHL: Without
6 objection, hearing no objection, Senator Padavan
7 will be recorded in the negative on Calendar
8 Number 1384.

9 Secretary will continue to read
10 the non-controversial calendar.

11 THE SECRETARY: 1392, by Senator
12 Santiago, Senate Print 5595, an act to authorize
13 the Office of General Services to sell and
14 convey.

15 ACTING PRESIDENT KUHL: There is
16 no home rule message at the desk. The bill will
17 be laid aside.

18 THE SECRETARY: Calendar Number
19 1396, by Senator Maltese, Senate Print 1173, an
20 act to amend the Retirement and Social Security
21 Law, in relation to return of member
22 contributions.

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

1 SENATOR PATERSON: Lay aside.

2 ACTING PRESIDENT KUHL: Lay the
3 bill aside.

4 THE SECRETARY: Calendar Number
5 1417, by Senator Goodman, Senate Print 5552-A,
6 an act to amend the Tax Law, in relation to
7 exemption from Article 9.

8 SENATOR LEICHTER: Lay aside.

9 ACTING PRESIDENT KUHL: Lay the
10 bill aside.

11 THE SECRETARY: Calendar Number
12 1421, by the Committee on Rules, Senate Print
13 5598, an act to amend the Insurance Law, in
14 relation to continuing.

15 SENATOR PATERSON: Lay aside.

16 ACTING PRESIDENT KUHL: Lay the
17 bill aside.

18 THE SECRETARY: Calendar Number
19 1422, by Senator Gentile, Senate Print 3836, an
20 act authorizing the city of New York to
21 reconvey.

22 ACTING PRESIDENT KUHL: Secretary
23 will read the last -- there is a home rule
24 message at the desk. Secretary will read the
25 last section.

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

3 ACTING PRESIDENT KUHL: Call the
4 roll.

5 (The Secretary called the roll.)

6 THE SECRETARY: Ayes 40.

7 ACTING PRESIDENT KUHL: The bill
8 is passed.

9 Senator Bruno, that completes the
10 reading of the non-controversial calendar.

11 Senator Tully, why do you rise?

12 SENATOR TULLY: Mr. President,
13 may I have unanimous consent to be recorded in
14 the negative on Calendar 1384.

15 ACTING PRESIDENT KUHL: Without
16 objection, hearing no objection, Senator Tully
17 will be recorded in the negative on Calendar
18 Number 1384.

19 Senator Hannon?

20 SENATOR HANNON: Mr. President,
21 I'd like to be recorded in the same way on
22 1384.

23 ACTING PRESIDENT KUHL: Without
24 objection, hearing no objection, Senator Hannon
25 will be recorded in the negative on Calendar

1 Number 1384.

2 Senator Bruno.

3 SENATOR BRUNO: Mr. President,
4 can we at this time take up the controversial
5 calendar.

6 ACTING PRESIDENT KUHL: Secretary
7 will read the controversial calendar beginning
8 with Calendar Number 78, on page 4.

9 THE SECRETARY: Calendar Number
10 78, by Senator Wright, Senate Print 731-A, an
11 act to legalize, ratify and confirm.

12 ACTING PRESIDENT KUHL: Local
13 fiscal impact note is at the desk, but the bill
14 is high, so it will be laid aside.

15 THE SECRETARY: Calendar Number
16 124, by Senator Johnson, Senate Print 738-A, an
17 act to amend the Education Law, in relation to
18 prohibiting financing political organizations.

19 SENATOR LEICHTER: Explanation.

20 SENATOR BRUNO: Lay aside
21 temporarily.

22 ACTING PRESIDENT KUHL: Lay the
23 bill aside temporarily.

24 THE SECRETARY: Calendar Number
25 280, by Senator Johnson, Senate Print 2514-A, an

1 act to amend the Real Property Tax Law, in
2 relation to liability for environmental
3 clean-up.

4 SENATOR PATERSON: Explanation.

5 SENATOR BRUNO: Lay it aside
6 temporarily.

7 ACTING PRESIDENT KUHL: Lay the
8 bill aside temporarily.

9 THE SECRETARY: Calendar Number
10 332, by member of the Assembly Sweeney, Assembly
11 Print 3221, an act to amend the Education Law,
12 in relation to transmitting of certain
13 information.

14 SENATOR PATERSON: Explanation.

15 SENATOR BRUNO: Lay it aside
16 temporarily.

17 ACTING PRESIDENT KUHL: Lay the
18 bill aside temporarily.

19 THE SECRETARY: Calendar Number
20 339, by Senator Holland, Senate Print 453-C, an
21 act to amend the Insurance Law, in relation to
22 settlement of claims.

23 ACTING PRESIDENT KUHL: The bill
24 is high. The bill will have to be laid aside.

25 THE SECRETARY: Calendar Number

1 498, by Senator Maziarz, Senate Print 403-A, an
2 act to amend the Executive Law, in relation to
3 requiring the use of child-proof locks.

4 SENATOR PATERSON: Explanation.

5 SENATOR BRUNO: Lay it aside
6 temporarily.

7 ACTING PRESIDENT KUHL: Lay the
8 bill aside temporarily.

9 THE SECRETARY: Calendar Number
10 633, by Senator Tully.

11 ACTING PRESIDENT KUHL: Senator
12 Bruno.

13 SENATOR BRUNO: Can we ask for an
14 immediate meeting of the Finance Committee in
15 Room 332.

16 ACTING PRESIDENT KUHL: There
17 will be an immediate meeting of the Finance
18 Committee, immediate meeting of the Finance
19 Committee in the Majority Conference Room, Room
20 332.

21 Secretary will continue to read
22 the controversial calendar.

23 THE SECRETARY: Calendar Number
24 633, by Senator Tully, Senate Print 4111-A, an
25 act to amend Chapter 521 of the Laws of 1994.

1 ACTING PRESIDENT KUHL: Calendar
2 Number 633 is high also, so we'll lay the bill
3 aside.

4 THE SECRETARY: Calendar Number
5 784, by Senator Maziarz, Senate Print 5081-A, an
6 act to amend the Social Service Law, in relation
7 to establishing.

8 SENATOR PATERSON: Explanation.

9 SENATOR BRUNO: Lay it aside
10 temporarily, please.

11 ACTING PRESIDENT KUHL: Lay the
12 bill aside temporarily.

13 THE SECRETARY: Calendar Number
14 855, by Senator Meier, Senate Print 3307-B, an
15 act to amend the Criminal Procedure Law, in
16 relation to powers of federal law enforcement
17 officers.

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

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

22 SENATOR PATERSON: Mr.
23 President.

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

1 SENATOR MARCELLINO: Mr.

2 President, can I have unanimous consent to be
3 recorded -

4 ACTING PRESIDENT KUHL: No.

5 SENATOR MARCELLINO: No?

6 ACTING PRESIDENT KUHL: Because
7 we're on a slow -- we're on a roll call.

8 SENATOR MARCELLINO: O.K. I'll
9 wait. Then I'll unroll.

10 ACTING PRESIDENT KUHL: Lay the
11 bill aside.

12 Now, Senator Marcellino.

13 SENATOR MARCELLINO: Thank you,
14 Mr. President. May I have unanimous consent to
15 be recorded in the negative on Calendar Number
16 1384.

17 ACTING PRESIDENT KUHL: Without
18 objection, hearing no objection, Senator
19 Marcellino will be recorded in the negative on
20 Calendar Number 1384.

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

23 ACTING PRESIDENT KUHL: Secretary
24 will continue to read the controversial
25 calendar.

1 THE SECRETARY: Calendar Number
2 982, by Senator Saland, Senate Print 2703-B, an
3 act to amend the Vehicle and Traffic Law, in
4 relation to authorizing a permit parking system
5 in the city of Beacon.

6 SENATOR SALAND: Mr. President,
7 lay that aside, please.

8 ACTING PRESIDENT KUHL: Lay the
9 bill aside awaiting a home rule message.

10 THE SECRETARY: Calendar Number
11 1135, by Senator Kuhl, Senate Print 2244-A, an
12 act to amend the General Municipal Law and the
13 Town Law, in relation to the practice of
14 forestry.

15 SENATOR PATERSON: Mr.
16 President.

17 ACTING PRESIDENT KUHL: Senator
18 Paterson.

19 SENATOR PATERSON: Mr. President,
20 to save the Chair a trip and also to provide a
21 little clarification, Senator Leichter and
22 Senator Dollinger have laid the past three or
23 four bills aside. They're both in the Finance
24 Committee, and that is the reason that we're
25 having a little problem right here because

1 they're in committee meeting and we would like
2 to give them the opportunity to debate these
3 bills on the floor.

4 ACTING PRESIDENT KUHL: We can
5 lay this bill aside temporarily.

6 THE SECRETARY: Calendar Number
7 1379, by the Committee on Rules, Senate Print
8 5506, an act in relation to granting Tier I
9 retirement status to certain public employees.

10 ACTING PRESIDENT KUHL: Lay the
11 bill aside temporarily.

12 THE SECRETARY: Calendar Number
13 1396, by Senator Maltese, Senate Print 1173, an
14 act to amend the Retirement and Social Security
15 Law, in relation to return of member
16 contributions.

17 ACTING PRESIDENT KUHL: There is
18 a home rule message at the desk. Secretary -
19 Senator Paterson.

20 SENATOR PATERSON: Mr. President,
21 might we temporarily lay that bill aside.

22 ACTING PRESIDENT KUHL: Is that
23 because some member had a request who is not
24 here in the chamber because of the Finance
25 Committee, Senator Paterson?

1 SENATOR PATERSON: That's right,
2 Mr. President.

3 ACTING PRESIDENT KUHL: Senator
4 Skelos, what's your pleasure?

5 SENATOR SKELOS: No objection.

6 ACTING PRESIDENT KUHL: Lay the
7 bill aside.

8 THE SECRETARY: Calendar Number
9 1417, by Senator Goodman, Senate Print 5552-A,
10 an act to amend the Tax Law, in relation to
11 exemption from Article 9.

12 ACTING PRESIDENT KUHL: Senator
13 Paterson.

14 SENATOR PATERSON: Same trouble.
15 The next bill, Mr. President, 1421, that's a
16 bill that we could take up right now if it's
17 your pleasure, if it's the Majority Leader's
18 pleasure, excuse me.

19 SENATOR SKELOS: Lay it aside
20 temporarily.

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

23 THE SECRETARY: Calendar Number
24 1421, by the Committee on Rules, Senate Print
25 5598, an act to amend the Insurance Law, in

1 relation to continuing the purpose and extending
2 the existence of the Medical Malpractice
3 Insurance Association.

4 SENATOR PATERSON: Explanation.

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

7 Senator Skelos, that completes
8 the first time through the reading of the
9 controversial calendar.

10 SENATOR SKELOS: Mr. President,
11 there's a privileged resolution at the desk by
12 Senator Meier, 1934. Could we have the title
13 read and move for its immediate adoption.

14 ACTING PRESIDENT KUHL: We'll
15 return to the order of motions and resolutions
16 and the Secretary will read the title to
17 Resolution Number 1934, by Senator Meier.

18 THE SECRETARY: By Senator Meier,
19 Legislative Resolution, commemorating June 25th,
20 1997 as Korean War Day in the state of New
21 York.

22 ACTING PRESIDENT KUHL: Question
23 is on the resolution. All those in favor
24 signify by saying aye.

25 (Response of "Aye.")

1 Opposed nay.

2 (There was no response.)

3 The resolution is adopted.

4 SENATOR SKELOS: Mr. President.

5 ACTING PRESIDENT KUHL: Senator
6 Skelos.

7 SENATOR SKELOS: Yes. With the
8 consent of the Minority, would you please call
9 up Calendar Number 1417, by Senator Goodman.

10 ACTING PRESIDENT KUHL: Secretary
11 will read Calendar Number 1417.

12 THE SECRETARY: Calendar Number
13 1417, by Senator Goodman, Senate Print 5552-A,
14 an act to amend the Tax Law.

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

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

19 ACTING PRESIDENT KUHL: Call the
20 roll.

21 (The Secretary called the roll.)

22 THE SECRETARY: Ayes 45.

23 ACTING PRESIDENT KUHL: The bill
24 is passed.

25 Senator Skelos.

1 SENATOR SKELOS: Mr. President,
2 is there any housekeeping at the desk?

3 ACTING PRESIDENT KUHL: We have
4 one resolution at the desk, privileged
5 resolution by Senator Seabrook we could take up
6 at this time.

7 SENATOR SKELOS: If we could have
8 the title read and move for its adoption.

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

11 SENATOR SKELOS: Could we have
12 that resolution read in its entirety.

13 ACTING PRESIDENT KUHL: Secretary
14 will read the privileged resolution by Senator
15 Seabrook, Number 1935, in its entirety.

16 THE SECRETARY: Legislative
17 Resolution, by Senators Seabrook, Smith,
18 Paterson and Montgomery, 1935: Mourning the
19 death of Dr. Betty Shabazz, distinguished
20 citizen.

21 WHEREAS it is the custom of this
22 legislative body to mourn publicly the death of
23 prominent citizens of the state of New York
24 whose life work and civic endeavor served to
25 enhance the reputation of the state;

1 WHEREAS Dr. Betty Shabazz of
2 Yonkers died on June 23, 1997;

3 Dr. Betty Shabazz distinguished
4 herself by her sincere dedication and
5 substantial contribution to the welfare of her
6 community;

7 Dr. Betty Shabazz' spirit of
8 humanity, of devotion to the good of all,
9 carried over into all fields of enterprise
10 including charitable and philanthropic work; and

11 WHEREAS, born in Detroit,
12 Michigan, Dr. Betty Shabazz, age 61, studied at
13 Tuskegee Institute, Brooklyn State Hospital
14 School of Nursing, Jersey City State College and
15 earned a doctorate in education from the
16 University of Massachusetts in 1975;

17 After her education was
18 completed, Dr. Betty Shabazz became Director of
19 Public Relations at Medgar Evers College and
20 later became head of the school's Office of
21 Institutional Advancement;

22 WHEREAS in the decades after the
23 death of her husband, Malcolm X, Dr. Betty
24 Shabazz emerged as a leader in her own right,
25 but her three-week struggle for life inspired

1 her largest following of all;

2 A blood drive on June 17, 1997
3 held at a Harlem bank that was intended to
4 support her surgeries drew long lines of donors
5 from many races and nationalities;

6 WHEREAS among those who visited
7 her in the hospital were civil rights leader
8 Jesse L. Jackson, poet Maya Angelou, Coretta
9 Scott King, the widow of Dr. Martin Luther King,
10 Jr., Kweisi Mfume, the President of the National
11 Association for the Advancement of Colored
12 People, and former New York City Mayor David M.
13 Dinkins;

14 WHEREAS along with Coretta Scott
15 King and Myrlie Evers-Williams, Dr. Betty
16 Shabazz emerged as a powerful symbol in her own
17 right, for millions of people looked to her for
18 some kind of understanding of the civil rights
19 movement;

20 NOW, THEREFORE BE IT RESOLVED
21 that this legislative body pause in its
22 deliberations to mourn the death of Dr. Betty
23 Shabazz, distinguished citizen; and

24 BE IT FURTHER RESOLVED that a
25 copy of this resolution, suitably engrossed, be

1 transmitted to the family of Dr. Betty Shabazz.

2 ACTING PRESIDENT KUHL: Any
3 Senator wishing to speak on the resolution?

4 Hearing none -

5 SENATOR WALDON: Wait a minute.

6 ACTING PRESIDENT KUHL: Senator
7 Waldon.

8 SENATOR WALDON: Mr. President,
9 rarely have I felt the way I do this morning. I
10 applaud Senator Seabrook on bringing this
11 resolution before us.

12 I had the good fortune of repre
13 senting Dr. Shabazz in regard to recovering
14 monies from the products that were across this
15 nation which were using the likeness of Malcolm
16 X without benefit to Sister Betty or to her
17 children. As a result of that representation
18 effort, if you will, as her agent over the last
19 five, six, seven years, Barbara, my wife, and I
20 got to know her very well. We visited each
21 other at our homes. She spent time in our home;
22 we went to many dinners and lunches together.
23 In fact, we even traveled a little bit back and
24 forth in regard to her business enterprises and
25 to some personal things that she had asked me to

1 do in regard to the Malcolm X Foundation.

2 This is not just a sad moment for
3 Al Waldon and his family. This truly, her
4 passing, is a moment of mourning, a moment of
5 pathos for the entire nation. This lady was
6 regal, the manner in which she carried herself,
7 in the manner in which she conducted her
8 business. She was inspirational, and that
9 despite the tragedy which had followed her since
10 the death of her husband, and all of the
11 controversy which surrounded her and the fact
12 that she was part of the Muslim community. She
13 stood tall. She was a conciliator, because it
14 would have been very easy for her to exclude
15 people because of the pain the manner in which
16 she had been treated brought upon herself and
17 her family.

18 She was a brilliant woman, very
19 intelligent and gifted woman, a moving speaker,
20 someone who not only could move you with the
21 substance of her speech, but caused you
22 laughter, because of her wry sense of humor. I
23 don't know if words would allow me to truly
24 express my feeling, but they are all that I
25 have.

1 I suspect that this period of
2 morning should not be celebrated just in this
3 chamber or in the city of New York or in the
4 state, but across the nation, because there are
5 very few people, not just women, but very few
6 people in this country, who have the stature,
7 who demand the respect, admiration and love as
8 did Sister Betty Shabazz.

9 I am very sorry that she's passed
10 away, especially under the circumstances in
11 which it is alleged that she suffered her
12 injuries; but I'm very glad that I had the
13 opportunity on a very personal note, in a very
14 personal way to get to know her and to get to
15 love her.

16 Thank you very much.

17 ACTING PRESIDENT KUHL: Senator
18 Paterson, on the resolution.

19 SENATOR PATERSON: Mr. President,
20 when the bright light of scrutiny surrounds the
21 life of an individual, often it, in many ways,
22 obfuscates some of the greatness that they
23 display on their own. It would not have
24 mattered who Dr. Betty Shabazz was. She was an
25 outstanding achiever, a great humanitarian, an

1 ambassador for all of the principles, I think,
2 that this body would represent, and probably as
3 well respected a New Yorker as we have ever been
4 privileged to know.

5 She was beset with great
6 intimidation and hardship in her life. She was
7 married to Malcolm X who was assassinated in
8 front of her and four children on February 21st,
9 1965. She at the time was pregnant with twins.
10 One week earlier, on February 14th, 1965, her
11 home was fire bombed so she was left at that
12 period in her life, homeless and widowed and
13 somehow like the phoenix out of the ashes, was
14 able to bring her family together and to educate
15 her children and to persevere herself, receiving
16 a Ph.D. and some of the other great accolades
17 that are described in the resolution.

18 But as Senator Waldon so aptly
19 put it, as he so often does, this was a human
20 being that we would all have been privileged to
21 know. I was one of the luckier among us. She
22 was a very good personal friend of the former
23 Assemblywoman Geraldine Daniels and visited her
24 at least once a week. I live in the same
25 apartment building with the former Assembly

1 woman and was pleased to know her and was
2 privileged to speak with her on many, many
3 times.

4 She had a unique insight and was
5 certainly a universalist. Malcolm X, who lived
6 in our time and offered us a disciplined
7 criticism and honesty, a steadfast honesty about
8 the America as it was in the '60s and in the
9 late '50s and as the America as it was for
10 African-Americans, was misunderstood in his
11 time.

12 Later he traveled to Mecca and
13 found that there were people of all races and
14 all religions who could live together and had
15 the courage and had the conviction to change a
16 lot of his beliefs, while at the same time
17 militating very strongly for economic, political
18 and social justice for all Americans,
19 particularly those of his community, the
20 African-American community.

21 That courage, that character that
22 he demonstrated is the reason that he was buried
23 at age 39. It is so often that individuals who
24 have achieved great notoriety recognize that
25 there must be some fine tuning of their message

1 and then unfortunately are assassinated for it.
2 He more -- as the decades passed, becomes more
3 understood and greater revered by all peoples
4 around the world, and so this international star
5 was also the benefit of his relationship with
6 Dr. Betty Shabazz, who was a driving force in
7 his life and was certainly a partner in all of
8 his efforts; and so it was so tragic to hear
9 nearly a month ago of the unfortunate and tragic
10 situation that befell his family again, which
11 has suffered for four generations from the
12 murder of Malcolm X's father, to his own
13 assassination, to some of the misfortunes of
14 other family members, and now the tragic death
15 of Dr. Betty Shabazz, that it almost seems an
16 ironic twist that some of the greatest and some
17 of those who displayed the greatest virtue are
18 beset with the most severe tragedies. That's
19 something that I can not explain and do not
20 understand at this point in my life, but it's
21 something that we all should recognize when we
22 pay tribute to this great family and to this
23 outstanding woman of achievement who will be
24 buried in the next couple of days.

25 I want to thank Senator Seabrook

1 for bringing this resolution before the body and
2 all of my colleagues for allowing us to present
3 to you a great person of all communities who we
4 had the privilege of knowing in our generation.

5 ACTING PRESIDENT KUHL: Senator
6 Smith, on the resolution.

7 SENATOR SMITH: Thank you, Mr.
8 Chairman.

9 My family and I too suffer a
10 personal loss with the death of Dr. Betty
11 Shabazz.

12 Dr. Shabazz was a good friend who
13 was always there with the shoulder to cry on and
14 an ear to listen and a kind word in time of
15 sorrow or in time of need. I remember her phone
16 calls when I lost my mother, and my -- there was
17 an outpouring from all of the people of the city
18 of New York because she was truly a considerate
19 and great woman.

20 Much has been said about the life
21 of Malcolm X. It's been portrayed in movies and
22 on television, and it talks about some of the
23 bad things, but it also shows the gifts that he
24 gave to each and every one of us; but the
25 greatest gift he gave us was that of his wife,

1 Dr. Betty Shabazz, and all of us will mourn her
2 greatly.

3 Thank you.

4 ACTING PRESIDENT KUHL: Senator
5 Lachman, on the resolution.

6 SENATOR LACHMAN: I rise also,
7 Mr. President, to speak on Dr. Shabazz.

8 I knew her as an academic and as
9 administrator in the City University of New
10 York. She graced the academic community and the
11 administrative community with a great deal of
12 dignity, a great deal of knowledge, a great deal
13 of perseverance. She was beloved by her
14 students, her fellow faculty members and
15 administrators and she will be missed by all.
16 She was an extraordinarily gifted person who
17 lived through many tragedies and fought each one
18 to the utmost of her ability.

19 Her memory will be remembered.
20 Her acts and deeds will be remembered by people
21 of all faiths, races and backgrounds, because of
22 her own innate ability and achievements in this
23 world.

24 Thank you.

25 ACTING PRESIDENT KUHL: Senator

1 Oppenheimer, on the resolution.

2 SENATOR OPPENHEIMER: Yes. It's
3 been said that she was an important person in
4 New York City. I have to also note that she was
5 a very important person in Westchester County
6 where she lived for a large portion of her life
7 in Mount Vernon and was very instrumental to
8 those of us in Westchester in the academic field
9 and also in the arena of social services.

10 She will be missed by all of us
11 because she was a dear friend to all of us.

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

14 SENATOR SEABROOK: Yes, Mr.
15 President. This is truly a living tribute to
16 one who has given so much and is considered a
17 treasure in our community and in this state and
18 I'd like to thank the body for allowing the
19 resolution to be presented and also to say a
20 special thanks to the Governor for seeing fit to
21 memorialize and commemorate this by having the
22 state flags flown at half staff, to say that
23 Betty Shabazz was truly a treasure to all of us
24 and she meant so much to all of us, and on a
25 personal note that she was truly a friend and

1 very dear and she would be here with us in
2 celebration each year and she never missed a
3 caucus we did and was always here to do whatever
4 we asked of her to do.

5 So I'd like to say that she will
6 truly be missed by all of us, but she was a
7 woman's woman.

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

11 (Response of "Aye.")

12 Opposed nay.

13 (There was no response.)

14 The resolution is unanimously
15 adopted.

16 Senator Skelos.

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

20 ACTING PRESIDENT KUHL: Immediate
21 meeting of the Rules Committee, immediate
22 meeting of the Rules Committee in the Majority
23 Conference Room, Room 332.

24 Senator Abate, why do you rise?

25 SENATOR ABATE: Yes. I ask for

1 unanimous consent to be recorded in the negative
2 on Calendar Number 1384.

3 ACTING PRESIDENT KUHL: Without
4 objection, hearing no objection, Senator Abate
5 will be recorded in the negative on Calendar
6 Number 1384.

7 Senator Skelos.

8 SENATOR SKELOS: Mr. President, I
9 know it was inadvertent, but perhaps the
10 Minority would consent to any member wishing to
11 sponsor the resolution that just passed if they
12 could notify the desk and go on the resolution.

13 ACTING PRESIDENT KUHL: Senator
14 Seabrook, is that all right with you?

15 SENATOR SEABROOK: Yes.

16 ACTING PRESIDENT KUHL: All
17 right. If there is any member who wishes to
18 co-sponsor in addition to those who have already
19 indicated they wish to co-sponsor, if they would
20 have the staff fill out the appropriate forms
21 and file them with the desk.

22 Senator Seabrook?

23 SENATOR SKELOS: Senate will
24 stand at ease.

25 ACTING PRESIDENT KUHL: Senate

1 will stand at ease.

2 (The Senate stood at ease from
3 10:55 a.m., to 11:31 a.m.)

4 ACTING PRESIDENT KUHL: Senate
5 will come to order. Ask the members to take
6 their chairs, staff to find their places.

7 Senator Skelos.

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

13 ACTING PRESIDENT KUHL: We'll
14 return to the order of reports of standing
15 committees. I'll ask the Secretary to read the
16 report of the Rules Committee.

17 THE SECRETARY: Senator Bruno,
18 from the Committee on Rules, reports the
19 following bills:

20 Senate Print 430-A, by Senator
21 Goodman, an act to amend the Education Law;

22 751, by Senator Volker, an act to
23 amend the Criminal Procedure Law;

24 1667, by Senator Stachowski, an
25 act directing the Commissioner of the Division

1 of Criminal Justice Services;

2 1882, by Senator Velella, an act
3 to amend the Administrative Code of the city of
4 New York;

5 2186, by Senator Hannon, an act
6 to amend the Education Law;

7 2574, by Senator Montgomery, an
8 act authorizing the city of New York;

9 2659-A, by Senator LaValle, an
10 act to amend the Environmental Conservation Law;

11 2688, by Senator Velella, an act
12 to amend the Public Housing Law;

13 2697, by Senator Skelos, an act
14 to amend the Public Service Law;

15 2707-A, by Senator Spano, an act
16 to amend the Public Health Law;

17 3689-A, by Senator Present, an
18 act to amend the County Law;

19 3799-A, by Senator Present, an
20 act authorizing the payment;

21 4467, by Senator Padavan, an act
22 to amend the Public Service Law;

23 4707-A, by Senator Hannon, an act
24 to amend the Social Services Law;

25 4741, by Senator LaValle, an act

1 to amend Chapter 554;

2 4798-B, by Senator Seward, an act
3 to enact the Ithaca City School District Public
4 Construction Flexibility;

5 5301, by Senator Larkin, an act
6 to legalize, ratify and confirm;

7 5435, by Senator Maziarz, an act
8 to amend the Family Court Act;

9 5522, by Senator Goodman, an act
10 to amend the Alcoholic Beverage Control Law; and

11 5579, by Senator Saland, an act
12 to authorize the city school district.

13 All bills ordered direct for
14 third reading.

15 ACTING PRESIDENT KUHL: Senator
16 Skelos.

17 SENATOR SKELOS: Mr. President,
18 move to accept the Rules report.

19 ACTING PRESIDENT KUHL: Motion is
20 to accept the report of the Rules Committee.

21 All those in favor signify by saying aye.

22 (Response of "Aye.")

23 Opposed nay.

24 (There was no response.)

25 The report is accepted.

1 Senator Skelos.

2 SENATOR SKELOS: Mr. President, I
3 believe there is a report of the Finance
4 Committee at the desk. I ask that it be read.

5 ACTING PRESIDENT KUHL: Ask the
6 Secretary to read the report of the Rules
7 Committee -- excuse me, report of the Finance
8 Committee.

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

12 Member of the Small Business
13 Advisory Board, Ross M. Weale, of South Salem.

14 ACTING PRESIDENT KUHL: Question
15 is on the nomination. All those in favor
16 signify by saying aye.

17 (Response of "Aye.")

18 Opposed nay.

19 (There was no response.)

20 The nominee is confirmed.

21 Secretary will read.

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

25 Member of the Metropolitan

1 Transportation Authority, Andrew Saul, of
2 Katonah.

3 ACTING PRESIDENT KUHL: Question
4 is on the nomination. All those in favor
5 signify by saying aye.

6 (Response of "Aye.")

7 Opposed nay.

8 (There was no response.)

9 The nominee is confirmed.

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

13 Member of the Advisory Council on
14 Alcoholism and Substance Abuse Services, Robert
15 G. Gardner, of Cortland.

16 ACTING PRESIDENT KUHL: Question
17 is on the nomination. All those in favor
18 signify by saying aye.

19 (Response of "Aye.")

20 Opposed nay.

21 (There was no response.)

22 The nominee is confirmed.

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

1 Members of the New York State
2 Hospital Review and Planning Council, Sal
3 Alfiero, of Amherst, and Georgia Jenis, of
4 Williamsville.

5 ACTING PRESIDENT KUHL: Question
6 is on the nominations. All those in favor
7 signify by saying aye.

8 (Response of "Aye.")

9 Opposed nay.

10 (There was no response.)

11 The nominees are confirmed.

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

15 Member of the Public Health
16 Council, Joan H. Ellison, of Livonia.

17 ACTING PRESIDENT KUHL: Question
18 is on the nomination. All those in favor
19 signify by saying aye.

20 (Response of "Aye.")

21 Opposed nay.

22 (There was no response.)

23 The nomination is confirmed.

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

1 following nomination:

2 Members of the Medical Advisory
3 Committee, John Angerosa, Jr., M.D., of Scotia;
4 Randall D. Bloomfield, J.D., of Brooklyn; Norman
5 Loomis, M.D., of Ontario; Tamton Mustapha, M.D.,
6 of Valatie and Dennis P. Norfleet, of Oswego.

7 ACTING PRESIDENT KUHL: Question
8 of is on the nominations. All those in favor
9 signify by saying aye.

10 (Response of "Aye.")

11 Opposed nay.

12 (There was no response.)

13 The nominees are confirmed.

14 Secretary will continue to read.

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

18 Members of the Medical Advisory
19 Committee, Inga J. Scott, of Pulaski; Roger W.
20 Triftshauser, D.D.S., of Batavia; Ellen M.
21 Vossler, D.D.S., of Eggertsville, and Charles E.
22 Wisor, M.D., of Geneva.

23 ACTING PRESIDENT KUHL: Question
24 is on the nominations. All those in favor
25 signify by saying aye.

1 (Response of "Aye.")

2 Opposed nay.

3 The nominees are confirmed.

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

7 Member of the Board of Visitors
8 of the Broome Developmental Disabilities
9 Services Office, Joseph F. Abissi, of Johnson
10 City.

11 ACTING PRESIDENT KUHL: Question
12 is on the nomination. All those in favor
13 signify by saying aye.

14 (Response of "Aye.")

15 Opposed nay.

16 (There was no response.)

17 The nominee is confirmed.

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

21 Members of the Board of Visitors
22 of the Central New York Developmental
23 Disabilities Services Office, Doris W. Latimer,
24 of Rome; Henry F. Miller, Jr., of Barneveld;
25 Shirley Mary Wilcox, of Little Falls, and Thomas

1 Yousey, Sr., of Lowville.

2 ACTING PRESIDENT KUHL: Question
3 is on the nominations. All those in favor
4 signify by saying aye.

5 (Response of "Aye.")

6 Opposed nay.

7 (There was no response.)

8 The nominees are confirmed.

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

12 Member of the Board of Visitors
13 of the Letchworth Village Developmental
14 Disabilities Services Office, Alice Kayser, of
15 Orangeburg.

16 ACTING PRESIDENT KUHL: Question
17 is on the nomination. All those in favor
18 signify by saying aye.

19 (Response of "Aye.")

20 Opposed nay.

21 (There was no response.)

22 The nominee is confirmed.

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

1 Members of the Board of Visitors
2 of the Middletown Psychiatric Center, Frank P.
3 Dodd, of Middletown, and Helen R. Swanwick, of
4 Middletown.

5 ACTING PRESIDENT KUHL: Question
6 is on the nominations. All those in favor
7 signify by saying aye.

8 (Response of "Aye.")

9 Opposed nay.

10 (There was no response.)

11 The nominees are confirmed.

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

15 Member of the Board of Visitors
16 of the Mid-Hudson Psychiatric Center, Albert R.
17 Lybolt, of Middletown.

18 ACTING PRESIDENT KUHL: Question
19 is on the nomination. All those in favor
20 signify by saying aye.

21 (Response of "Aye.")

22 Opposed nay.

23 (There was no response.)

24 The nominee is confirmed.

25 THE SECRETARY: Senator Stafford,

1 from the Committee on Finance, reports the
2 following nomination:

3 Member of the Board of Visitors
4 of the Rockland Psychiatric Center, Elizabeth A.
5 Van Wynen, of Pearl River.

6 ACTING PRESIDENT KUHL: Question
7 is on the nomination. All those in favor
8 signify by saying aye.

9 (Response of "Aye.")

10 Opposed nay.

11 (There was no response.)

12 The nominee is confirmed.

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

16 Member of the Board of Visitors
17 of the Taconic Developmental Disabilities
18 Services Office, Joan E. Klink, of Fishkill.

19 ACTING PRESIDENT KUHL: Question
20 is on the nomination. All those in favor
21 signify by saying aye.

22 (Response of "Aye.")

23 Opposed nay.

24 (There was no response.)

25 The nomination is confirmed.

1 Senator Skelos, that completes
2 the Finance Committee report.

3 SENATOR SKELOS: Mr. President,
4 if we could return to the controversial
5 calendar, with the consent of the Minority,
6 we're going to call up three bills now which I
7 think we can dispose of.

8 Would you please start with
9 Calendar Number 784.

10 ACTING PRESIDENT KUHL: Secretary
11 will read Calendar Number 784.

12 THE SECRETARY: Calendar Number
13 784, by Senator Maziarz, Senate Print 5081-A, an
14 act to amend the Social Services Law.

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

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

19 ACTING PRESIDENT KUHL: Call the
20 roll.

21 (The Secretary called the roll.)

22 THE SECRETARY: Ayes 52.

23 ACTING PRESIDENT KUHL: The bill
24 is passed.

25 SENATOR SKELOS: Please call up

1 Calendar Number 855.

2 ACTING PRESIDENT KUHL: Secretary
3 will read.

4 THE SECRETARY: Calendar Number
5 855, by Senator Meier, Senate Print 3307-B, an
6 act to amend the Criminal Procedure Law.

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

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

11 ACTING PRESIDENT KUHL: Call the
12 roll.

13 (The Secretary called the roll.)

14 THE SECRETARY: Ayes 52.

15 ACTING PRESIDENT KUHL: The bill
16 is passed.

17 SENATOR SKELOS: Would you please
18 call up Calendar Number 1392.

19 ACTING PRESIDENT KUHL: Secretary
20 will read.

21 THE SECRETARY: Calendar Number
22 1392, by Senator Santiago, Senate Print 5595, an
23 act to authorize the Office of General Services
24 to sell and convey certain real property.

25 ACTING PRESIDENT KUHL: Secretary

1 will read the last section.

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

4 ACTING PRESIDENT KUHL: Call the
5 roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes 52.

8 ACTING PRESIDENT KUHL: The bill
9 is passed.

10 Senator Skelos.

11 SENATOR SKELOS: Mr. President,
12 at this time if we would take up Senate
13 Supplemental Calendar 59-A, non-controversial.

14 ACTING PRESIDENT KUHL: Secretary
15 will read the non-controversial reading of
16 Supplemental Calendar 59-A, which is on the
17 members' desks.

18 THE SECRETARY: Calendar Number
19 1380, by Senator Goodman, Senate Print 430-A, an
20 act to amend the Education Law.

21 SENATOR GOODMAN: Lay the bill
22 aside.

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

1 THE SECRETARY: Calendar Number
2 1400, by Senator Volker, Senate Print 751, an
3 act to amend the Criminal Procedure Law.

4 SENATOR LEICHTER: Lay aside.

5 ACTING PRESIDENT KUHL: Lay the
6 bill aside.

7 THE SECRETARY: Calendar Number
8 1412, by Senator Stachowski, Senate Print 1667,
9 an act directing the Commissioner of the
10 Division of Criminal Justice.

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

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

15 ACTING PRESIDENT KUHL: Call the
16 roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes 52.

19 ACTING PRESIDENT KUHL: The bill
20 is passed.

21 THE SECRETARY: Calendar Number
22 1423, by Senator Velella, Senate Print 1882, an
23 act to amend the Administrative Code of the city
24 of New York.

25 ACTING PRESIDENT KUHL: There is

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

3 SENATOR PATERSON: Lay aside.

4 ACTING PRESIDENT KUHL: Lay the
5 bill aside.

6 THE SECRETARY: Calendar Number
7 1424, by Senator Hannon, Senate Print 2186, an
8 act to amend the Education Law.

9 SENATOR PATERSON: Lay aside.

10 ACTING PRESIDENT KUHL: Lay the
11 bill aside.

12 THE SECRETARY: Calendar Number
13 1425, by Senator Montgomery, Senate Print 2574,
14 an act authorizing the city of New York.

15 ACTING PRESIDENT KUHL: There is
16 no home rule message at the desk. The bill will
17 be laid aside.

18 THE SECRETARY: Calendar Number
19 1426, by Senator LaValle, Senate Print 2659-A,
20 an act to amend the Environmental Conservation
21 Law.

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

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

1 ACTING PRESIDENT KUHL: Call the
2 roll.

3 (The Secretary called the roll.)

4 THE SECRETARY: Ayes 52.

5 ACTING PRESIDENT KUHL: The bill
6 is passed.

7 THE SECRETARY: Calendar Number
8 1427, by Senator Velella, Senate Print 2688, an
9 act to amend the Public Housing Law, in relation
10 to requiring.

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

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

15 ACTING PRESIDENT KUHL: Call the
16 roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes 52.

19 ACTING PRESIDENT KUHL: The bill
20 is passed.

21 THE SECRETARY: Calendar Number
22 1428, by Senator Skelos, Senate Print 2697, an
23 act to amend the Public Service Law, in relation
24 to definition.

25 ACTING PRESIDENT KUHL: Secretary

1 will read the last section.

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

4 SENATOR GOLD: Senator Leichter
5 has asked that it be laid aside.

6 ACTING PRESIDENT KUHL: Lay the
7 bill aside.

8 THE SECRETARY: Calendar Number
9 1429, by Senator Spano, Senate Print 2707-A, an
10 act to amend the Public Health Law.

11 SENATOR LEICHTER: Lay it aside.

12 ACTING PRESIDENT KUHL: Lay the
13 bill aside.

14 THE SECRETARY: Senator Present
15 moves to discharge from the Committee on Rules
16 Assembly Bill Number 5816-A, and substitute it
17 for the identical Third Reading Calendar 1430.

18 ACTING PRESIDENT KUHL:
19 Substitution is ordered. Secretary will read.

20 THE SECRETARY: Calendar Number
21 1430, by member of the Assembly Parment,
22 Assembly Print 5816-A, an act to amend the
23 County Law.

24 ACTING PRESIDENT KUHL: There is
25 a local fiscal impact note at the desk. Bill

1 will be laid aside.

2 THE SECRETARY: Calendar Number
3 1431, by Senator Present, Senate Print 3799-A,
4 an act authorizing the payment of certain school
5 building aid.

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

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

10 ACTING PRESIDENT KUHL: Call the
11 roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes 52.

14 ACTING PRESIDENT KUHL: The bill
15 is passed.

16 THE SECRETARY: Calendar Number
17 1432, by Senator Padavan, Senate Print 4467, an
18 act to amend the Public Service Law, in relation
19 to prohibiting the Public Service Commission.

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

22 THE SECRETARY: Section 2. This
23 act shall take effect on the 60th day.

24 ACTING PRESIDENT KUHL: Call the
25 roll.

1 (The Secretary called the roll.)

2 THE SECRETARY: Ayes 52.

3 ACTING PRESIDENT KUHL: The bill
4 is passed.

5 THE SECRETARY: Calendar Number
6 1433, by Senator Hannon, Senate Print 4707-A, an
7 act to amend the Social Services Law, in
8 relation to limiting.

9 ACTING PRESIDENT KUHL: Sec...

10 SENATOR GOLD: What is that
11 number?

12 ACTING PRESIDENT KUHL: 1433.

13 SENATOR GOLD: Lay aside.

14 ACTING PRESIDENT KUHL: Lay the
15 bill aside.

16 THE SECRETARY: Calendar Number
17 1434, by Senator LaValle, Senate Print 4741, an
18 act to amend Chapter 554 of the Laws of 1996.

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

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

23 ACTING PRESIDENT KUHL: Call the
24 roll.

25 (The Secretary called the roll.)

1 THE SECRETARY: Ayes 52.

2 ACTING PRESIDENT KUHL: The bill
3 is passed.

4 THE SECRETARY: Calendar Number
5 1435, by Senator Seward, Senate Print 4798-B, an
6 act to enact the Ithaca City School District.

7 SENATOR PATERSON: Lay aside,
8 please.

9 ACTING PRESIDENT KUHL: Lay the
10 bill aside.

11 THE SECRETARY: Calendar Number
12 1436, by Senator Larkin, Senate Print 5301, an
13 act to legalize, ratify and confirm the acts and
14 proceedings of the board of education.

15 ACTING PRESIDENT KUHL: There is
16 a local fiscal impact note at the desk.
17 Secretary will read the last section.

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

20 ACTING PRESIDENT KUHL: Call the
21 roll.

22 (The Secretary called the roll.)

23 SENATOR GOLD: Mr. President,
24 just want to explain my vote.

25 (The Secretary called the roll.)

1 ACTING PRESIDENT KUHL: Senator
2 Gold, to explain his vote.

3 SENATOR GOLD: Thank you, Mr.
4 President.

5 I'm going to support this bill by
6 Senator Larkin which deals with legalizing and
7 ratifying acts for a community which I found out
8 in the Rules Committee is in his district, as I
9 will also support Senator Seward's bill for
10 Ithaca which I understand is in his district
11 and, of course, I've already voted for Senator
12 LaValle's bill dealing with Brookhaven, and
13 Senator Present's bill for the Forestville
14 Central School District, which is in his
15 district.

16 Vote me in the affirmative,
17 please.

18 ACTING PRESIDENT KUHL: Senator
19 Gold will be recorded in the affirmative.
20 Announce the results.

21 THE SECRETARY: Ayes 52.

22 ACTING PRESIDENT KUHL: The bill
23 is passed.

24 THE SECRETARY: Calendar Number
25 1437, by Senator Maziarz, Senate Print 5435, an

1 act to amend the Family Court Act, in relation
2 to violations.

3 SENATOR PATERSON: Lay aside.

4 ACTING PRESIDENT KUHL: Lay the
5 bill aside.

6 THE SECRETARY: Calendar Number
7 1438, by Senator Goodman, Senate Print 5522, an
8 act to amend the Alcoholic Beverage Control Law,
9 in relation to requiring.

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

12 THE SECRETARY: Section 4. This
13 act shall take effect on the 90th day.

14 ACTING PRESIDENT KUHL: Call the
15 roll.

16 (The Secretary called the roll.)

17 THE SECRETARY: Ayes 52.

18 ACTING PRESIDENT KUHL: The bill
19 is passed.

20 THE SECRETARY: Calendar Number
21 1439, by Senator Saland, Senate Print 5579, an
22 act authorize the City School District of the
23 city of Hudson.

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

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

3 ACTING PRESIDENT KUHL: Call the
4 roll.

5 (The Secretary called the roll.)

6 SENATOR GOLD: Mr. President.

7 ACTING PRESIDENT KUHL: Senator
8 Gold, to explain his vote.

9 SENATOR GOLD: Thank you. I
10 spoke to the Senator involved, and I'm pleased
11 to support Senator Saland's effort to help the
12 city of Hudson which is in his district.

13 Vote me yes.

14 ACTING PRESIDENT KUHL: Senator
15 Gold will be recorded in the affirmative.
16 Announce the results.

17 THE SECRETARY: Ayes 52.

18 ACTING PRESIDENT KUHL: The bill
19 is passed.

20 Senator Skelos, that completes
21 the reading of the -- the non-controversial
22 reading of Supplemental Calendar 59-A.

23 SENATOR SKELOS: Mr. President,
24 if we could read the supplemental calendar now,
25 controversial.

1 ACTING PRESIDENT KUHL: Secretary
2 will read the controversial calendar,
3 Supplemental Calendar 59-A commencing with
4 Calendar Number 1380, by Senator Goodman.

5 THE SECRETARY: Calendar Number
6 1380, by Senator Goodman, Senate Print 430-A, an
7 act to amend the Education Law.

8 ACTING PRESIDENT KUHL: Bill is
9 before the house. Secretary will read the last
10 section.

11 SENATOR GOODMAN: One moment, Mr.
12 President. Is that Senate Number 13 -- lay it
13 aside temporarily, please.

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

16 Secretary will continue to read.

17 THE SECRETARY: Calendar Number
18 1400, by Senator Volker, Senate Print 751, an
19 act to amend the Criminal Procedure Law.

20 SENATOR PATERSON: Explanation.

21 ACTING PRESIDENT KUHL: Senator
22 Volker, an explanation of Calendar Number 1400
23 has been requested by Senator Paterson.

24 SENATOR VOLKER: Mr. President,
25 this bill which actually was introduced back in

1 January, was really introduced in the last
2 session, first introduced, I believe in 1994,
3 and the reason that's significant is that the
4 bill was drafted by my former counsel, Ken
5 Connolly, who is -- who is now counsel to DCJS
6 and in conjunction with Ted Hallman, who is
7 deputy commissioner there, but anyways, so I
8 don't take any real credit for this bill, but
9 anyway what this bill does is it is a -- it is
10 very, very close, in fact, it is based on the
11 Kansas law on violent felony or violent felony
12 predators and -- sexual predators, I'm sorry,
13 and the reason it's here today is because the
14 Supreme Court just ruled, and the announcement
15 was made Monday at noon -- shows you how speedy
16 we are here in New York these days -- that the
17 Supreme Court of the United States by a five to
18 four decision had approved a process for
19 retaining violent sexual predators after their
20 term of imprisonment has been -- has been
21 ceased, and it sets a process up which mirrors
22 the process in Kansas that says that a D.A. must
23 be notified within 90 days of the release of
24 that person. There is a process whereby a
25 psychiatrist would review the person, examine

1 the person. The D. A. then would have the
2 option to proceed to put that person before a
3 jury, and a decision would be made as far as
4 that person's retention.

5 Two things I'd like to point out
6 here. One, under the Kansas statute, the -- the
7 commitment does not have to be made beyond a
8 reasonable doubt. In this bill, we say that it
9 -- if a jury is to decide that this person is
10 to be kept in a secure mental hygiene facility,
11 it has to be done beyond a reasonable doubt.

12 My counsel has been checking into
13 this. We actually go farther, as I say, than
14 the Supreme Court has actually allowed, that is
15 farther meaning we put more protections in.
16 Just so that that's aware.

17 Secondly, let me say that there
18 was an editorial today, and I want to talk about
19 it up front, that -- in the local newspaper that
20 said, the state Constitution prohibits
21 government from locking up citizens beyond the
22 term of the legal incarceration, so forth.
23 Obviously they got that from some defense
24 attorney, and I understand. We read the
25 Constitution. There is no such provision in the

1 Constitution. Not only is there no such
2 provision in the Constitution, there have been
3 Court of Appeals cases, in fact, that allow the
4 reverse. There is nothing that we can find in
5 the last five years that, in effect, would
6 supersede or would bar this kind of a Supreme
7 Court decision.

8 So we believe that this book -
9 this bill will stand up to constitutionality.
10 Now, obviously the question is as to whether you
11 want to do this. Senator Padavan informs me
12 that the process is similar to the process for
13 people with mental disease, and he's had a bill
14 for years for criminally -- for guilty but
15 mentally ill, which I've been a co-sponsor on.

16 The process is somewhat similar.
17 Let me just finish by saying, and I won't -- I
18 mean I could describe the entire process all the
19 way down, but it -- it is a very detailed and
20 careful process. In fact, I don't have to -
21 I'm not going to, but it is a very detailed
22 process of how this person would be -- the
23 decision would be made whether this person would
24 be freed or kept in.

25 Remember, this is only for

1 violent sexual predators, not for any other
2 people that involved in violence.

3 ACTING PRESIDENT KUHL: Senator
4 Waldon, why do you rise?

5 SENATOR WALDON: Would the
6 gentleman yield to a question?

7 ACTING PRESIDENT KUHL: Senator
8 Paterson has the floor, Senator Waldon. I have
9 a list going on.

10 Senator Paterson.

11 SENATOR PATERSON: I will allow
12 Senator Waldon to go in front of me.

13 ACTING PRESIDENT KUHL: You're
14 willing to yield? Senator Paterson passes.

15 Senator Waldon.

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

19 Senator Volker, you are familiar
20 with ex post facto laws, are you not?

21 SENATOR VOLKER: I'm sorry. I'm
22 what?

23 SENATOR WALDON: You're familiar
24 with ex post facto laws, are you not?

25 SENATOR VOLKER: Certainly.

1 SENATOR WALDON: Could this be
2 characterized as an anticipatory cousin of the
3 ex post facto law because the person here hasn't
4 done anything, according -- as I understand your
5 proposal, according to the law, the person has
6 served the sentence to its fullest in regard to
7 the crime committed and what this does is say,
8 Wait a minute. We're not so sure that you can
9 go back out into society. So we're going to
10 hold a special hearing in anticipation of the
11 possibility that you might commit again what you
12 have been committing in the past, we're going to
13 create a mechanism to hold you. Is that true?

14 SENATOR VOLKER: Well, first of
15 all, let's -- the answer is no. It is not an ex
16 post facto law and you say well, Senator, how
17 can you say that?

18 SENATOR WALDON: I said a cousin.

19 SENATOR VOLKER: It may be a
20 cousin of, except that the Supreme Court says
21 that cousin is legal because the Supreme Court
22 of the United States has specifically ruled that
23 this is not an ex post facto statute, meaning
24 that this -- the Kansas statute was not ex post
25 facto and, therefore, since this is patterned

1 after the Kansas statute, that this is not an ex
2 post facto law because this is a civil
3 commitment. This is not a criminal commitment.
4 In other words, this is not an extension of the
5 criminal -- the criminal sanction. This is a
6 civil commitment based on the ability of society
7 to protect itself and what the decision says is
8 -- and there have been several decisions, by
9 the way, not just this decision, although
10 admittedly this is probably the most extensive
11 in this area -- that say that the ability of
12 society to protect itself supersedes a lot of
13 the normal, quote-unquote, protections for
14 individuals and particularly in this area of
15 sexual predators -- and we have the decision
16 here, by the way, from the Supreme Court -- and
17 it mirrors a lot of the thoughts that have been
18 discussed on the floor of this house as regards
19 the dangers of people who are sexual predators
20 and whether they can be cured and the treatment
21 that's necessary, and keep in mind that if a
22 person is found under this statute to be
23 somebody who should be kept -- they wouldn't be
24 kept in prison. They would be kept in a secure
25 mental facility and if you follow the tracking

1 of the bill, they would be checked periodically
2 to make sure that they're not a danger to
3 themselves, to society, whatever. If they're
4 found not to be, then they can be released but
5 until that time, they have to stay in a secure
6 mental health facility.

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

9 SENATOR VOLKER: Sure.

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

12 SENATOR WALDON: Senator Volker,
13 I heard what you said and then I looked at the
14 note on the bill and it says "An act to amend
15 the Criminal Procedure Law, in relation to
16 retention of sexually violent predators" which
17 causes me to question the fact that it is a
18 civil procedure which would retain them, but let
19 me ask this question.

20 In the history of our nation, to
21 your personal knowledge or to your counsel's
22 knowledge, have we ever had a proviso where
23 someone who has in the past committed criminal
24 acts will not be held beyond the time that they
25 have paid their debt to society on a maneuver of

1 this type?

2 SENATOR VOLKER: The answer to
3 that is yes. If a person who is in a prison is
4 found at the time that he or she is proposed to
5 be released, is found to be insane, and on
6 several occasions I guess it has happened. It
7 is rare, but it has happened on several
8 occasions, where that person would be a threat
9 to himself or to society, that person would then
10 be kept not in a prison but in a mental health
11 facility.

12 Now, in the old days that would
13 have meant places like Dannemora, for instance,
14 for the criminally insane. Since we've had a
15 ruling here in this state that we can't keep
16 mentally deficient people or mentally diseased
17 people in the prison system, we have to keep
18 them on the mental health side.

19 So, therefore, in compliance with
20 that, that's why we talk about a secure mental
21 facility. So there have been people who have
22 been kept after their term not because of a
23 criminal sanction but because of civil
24 commitment and of the -- the potential danger to
25 society.

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

3 SENATOR VOLKER: Sure.

4 ACTING PRESIDENT KUHL: The
5 Senator continues to yield.

6 SENATOR WALDON: Senator, were
7 there any public hearings conducted regarding
8 your proposal which would have allowed the
9 Office of Mental Health and its commissioner or
10 the Department of Correctional Services and its
11 commissioner or the Office of Mental Retardation
12 and its commissioner or community organizations
13 and/or organizations which have a specialty in
14 this area, the Defenders Association, Legal Aid
15 or whatever to come before you or your committee
16 and indicate to you their reservations, their
17 support, their ideas in regard to this dramatic
18 and drastic change in public policy vis-a-vis
19 the laws of the state of New York before you
20 submitted this proposal?

21 SENATOR VOLKER: Before we
22 submitted the proposal, there have been -- to my
23 knowledge, there have been a lot of public
24 hearings and discussions on the issue. Frank -
25 Senator Padavan has had over the years

1 innumerable hearings on the issue of guilty but
2 mentally ill and on this entire issue of mental
3 illness, and we have had -- we have had hearings
4 over the years on sexual predator legislation.

5 On this specific bill, no, and
6 keep in mind -- the reason, I guess, is although
7 this issue has, you know, gone to the forefront,
8 until this Supreme Court decision just the other
9 day, it was the -- obviously we were reluctant
10 to move because we wanted to feel that we were
11 on totally solid ground before we were able to
12 move.

13 Although there have been no
14 hearings on this bill, it seems to me this is
15 such a serious issue, the issue of violent
16 sexual predators and just recently in Senator
17 Maziarz' district an issue came up where a
18 person was released on parole and that became
19 one of the -- a huge problem. It just seems as
20 if -- that this is an issue that needs to be
21 dealt with as quickly as possible. We know,
22 obviously, defense attorneys are going to oppose
23 it, as I think it's to be expected. It is an
24 issue, I think, that should be dealt with and
25 that's why it's on the floor today.

1 SENATOR WALDON: Would the
2 gentleman continue to yield?

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

5 SENATOR VOLKER: Certainly.

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

8 SENATOR WALDON: Senator, I heard
9 what you said in regard to hearings by Senator
10 Padavan and yourself and others perhaps amongst
11 our body some time ago, but this decision was
12 very recent and you are moving forward with the
13 proposal without the most recent information
14 from the state agencies which should have a say
15 about this.

16 Furthermore, it appears from what
17 you've said that you're moving forward without
18 the benefit of the best minds in the state to
19 give you their feelings and suggestions and
20 intelligence on this issue. You don't in any
21 way feel that this move is premature without the
22 benefit of all of these experts who could have
23 indicated some considerations for you?

24 SENATOR VOLKER: I certainly -
25 and I -- I say very humbly, I am not -- I don't

1 profess to be one of those acknowledged
2 experts. I like to think that some of the
3 people that have worked for me have some
4 expertise in this area and I've discussed this
5 for -- at some point -- at different points with
6 a lot of people that are involved in the various
7 areas. It's not as if this is something that
8 has been totally not discussed over the last
9 three to four years. In fact, this bill, by the
10 way, was in the Rules Committee, I think either
11 two years ago or a year ago. It was thoroughly
12 discussed and frankly, because of -- I pulled
13 the bill back because of the fact that there was
14 a lot of objections to the fact as to whether
15 the Supreme Court of the United States, what the
16 ruling would be, that there would probably be an
17 adverse ruling, and so forth, and so on, and
18 rather than, in an issue of this sensitivity,
19 move the bill at that point without any specific
20 grounds to say that -- I could say that it would
21 be upheld constitutionally -- since it was in
22 litigation at the time, we decided to hold back
23 on it.

24 So the answer to your question is
25 that this is something that has been discussed

1 on and off for a long period of time. I don't
2 think it really is precipitous. Certainly we're
3 going to continue to speak to some people about
4 this, but I think it's something that really
5 should be dealt with quickly and get this whole
6 process moving.

7 SENATOR WALDON: Mr. President,
8 would the gentleman yield again?

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

11 SENATOR VOLKER: Sure.

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

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

16 Senator Volker, you said earlier
17 we have precedent for this procedure, those who
18 are found to be mentally insane and, therefore,
19 from places historically in the state like
20 Matteawan, Dannemora, et cetera, when they are
21 about to be released, they can be held over, or
22 at least historically were held over because
23 they were adjudged to be mentally insane, but I
24 don't see anything in 1400 which says that these
25 people are first found mentally insane and then

1 held. It is my understanding that that is not
2 the case, and so let me ask you the question
3 again.

4 Is this absolutely new and
5 precedent setting procedure by our state and
6 from a historical sense, is there not a
7 precedent to do this?

8 SENATOR VOLKER: Well, let me
9 say, first of all -- and as Senator Padavan just
10 mentioned to me, that these types of people are
11 sent to Mid-Hudson, but if they would be
12 declared to be mentally incompetent, they
13 shouldn't be in a prison to start with. I mean,
14 so, yeah, it is different and it would be
15 different than the issue of a competency
16 precedent. If they were mentally incompetent,
17 then they wouldn't be in the prison to start
18 with and they would have to go to Mid-Hudson or
19 whatever it was anyways.

20 What we're doing here is coming
21 short of that to -- in dealing with violent
22 sexual predators which the Supreme Court of the
23 United States has said -- and a number of
24 courts, by the way, not just the Supreme Court,
25 but obviously we're using the highest authority

1 now -- have said that this type of action, these
2 types of people should be taken in a different
3 context from normal violent criminals and that
4 since we -- it's acknowledged by some of the
5 best experts in the field -- are not able to
6 deal with these people psychologically and
7 emotionally, are not able to deal with them in
8 the same way, that what we are trying to do is
9 set up a process here. You can call this
10 process unique -- and I guess it is unique.
11 It's a process related to processes that we have
12 had for years, but it is a unique process in
13 this category and we are setting up, in effect,
14 a special category of people who, in fact, by
15 their crimes, have set themselves up into a
16 special category for special attention and that
17 special attention is that they will be reviewed
18 at the time they're about to be released to make
19 sure that they can function in society without
20 creating havoc in society.

21 SENATOR WALDON: Will the
22 gentleman yield again, Mr. President?

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

25 SENATOR VOLKER: Sure.

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

3 SENATOR WALDON: Thank you, Mr.
4 President.

5 Senator Volker, have you ever
6 been to Green Haven prison?

7 SENATOR VOLKER: Have I even been
8 to what?

9 SENATOR WALDON: To Green Haven.

10 SENATOR VOLKER: Yes, I have. I
11 haven't been there recently but I was there a
12 few years ago, yes.

13 SENATOR WALDON: When I was there
14 last, they had a section of the prison which
15 housed primarily sexual offenders and they had a
16 program of support systems to try to help these
17 people in terms of their propensity to act out
18 in a deviant sense.

19 To your knowledge, is there any
20 history in New York State, any history in New
21 York State of any success in treating those who
22 are sexual predators, if you will?

23 SENATOR VOLKER: I think in all
24 honesty -- and I think it -- remember, that this
25 whole area, the attention to this area is

1 something fairly new. I mean, obviously sexual
2 predators are not new but the violence and the
3 amount of violence that has occurred by these
4 individuals and the numbers of victims have
5 escalated over the last few years.

6 I would have to say I think there
7 has been some success, but I think the general
8 consensus is that it's been extremely limited
9 and that's the reason that we are attempting in
10 this bill to set up what amounts to an
11 additional process to try to make sure that
12 these individuals do not create continued havoc
13 in society.

14 I want you to keep in mind that
15 we have a forensic center at Gowanda. I have
16 been to that a number of times, which is part of
17 the prison system. I just talked to
18 Commissioner Goord about that last night when we
19 had a chat about this bill because one of the
20 options in looking at the decision, you could
21 probably try to push it and say maybe that a
22 separate prison facility could be acceptable but
23 in reading literally the decision, we believe
24 that a mental health facility is really the best
25 option, the best constitutionally and probably

1 the best in any case and that's why the bill
2 envisions mental health and we -- so that's why
3 it envisions someone going to mental health
4 rather than a prison psychiatric facility.

5 SENATOR WALDON: On the bill, Mr.
6 President.

7 Thank you, Senator.

8 ACTING PRESIDENT KUHL: Senator
9 Waldon, on the bill.

10 SENATOR WALDON: I'm really torn
11 on this issue. No one wants to put back into
12 society or to be responsible for the placement
13 back in society of someone who's going to create
14 such severe trauma as those who we characterize
15 because of what they do as sexual predators, but
16 my fear is that we are creating a precedent,
17 even though sanctioned, unfortunately by the
18 Supreme Court, which is not always right but in
19 this nation of laws, when they make a statement,
20 it has great and pervasive impact.

21 When we are about to say what you
22 may do down the road we'll hold you for now, is
23 unprecedented historically in this nation. It
24 is unprecedented, and my fear is who will be
25 told you are the one who we anticipate will do

1 the wrong if we should let you out?

2 Will it get back to a situation
3 similar to what has happened with certain people
4 in our society in regard to the death penalty,
5 when those who are of color are those who have
6 most often been executed? I would hope not.
7 When those who are poor are those who are most
8 often executed? I would hope not. When those
9 who commit crime, black against white, are most
10 often executed? I would hope not. But my fear
11 is that historically this nation has proven that
12 that is the case.

13 This is not something that Al
14 Waldon dreamed up, that I created in the ether.
15 Historically this nation has applied its
16 criminal justice laws in a racist fashion, and I
17 sincerely hope that this will not happen
18 regarding this particular proposal.

19 I'll make my decision after I've
20 heard all of my colleagues speak, but I can tell
21 you truthfully that this is tearing at my
22 innards as to what I should do which will be
23 right and for the greater good of the society.

24 Thank you, Mr. President.

25 ACTING PRESIDENT KUHL: Senator

1 Abate.

2 SENATOR ABATE: Yes. Would
3 Senator Volker yield to a question?

4 ACTING PRESIDENT KUHL: Senator
5 Volker, do you yield to a question from Senator
6 Abate? The Senator yields.

7 SENATOR ABATE: Yes. I
8 understand clearly and the Supreme Court talked
9 about the balance between protecting society
10 against sexual predators which we know will
11 commit similar crimes in the future and the
12 balance that must be rendered in terms of
13 providing procedural due process safeguards to
14 ensure the right and appropriate people are kept
15 detained.

16 One of my concerns is what would
17 be the standard that would be set? Is it beyond
18 a reasonable doubt? Is it clear and convincing
19 evidence?

20 SENATOR VOLKER: The answer is
21 beyond a reasonable doubt.

22 SENATOR ABATE: It would be
23 beyond a reasonable doubt.

24 SENATOR VOLKER: Yeah. In fact,
25 I mentioned that -- and that's a point. We

1 checked -- and we have the decision here and the
2 Kansas statute, as I understand it, their civil
3 commitment, we think is the same as it is here.
4 A civil commitment here is not beyond a
5 reasonable doubt, as you know.

6 SENATOR ABATE: It's clear and
7 convincing evidence.

8 SENATOR VOLKER: It's clear and
9 convincing. What we have done here -- and I
10 remember that's part of it. I do remember when
11 we talked about this way back when was that we
12 could have allowed the civil commitment, the
13 jury trial to be clear and convincing because it
14 appears under the decisions that we could do
15 that but we did not want to do that because we
16 felt that this is something severe enough and
17 restricting enough that it should be beyond a
18 reasonable doubt. So clearly at every step of
19 the way, the decision to keep a person in a
20 mental facility after their term has to be
21 beyond a reasonable doubt.

22 SENATOR ABATE: Would Senator
23 Volker continue to yield, Mr. President?

24 SENATOR VOLKER: Certainly.

25 ACTING PRESIDENT KUHL: The

1 Senator continues to yield.

2 SENATOR ABATE: I'm very pleased
3 that it's the higher standard. It's my
4 understanding right now in a civil commitment if
5 an individual is shown to be a danger to
6 themselves or others, upon a showing of clear
7 and convincing evidence to that fact, they can
8 be detained indefinitely -

9 SENATOR VOLKER: That's exactly
10 right.

11 SENATOR ABATE: -- with a
12 periodic review.

13 SENATOR VOLKER: You're right.

14 SENATOR ABATE: What would be -
15 while we have established what the standard is
16 beyond a reasonable doubt, what would have to be
17 shown and to whom? Who would preside over this
18 matter?

19 SENATOR VOLKER: Well, the notice
20 goes to the D.A. The psychiatric exam has to be
21 held. The issue then would go to a court and
22 the -

23 SENATOR ABATE: Would it go to
24 the sentencing judge? Who would hear this
25 case?

1 SENATOR VOLKER: No. I think it
2 would be probably the judge in the area where
3 the person was incarcerated, I would think. We
4 don't specify that but traditionally if you have
5 somebody who is about to be released, the judge
6 that would hear it would be -- for instance, if
7 it's Attica, it would be in the Wyoming County
8 Court. It could be in Erie because it's a
9 judicial district but wherever the area is, the
10 decision then, the actual decision, assuming
11 that the D.A. decides to move and the evaluation
12 is set -- the D.A., by the way, says "may".
13 Well, the reason for that is if the psychiatric
14 decision -- evaluation says that this person is
15 not a problem, he can then withdraw it and then,
16 as I understand it, the person could be
17 released. Otherwise he could move ahead. The
18 judge would order a jury impanelled and they
19 will have a jury trial on the issue of whether
20 that person should be retained as a civil
21 commitment.

22 SENATOR ABATE: So not only is
23 the burden of proof beyond a reasonable doubt.
24 The decision would be unless it was waived by
25 the defendant, the defendant would be entitled

1 to a jury trial in this case.

2 SENATOR VOLKER: Absolutely.

3 SENATOR ABATE: And what would
4 the district attorney have to demonstrate? What
5 would he or she have to prove beyond a
6 reasonable doubt?

7 SENATOR VOLKER: He would have to
8 show that he was convicted, number one, of a
9 violent -- violent felony offense -- sexual
10 violent -- that he was a violent predator, in
11 effect, a violent sexual offense and that he
12 suffers from a mental illness or deficiency
13 which is defined in the bill and, therefore,
14 that he should be -- I'm listening as I'm
15 talking here -- that he would have to find out
16 that he had a disease or defect that would keep
17 -- that would possibly allow him to continue to
18 be, in effect, a danger to himself or to others;
19 in other words, that he could still continue to
20 prey on society.

21 SENATOR ABATE: My understanding
22 is they would have to demonstrate that in the
23 past, the instant crime which the person is
24 doing time for, was for a violent sex offense.

25 SENATOR VOLKER: Violent sexual

1 offense, yep.

2 SENATOR ABATE: That there was a
3 likelihood or predisposition to commit these
4 crimes in the future and is there a third
5 criteria that the individual is dangerous to
6 themselves and others if released?

7 SENATOR VOLKER: I use that as a
8 -- in general, that's it. That's part of the
9 -- in fact, I think in the data, the judge
10 mentions that, in effect, but what you just
11 described correctly -- specifically is what must
12 be determined.

13 SENATOR ABATE: The -- my last
14 question is the dissenting opinion, while I have
15 not read it completely, I've just -
16 unfortunately I only read press clips of a
17 synopsis of the four dissenting judges. They
18 were not totally uncomfortable with the
19 majority's decision except for two points.

20 SENATOR VOLKER: M-m h-m-m.

21 SENATOR ABATE: And I need
22 clarification about those points. Would this
23 bill be applied retroactively? Clarence Thomas
24 talks in the majority opinion that it would not
25 be applied retroactively, and I think there are

1 some constitutional issues raised if we apply
2 retroactively and not just prospectively.

3 SENATOR VOLKER: Yeah, I think
4 the issue of retroactivity is a fascinating
5 issue and I think -- what does retroactivity
6 mean? Does it mean somebody who is actually now
7 in prison or -- I think what maybe they were
8 concerned about is re-evaluating people who are
9 presently about to be released, for instance.

10 SENATOR ABATE: I think they're
11 talking about pre-plea, when someone pleads
12 to -

13 SENATOR VOLKER: I was going to
14 say or already released, and I think what the
15 judges are concerned about is you can't bring
16 people back, and I think that may have been one
17 of the issues that was being -- I think Thomas
18 pretty clearly was saying you can't do that. In
19 other words, these are all people that are -
20 this is going to be in the future once this
21 statute is established.

22 Now, does this mean that you have
23 to wait for new crimes and new people to
24 actually be sentenced and wait until the end? I
25 don't think so, and I think -- although the

1 Minority may have worried about that
2 dissenting. I think it's envisioned here that
3 people who are presently incarcerated, who have
4 presently committed violent felony offenses and
5 after this bill -- or assuming this bill became
6 law and was signed by the judge after November
7 1st, that when they came up for their release,
8 then the -- this statute would be applied and,
9 therefore, they could be -- the process would
10 begin at that point but not for people, for
11 instance, who are already released or before
12 that time.

13 SENATOR ABATE: Well, Senator
14 Volker, perhaps we can just -

15 ACTING PRESIDENT KUHL: Senator
16 Abate, are you asking Senator Volker to yield to
17 another question?

18 SENATOR ABATE: Yes, I am.

19 ACTING PRESIDENT KUHL: I have
20 been rather limited in hoping that would
21 expedite the process here but it appears not to
22 have. So we'll have to go back so we can
23 maintain some sort of semblance of control in
24 this chamber anyway.

25 Senator Volker, do you continue

1 to yield?

2 SENATOR VOLKER: I certainly do.

3 ACTING PRESIDENT KUHL: The
4 Senator continues to yield.

5 SENATOR ABATE: This bill will
6 probably pass today, Senator Volker, but I hope
7 you would look at the retroactivity issue
8 because I'm not sure this bill will pass
9 constitutional muster, if it is done
10 retroactively and I'm talking retroactively,
11 before someone pleads guilty to a crime and what
12 I'm saying is someone pleads guilty to a crime
13 knowing that not only will they have to do it -
14 the time in terms of the instant crime but if
15 they're held to -- and they're convicted later,
16 they may not be released even after they do
17 their time, and I think that's an issue that's
18 worth doing some legal research on.

19 SENATOR VOLKER: Let me just say,
20 we will do that research, all right, but it was
21 just pointed out to me, the Hendrick case, the
22 decision was that this fellow was in that
23 position and the decision says that they can't
24 hold him and they can do the process. So we
25 assume that that is a pretty good indication.

1 SENATOR ABATE: All right.

2 Okay.

3 SENATOR VOLKER: And so we
4 certainly will do research, by the way. You can
5 be sure of that.

6 SENATOR ABATE: And then the
7 other issue, if you would continue to yield, for
8 my last question.

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

11 SENATOR VOLKER: Certainly.

12 ACTING PRESIDENT KUHL: The
13 Senator yields.

14 SENATOR ABATE: The other issue
15 raised by the four dissenting Supreme Court
16 judges is that when you civilly commit someone
17 because of their mental abnormality in this case
18 -- I don't know if they found the person
19 mentally ill but they call it a mental
20 abnormality -

21 SENATOR VOLKER: Yeah.

22 SENATOR ABATE: -- and you don't
23 have mandatory treatment, then the civil
24 commitment becomes too punitive and they raise
25 some other constitutional objections. Would you

1 consider, with these civil commitments, along
2 with it mandatory treatment?

3 SENATOR VOLKER: Absolutely.

4 SENATOR ABATE: And would you
5 consider amending this bill to reflect that?

6 SENATOR VOLKER: Let me just say
7 to you, we don't have to because the Mental
8 Hygiene Law, when you commit someone, must admit
9 -- treatment is absolutely mandatory under the
10 present law. We'll certainly look at that but
11 -- and Senator Padavan just mentioned that to
12 me. When you commit someone to a mental health
13 facility for a specific malady under the Mental
14 Hygiene Law, my recollection is you must treat
15 them, and I see Senator Leichter shaking his
16 head but that's the law already and we don't
17 have to put it in the statute because that's the
18 reason why, in fact, you put people in mental
19 institutions and if, by the way, the state
20 wouldn't do that, then obviously the defense
21 attorney could bring that up in the re
22 evaluation which, according to this bill, has to
23 be done on a regular basis, and I think it would
24 mean that that person would be released.

25 SENATOR ABATE: Unfortunately I

1 don't have the bill before me, that's why I'm
2 saying these many questions. So it's your
3 understanding -- but if it's not clear in terms
4 of the exact language of the bill, would you
5 consider making it very clear in the bill that
6 this -- what's required is mandatory treatment,
7 a possible commitment.

8 SENATOR VOLKER: It's already in
9 the Mental Health Law but we would certainly
10 consider it, but I really don't think it's a
11 problem but we will certainly look at it.

12 SENATOR ABATE: Are they being
13 detained under the Mental Health Law in this
14 bill?

15 SENATOR VOLKER: Pardon me?

16 SENATOR ABATE: Are they being
17 detained in the Mental Health Law in this bill?

18 SENATOR VOLKER: Well, they'll be
19 committed to the Commissioner of Mental Health
20 and under the Mental Health Law, when you send
21 people to mental health, they must treat them.

22 SENATOR ABATE: The last question
23 -- would you please continue to yield?

24 SENATOR VOLKER: Sure.

25 ACTING PRESIDENT KUHL: The

1 Senator continues to yield.

2 SENATOR ABATE: And how often
3 would the periodic review be and -- once someone
4 is civilly committed and who would do that
5 review and would it come back before a court and
6 under what circumstances would it return to a
7 court?

8 SENATOR VOLKER: You have the -
9 it occurs at least once a year, and I think
10 there's a -- it seemed to me there was -- yeah,
11 once a year, but it seemed to me there's a
12 process -- a defense attorney could bring an
13 action, if I'm not mistaken, if I remember
14 right, if he has, for instance, an examination
15 that shows the person is well and cured, and so
16 forth, could bring an action even sooner to have
17 that person released, but once every year there
18 must be a re-evaluation.

19 SENATOR ABATE: Okay. Thank
20 you.

21 ACTING PRESIDENT KUHL: Senator
22 Gold.

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

25 Would Senator Volker yield to a

1 question?

2 ACTING PRESIDENT KUHL: Senator
3 Volker, do you yield to Senator Gold? The
4 Senator yields.

5 SENATOR GOLD: Senator Volker,
6 while this bill, on its face is getting some
7 people concerned -- and I listened to Senator
8 Abate and Senator Waldon -- if you really
9 undress this bill, it seems to me that it's not
10 that much different than existing law. It seems
11 to me that -- and please answer this for me. It
12 seems to me that under existing law, if these
13 people were not in jail convicted of crimes but
14 were out in the street and they had an illness
15 which this bill mandates and they were a danger,
16 they could be picked up. They could be brought
17 before a Supreme Court judge, have a trial and
18 put in jail. Is that not correct?

19 SENATOR VOLKER: Not the jail,
20 committed.

21 SENATOR GOLD: Committed. I'm
22 sorry.

23 SENATOR VOLKER: To a mental
24 institution. You're absolutely right.

25 SENATOR GOLD: On the bill, Mr.

1 President.

2 ACTING PRESIDENT KUHL: Senator
3 Gold, on the bill.

4 SENATOR GOLD: Yeah. I for one
5 admire Senator Abate and Senator Waldon and
6 their sensitivity in these issues, and I hope I
7 am sensitive too, but I really do believe that
8 this bill, for all of its window dressing,
9 doesn't do too much to change existing law.

10 When I heard about it in the
11 Committee, my first inclination was, What are we
12 doing? People get convicted. You can sentence
13 them for long periods of time. You make them
14 serve every single day, don't give them parole
15 and the case is over. Why should they now not
16 be able to go out on the street, but the fact is
17 that they can go out on the street even under
18 this bill if they are not proven to have a
19 mental illness because this bill requires that.

20 If, in fact, they do have a
21 mental illness, then under existing law today
22 without this bill, someone could pick them up,
23 hold a hearing and have them committed.

24 So, Senator Volker, I'm going to
25 support it. I understand the motivation and I

1 think it's unfair when you throw into debate
2 that it was Ken Connolly that drafted it because
3 many of us still revere him but I'm going to
4 support the bill. I don't see a major change.

5 ACTING PRESIDENT KUHL: Senator
6 Dollinger.

7 SENATOR DOLLINGER: Would the
8 sponsor yield to some questions, Mr. President?

9 ACTING PRESIDENT KUHL: Senator
10 Volker, do you yield to some questions from
11 Senator Dollinger?

12 SENATOR VOLKER: Yes.

13 ACTING PRESIDENT KUHL: The
14 Senator yields.

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

17 Senator Volker, I'm not sure
18 whether this is, as Senator Gold characterizes
19 it, some permutation of Criminal Law or whether
20 this is a very tough, tough bill. One thing
21 I'll admit is this is a very tough, tough
22 problem and I appreciate it being addressed.

23 Let me take, if I could, three or
24 four minutes, again with the indulgence of the
25 President, to just ask you some technical

1 questions about the bill.

2 Who gives the notice?

3 SENATOR VOLKER: The -

4 SENATOR DOLLINGER: And again,
5 just so you understand, Senator, I'm talking
6 about the notice -

7 SENATOR VOLKER: Let me give you
8 the process, as I understand it. 90 days before
9 the release of a person who is a violent sexual
10 predator, the prison has to -- the Correction
11 Department has to notify the local D.A., that is
12 the D.A. that sentenced the person or
13 participated in the case, that this person is
14 about to be released, that is, he's being
15 released in 90 days and then the D.A. then -
16 according to this then commences the process of
17 doing the evaluation of the person. The
18 notification, obviously, is to the inmate
19 because he has the right to an attorney.
20 There's language in here that allows -- and we
21 even have the language -- I don't want to say
22 death penalty language but it is, in a sense.
23 If you don't have the funds, which most of these
24 people obviously would not have, they have the
25 right to an assigned attorney and all that sort

1 of thing and then that starts the process and
2 the evaluation.

3 SENATOR DOLLINGER: Again through
4 you, Mr. President, if Senator Volker will
5 continue to yield.

6 SENATOR VOLKER: Yes.

7 ACTING PRESIDENT KUHL: He
8 continues to yield.

9 SENATOR DOLLINGER: I was just
10 concerned because I read the bill as carefully
11 as I can here in the last 20 minutes and it says
12 "notice shall be given" but he doesn't specify
13 on page 2, line 20, who gives the notice. So I
14 would just call that to your attention that, if
15 there's eventually some kind of cleanup bill or
16 there's a discussion with the Assembly -

17 SENATOR VOLKER: Well, let me
18 explain to you -- and we will certainly look at
19 that but when a person is in prison, all notices
20 come from the Correction Department as regards
21 that inmate. Now -- at least that's my
22 understanding and -- Senator. So that when you
23 say notice, we'll certainly look at that, but
24 because the prison is possessed with the
25 information as to when this person would be

1 released, the prison would be the one who would
2 notify the D.A. and anybody else.

3 SENATOR DOLLINGER: The reason
4 why I asked that question, Senator, is because I
5 know this is an inclusion of the Criminal
6 Procedure Law and I'm not sure whether in the
7 prior sections of the Criminal Procedure Law,
8 that there's a definition of the commissioner,
9 whether it means the Commissioner of Corrections
10 or the commissioner of some other entity.

11 SENATOR VOLKER: You want me to
12 answer that question, because I noticed that
13 right away. I saw the commissioner and I said
14 to J.R., "We got a little problem" and he said,
15 "No, we don't" and he showed by reference the
16 commissioner -- he referenced back the language
17 and the commissioner is -- in fact, we have it
18 right here -- the commissioner that's referred
19 to is -- "Commissioner means the state
20 Commissioner of Mental Health or the state
21 Commissioner of Mental Retardation and
22 Developmental Disabilities."

23 SENATOR DOLLINGER: Okay. Again
24 through you, Mr. President, a second question.
25 I apologize. These are generally technical

1 questions, and then I'll address the bill.

2 SENATOR VOLKER: Sure.

3 SENATOR DOLLINGER: The notice
4 goes from the Department of Corrections to the
5 district attorney.

6 SENATOR VOLKER: Right.

7 SENATOR DOLLINGER: Did you give
8 consideration of the fact that the victim or the
9 victim's family should be notified as well,
10 simply to prevent the situation where the
11 district attorney gets the notice and something
12 happens and it doesn't trigger the proper
13 procedure.

14 SENATOR VOLKER: We -- you may be
15 right. That's something we'll look into. I
16 don't think we -- I just wondered whether the
17 present law would cover that but we will look at
18 it. Maybe it wouldn't cover it because this
19 isn't a -- the kind of release that was
20 anticipated at parole, and so forth, so that's
21 possible. We'll certainly look at that. That's
22 a good point.

23 SENATOR DOLLINGER: Another point
24 that deals with the question of release, in the
25 definitions of release between, again, page 2,

1 lines 24 through 32, it talks about release.
2 Are you talking about the final release without
3 any parole, without any conditions attached,
4 because it says here release -- and the reason
5 why it caught my mind, Senator, is because in
6 examples A and B, you talk about anticipated
7 release from total confinement and then in "C"
8 and "D", you talk about release of a defendant
9 and I'm not sure whether you're talking about
10 release back in the general population without
11 any probation monitoring or anything or -

12 SENATOR VOLKER: This is final
13 release we're talking about. The anticipation
14 that this person is going to be sent back into
15 the -- onto the streets without any kind of
16 supervision because we have a procedure now to
17 evaluate a person, for instance, who's on parole
18 and who is -- who is about to be paroled and so
19 what this envisions -- this is where this person
20 is to be released at the end of his term,
21 whatever it is, and is about to be sent back
22 onto the streets, period.

23 SENATOR DOLLINGER: Again, I
24 would just -- Senator, if there's a discussion
25 with the Assembly about this bill, I would just

1 suggest that you look at that definition of
2 release to make sure it conforms with that exact
3 same thing, because I was struck by the
4 difference of total confinement in "A" and "B"
5 and just total -- it doesn't mention confinement
6 at all in Section C and D, and I think some
7 language cleanup might be appropriate.

8 The third question, again through
9 you, Mr. President, is 45 days -- I understand
10 the way this works. Three months notice to the
11 district attorney, 45 days prior to the release
12 -- 45 days after the petition has been filed,
13 there has to be a trial.

14 I'd just ask you, Senator, is
15 that enough time to make this happen? I mean, I
16 can just envision, Senator, that the public
17 defender is hired or assistants of counsel,
18 immediately extensive discovery, EBTs and
19 experts on both sides to determine the course of
20 treatment, the way it works. Is 45 days
21 enough?

22 SENATOR VOLKER: The reason for
23 this, by the way, is really on the -- not for
24 the -- obviously the prosecution side or the
25 state side. This is for the person's side so

1 that the process would be moved under -- what is
2 it 30.20, under the present confinement, the
3 hearing is, I think even less than that. It's
4 -- the idea -- I suppose -- and I think despite
5 the fact we say it must be held within 45 days.
6 Obviously we can look at that, but I think the
7 reason for that is to make sure that this person
8 is evaluated and that the process is moved along
9 as quickly as possible so that a determination
10 could be made so that this person, if he or she
11 is not -- because a lot of this is going to be
12 -- obviously is going to be the determination
13 of the psychiatrist. You know, I mean, this is
14 not as if we're doing technical legal kind of
15 stuff. This is really a question, either he is
16 or he isn't, if you know what I mean? Obviously
17 there's evidence to be presented and all that
18 sort of thing, but I think the answer to that is
19 that I suppose if he needs more time, no
20 question the judge would have the right because
21 this provision is designed to protect the person
22 him or herself.

23 SENATOR DOLLINGER: I was just
24 concerned about whether the 45-day period was
25 accurate.

1 Now, let me ask what I think is
2 maybe the critical constitutional question that
3 this poses. As I understand it, in the
4 determination section, Section 7 on page 3, the
5 district attorney has to prove beyond a
6 reasonable doubt two things. He has to prove -
7 he has to prove one thing, that is, he's a
8 sexually violent predator, but in order to do
9 that, he has to prove that he -- beyond a
10 reasonable doubt something that he's already
11 proved beyond a reasonable doubt. Isn't that
12 correct?

13 SENATOR VOLKER: No.

14 SENATOR DOLLINGER: Because, as I
15 read it, what he says is -- on line 17, it says
16 the district attorney shall prove beyond a
17 reasonable doubt that the alleged sexual violent
18 act was sexually motivated and if the jury
19 determines that he's a sexually violent
20 predator, under the definition of sexually
21 violent predator, it says that he committed an
22 act, a violent felony offense. It's a sex
23 offense but that will have already been
24 determined in the trial years before.

25 Here's my concern, Senator. Do

1 we set up a problem, if we require the jury that
2 is going to civilly confine this individual, to
3 redetermine the issue beyond a reasonable doubt
4 of whether the offense that he was originally
5 committed with was a sexually violent offense;
6 and the reason why I suggest that, Senator -
7 just sort of finish out the rest of my question
8 -- and maybe -- wouldn't it be acceptable if we
9 simply said assume he committed a sexually
10 violent offense and the only issue that has to
11 be proven beyond a reasonable doubt is the
12 second part of your test, that is, whether he
13 suffers from a mental illness that makes such
14 person likely to engage in predatory acts of
15 sexual violence, because here's my concern,
16 Senator. Again, I -- it's a little loud, a
17 little noisy, but I'll continue.

18 My concern is this. Is a jury,
19 the second jury that hears this civil
20 confinement, isn't there a danger that the
21 passion and power of the original defense, that
22 at least from my perspective, Senator, this
23 person who's petitioning the court, or even if
24 the district attorney is petitioning, he will
25 have no defense, he will have no ready way that

1 he will ever be able to deny that he was
2 convicted of the underlying offense. We're
3 going to replay the whole crime a second time in
4 front of a jury. Isn't there a danger that the
5 jury hearing the civil confinement will actually
6 say he should have been more severely punished
7 for the first crime?

8 SENATOR VOLKER: Well, let me
9 just say so what? They can't -- they can't
10 resentence him, number one and number two, the
11 problem is this. The alternative is simply to
12 assume that the person is a sexually violent
13 predator. The problem with that is that we want
14 to give this person the maximum protections and,
15 therefore, the only way to give them the maximum
16 protections, I would think, would be to say that
17 you have to prove the two criteria beyond a
18 reasonable doubt and the first one is that you
19 have to show that he's a sexually -- that he was
20 a sexually violent predator and the second one,
21 that that person should be committed because of
22 mental abnormality or personality disorder, and
23 so forth, which is, in effect, the second
24 criteria.

25 I guess my problem is if you say,

1 well, okay, maybe, how would you not prove that
2 the person was -- or how would you prove the
3 person was not a sexually violent predator? The
4 interesting thing is if he can prove he was not
5 a sexually violent predator, obviously he's
6 going to be released because he probably
7 shouldn't have been there in the first place.
8 Although I would point out to you, I admit it
9 would be difficult to do because the jury
10 already found him to be but it, in effect, gives
11 him the opportunity, if there is some way to do
12 that because this person is going to be held in
13 an unusual procedure -- obviously an unusual
14 procedure and, therefore, we want to give him or
15 her the maximum ability to present his case.

16 SENATOR DOLLINGER: And again
17 through you, Mr. President. I appreciate
18 Senator Volker continuing to yield, but doesn't
19 that run into -- smack into the problem of the
20 double jeopardy clause?

21 SENATOR VOLKER: No.

22 SENATOR DOLLINGER: That he's
23 going to be tried a second time by a jury that
24 will find beyond a reasonable doubt that he was
25 guilty of an offense that he was already

1 convicted by a prior jury for the exact same
2 offense and my question to you, Senator, is
3 can't we serve the purpose of this bill? I'm
4 perhaps asking for a lesser test than what
5 you've put in the bill because I think that
6 there will be no dispute in any case that
7 Defendant A was found guilty. A court could
8 find just by taking judicial notice, We hereby
9 notice that there was a conviction entered, that
10 Tom Jones was found guilty of a sexually violent
11 offense in 1997. It's now the year 2010 and we
12 find that the predicate offense was established
13 by a prior jury or by a plea of guilty and that,
14 therefore, the offense he was charged with has
15 already been taken care of. The only issue that
16 this jury needs to resolve is an issue that has
17 never been resolved before, that doesn't trigger
18 the double jeopardy clause that says, is he
19 suffering from a mental illness that makes him
20 -- him or her likely to engage in predatory
21 acts of sexual violence and then I agree with
22 you, Senator. You built in a huge procedural
23 protection for him, which is you've got to prove
24 that fact beyond a reasonable doubt in order to
25 confine him, which I agree with you is the right

1 standard. I'm just concerned that does this
2 whole statute run potentially afoul of the
3 double jeopardy clause because you're going to
4 retry the underlying case and I'm worried about
5 the spill-over prejudice to the second jury that
6 would say, We don't think he's necessarily
7 suffering from a debilitating illness that would
8 make him more likely but what he did the first
9 time was so outrageous, we think he should be
10 confined more. Isn't that a danger for that
11 jury?

12 SENATOR VOLKER: Number one, let
13 me just say to you that redoing that statute is
14 a little bit of a problem. This is the Kansas
15 statute and what we're doing here -- your
16 argument was argued, I believe in the courts and
17 the court came down on the other side. My
18 counsel here gave an interesting question -
19 gave an interesting response to that. He said,
20 what if the guy pled guilty or the woman pled
21 guilty initially to a violent sexual predator
22 offense and now that he's about to be confined,
23 the issue comes up and now he's able to present
24 evidence that he really -- although he pled
25 guilty, he may have been guilty of something

1 else but maybe he wasn't the violent sexual
2 predator that was shown in the case. That's a
3 possibility, but the problem -- the bigger
4 problem with your argument is that this issue of
5 double jeopardy has already been decided by the
6 Supreme Court of the United States, specifically
7 in this case, and they said it's not and they
8 said that this procedure is the proper procedure
9 to use and they are actually saying this fellow
10 Hendricks, who was in Kansas, is going to have
11 to -- is obviously subject to this procedure -
12 has been subject to this procedure legally. So
13 that you can make the argument that we should
14 maybe make a different kind of procedure but the
15 problem is that the Supreme Court of the United
16 States said this is the correct procedure
17 already.

18 SENATOR DOLLINGER: The Kansas
19 statute -- again through you, Mr. President. I
20 appreciate Senator Volker's continuing to
21 yield. The Kansas statute actually said that
22 the second jury would find beyond a reasonable
23 doubt whether the -

24 SENATOR VOLKER: No, no,
25 Senator.

1 SENATOR DOLLINGER: Okay. That's
2 right. It was a preponderance of the evidence.

3 SENATOR VOLKER: No, but we have
4 -- it's true, we have made it stronger but my
5 point is that we have -- it seems
6 incomprehensible to me that the Supreme Court of
7 the United States would say, Well, you did a
8 stronger -- you did a stronger statute here. So
9 we're going to throw it out because you're too
10 strong. I just don't think that's going to
11 happen.

12 SENATOR DOLLINGER: Again, so I
13 understand it better, the Kansas statute
14 actually allowed the second jury to determine
15 the culpability of the defend... of the
16 petitioner or the person petitioned against,
17 allowed them to adjudicate the culpability after
18 it had already been resolved in a criminal trial
19 some time without violating -

20 SENATOR VOLKER: I understand it
21 was by clear and convincing evidence.

22 SENATOR DOLLINGER: Okay. You
23 hear my concern there.

24 SENATOR VOLKER: Sure.

25 SENATOR DOLLINGER: May I just

1 ask two other questions again through you, Mr.
2 President.

3 The confinement that this
4 prisoner would await -- strike that -- it
5 wouldn't be a prisoner.

6 SENATOR VOLKER: Mental health.

7 SENATOR DOLLINGER: Mental health
8 confinement. It would be in a mental health
9 institution?

10 SENATOR VOLKER: Right.

11 SENATOR DOLLINGER: My question
12 is, because this is a type of confinement
13 designed to deter activity, is there any sense
14 that the confinement should be in the least
15 possible or least restrictive environment in
16 order to prevent the harm?

17 My concern is you're taking
18 someone and placing them in a general
19 population.

20 SENATOR VOLKER: No.

21 SENATOR DOLLINGER: You're
22 extending their confinement beyond what is
23 reasonable and necessary to deter the activity,
24 and my question is do you anticipate a least
25 restrictive environment to prevent the harm kind

1 of confinement?

2 SENATOR VOLKER: At this point,
3 the facility that -- as Senator Padavan pointed
4 out to me, the major secure mental health
5 facility, I believe is at Mid-Hudson. I think
6 we have another one some place, but I think that
7 is the place where most of the people who are
8 considered to be sexual predators or serious,
9 serious people who are very serious mental
10 problems and are needed to be kept in a very
11 secure place, that's where at this point they
12 would be.

13 Now, one of the interesting
14 questions is we probably -- if this law -- if it
15 becomes law, and I think it eventually will, we
16 will probably develop a specific place for these
17 types of people and it would make, you know,
18 eminent sense. These people now are going
19 primarily to one place but once this becomes
20 law, then I'm sure mental hygiene would develop
21 a specific place separate from everybody else
22 for these people.

23 SENATOR DOLLINGER: Okay. I
24 think that's a good -- just a final question,
25 Mr. President, then I'll just address the bill

1 briefly.

2 As I understand it, reading the
3 text of the bill, Senator Volker, the burden of
4 proof is always on the people to prove beyond a
5 reasonable doubt even if the petition is brought
6 by the confined individual?

7 SENATOR VOLKER: Exactly.

8 SENATOR DOLLINGER: It's always
9 on them to prove beyond a reasonable doubt that
10 they are a sexually violent predator.

11 SENATOR VOLKER: Let me be honest
12 with you about this. I am not sure that is
13 specifically the Kansas -- I don't think it is
14 specifically the Kansas statute but we added
15 that in as some added protections for the
16 individual because this is such an unusual
17 procedure. So it's my understanding and my
18 recollection that the Kansas statute does not
19 necessarily go that far but we have gone that
20 far just to make sure that this person gets the
21 maximum rights that he can.

22 SENATOR DOLLINGER: Through you,
23 Mr. President. I'll just speak briefly on the
24 bill. Most of it highlights some of the
25 questions that I've raised.

1 I think that if this does go to a
2 Conference Committee or discussions with the
3 Assembly, I'd just encourage you to look at the
4 notice issue, who gets the notice, who issues
5 the notice. I'd prefer that it go to some
6 victim or family of victims so that there's some
7 identification. That would eliminate the
8 possibility -- I think it just broadens the
9 knowledge of this release and of this whole
10 procedure.

11 I'm concerned about whether 45
12 days is enough time, but I agree with Senator
13 Volker that the 45 days are designed to protect
14 this person who is potentially facing
15 confinement. It's not going to be enough time.
16 It will probably be longer than that. I just
17 wouldn't want to be in a position where if for
18 some reason they failed to meet the 45-day
19 period, the guy walks, which I think is
20 something that we don't want to do.

21 I raised the issue of least
22 restrictive environment only because I think
23 Senator Volker is correct. We don't have a
24 facility that would accommodate individuals
25 under the statute at this time. I have some

1 confidence that I think I share with Senator
2 Volker that we would develop an environment
3 which would not be a general prison environment,
4 which would not be a general mental health
5 confinement environment but nonetheless an
6 environment where the treatment issues that
7 Senator Abate talked about would perhaps be
8 streamlined and put on the table and used in a
9 rigorous manner.

10 I do think -- and this is where,
11 Senator Volker, I think you've probably gone to
12 all the extent that Kansas allows you. I still
13 have a reservation. I'm going to vote for this
14 bill, but I think you may unnecessarily run into
15 a double jeopardy problem by permitting the
16 second jury to retry the culpability of the
17 defendant beyond a reasonable doubt to the
18 underlying crime. I can imagine the situation
19 -- and, Senator Volker, I think it just would
20 be so unbelievable if someone who had either
21 pled guilty to an underlying offense and spent
22 20 years in jail for it or who had been
23 convicted and found 20 years later, would come
24 back, retry the case 20 years later when the
25 witnesses are gone, when nobody's there and

1 somehow the second jury finds we find beyond a
2 reasonable doubt that he didn't do it, an
3 unbelievable circumstance.

4 What I would suggest -- and I'm
5 not so sure -- I understand that the Kansas
6 statute may require this, but I would just
7 suggest that you don't need to retry the
8 underlying case because that's what will create
9 a double jeopardy problem for this statute.

10 What I would suggest instead is
11 either by plea of guilty or by finding of beyond
12 a reasonable doubt by a prior jury the predicate
13 offense is established, the only issue that the
14 jury has to consider and, in fact, the danger of
15 allowing a jury to consider both factors is that
16 a jury could sit down and say, We don't think it
17 will ever happen again. We don't think he's
18 really a future risk but, boy, we think what he
19 did merits more punishment and, therefore, they
20 would find him guilty of the underlying offense
21 and guilty of being a predator with a mental
22 disease or illness, simply to punish him for the
23 first offense, and I think that may be, if you
24 run into a constitutional problem with this
25 bill, that's where you'll run into it.

1 I think you could solve that and
2 achieve a better goal by simply assuming the
3 predicate offense, simply try the issue beyond a
4 reasonable doubt of whether they're a predator,
5 whether they're a fear to the future. Then you
6 get a jury that isn't tainted by the prior crime
7 and establishes that issue and you got a bill
8 that's constitutional.

9 I'm going to vote for it because
10 I think it's a step in the right direction, but
11 I caution you that I think you might have a
12 problem.

13 ACTING PRESIDENT KUHL: The Chair
14 recognizes Senator Padavan.

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

17 First, let me say that Senator
18 Volker ought to be congratulated for moving
19 quickly on this issue with regard to the Supreme
20 Court decision in providing the people of New
21 York State with a level of protection for this
22 category of mental illness that previously did
23 not exist to the extent we can now apply.

24 The point I would like to make is
25 just to build upon something that Senator Gold

1 said earlier. In the late '70s and in mid-'80s,
2 this Legislature, this state, developed a whole
3 series of mechanisms and expanding upon previous
4 law dealing with involuntary commitment,
5 involuntary commitment which could take place if
6 the person was acquitted by reason of insanity,
7 found incompetent to stand trial and more
8 recently, could be involuntary committed if they
9 did not continue out-patient treatment, and that
10 is a pilot program currently underway in the
11 city of New York under the auspices of Bellevue.

12 This bill clearly articulates a
13 definition of mental illness involving activity
14 of a sexual predator. It defines it, which is
15 something clinicians and psychiatrists have
16 identified as a mental illness for years, for
17 years.

18 In answer to an earlier question,
19 hearings on this general subject were held all
20 over the state with forensic psychiatrists,
21 district attorneys, law enforcement,
22 professionals at all levels contributing. What
23 we have done and what Senator Volker has done
24 with this bill is provide a mechanism for
25 someone who is in prison or someone who is not

1 in prison who's found incompetent to stand trial
2 but was a sexual predator, for placing that
3 person in a mental health facility.

4 Now, if you read the bill, there
5 are specific requirements incumbent upon the
6 state in these OMH facilities which exist today
7 but are transposed for this particular category,
8 such as the annual review, the requirement that
9 the commissioner initiate on behalf of the
10 individual in question an action for release if
11 in the judgment of the commissioner and his
12 psychiatrist that person has been cured of his
13 mental illness. All of that is in here and the
14 level of protections that we provide consistent
15 with our history in this subject area go far
16 beyond the mandate that the Supreme Court
17 allowed us to impose or the -- or the actions
18 that it allows us to impose.

19 So as was said earlier, if you
20 take the sexual predator phrase out of this and
21 its definition as a mental illness, what we are
22 doing here, in essence and, in fact, is exactly
23 what we're doing today in cases where people
24 have been found to be mentally deficient to the
25 extent that they are a danger to themselves or

1 others and while not in a position either by
2 virtue of that incompetence, to stand trial or
3 by virtue of acquittal by reason of insanity,
4 not to be placed in a state prison but can be
5 placed in a mental health facility. That's the
6 law today. It serves us well, but even though
7 that is the law, the mental health information
8 services and all the other safeguards, including
9 the responsibility of the Attorney General to
10 deal with these individuals on a predetermined
11 periodic basis -- and in this bill it says no
12 less than one year. So every year this person
13 would come up for review. A psychiatrist would
14 evaluate him. They would make a determination
15 whether he's still mentally ill and then an
16 application would be made one way or the other.

17 So, Mr. President, I again say
18 that I think this bill is balanced. It's well
19 thought out. It's constitutional, obviously and
20 it will serve the people of this state in this
21 very narrow area properly.

22 ACTING PRESIDENT KUHL: Senator
23 Leichter.

24 SENATOR LEICHTER: Yes. Mr.
25 President, if Senator Volker will yield.

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

4 SENATOR LEICHTER: Senator
5 Volker, I must say I have some serious questions
6 about your bill for two reasons: One is because
7 I really think, with all due respect to the fine
8 counsel who drafted it, that it was poorly
9 drafted and secondly -- and secondly, because I
10 think you're going into an area where really we
11 don't have any clear standards, any scientific
12 basis for some of the determinations that
13 underlie the bill, but let me first deal with
14 the drafting and deal with language that Senator
15 Dollinger sort of very, I think generously said,
16 well, this raises constitutional issues. I
17 think it just -- with all due respect, I think
18 it was just careless drafting, when on page 3
19 you left in -- you put in language -- and I'll
20 read it, line 17, "The district attorney must
21 prove beyond a reasonable doubt that the alleged
22 sexual violent act was sexually motivated"
23 because, Senator, first of all, we're not -- as
24 to one class of people covered by your bill -
25 that's people who have been convicted -- they

1 either pled guilty or they've been convicted.
2 We're not dealing with an alleged act. We're
3 dealing with a sexually violent act, and I think
4 the reason that language is in there is because
5 people covered by your bill are not only those
6 who have been convicted but those who have ever
7 stood trial because they were mentally
8 incompetent and it's as to those that the
9 draftsman thought that it was necessary or
10 appropriate now to have a trial to determine if
11 they had committed the act, but it certainly
12 would make no sense. It would be totally
13 unworkable to require a retrial of people that
14 have already been convicted or pled guilty. In
15 most instances, these would occur many years
16 after. So constitutionally -- and the Kansas
17 decision did not require that you retry the
18 person. That doesn't make any sense. You've
19 just left that language in there and you meant
20 it to apply to a different category of persons
21 who are covered. I mean, it seems clear to me.

22 SENATOR VOLKER: Senator, I don't
23 think it's clear at all. Senator -- in fact,
24 Senator, your thinking -- this has nothing to do
25 with people who have mental disease or defect.

1 These are people that got convicted and,
2 Senator, I read this and it reads very logically
3 to me. I mean, it says that you've got to show
4 -- and you don't have a retrial. If you have,
5 for instance -- obviously there is all sorts of
6 evidence, if this person has been in jail all
7 this time, it's assumed that you can bring the
8 record in to show that this person was a violent
9 predator, a violent sexual predator. I don't -
10 I think that your -- what you're assuming
11 somehow is that there will be some full trial on
12 this issue. Nobody is saying there will be a
13 full trial on this unless the person who is the
14 violent sexual predator has some evidence that
15 possibly he couldn't raise at the trial, I
16 suppose, or something that's assumed he probably
17 won't be able to do, but what we're trying to do
18 is give him the maximum ability to make his
19 arguments at the time that he is going to be
20 confined.

21 I do not think this is bad
22 draftsmanship. I think it's rather logical
23 draftsmanship and I think that -- I suppose what
24 you could say is -- is what Senator Dollinger
25 said and that is leave that language out, and I

1 think we would be in a little bit of a risk
2 because this process was approved by the Supreme
3 Court of the United States with that language in
4 there and it just seems to me except for one
5 thing, except we're talking about reasonable
6 doubt and that's true, and I don't know if it
7 was in the Kansas statute or not. We know it
8 wasn't in the commitment itself and I'm really
9 not sure that it -- that reasonable doubt was
10 the criteria but it certainly was in the Kansas
11 statute and since it's already been determined,
12 I find it a little hard to believe that we
13 should leave that language out of there.

14 SENATOR LEICHTER: Mr. President
15 -- I mean, Senator Volker, it's sort of strange
16 in one respect that you and I should be arguing,
17 where I'm saying you put in a provision in there
18 that is not constitutionally required and I
19 don't believe it was in the Kansas statute.
20 Secondly, it makes absolutely no sense because
21 you're dealing at least with one category of
22 persons who had been guilty. So -- but,
23 Senator, if you insist on your language, let me
24 just ask you this question. Why do you say
25 "alleged"? Alleged means there's been a charge

1 that somebody has committed an act, right, a
2 crime? We say alleged. If somebody has been
3 convicted of a crime, we don't say alleged, we
4 say -- and that -- I think that exactly proves
5 my point, Senator, and you can continue to argue
6 it -

7 SENATOR VOLKER: Okay. All
8 right, Senator.

9 SENATOR LEICHTER: Let me just
10 continue, please -- as you will, but that
11 language, Senator, was intended and what the
12 draftsman had in mind was he was referring to
13 persons covered by this bill who had not stood
14 trial. That's the only way the use of the word
15 "alleged" makes any sense and what you would
16 have to do -- it wouldn't be a very hard thing
17 to do -- is, one, put in that as to those who
18 stood trial, maybe you have to establish that,
19 indeed, they had committed a violent sexual act,
20 that the violent act was sexually motivated but
21 you certainly don't have to prove it as to those
22 people who had stood convicted or pled guilty.

23 So it's just a matter of
24 draftsmanship and with all due respect, I know
25 how carefully you go over these bills. These

1 are complicated bills. You had a terrific
2 counsel who did it, but I think in that instance
3 he left some language in there without properly
4 defining who he meant to have that language
5 apply to.

6 SENATOR VOLKER: I think you're
7 wrong, Senator, and let me just say to you, I
8 guess I just thought of an example. What if a
9 person is convicted of a sexual violent -
10 violent -- sexual violent predator offense and
11 is also convicted of attempted murder, for
12 instance, and is incarcerated. While he's
13 incarcerated, the sexual violent predator
14 offense is appealed or whatever and is thrown
15 out. Now he's technically -- he was
16 incarcerated and he was convicted of a violent
17 felony sexual offense. He was also convicted of
18 attempted murder. He's now about to be
19 released. It presents an interesting question
20 as to whether there should be at least some -
21 at least some check as to whether that person
22 maybe really was a violent felony offender even
23 though while he was in prison he was found that
24 that case was thrown out and so what this would
25 do is this would create a check for that person

1 to make sure that he or she didn't get out into
2 society and become a danger to society.

3 SENATOR LEICHTER: Mr. President,
4 Senator Volker, I'm not going to pursue this
5 further, but I just want to say in the instance
6 that you've given, since the person was
7 convicted of two different acts, obviously the
8 indictment specifies a different act and the
9 jury is asked to consider different acts, so I
10 think you know what you're dealing with, but let
11 me also just on the issue that I'm addressing at
12 this moment, which I think is some draftsman
13 problems here, if you look on page 4 -- if you
14 look on page 4, where the person covered by this
15 bill can petition the court to be let out of
16 confinement and probable cause exists and the
17 standard that the court is to address is the
18 issue of mental abnormality or personality
19 disorder, neither of which have been defined.
20 They suddenly appear in the act. Previously we
21 have been talking about mental illness. Now -

22 SENATOR VOLKER: Senator, you're
23 wrong. Look back, you'll find that it's in the
24 bill two or three different places, because if a
25 person has a mental disease or defect, they

1 shouldn't be there in the first place. They
2 would be in a mental institution. You can't
3 convict them.

4 SENATOR LEICHTER: Senator, take
5 a look at the definitions and maybe I've
6 overlooked it and show to me -- excuse me. Let
7 me -

8 SENATOR VOLKER: Page 3 -

9 SENATOR LEICHTER: -- just finish
10 my question -- and show to me where it defines
11 mental abnormality or personality disorder in
12 the definition.

13 SENATOR VOLKER: No, that's not
14 the issue, Senator. Mental -- that's not
15 something -- what is mental disease or defect,
16 Senator?

17 SENATOR LEICHTER: Mental -

18 SENATOR VOLKER: By the way,
19 Senator -

20 ACTING PRESIDENT KUHL: Gentlemen
21 -- gentlemen, if we might, we have been very,
22 very, very, I think accommodating from the Chair
23 in allowing your conversations -- as a matter of
24 fact, I was thinking about asking the two of you
25 to take your conversation out of the chamber so

1 we could actually proceed, but I thought maybe
2 that would be out of order.

3 Could we go through the Chair on
4 asking questions and so that we can kind of keep
5 the conversation in an orderly fashion.

6 Senator Leichter, are you asking
7 Senator Volker to yield to another question?

8 SENATOR LEICHTER: Senator -

9 ACTING PRESIDENT KUHL: Senator
10 Leichter -- Senator Leichter, are you asking
11 Senator Volker to yield to a question?

12 SENATOR LEICHTER: Yes, I am, Mr.
13 President.

14 ACTING PRESIDENT KUHL: Senator
15 Volker, do you yield? The Senator yields.

16 SENATOR LEICHTER: Through you,
17 Mr. President. Senator, the -- you have a
18 definition here of mental illness and, as I
19 understand it, the standard here that is to be
20 met in determining whether somebody now is going
21 to be subject to this confinement is that the
22 jury determined beyond a reasonable doubt a
23 mental illness and mental illness is defined as
24 "A congenital or acquired condition affecting
25 the emotional volitional capacity which

1 predisposes the person in the commission of
2 criminal sexual acts in a degree constituting
3 such person a menace to the health and safety of
4 others."

5 There's no reference in the
6 definition whatsoever to mental abnormality or
7 personal disorder. What are they? How are they
8 defined? How is the court to determine those?
9 Suddenly they appear as the standard in the
10 court determining whether to grab a show cause
11 petition.

12 SENATOR VOLKER: It doesn't -
13 Senator, you didn't read page 3. "If the jury
14 determines the defendant is a sexual violent
15 predator, then it must be committed... treatment
16 until such time as the defendant's mental
17 abnormality or personality disorder has so
18 changed that the defendant no longer constitutes
19 a physical danger to others." That has been -
20 and it's quoted in three or four different
21 places and, Senator, that is a part of the bill
22 that is part of those definitions that are
23 assumed to be part of our understanding of what
24 these kinds of people are involved with. I
25 don't think -- the psychiatric experts on the

1 stand, they are the kinds of definitions that
2 are very part of the -- the kind of illness or
3 problems that these people are involved with and
4 that's why the determin... determination has to
5 be made by psychiatric experts and, Senator,
6 you've argued this before. We know that there
7 are certain types of definitions that are
8 virtually indefinable because they are part of
9 the very language that we use to determine
10 whether people are sick or ill or whatever.

11 SENATOR LEICHTER: Mr. President,
12 if Senator Volker will continue to yield.

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

15 SENATOR LEICHTER: Senator
16 Volker, isn't it a fact, isn't it true that in
17 your definitional provisions, you don't define
18 what mental abnormality or personality disorders
19 are? Isn't that true?

20 SENATOR VOLKER: This bill does
21 not and I don't think it's necessary to do it,
22 Senator, because if it was necessary to do it,
23 we would do it. By the way, the Supreme Court
24 didn't -- it didn't bother the Supreme Court
25 because they upheld this bill just as it is and

1 this language was in that provision in the
2 Kansas statute and this apparently didn't bother
3 the Supreme Court.

4 SENATOR LEICHTER: Mr. President,
5 Senator Volker, are you telling me -

6 ACTING PRESIDENT KUHL: Senator
7 Leichter -- Senator Leichter, are you asking the
8 Senator to yield?

9 SENATOR LEICHTER: I did, sir.

10 ACTING PRESIDENT KUHL: Well, I'm
11 asking -- I would like to be included in the
12 request. So, Senator Volker, do you -

13 SENATOR LEICHTER: Always through
14 you, Mr. President.

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

18 SENATOR LEICHTER: Senator
19 Volker, are you representing to us that what we
20 have here is precisely the -- in haec verba the
21 Kansas statute that was the subject of a Supreme
22 Court decision?

23 SENATOR VOLKER: The language
24 that you're talking about is exactly -- and I
25 have this right here. I'm looking at the Kansas

1 statute. I'm not saying that every single
2 provision is exactly but that language is
3 exactly, that is, the mental abnormality or
4 personality disorder, that comes directly out of
5 the Kansas statute.

6 SENATOR LEICHTER: Senator
7 Volker, if you'll continue to yield.

8 SENATOR VOLKER: Yep.

9 SENATOR LEICHTER: In the Kansas
10 statute, were those terms defined?

11 SENATOR VOLKER: Not any more
12 than they are in this bill right here.

13 SENATOR LEICHTER: Where are they
14 -- if you'll continue to yield. Where in this
15 bill are they defined at all?

16 SENATOR VOLKER: Senator, you
17 know well and we've argued this before on a
18 number of occasions, you do not have to define
19 every single category that is involved in
20 disease or defect or that is involved in these
21 kinds of issues where technical -- particularly
22 where technical people, such as psychiatric
23 examinations are involved and these types of
24 disorders are assumed to be understood in the
25 community that makes the determinations.

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

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

6 SENATOR LEICHTER: What
7 statistics do we have as to the recidivism rate
8 of sexual predators? I mean, we've had a number
9 of bills this session, last session and all of
10 us sort of proceed on the assumption -- and one
11 reads it continuously or hears it that sexual
12 predators are more likely to commit their act
13 again. I'm not so sure that we have the
14 scientific basis for it or that the scientific
15 basis shows the degree that these people are
16 more likely to commit the same act again and to
17 what extent it is. I mean, I think we ought to
18 know some of these things before we embark on
19 what are really very radical changes in the way
20 that we have dealt with individuals as far as
21 their confinement is concerned.

22 SENATOR VOLKER: Senator, I agree
23 with you on that and I must tell you that there
24 are innumerable studies going on right now. I
25 have never seen a study -- and I have seen

1 several of them and I must believe that you have
2 too -- I have seen reports by psychiatric
3 bodies. I have seen several studies that have
4 dealt with preliminary determinations on people
5 who are involved in violent sexual offenses -
6 in fact, I believe the Supreme Court in this
7 decision speaks about the difference between
8 normal violent offenders, normal violent -
9 ordinary violent offenders, we may call them,
10 whatever the term is and sexual predator
11 offenders, that they assume -- they assume,
12 because every evidence that has appeared -
13 every evidence from psychiatric examinations and
14 psychological examinations and from the crimes
15 that have been committed, the numbers of crimes
16 have been committed show that recidivism is far
17 higher in these people and much more difficult
18 to deal with.

19 ACTING PRESIDENT KUHL: Senator
20 Hoffmann, why do you rise?

21 SENATOR HOFFMANN: I just wonder
22 if Senator Volker would like to yield for one
23 second for a statistic that might help to
24 elaborate on it.

25 ACTING PRESIDENT KUHL: Well,

1 Senator Leichter has the floor.

2 SENATOR LEICHTER: Sure. I'll
3 yield.

4 ACTING PRESIDENT KUHL: Senator
5 Leichter yields.

6 SENATOR HOFFMANN: The last
7 period of time in which my office obtained
8 statistics on this subject is a little bit out
9 of date, and I can tell you that I know the
10 statistics have increased since that time, but
11 between 1978 and 1982, there were 598 first
12 degree rapists released from New York State
13 prisons. Within five years, 42 percent of those
14 had returned to prison. Only 19 percent came
15 back as parole violators but 23 percent were
16 returned having committed new sexual offenses.
17 Many of them -- I can't give you the exact
18 number but the majority of them were again for
19 first degree rapes.

20 ACTING PRESIDENT KUHL: Senator
21 Leichter, the floor is yours.

22 SENATOR LEICHTER: Mr. President,
23 I thank Senator Hoffmann, but I guess those
24 figures would only be meaningful, Senator
25 Hoffmann, if they -- if you compared them to

1 burglars, murderers, muggers, embezzlers, and so
2 on. I mean, these are raw figures that by
3 themselves tell us nothing.

4 Senator Volker, if you would be
5 good enough to continue to yield.

6 ACTING PRESIDENT KUHL: Senator
7 Volker.

8 SENATOR VOLKER: Yep.

9 ACTING PRESIDENT KUHL: The
10 Senator yields.

11 SENATOR LEICHTER: Yes. Senator,
12 you made some representations, I think in
13 discussion with Senator Abate, that this was all
14 under the Mental Hygiene Law. I see nothing in
15 this bill which refers to the Mental Hygiene Law
16 or which states that the confinement will be
17 under the supervision of the Department of
18 Mental Health. All it says is that upon being
19 found a violent predator, that the person were
20 to be put in a secure facility.

21 SENATOR VOLKER: Senator, you'll
22 notice that the top of the section here, we talk
23 about the section of the law, 330.20, which is
24 the procedure for following a verdict -

25 SENATOR LEICHTER: What line?

1 SENATOR VOLKER: Right at the
2 top, right in the beginning of the statute and
3 the procedure here is already in law, under the
4 Criminal Procedure Law, and we refer to it and
5 the commissioner as listed under 30.20 means the
6 state Commissioner of Mental Health or the state
7 commissioner, and so forth. That is already
8 referred to here. We didn't restate it because
9 it's already in the law.

10 This statute, this provision here
11 is an amendment to what's already in the law on
12 releases -- or on procedures following verdicts
13 or pleas or not responsible by reason of mental
14 disease or defect. In other words, we're adding
15 this as an additional part of that section and
16 that's why we don't refer to the commissioner -
17 we refer to the commissioner which has already
18 been designated in this section.

19 SENATOR LEICHTER: I accept
20 that. Thank you.

21 Senator, let me -- if you would
22 continue to yield.

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

25 SENATOR VOLKER: Yes.

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

3 SENATOR LEICHTER: Senator,
4 you've -- in answer to Senator Abate and it was
5 picked up by Senator Gold, you implied or
6 actually stated that the test here in deciding
7 whether the person had a mental illness which
8 justified confinement was really pretty much the
9 same as he's a danger to himself or a danger to
10 others, but isn't it a fact, Senator, that
11 you've established a totally different
12 standard? That's not the standard because if it
13 was the standard, you wouldn't need the bill
14 because that's already in law.

15 SENATOR VOLKER: Well, what I was
16 pointing out was in the -- we refer back -- we
17 talk about predatory acts and things of a
18 sexually violent offense. What I said was it
19 was in the same -- in effect, in the same
20 neighborhood. If this person would have -
21 would be determined to be mentally ill and to
22 have mental defect, he would be -- he or she
23 would be confined, in fact, probably shouldn't
24 have been in prison in the first place.

25 What we are saying here is that

1 we are using a special area for sexual predators
2 and sexually violent -- people that are sexually
3 violent offenders but it's in the same type of
4 area except since these people have -- have been
5 determined to have special problems, that we
6 are, in effect, using a bit of a different
7 standard. If the -- this jury, obviously should
8 find this person to be totally mentally ill, as
9 I pointed out, under the present law you
10 couldn't release them anyways. So what we are
11 doing here is we are using not exactly the same
12 standard but it's like a variation of that
13 standard short of totally mentally ill which
14 would allow these people to be determined to be
15 held for the time being.

16 SENATOR LEICHTER: Mr. President,
17 I thank my good friend. Senator Volker has
18 always -- has very effectively and articulately
19 defended his bill and, frankly, I think the bill
20 needed a lot of defending.

21 With all due respect, Senator
22 Volker, I think there's two issues here. One is
23 are we really smart enough as a society and do
24 we have clear enough guidelines to say that
25 somebody is so likely to do an act again, a

1 criminal act that we're going to confine that
2 person? I'm not sure that we've reached that
3 degree of understanding of human motives, human
4 behavior, and while I accept that maybe there's
5 a greater predisposition on the part of certain
6 persons who have been convicted or committed
7 sexual offenses to do so again, I'm not sure
8 that the statistics show that the increase is so
9 far greater than for other acts that we really
10 want to, as to those people, completely change
11 what is a basic constitutional safeguard, that
12 we put people in jail for acts they've
13 committed. We don't put them in jail for acts
14 that they might commit. That's a very, very
15 significant change in the way we operate our
16 criminal justice system, and I think without
17 clear and compelling proof that this group is
18 really such a danger to society and that we can
19 tell which of these people, in fact, is likely
20 to commit a crime again, I think that we should
21 not shred this basic constitutional safeguard.

22 I think in addition -- and I want
23 to look at the Kansas statute -- with all
24 respect, I think that Senator Volker -- I won't
25 say Senator Volker because he told us he hadn't

1 drafted the bill, but the draftsman of this bill
2 -- certainly Senator Volker has embraced it -
3 has actually provided a great deal of
4 protections. Some of the protections are so
5 great that actually it would impose such a
6 burden on the district attorney that I don't
7 believe you would ever be able to find anybody
8 -- a sexual violent predator because Senator
9 Volker insists that you have to almost retry the
10 earlier conviction. I just submit that that is
11 draftsmanship that wasn't carefully done, but
12 I'm particularly concerned that other aspects of
13 draftsmanship here, the use of words that are
14 not in the definitional section, I think make it
15 very difficult for the court or anybody else to
16 be guided in what is already a very difficult
17 area when we use terms such as personality
18 disorders. I mean, we're talking about people's
19 freedom, and I think all of us use the term
20 "personality disorder" in a very loose way.
21 It's used loosely in our society. It's not a
22 clearly defined term and now to make it the test
23 as to whether somebody gets out of this
24 confinement or not, without any definition, I
25 find to be a terrible flaw in this bill.

1 So much as I would like that we
2 do the certainty that we could protect society
3 by saying, This guy's going to commit a crime
4 next year, we better put him in jail now, I
5 don't think we have that skill, the ability. I
6 don't think we have the constitutional
7 safeguards. The Supreme Court may say that
8 under certain circumstances you may do it, but
9 that doesn't mean that it's right policy. I
10 don't think it is right policy and, as I pointed
11 out, that policy, even if you wanted to pursue
12 it, under this bill, because of the language
13 difficulties, I don't think you would ever be
14 able to work that out in a rational manner.

15 So for all these reasons, Mr.
16 President, I'm going to vote against the bill.

17 ACTING PRESIDENT KUHL: Senator
18 Hoffmann.

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

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

23 SENATOR PATERSON: I don't know,
24 Mr. President. I'll sit down.

25 SENATOR HOFFMANN: Senator

1 Paterson, would you like me to yield to you
2 or -

3 ACTING PRESIDENT KUHL: Senator
4 Hoffmann, the floor is yours.

5 SENATOR PATERSON: Yeah, if you
6 don't mind.

7 SENATOR HOFFMANN: Fine. I'll
8 reserve my remarks until after Senator Paterson.

9 ACTING PRESIDENT KUHL: Senator
10 Hoffmann passes.

11 Senator Paterson.

12 SENATOR PATERSON: Mr. President,
13 I yielded an hour and 35 minutes ago. So I
14 thought I might not get another chance, but I'm
15 happy that Senator Hoffmann is yielding to me.
16 It was Senator Hoffmann who, in 1990, brought
17 this whole issue of sexual predators to the
18 attention of New Yorkers and cited some of the
19 same statistics that she did in the discussion
20 with Senator Leichter and Senator Volker.

21 Between 1978 and 1982, 42 percent
22 recidivism rate among sexual predators, 23
23 percent not related to parole violation but
24 actually furtherance of committing similar
25 offenses demonstrates the severity of this issue

1 and also it is not the statistics taken alone
2 but it's the comparison of the recidivism in
3 this particular crime as opposed to other crimes
4 that makes it clear that it is not often the
5 willful act of the felon but really a
6 psychiatric condition that's overriding the
7 entire process.

8 This is something that Senator
9 Hoffmann was involved with when she introduced
10 the legislation in 1991 and has visited a number
11 of facilities around the state to try to focus
12 us on this particular issue and it's unfortunate
13 that it's taken until this time until we
14 actually have.

15 There are many types of reasons
16 that we put people in facilities and in -- for
17 the purpose of incarceration. One would just
18 simply be retribution. Another one would be
19 punishment. Another certainly would be
20 rehabilitation and it's on the issue of
21 rehabilitation that sparked really what is
22 probably the centering case that Senator Padavan
23 referred to, Jackson versus Indiana, U.S. 408,
24 which I believe is a 1977 case which held and
25 provided for the civil commitment of those who

1 suffer from mental disease or disability even at
2 the time of trial and one of the original
3 problems with this type of situation is that
4 individuals who are charged with very serious
5 offenses were civilly committed and then because
6 they were just civil commitment cases, there was
7 no further examination of them and when
8 psychiatrists determined that there wasn't any
9 further mental problem, they actually slipped
10 into the cracks and got out on the streets
11 before the time that they would have served had
12 they been convicted of the crime.

13 So to really put this issue in
14 proper perspective, the access for criminality
15 and the access for civil commitment based on a
16 mental disease or defect are really
17 perpendicular. There is often not much of a
18 relationship and so, therefore, we can have
19 situations where an individual can serve a
20 longer time because in the opinion of
21 psychiatrists, they are not able to distinguish
22 between right and wrong and are not able to
23 significantly take care of themselves to the
24 point that they can make that judgment. So this
25 is why we already have legislated this

1 opportunity.

2 So to put it simply, if a person
3 goes to prison for auto theft and about three
4 months before they are going to be released it
5 becomes clear from observers that they are
6 suffering from psychiatric problems, we right
7 now under Section 330.20 of the Criminal
8 Procedure Law can seek an order of retention.
9 There would be an annual review of these types
10 of cases which Senator Padavan referred to.

11 What this bill simply is trying
12 to do is to extend this option to situations
13 where there are -- where there's a relationship
14 of predatory action in terms of violent sexual
15 offenses.

16 So, therefore, on that scope, I
17 don't have any problem on this bill, but if
18 Senator Volker would yield for a question, there
19 is an issue I do have with this legislation.

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

22 SENATOR VOLKER: Sure.

23 ACTING PRESIDENT KUHL: The
24 Senator yields.

25 SENATOR PATERSON: Senator, if a

1 violent sexual offense is committed and the
2 prosecutor does not seek for there to be a
3 similar order of civil commitment such as is
4 provided for in this case and in the Kansas case
5 that was upheld by the Supreme Court, would it
6 not be likely that the prosecutor puts himself
7 or herself in the ambit of public criticism
8 should another violent felony be committed after
9 the incarceration by the then prisoner?

10 SENATOR VOLKER: Senator, I
11 thought of that also, by the way. That is very
12 astute but the answer to that is that's true
13 except for the fact that if he's got to have the
14 evidence, he's got to be able to show that the
15 person would be one of those people who would
16 create a potential problem, and I would think
17 that the district attorney obviously would be in
18 a situation where he would have to have a very
19 thorough psychiatric exam and he would want to
20 have that psychiatric exam available. Should he
21 decide not to pursue it, I think he would use
22 that as -- he or she would use that as the
23 reason to show why he didn't pursue trying to
24 keep this person for a civil commitment, but I
25 think that is true. There would be a lot of

1 pressure on that district attorney to pursue and
2 make sure that this person was not a danger
3 because should that person be released without
4 -- without any kind of a trial or whatever and
5 commit a serious sexual crime, he would probably
6 be in some jeopardy.

7 SENATOR PATERSON: Mr. President,
8 if Senator Volker would continue to yield.

9 SENATOR VOLKER: Sure.

10 SENATOR PATERSON: Senator, my
11 issue with this is that if we set up a scenario
12 where the prosecutor really -- prosecutors
13 really for their own public protection for
14 scrutiny which would come after the fact -- and
15 we already know based on the statistics that
16 Senator Hoffmann offered us in all of her
17 research, we already know that there is a high
18 degree of recidivism anyway. So we know that
19 there's a serious problem with these types of
20 offenses and these types of offenders. We just
21 don't know specifically who it is that's coming
22 back. So we're trying to make a determination
23 as to who it is. With the high number of
24 returning felons and the prosecutor, as I
25 assert, being left almost no option but to seek

1 these orders within 90 days of release, aren't
2 we creating a situation where individuals -- in
3 other words, I'm going about it in a different
4 way but am I not coming to the same conclusion
5 that Senator Waldon came to, that in the end we
6 are taking individuals based on the type of
7 crime they committed and in a sense holding them
8 to a higher standard when our alternative could
9 have been if we demonstrate that this is a crime
10 that has the serious ramifications that it does,
11 that we simply just extend the sentence for this
12 crime in the first place?

13 SENATOR VOLKER: Senator, the
14 problem with that is -- and I admit to you that
15 -- because we haven't had a lot of time since
16 the Supreme Court decision. I did think about
17 that, but I guess you have to think about the
18 process here. Remember, these people are
19 criminally incarcerated, that is, they're
20 incarcerated for a crime and the reason it's
21 logical, we go back to the district attorney who
22 prosecuted the case -- because obviously they
23 have the records and they're the people that
24 actually did this case in the first place. When
25 it comes to a civil commitment, the problem is

1 you have incarcerated people under a crime. You
2 couldn't very well automatically refer them to
3 mental hygiene. Somebody would have to do some
4 sort of determining and make some sort of
5 presentation.

6 SENATOR PATERSON: Mr. President.

7 SENATOR VOLKER: So although I
8 understand what you're saying, I just don't know
9 how else logically you would do this because,
10 although certainly there will be some pressure
11 on a district attorney, you still have the
12 situation he has to have the proof -- he or she
13 has to have the proof, the psychiatric proof,
14 psychological proof, whatever, to determine that
15 person's status.

16 ACTING PRESIDENT KUHL: Senator
17 Paterson.

18 SENATOR PATERSON: Mr. President,
19 on the bill.

20 ACTING PRESIDENT KUHL: Senator
21 Paterson, on the bill.

22 SENATOR PATERSON: I'm going to
23 vote for the bill, Mr. President, because I
24 think that it really creates a new avenue for
25 the application of law the same way it's been

1 applied before. I don't know that people knew
2 that the district attorney had that option, as I
3 said before, under Section 330.20 of the
4 Criminal Procedure Law as it stands right now
5 and that there did not have to be any indication
6 at the point of the trial that the prosecutor
7 was going to seek this action. As a matter of
8 fact, it's usually events that occur while the
9 individual is incarcerated that bring this
10 about.

11 However, my point -- and it's
12 just an admonition should this come close to
13 becoming law, that I think we've got to take a
14 look at the situation that befalls many people
15 who are incarcerated that, in many respects,
16 regardless of their behavior, that the
17 prosecutors may not want to take the chance.
18 They may not win in the proceeding but they at
19 least can state later that they brought the
20 proceeding so that somebody doesn't raise the
21 issue of, Didn't you know about violent
22 felonies, violent sexual offenses? Didn't you
23 know the percentage of it? Didn't you know this
24 person, whatever personal statistics can be
25 compiled about the individual and then a charge

1 is made later on, our public servants didn't do
2 their job, they should have brought this
3 action. It's a little bit different than in the
4 standard crime, and so I have a concern that
5 makes it difficult for me to go forward.

6 However, because of the
7 staggering statistics and the difference between
8 the recidivism rate on these types of offenses
9 based on -- in comparison to others, I actually
10 think that had we done this in order, we would
11 have probably approached the violent sexual
12 offenses first and the other types of situations
13 where the prosecutor can raise the issue of
14 mental disease or defect would have come later
15 because of the starkness with which it appears
16 clear that these acts seem to be more related to
17 mental disease than they are to anything else.

18 ACTING PRESIDENT KUHL: Senator
19 Hoffmann.

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

22 I'd like to compliment Senator
23 Volker on bringing this bill before us and thank
24 Senator Bruno for allowing it to come before to
25 the floor today. It's a subject which I have

1 been concerned about for many years and studied
2 at some length in the early 1990s and believed
3 that its time has come and I look forward to a
4 -- an opportunity with the other house to
5 develop, probably through the Conference
6 Committee process, legislation will pass both
7 houses.

8 I don't look at this as a
9 one-house bill. One of my colleagues asked
10 about this a little while ago. I think this is
11 a very important first step to putting New York
12 State on that short list of other states which
13 have taken the responsibility that is incumbent
14 upon us to do something meaningful to protect
15 the women and children of this state from those
16 predatory sex offenders who it is clearly known
17 will rape and will commit horrible cases of
18 child molestation upon their release.

19 It is known by the people who are
20 handling them in treatment while they are
21 incarcerated that in some instances, not all,
22 but in some instances they are beyond almost any
23 certainty of a doubt going to commit the same
24 crime again and sometimes worse crimes and what
25 is particularly frustrating to the people who

1 are in the treatment profession is the situation
2 that presently exists, whereby in some cases a
3 convicted rapist has made it abundantly clear
4 during his period of incarceration that he
5 intends to do the same type of thing upon
6 release.

7 Our parole situation is such in
8 New York State that such rapists are generally
9 not paroled. We don't have a mandated aftercare
10 system for sex offender treatment as we should
11 in this state. Therefore, the Parole Board
12 wisely and to cut its own losses will not
13 release an inmate who has demonstrated that type
14 of violent sexual offense until he has max'ed
15 out. Once he has max'ed out, he's released from
16 state custody and there is no means of
17 controlling or even supervising his behavior.

18 When such an individual states
19 while incarcerated that he has every intention
20 of committing the same crime again, it is a very
21 frustrating situation for those people in our
22 criminal justice system. The district attorneys
23 who originally prosecuted the case, the victims
24 from the first -- or not always the first but
25 from previous sexual offenses, even the

1 perpetrator's families shudder in horror of the
2 prospect of this individual being released
3 having stated that he has the intention of
4 committing the same or similar crimes again, and
5 it's important for us to understand that it is
6 not always a case of the mental health experts,
7 the psychologists and psychiatrists determining
8 that a person is, in fact, capable of it. It is
9 sometimes the individual himself who has
10 announced that very clearly and there is no way
11 to prevent him from being released to society
12 without having this type of statute on the books
13 in New York State.

14 Senator Leichter asked a question
15 about statistics and then seemed to not be
16 interested in the response and made some strange
17 reference to the fact that he didn't think it
18 was relevant because it didn't compare the
19 recidivism rate for first degree rapists for the
20 recidivism rate for burglars. I find that a
21 little bit offensive because the case of
22 burglary has a very different type of victim
23 population than does rape or child molestation,
24 and I think it is our responsibility to address
25 the problem of rape and recurring crimes by

1 rapists with the same seriousness that we should
2 be looking at many other issues and,
3 unfortunately, this one has languished for a
4 number of years.

5 It's hard for me to understand
6 why but for several years, a bill which I had
7 introduced was never heard in committee, has
8 never been allowed to come to the floor, and I'm
9 pleased to be on the bill that Senator Volker
10 has brought forward today but I'm a little bit
11 sad because I know that had we enacted
12 legislation ourselves a number of years ago, it
13 might have been the New York statute that was
14 tried before the Supreme Court and upheld, not
15 the Kansas statute.

16 I embarked upon this study back
17 in 1990 -- actually it was in the late '80s
18 after a number of hearings where the Finance
19 Committee would listen to the Department of
20 Corrections Commissioner explain what was
21 happening statistically within our prison
22 system. I recognized the dramatic increase in
23 sexual offenses and while the Department was
24 looking for huge budgetary increases to deal
25 with drug abuse problems among the drug offender

1 population, there was no similar request being
2 made of the Legislature and the Governor to come
3 up with a special source of funding to deal with
4 the unique problems caused by sex offenders.

5 The statistics were staggering.
6 Between 1982 and 1989 in New York State,
7 sentenced sex offenders increased by 174 percent
8 in our prison population. I thought that that
9 warranted some additional study and additional
10 decision-making on our part to either attempt to
11 reduce or curb the increase that we were
12 experiencing with sex offenders and I did not
13 know why when I went into this process we were
14 experiencing this increase. It's still very
15 difficult to determine why but it is real.

16 The problem is with us. The
17 number of child abuse, child molestation and
18 first degree rape cases is markedly increasing
19 all over the country and we have to deal with
20 the problem of who these individuals are and
21 what happens to them upon completion of their
22 sentence and what happens to them while they're
23 incarcerated.

24 I looked at what several other
25 states have done. I visited the programs in

1 place in Minnesota, in Washington State and in
2 New Jersey. Working with our Division of
3 Criminal Justice Services and its commissioner
4 at that time, John Poklemba, and his staff, we
5 did an analysis at that time and we studied that
6 states offered unique examples of sex offender
7 legislation and treatment options and determined
8 that it was wise to visit those states and do
9 the following: visit with the corrections
10 officials who run the programs in those states,
11 visit with the legislators who had enacted very
12 significant legislation on the cutting edge of
13 sex offender law, see the programs in action,
14 including interacting with the sentenced sex
15 offenders and have the opportunity to come back
16 and see what would work within New York State's
17 system of criminal justice and correctional
18 services.

19 There were a number of things
20 that became apparent on this trip. First of
21 all, the state of Minnesota is the one which has
22 the lowest recidivism rate in the nation for sex
23 offenders. Once they have completed their
24 sentence, sex offenders in Minnesota do not
25 return to the prison population, anything like

1 the statistics that we experience in New York
2 State and, indeed, most other states.

3 There was several reasons for
4 this. One is the fact that they have a mandated
5 sex offender treatment program in that state.
6 All sex offenders, regardless of the degree of
7 offense are required to undergo mandatory
8 treatment and they are kept in this treatment
9 for as long a period of time as they cooperate
10 with the treatment. They are not allowed parole
11 without having a mandated aftercare component.
12 This means that they continue in treatment and
13 they have close psychological supervision, both
14 as inmates and as parolees. This is totally
15 unlike New York State where once they are
16 paroled, there is no supervision whatsoever
17 because they have inevitably max'ed out. The
18 Parole Board won't take a chance in paroling a
19 sex offender. They max'ed out. They serve
20 their term and then they are let go. The phrase
21 that they use in Minnesota is we keep a hook in
22 them.

23 In Minnesota, the Parole
24 Department and the Corrections Department are
25 run under the supervision of one agency. The

1 Department of Corrections in that state under
2 Commissioner Orville Pung, who had been there
3 for many, many years, was capable of managing
4 the movements of these inmates both while
5 incarcerated and upon release in such a way as
6 to ensure both the best type of treatment for
7 the individual to eventually in many cases
8 become a responsible member of society but more
9 importantly to provide a high measure of safety
10 for the citizens of the state of Minnesota.

11 That model, good as it was for
12 Minnesota, unfortunately would not work in New
13 York State because of our very different type of
14 system. We have very different forms of
15 supervision for parole in New York State and an
16 entirely separate bureaucracy. Sadly, there is
17 not as much connection and a lot of
18 communication between these two agencies and it
19 will be helpful for us as we go into this issue
20 now in greater detail, armed with some of this
21 information, to see how we can better mesh these
22 two agencies, but when I returned from having
23 seen Minnesota, Washington and New Jersey's
24 programs, the one that seemed most likely for us
25 for the sex offender treatment component was, in

1 fact, the Minnesota model and with Commissioner
2 Tom Coughlin, we embarked upon a mandatory sex
3 offender treatment program here in New York
4 State on a somewhat smaller scale than what
5 Minnesota does, not for as long a duration and
6 not with the mandated aftercare but
7 nevertheless, in 1991, New York State entered
8 that age as well and we now have mandated sex
9 offender treatment at Oneida Correctional
10 facility where all of the sentenced sex
11 offenders in New York State must spend some
12 time, at lease a minimal amount of time,
13 sometimes as little as six weeks, generally at
14 six months and in a few years we will begin to
15 compile statistics to show whether we have
16 reduced recidivism by even a modest amount by
17 virtue of that program.

18 The state that had the best law
19 dealing with predatory sex offenders at that
20 time and the one that was in the forefront was
21 Washington State. Washington State had a
22 particularly heinous series of sexual offenses
23 for that state, probably not that shocking for
24 people in New York who are used to reading about
25 such things in the tabloid newspapers on a

1 fairly regular basis, but in Washington State,
2 they had become shocked into the reality that
3 there were incredibly dangerous people in that
4 state committing heinous crimes of rape and
5 sexual abuse against children and murder and
6 they began a series of public hearings that the
7 Legislature convened. The select committee held
8 hearings around the state and out of those
9 hearings they determined that they would embark
10 upon a two-pronged approach.

11 One was to increase their sex
12 offender treatment for the incarcerated inmates,
13 strengthen the sentencing guidelines, make it
14 somewhat easier to sentence some of those sex
15 offenders who previously were let off on plea
16 bargain charges because it's always very
17 difficult to prove, especially in the case of
18 children, where witnesses are not resisting the
19 nature of the sexual offense and very often the
20 victims -- in an attempt to spare the victim the
21 agony of the trial, it's the perpetrator who
22 catches the break, but in Washington State they
23 did something else and in 1990, they passed a
24 law in Washington State that was the Sexual
25 Predator Law upon which Kansas and many other

1 states then based their sexual predator laws.

2 I introduced the first bill in
3 1991 in New York State, modeled very much upon
4 the Washington statute and I'm sorry that a few
5 of my colleagues who raised some questions
6 aren't here right now so that I could explain
7 the differences between the Washington statute
8 and the Kansas statute.

9 I'm pleased as everyone -- as I
10 hope most people are pleased -- that the Supreme
11 Court has upheld the Kansas statute. I think
12 they would have found it equally comfortable to
13 uphold the Washington State statute. It was
14 just a circumstance of the process by which
15 appeals move through the judicial system in this
16 country that brought the Kansas statute before
17 the Supreme Court ahead of the Washington State
18 one. Had the Washington State law gone first,
19 it too would have been upheld by the Supreme
20 Court of the United States, I'm quite sure, but
21 within these two laws, Kansas and Washington
22 State, there are absolute guarantees for due
23 process to allow the kind of careful check and
24 balance that some of my colleagues on this side
25 of the aisle, particularly Senator Waldon, have

1 raised.

2 This is not an automatic sentence
3 to a mental health sentence. It requires the
4 kind of evaluation that sets up the process by
5 which the psychological evidence must be so
6 clearly demonstrated that the person is
7 incarcerated under the Mental Hygiene Law as
8 opposed to the Corrections Law.

9 I have no doubt that the bill
10 that Senator Volker has introduced can contain
11 every one of the guidelines that's necessary but
12 if more are deemed reasonable by members of this
13 house and members of the other house, then I
14 would have no problem with putting them on
15 because I have every confidence that this
16 measure, once signed into law, is going to be
17 enacted fairly. I have confidence in this
18 system by which the psychological evidence will
19 be the determining factor for recommitment under
20 the mental hygiene statute, that there will not
21 be violation of individual rights. We are only
22 talking about a mere handful of cases per year
23 that would be likely to find the force of this
24 law in effect. It's not dozens and dozens or
25 hundreds of those first degree rapist. The vast

1 majority of them will continue to serve their
2 sentences and be released to society and sadly
3 many of them will commit the same crimes again.
4 We cannot do much about the vast majority of
5 them but there are a unique handful, a unique
6 handful who are, in fact, so dangerous, who have
7 made it abundantly clear through their actions
8 while incarcerated, not just because of their
9 crime -- we do not need to retry that crime
10 again. It is their actions while incarcerated.
11 It is their own statements which make them
12 mentally unstable to the point that the
13 psychological testimony will have them
14 recommitted into a mental hygiene facility for
15 their benefit as well as for the benefit of
16 society and with an annual evaluation, it's
17 possible some of them would after a few years be
18 released or be released to a less secure
19 facility and begin the phasing process into
20 society again. It does not have to be a
21 lifetime commitment as some would have suggested
22 but for the most dangerous, it must be a
23 commitment beyond the current criminal sentence
24 that they serve and I'm glad that we have taken
25 this step.

1 I wish we could have done it in
2 1991 or 1992 or any number of other times. It's
3 too bad that we are doing it in a reactionary
4 mode following the Supreme Court decision
5 instead of having taken the opportunity to be
6 one of those states that set the example for the
7 rest of the nation on this, but I look forward
8 to the future dialogue between the houses and,
9 again, I want to thank Senator Volker for having
10 the courage to bring this measure before the
11 rest of the Senate, and I would urge all of my
12 colleagues to demonstrate their support for this
13 very important measure for protection for the
14 women, the children of this state.

15 Think of it in terms of avoiding
16 the crime of rape. It's a lot different from
17 burglary. It is not -- it is not a victimless
18 crime. It is one in which we should be spending
19 more time, not less time. Nobody likes to talk
20 about the subject of rape. We've never held
21 hearings on this particular measure, but I hope
22 following the Supreme Court decision, following
23 the passage of this bill today in this house
24 that we will then take this matter to the public
25 and be able to make sure that we are comfortable

1 passing the strongest measure of protection that
2 we can possibly do in New York State to protect
3 the people of this state from some of the most
4 horrendous crimes imaginable.

5 ACTING PRESIDENT KUHL: With the
6 two-hour time limit on debate having expired,
7 the Secretary will read the last section.

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

11 ACTING PRESIDENT KUHL: Call the
12 roll.

13 (The Secretary called the roll.)

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

16 THE SECRETARY: Ayes 55, nays 1,
17 Senator Leichter recorded in the negative.

18 ACTING PRESIDENT KUHL: The bill
19 is passed.

20 Senator Present.

21 SENATOR PRESENT: Mr. President,
22 I would like to announce there will be an
23 immediate meeting of the Rules Committee in Room
24 332.

25 ACTING PRESIDENT KUHL: There

1 will be an immediate meeting of the Rules
2 Committee, an immediate meeting of the Rules
3 Committee in the Majority Conference Room, Room
4 332.

5 SENATOR HOFFMANN: Mr. President.

6 ACTING PRESIDENT KUHL: Senator
7 Hoffmann, why do you rise?

8 SENATOR HOFFMANN: I was out of
9 the chamber when Calendar 855 was brought up and
10 I would request unanimous consent to be recorded
11 in the negative.

12 ACTING PRESIDENT KUHL: Without
13 objection, hearing no objection, Senator
14 Hoffmann will be recorded in the negative on
15 Calendar Number 855.

16 Senator Present.

17 SENATOR PRESENT: Mr. President,
18 could we take up Calendar 1423, Senator
19 Velella's bill.

20 ACTING PRESIDENT KUHL: The
21 Secretary will read.

22 THE SECRETARY: Calendar Number
23 1423, by Senator Velella, Senate Print 1882, an
24 act to amend the Administrative Code of the city
25 of New York, in relation to establishing.

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

4 SENATOR LEICHTER: 1423?
5 Explanation.

6 ACTING PRESIDENT KUHL: Senator
7 Velella, an explanation of Calendar Number 1423
8 has been requested.

9 SENATOR VELELLA: Mr. President,
10 this bill establishes a procedure for the
11 Corrections Department employees and members of
12 the disability retirement system to have a
13 medical expert review panel put in place to
14 review cases and applications they may make on
15 the medical disability claims.

16 This is similar to provisions
17 that are already in place for members of the
18 Sanitation Department and for the Police
19 Department.

20 ACTING PRESIDENT KUHL: Senator
21 Leichter.

22 SENATOR LEICHTER: Would Senator
23 Velella yield, please?

24 SENATOR VELELLA: Yes.

25 ACTING PRESIDENT KUHL: Senator

1 Velella, do you yield? The Senator yields.

2 SENATOR LEICHTER: Senator, you
3 actually addressed one of the questions I had.
4 Do we have these independent medical review
5 panels for other City employees? You mentioned
6 police and you mentioned sanitation. How about
7 the fire department?

8 SENATOR VELELLA: I only know of
9 the police -- I only know of the police and
10 sanitation and hopefully with the passage of
11 this bill, correction officers. I don't know
12 about the others. They may or may not have.

13 SENATOR LEICHTER: Mr. President,
14 if Senator Velella continues to yield.

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

17 SENATOR VELELLA: Yes.

18 ACTING PRESIDENT KUHL: The
19 Senator yields.

20 SENATOR LEICHTER: Senator,
21 wouldn't it seem to you that it would make sense
22 to have a uniform policy for all City
23 employees?

24 SENATOR VELELLA: Senator, it
25 makes sense to me that we pass this bill and let

1 the opportunity for medical experts make rulings
2 on applications for correction officers. If you
3 feel you want to expand that to other groups,
4 put the bill in.

5 SENATOR LEICHTER: Mr. President,
6 I was trying to get your opinion, Senator. I
7 know what my opinion is.

8 SENATOR VELELLA: Oh, okay.

9 ACTING PRESIDENT KUHL: Senator
10 Leichter.

11 SENATOR LEICHTER: Yes, I'm
12 asking Senator -

13 ACTING PRESIDENT KUHL: Senator,
14 this is an orderly body, not an argumentative
15 one, and we're going to keep it that way. If
16 you have a question to ask Senator Velella, I'll
17 certainly ask him if he'll yield to that.

18 SENATOR LEICHTER: I was in the
19 process of asking my question when Senator
20 Velella felt that he wanted to jump to an
21 answer.

22 Let me finish asking the
23 question.

24 ACTING PRESIDENT KUHL: Senator
25 Velella, do you yield to another question from

1 Senator Leichter?

2 SENATOR VELELLA: Yes.

3 ACTING PRESIDENT KUHL: The
4 Senator yields.

5 SENATOR LEICHTER: I certainly
6 have in mind, as I'm sure Senator Velella does,
7 it's always good to know we're an orderly body.

8 So, Senator, my question to you
9 is, I know my view but I wanted to get your view
10 as to whether you think all City employees ought
11 to have the benefit of these independent medical
12 review panels to determine if there's
13 disability, or is there something special about
14 correction officers, police and sanitation that
15 distinguish them from fire department, people
16 who work for HRA, and so on?

17 SENATOR VELELLA: Well, my
18 response to that is that, first of all, my
19 personal belief is that in this case that we are
20 discussing here, this is a good idea. Secondly,
21 I have a basic premise that I operate under that
22 may be different than yours and that is if it
23 isn't broke, you don't fix it. Correction
24 officers came to me and said this is a problem
25 they have. They're seeking to have this problem

1 that they have in their disability pensions
2 resolved. They would like to have the same type
3 of panel as the other groups have that -- that I
4 mentioned and I said, I think I agree with you,
5 I think I'll put the bill in and let it be
6 passed, and let the Senate make a decision on
7 it.

8 If other groups out there or
9 within the sound of our voices, seek to have the
10 same benefit, let them come in; I'll be happy to
11 look at it. But my policy is I don't go out
12 there looking for things to fix if they aren't
13 broke.

14 SENATOR LEICHTER: Mr. President.

15 ACTING PRESIDENT KUHL: Senator
16 Leichter.

17 SENATOR LEICHTER: If Senator
18 Velella continues to yield?

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

21 SENATOR VELELLA: Yes.

22 ACTING PRESIDENT KUHL: Yes.

23 SENATOR LEICHTER: You made a
24 determination that as to correction officers,
25 the determination of disability was broken.

1 Would you tell us in what respect the current
2 system failed to work and why you deemed that it
3 was broken?

4 SENATOR VELELLA: Well, Senator,
5 you've made -- you've made a tremendous jump as
6 to what my conclusions were. I know you think
7 you can get into everybody's mind and attribute
8 reasons to them, but at least give me the
9 opportunity to explain to you my own mental
10 process. Again I'll try to make it simple so
11 you can understand it.

12 The correction officers came to
13 me complaining of an inequity. They said there
14 are not medical professionals of competence and
15 expertise to make judgments on their
16 applications. They would like to broaden the
17 panel, and I said, I think that's a good idea.
18 You don't have that. Is there a precedent for
19 it? They said, Yes; they gave me precedents
20 from other unions, other groups, and I said I
21 would put the bill in.

22 Now, if you want to expand that
23 to what other processes and decisions I made, it
24 was pretty simple. It was a group of
25 constituents seeking to get assistance in a

1 problem they had that had precedents in law, and
2 it's that simple.

3 SENATOR LEICHTER: Mr. President,
4 if Senator Volker continues -- Senator Velella,
5 that is continues to yield. Senator -

6 ACTING PRESIDENT KUHL: Senator
7 Leichter, let me find out if he continues to
8 yield. As a good lawyer, you don't want to
9 assume anything.

10 Senator Velella, do you continue
11 to yield?

12 SENATOR VELELLA: Yes.

13 ACTING PRESIDENT KUHL: Senator
14 continues to yield.

15 SENATOR LEICHTER: Senator
16 Velella, I raised the issue of being broke
17 because you said that you thought it was
18 broken. Now, you explain it in terms of you
19 thought it was fairer that there would be an
20 independent medical review panel and that may be
21 so.

22 I'm just trying to find out, were
23 there problems with the current system; has it
24 been unfair? Did it not work? Were there
25 instances of people who you and I and others

1 would clearly consider disabled who were denied
2 disability pensions?

3 SENATOR VELELLA: Is that the
4 question?

5 SENATOR LEICHTER: Yes.

6 SENATOR VELELLA: I don't know
7 that there were people that were denied that
8 were rightfully or wrongfully denied. I know
9 that this is a suggestion for a better way of
10 doing it and putting more competent people on
11 the board. I think it's a better way to do it.
12 It gives a broader base of medical expertise to
13 the panel that's going to be selected.

14 Now, unfortunately, every piece
15 of legislation that comes before this house we
16 don't have the opportunity to go out and contact
17 every member of the union that's being affected,
18 and say, Do you think this is working right or
19 wrong? I made a judgment. I hope the house
20 makes a judgment. This broadens the base of
21 expertise available on applications and it's
22 been done for other unions, should be done for
23 this union, and I think that the bill should be
24 voted on the merits that this is a better
25 system, not worrying about what little nuances

1 may have occurred in the past. We're moving
2 ahead to a better way of doing it.

3 SENATOR LEICHTER: Mr. President,
4 if Senator Velella continues to yield.

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

7 SENATOR VELELLA: I'm not going
8 to yield any more. I'll let the bill stay the
9 way it is.

10 ACTING PRESIDENT KUHL: Senator
11 refuses to yield.

12 SENATOR LEICHTER: O.K. Well, I
13 think it's unfortunate, because I think there
14 are some questions here as to the position of
15 the city of New York. Is this a matter that's
16 in collective bargaining? I'm sorry that Senator
17 Velella doesn't want to defend his bill or
18 address these issues, but I think I am troubled
19 by the fact that unless we're given some sound
20 reason as to why we should interfere in a matter
21 which is basically settled by collective
22 bargaining between the city of New York and its
23 employees, and we have another bill on later
24 today where this legislature meddles in what is
25 really a matter of the city of New York and its

1 relationship it has with its employees.

2 So based on, you know, Senator
3 Velella's answers and what he hasn't answered, I
4 take this to be an infringement on the rights of
5 the city of New York, maybe an interference in
6 the collective bargaining. I know no reason why
7 the current system is not working. I also don't
8 know whether there's any effort here to broaden
9 the bases upon which disability is granted.

10 Disability pensions cost an
11 enormous amount to the city of New York and its
12 taxpayers. Some are fair and some are very
13 unfair and, frankly, people taking advantage of
14 the city of New York. Is this an effort to try
15 to broaden the people that are going to win
16 disability pensions that have to be paid for by
17 the people of the city of New York?

18 It might well be the case. We
19 never -- we won't have all the answers because
20 Senator Velella said he didn't have time to look
21 at the nuances. I don't think I asked him to
22 check with every member of the union. I don't
23 know whether he checked with the commissioner.
24 In fact, we have a former commissioner of
25 corrections, Senator Velella, sits about 20 feet

1 from you. Maybe she might have given you some
2 information or advice as to how well the current
3 board was working.

4 Based on the information I have,
5 I would urge members to vote against this bill.

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

8 SENATOR VELELLA: Speak on the
9 bill.

10 ACTING PRESIDENT KUHL: Senator
11 Velella, on the bill.

12 SENATOR VELELLA: Mr. President,
13 on the bill, I would like to point out to the
14 members that there is a message at the desk from
15 the city of New York that the City has approved
16 this bill and is in full support of the bill so,
17 again, we have a case of Senator Leichter's
18 all-knowing knowledge superseding everybody
19 else's ability to make decisions.

20 I would suggest that the state
21 Senate is not the place for a classroom to
22 educate someone as to everything that's going on
23 in the city of New York. If the Senator has a
24 particular question and a particular concern,
25 it's their obligation also to look into the

1 issue. This bill is on the calendar; calls
2 could be made to find out about it.

3 I believe we've met the obliga
4 tion. The city of New York has requested it;
5 the union has requested it; the administration
6 has requested it. There is precedent for it.
7 It's a better system to operate under despite
8 Senator Leichter's concerns and lack of
9 knowledge in terms of looking into what he has
10 concerns about. I'm not here to educate him.
11 I'm here to make proposals to improve the
12 process.

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

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

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

19 SENATOR LEICHTER: I raised the
20 issue whether the city of New York's for the
21 bill. I don't know; I just saw it. Senator
22 Velella, I was going to ask you is the city of
23 New York for it? I'll ask you to yield now.

24 Is it not the home rule message
25 -- the City Council I understand. Is the city

1 of New York, your mayor, my mayor, have they
2 come out in favor of the bill?

3 SENATOR VELELLA: The same answer
4 that I gave you in the Rules Committee, the same
5 answer that I'm giving you here now. Sometimes
6 it doesn't get through your head when you hear
7 something direct. There is a home rule
8 message. I have not had any reason to believe
9 anybody is against this bill. The mayor has not
10 contacted me. There's been no memo that I have
11 seen against it. If you have one, show it to
12 me.

13 I appreciate your concern for the
14 mayor of the city of New York, but if he had a
15 problem, I assure you he would let me know. The
16 Council has voted for it. Yes, I say the voices
17 I have heard from the city of New York say they
18 want this bill.

19 ACTING PRESIDENT KUHL: Senator
20 Leichter.

21 SENATOR LEICHTER: There's a big
22 difference saying that there's a home rule
23 message which came from the City Council and
24 saying the city of New York is for it. We've
25 had a number of instances where there have been

1 home rule messages and the mayor has taken a
2 different position.

3 I happen to have a lot of
4 disagreements with the mayor, but I do happen to
5 believe that when it comes to management issues
6 between employer and employee that the chief
7 execute ought to have freedom to work out that
8 relationship.

9 So, Senator, I gather now that -
10 and I thank you for answering -- that the city
11 of New York has not approved the bill. You
12 pointed out that they haven't opposed it. I
13 have not seen a memo of opposition either, but
14 what you were referring to is a home rule
15 message which is far different than saying the
16 city of New York supports the bill.

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

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

21 ACTING PRESIDENT KUHL: Call the
22 roll.

23 (The Secretary called the roll.)

24 ACTING PRESIDENT KUHL: Record
25 the negatives. Announce the results.

1 THE SECRETARY: Ayes 55, nays
2 one, Senator Leichter recorded in the negative.

3 ACTING PRESIDENT KUHL: Senator
4 Larkin, we have some housekeeping at the desk
5 we'd like to do if that's possible.

6 SENATOR LARKIN: Yes, please.

7 ACTING PRESIDENT KUHL: Return to
8 the order of motions and resolutions. Secretary
9 will read the substitutions.

10 THE SECRETARY: On page 5,
11 Senator Farley moves to discharge from the
12 Committee on Rules Assembly Print 5281 and
13 substitute for the identical Senate Third
14 Reading 147.

15 On page 9, Senator Velella moves
16 to discharge from the Committee on Rules
17 Assembly Print 7728-A, and substitute for the
18 identical Senate Third Reading 340.

19 On page 10, Senator Goodman moves
20 to discharge from the Committee on Rules
21 Assembly Print 5036-B and substitute it for the
22 identical Senate bill, Third Reading 371.

23 On page 17, Senator Tully moves
24 to discharge from the Committee on Rules
25 Assembly Print 8009-A and substitute it for the

1 identical Senate bill, Third Reading 633.

2 On page 26, Senator DeFrancisco
3 moves to discharge from the Committee on Rules
4 Assembly Print 6652-A and substitute it for the
5 identical Senate bill, Third Reading 911.

6 ACTING PRESIDENT KUHL:
7 Substitutions are ordered.

8 Chair recognizes Senator
9 Marcellino.

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

12 On page number 23, I offer the
13 following amendments to Calendar Number 839,
14 Senate Print Number 4124, and ask that said bill
15 retain its place on the Third Reading Calendar.

16 ACTING PRESIDENT KUHL:
17 Amendments to Calendar Number 839 are received
18 and adopted and the bill will retain its place
19 on the Third Reading Calendar.

20 Senator Marcellino.

21 SENATOR MARCELLINO: Mr.
22 President, I wish to call up, on behalf of
23 Senator Leibell, Calendar Number 504, Assembly
24 Print Number 2931.

25 ACTING PRESIDENT KUHL: Secretary

1 will read.

2 THE SECRETARY: By member of the
3 Assembly Lopez, Assembly Print 2931, an act to
4 amend the Private Housing Finance Law.

5 ACTING PRESIDENT KUHL: Senator
6 Marcellino.

7 SENATOR MARCELLINO: I now move
8 to reconsider the vote by which this Assembly
9 bill was substituted for Senator Leibell's bill,
10 Print Number 3508, on April 8th.

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

13 (The Secretary called the roll on
14 reconsideration.)

15 THE SECRETARY: Ayes 56.

16 ACTING PRESIDENT KUHL: Senator
17 Marcellino.

18 SENATOR MARCELLINO: I now move
19 that Assembly Bill Number 2931 be committed to
20 the Committee on Rules and Senator Leibell's
21 bill, Senate bill, be restored to the order of
22 third reading.

23 ACTING PRESIDENT KUHL: The
24 Assembly bill will be committed and the Senate
25 bill will be restored.

1 SENATOR MARCELLINO: I now move
2 to offer the following amendments.

3 ACTING PRESIDENT KUHL: The
4 amendments are received and adopted.

5 Senator Marcellino.

6 SENATOR MARCELLINO: Mr.
7 President, I wish to call up Senator Leibell's
8 bill, Print Number 3731, recalled from the
9 Assembly which is now at the desk.

10 ACTING PRESIDENT KUHL: Secretary
11 will read.

12 THE SECRETARY: By Senator
13 Leibell, Senate Print 3731, an act to amend
14 Chapter 915 of the Laws of 1982.

15 ACTING PRESIDENT KUHL: Senator
16 Marcellino.

17 SENATOR MARCELLINO: Mr.
18 President, I now move to reconsider the vote by
19 which this bill was passed.

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

22 (The Secretary called the roll on
23 reconsideration.)

24 THE SECRETARY: Ayes 56.

25 ACTING PRESIDENT KUHL: Senator

1 Marcellino.

2 SENATOR MARCELLINO: Mr.
3 President, I now offer the following
4 amendments.

5 ACTING PRESIDENT KUHL:
6 Amendments are received and adopted.

7 Senator Marcellino.

8 SENATOR MARCELLINO: Mr.
9 President, I wish to call up Calendar Number
10 792, Assembly Print Number 8089.

11 ACTING PRESIDENT KUHL: Secretary
12 will read.

13 THE SECRETARY: Calendar Number
14 792, by the assembly Committee on Rules,
15 Assembly Print 8089, an act to provide for the
16 adjustment of stipends.

17 ACTING PRESIDENT KUHL: Senator
18 Marcellino.

19 SENATOR MARCELLINO: Thank you,
20 Mr. President. I now move to reconsider the
21 vote by which this Assembly bill was substituted
22 for Senator Trunzo's bill, Senate Print Number
23 5237-A on June 9.

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

1 (The Secretary called the roll on
2 reconsideration.)

3 THE SECRETARY: Ayes 56.

4 ACTING PRESIDENT KUHL: Senator
5 Marcellino.

6 SENATOR MARCELLINO: I now move
7 that Assembly Bill Number 8089 be recommitted to
8 the Committee on Rules and Senate Bill -- and
9 Senator Trunzo's bill be restored to the order
10 of Third Reading Calendar.

11 ACTING PRESIDENT KUHL: The
12 Senate bill will be restored to the Third
13 Reading Calendar.

14 SENATOR MARCELLINO: Thank you.

15 ACTING PRESIDENT KUHL: Thank
16 you, Senator Marcellino.

17 Senator Larkin.

18 SENATOR LARKIN: Mr. President,
19 may we now call up Calendar 1380, by Senator
20 Goodman.

21 ACTING PRESIDENT KUHL: Secretary
22 will read the title.

23 THE SECRETARY: Calendar Number
24 1380, by Senator Goodman, Senate Print 430-A, an
25 act to amend the Education Law, in relation to

1 the unauthorized practice of a profession.

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

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

6 ACTING PRESIDENT KUHL: Call the
7 roll.

8 (The Secretary called the roll.)

9 THE SECRETARY: Ayes 56.

10 ACTING PRESIDENT KUHL: The bill
11 is passed.

12 SENATOR LARKIN: Could we now
13 proceed on regular order.

14 ACTING PRESIDENT KUHL: Calendar
15 Number 1380 was passed.

16 We'll now go to regular order,
17 commencing with Calendar Number 1424, by Senator
18 Hannon.

19 SENATOR GENTILE: Mr. President.

20 ACTING PRESIDENT KUHL: Senator
21 Gentile.

22 SENATOR GENTILE: I would just
23 ask for unanimous consent to be recorded in the
24 negative on Calendar Numbers 124 and 1135.

25 SENATOR KUHL: Without objection,

1 hearing no objection, Senator Gentile will be
2 recorded in the negative on Calendar Number
3 124. Senator Gentile, we're just checking, but
4 apparently you're on a different time schedule
5 and calendar than we are because neither of
6 those -- we appreciate your optimism and
7 enthusiasm for the adoption of bills which have
8 not been adopted by this chamber, so we're not
9 able to record your votes at this time.

10 SENATOR GENTILE: Trying to speed
11 the process along.

12 ACTING PRESIDENT KUHL: We
13 appreciate that. Maybe you can talk with some
14 of the other members of the house.

15 Secretary will continue to call
16 the controversial calendar, commencing with
17 Calendar Number 1424, by Senator Hannon.

18 THE SECRETARY: Calendar Number
19 1424, by Senator Hannon, Senate Print 2186, an
20 act to amend the Education Law, in relation to
21 experimental alternative institutional.

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

24 THE SECRETARY: Section 2. This
25 act shall take effect July 1.

1 ACTING PRESIDENT KUHL: Call the
2 roll.

3 (The Secretary called the roll.)

4 THE SECRETARY: Ayes 56.

5 ACTING PRESIDENT KUHL: The bill
6 is passed.

7 THE SECRETARY: Calendar Number
8 1425, by Senator Montgomery, Senate Print 2574,
9 an act authorizing.

10 ACTING PRESIDENT KUHL: There is
11 no home rule bill at the desk, so the bill will
12 be laid aside. Continue to call the
13 controversial calendar.

14 THE SECRETARY: Calendar Number
15 1428, by Senator Skelos, Senate Print 2697, an
16 act to amend the Public Service Law, in relation
17 to definition.

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

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

22 ACTING PRESIDENT KUHL: Call the
23 roll.

24 (The Secretary called the roll.)

25 THE SECRETARY: Ayes 56.

1 ACTING PRESIDENT KUHL: The bill
2 is passed.

3 THE SECRETARY: Calendar Number
4 1429, by Senator Spano, Senate Print 2707-A, an
5 act to amend the Public Health Law, in relation
6 to the extension.

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

9 SENATOR LARKIN: Lay it aside
10 temporarily.

11 ACTING PRESIDENT KUHL: Lay the
12 bill aside temporarily.

13 THE SECRETARY: Calendar Number
14 1430, substituted earlier today, by member of
15 the Assembly Parment, Assembly Print 5816-A, an
16 act to amend the County Law, in relation to the
17 allocation.

18 ACTING PRESIDENT KUHL: There is
19 a local fiscal impact note at the desk.
20 Secretary will read the last section.

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

23 ACTING PRESIDENT KUHL: Call the
24 roll.

25 (The Secretary called the roll.)

1 THE SECRETARY: Ayes 56.

2 ACTING PRESIDENT KUHL: The bill
3 is passed.

4 THE SECRETARY: Calendar Number
5 1433, by Senator Hannon, Senate Print 4707-A, an
6 act to amend the Social Services Law, in
7 relation to limiting the method of payment.

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

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

12 ACTING PRESIDENT KUHL: Call the
13 roll.

14 (The Secretary called the roll.)

15 THE SECRETARY: Ayes 56.

16 ACTING PRESIDENT KUHL: The bill
17 is passed.

18 THE SECRETARY: Calendar Number
19 1435, by Senator Seward, Senate Print 4798-B, an
20 act to enact the Ithaca City School District
21 public construction.

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

24 THE SECRETARY: Section 8. This
25 act shall take effect immediately.

1 ACTING PRESIDENT KUHL: Call the
2 roll.

3 (The Secretary called the roll.)

4 THE SECRETARY: Ayes 56.

5 ACTING PRESIDENT KUHL: The bill
6 is passed.

7 THE SECRETARY: Calendar Number
8 1437, by Senator Maziarz, Senate Print 5435, an
9 act to amend the Family Court Act, in relation
10 to violations.

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

13 THE SECRETARY: Section 4. This
14 act shall take effect in 90 days.

15 ACTING PRESIDENT KUHL: Call the
16 roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes 56.

19 ACTING PRESIDENT KUHL: The bill
20 is passed.

21 Senator Larkin.

22 SENATOR LARKIN: Mr. President,
23 can we now return to motions and resolutions. I
24 believe you have a privileged resolution at the
25 desk -- would you just read the title -- by

1 Senator Rath.

2 ACTING PRESIDENT KUHL: There is
3 a privileged resolution by Senator Rath at the
4 desk. Secretary will read the title.

5 THE SECRETARY: By Senator Rath,
6 Legislative Resolution commending Dr. Stuart
7 Steiner, president of Genesee Community College
8 upon the occasion of his designation by the
9 Association of Community College Trustees as a
10 recipient of the 1997 Northeastern United States
11 Chief Executive Officer Award.

12 ACTING PRESIDENT KUHL: Question
13 is on the resolution. All those in favor
14 signify by saying aye.

15 (Response of "Aye.")

16 Opposed nay.

17 (There was no response.)

18 The resolution is adopted.

19 Senator Larkin, as long as we're
20 on motions and resolutions, we do have two
21 motions we'd like to take up at this time. Is
22 that O.K. with you?

23 SENATOR LARKIN: Yes, Mr.
24 President.

25 ACTING PRESIDENT KUHL: Senator

1 Marcellino.

2 SENATOR MARCELLINO: Mr.
3 President, on behalf of Senator Farley, on page
4 number 7, I offer the following amendments to
5 Calendar Number 275, Senate Print Number 2339,
6 and ask that said bill retain its place on the
7 Third Reading Calendar.

8 ACTING PRESIDENT KUHL:
9 Amendments to 275 are received and adopted and
10 the bill will retain its place on the Third
11 Reading Calendar.

12 Senator Marcellino.

13 SENATOR MARCELLINO: Thank you,
14 Mr. President.

15 On behalf behalf of Senator
16 Leibell, I wish to call up his bill, Print
17 Number 3580, recalled from the Assembly which is
18 now at the desk.

19 ACTING PRESIDENT KUHL: Secretary
20 will read.

21 THE SECRETARY: Calendar Number
22 507, by Senator Leibell, Senate Print 3580, an
23 act to amend the Private Housing Finance Law.

24 ACTING PRESIDENT KUHL: Senator
25 Marcellino.

1 SENATOR MARCELLINO: Mr.
2 President, I move to reconsider the vote by
3 which this bill was passed.

4 (The Secretary called the roll on
5 reconsideration.)

6 THE SECRETARY: Ayes 57.

7 ACTING PRESIDENT KUHL: Senator
8 Marcellino.

9 SENATOR MARCELLINO: Mr.
10 President, I now offer the following
11 amendments.

12 ACTING PRESIDENT KUHL:
13 Amendments are received and adopted.

14 SENATOR PADAVAN: Mr. President.

15 ACTING PRESIDENT KUHL: Senator
16 Padavan.

17 SENATOR PADAVAN: Mr. President,
18 I'd like, by unanimous consent, to be recorded
19 in the negative on a bill that passed earlier
20 today, Calendar 855, Senate Bill 3307-B.

21 ACTING PRESIDENT KUHL: Without
22 objection, hearing no objection, Senator Padavan
23 will be recorded in the negative on Calendar
24 Number 855.

25 Senator Larkin.

1 SENATOR LARKIN: Mr. President,
2 can we now return to our original calendar and
3 start with Calendar Number 78.

4 ACTING PRESIDENT KUHL: We'll
5 return to the controversial reading of the
6 original calendar of the day, Calendar 59,
7 beginning with Calendar Number 78, but before we
8 do that, we'll recognize Senator Trunzo.

9 SENATOR TRUNZO: Mr. President,
10 there will be an immediate meeting of the Civil
11 Service and Pension Committee meeting -
12 Committee in the Conference Room, Room 332.

13 ACTING PRESIDENT KUHL: Immediate
14 meeting of the Civil Service and Pensions
15 Committee. Immediate meeting of the Civil
16 Service and Pensions Committee in the Majority
17 Conference Room, Room 332.

18 Secretary will read Calendar
19 Number 78.

20 THE SECRETARY: Calendar Number
21 78, by Senator Wright, Senate Print 731-A, an
22 act to legalize, ratify and confirm the acts and
23 proceedings of the board of education of the
24 Mexico Central School District.

25 ACTING PRESIDENT KUHL: Senator

1 Larkin.

2 SENATOR LARKIN: Is there a
3 message, Mr. President?

4 ACTING PRESIDENT KUHL: There is
5 a message of necessity for Calendar Number 78 at
6 the desk.

7 SENATOR LARKIN: Move to accept
8 the message.

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

12 (Response of "Aye.")

13 Opposed nay.

14 (There was no response.)

15 The message is accepted.

16 There is a local fiscal impact
17 note at the desk also. Secretary will read the
18 last section.

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

21 ACTING PRESIDENT KUHL: Call the
22 roll.

23 (The Secretary called the roll.)

24 THE SECRETARY: Ayes 57.

25 ACTING PRESIDENT KUHL: The bill

1 is passed.

2 THE SECRETARY: Calendar Number
3 124, by Senator Johnson, Senate Print 738-A, an
4 act to amend the Education Law, in relation to
5 prohibiting.

6 ACTING PRESIDENT KUHL: Senator
7 Johnson, an explanation of Calendar Number 124
8 has been requested.

9 SENATOR JOHNSON: Mr. President,
10 this bill is intended to amend the Education Law
11 in relation to prohibiting financing of
12 political organizations through mandatory
13 student fees by state universities and
14 colleges.

15 This will assure that money
16 raised by students is spent for student
17 benefits, not for any other organization which
18 has its own agenda. It does permit, however,
19 optional fees to be paid by students who choose
20 to support these types of organizations if that
21 is approved by a majority vote of the students
22 voting.

23 So I think it's one that clears
24 up a lot of problems that we've had for years
25 with a particular organization and still lets

1 them exist if they choose to do so but not
2 mandatorily being paid by activity fees of
3 students on the campuses.

4 ACTING PRESIDENT KUHL: Senator
5 Oppenheimer.

6 SENATOR OPPENHEIMER: I think I'm
7 going to borrow a statement from one of the
8 Senators who said earlier today, if it ain't
9 fixed don't break -- if it ain't broken, don't
10 fix it.

11 Yes, there are, as Senator
12 Johnson said, mandatory student activity fees
13 for all kinds of extracurricular activity on
14 campus, social and educational, recreational,
15 cultural, but the fact is that if a student does
16 not choose to see those fees put into a
17 particular activity, they can request a portion
18 of the fees back.

19 I think this would change the
20 nature of all extracurricular activities on
21 campuses and would really prevent the young
22 people from advocating their opinions on a
23 variety of public policy issues. I think this
24 is critical if we want these young people to
25 learn how democracy works and how better than to

1 take stands on public policy issues and try and
2 work through them.

3 I think it's enormously important
4 to our democratic form of government, and we
5 always are talking about informed citizenry, and
6 we also are always talking about how our young
7 people have been turned off by the system and
8 many of them are not voting. Now, if we keep
9 talking about this and then say, on the other
10 hand, the activities they do on campus
11 concerning public policy and advocacy are not
12 worthy and should be restrained, I think we're
13 giving a terrible message.

14 I think we should be encouraging
15 this kind of activity, not discouraging it, and
16 -- and lastly, I would say that the students,
17 they decide how they're going to spend their own
18 money. It is their student government who
19 decides every four years when all of the various
20 organizations are enumerated, and there is a
21 detailed discussion of how the money will be
22 spent, so it's -- you know, we don't permit
23 their own student government to determine how
24 they should spend the money that they are
25 putting up, the students are putting up. It has

1 nothing to do with our money, it is student
2 money. Then I think we are giving them a
3 message that democracy is not working and that
4 we are not interested in the opinions of young
5 people.

6 I'll be voting no.

7 ACTING PRESIDENT KUHL: Any other
8 Senator wishing to speak on the bill? Senator
9 Stavisky.

10 SENATOR STAVISKY: Mr. President,
11 this bill comes up periodically. We've debated
12 it on the floor several years ago. It's been
13 considered in committee, and it has been held.
14 I don't know why we seek to resurrect this
15 notion which is a "get NYPIRG" agenda. If
16 someone has difficulty in accepting the
17 positions of NYPIRG, so be it, but if there is
18 no hidden agenda such as getting NYPIRG, then we
19 should also consider that.

20 I don't believe there is any
21 reason for presenting this bill except somewhere
22 in the distant past, NYPIRG may have offended a
23 member of the Legislature. I am not seeking to
24 undermine anyone's opposition to NYPIRG, but
25 this bill goes much further. It sends a

1 chilling message to many organizations that are
2 on campus. It sends a chilling message to
3 organizations such as student newspapers, campus
4 radio stations, cultural and religious groups,
5 speaker programs, ecology clubs and public
6 interest research groups, all of which are in
7 the business of trying to encourage students to
8 participate, not to be turned off by the
9 system.

10 I don't believe this is a well
11 thought out bill. I don't believe that we
12 should be considering this kind of legislation
13 because someone's feelings may have been upset
14 in the past by virtue of a position that NYPIRG
15 may have taken. In that case, the sponsor
16 perhaps could meet with NYPIRG, could discuss
17 the reasons for the submission of this piece of
18 legislation, but we in the Senate should not
19 supersede what is voted upon by the students
20 themselves as mandatory activity fees, and we
21 should take -- take it easy. We should not be
22 jumping to the conclusion that this should be
23 discontinued.

24 The source of funding is
25 important. No one would presume to take any

1 part of the funding away from a group that is
2 performing a worthwhile function. We should
3 not. We should not, in my opinion, define
4 public policy issues as anything that affects
5 the -- that affects the -- the -- that affects
6 the rights of the students to determine which
7 organization they are willing to support.

8 This is micromanagement of the
9 State University of New York. It's
10 micromanagement of the four-year institutions,
11 the two-year community colleges, and may even
12 have an impact on schools such as Syracuse
13 University which does have a part that is
14 involved in the State University system, the
15 College of Forestry.

16 I think that those of us who are
17 supportive of the university should not be
18 misled in supporting this legislation. It's a
19 mistake. I hope the sponsor will reconsider his
20 effort to have this pass. It's a one-house
21 bill, I believe. This is a bill that has never
22 been passed in any form in the New York State
23 Assembly, and I'm not asking the Senate to
24 forego its own position, but rather I ask the
25 Senate to avoid micromanaging the State

1 University.

2 There are new appointments that
3 have been recommended by the Governor of this
4 state to the Board of Trustees of the State
5 University system, and even those new members
6 who are now in a majority on the SUNY trustee
7 board have not asked us to do this. Why should
8 we? Why should we not hold our fire, keep our
9 cool? No disrespect to our presiding officer,
10 and avoid the micromanagement and I think the
11 destructive micromanagement that is inherent in
12 this bill.

13 I will be voting in the negative
14 and I hope my colleagues, some of them, will
15 join me.

16 ACTING PRESIDENT KUHL: Senator
17 Abate.

18 SENATOR ABATE: Yes, would
19 Senator Johnson yield to a couple questions?

20 ACTING PRESIDENT KUHL: Senator
21 Johnson, do you yield to Senator Abate?

22 SENATOR JOHNSON: Yes, Mr.
23 President.

24 ACTING PRESIDENT KUHL: Senator
25 yields.

1 SENATOR ABATE: Senator, I've
2 been told that 25 years ago CUNY and SUNY
3 authorized the mandatory fee, student fee. What
4 was their rationale for the institution of this
5 or the initiation of this mandatory fee?

6 SENATOR JOHNSON: Well, Senator,
7 back in those days a fellow named Ralph Nader
8 was running around organizing a lot of political
9 activities and one of the things he decided to
10 do was organize students in a political group to
11 advance his agenda.

12 SENATOR ABATE: Mr. President,
13 I'm having a hard time hearing.

14 ACTING PRESIDENT KUHL: I think
15 your point is very well taken. Excuse me,
16 Senator Johnson.

17 SENATOR JOHNSON: Senator, is
18 this one any better? No?

19 I said back in those years Ralph
20 Nader was actively organizing political groups
21 to advance his agenda in the nation and in the
22 legislatures and the federal Congress as well,
23 and NYPIRG was an outgrowth of the Nader
24 movement where they decided to organize students
25 to advance their agenda, and that's the origin

1 of NYPIRG.

2 SENATOR ABATE: But, Senator
3 Johnson, would you continue to yield?

4 SENATOR JOHNSON: Yes.

5 SENATOR ABATE: But it's my
6 understanding, and please correct me, that it
7 was put in place to generate more opportunity
8 for extracurricular activities, for more
9 involvement in activity upon the student to
10 organize, and as an outgrowth, can you tell me
11 in the CUNY and SUNY systems what organizations
12 have been formed as a result of this mandatory
13 fee? Certainly not just NYPIRG or Nader
14 organizations. Have there been other
15 organizations that have been formed as a result
16 of the mandatory fee?

17 SENATOR JOHNSON: Senator, I can
18 only tell you that there are 2,000 lobbyists
19 registered in this state. The only lobbyist
20 organization getting money from student activity
21 fees is NYPIRG.

22 SENATOR ABATE: But under this
23 fee schedule, aren't there NAACP chapters and
24 Hillel chapters and religious chapters and
25 Catholic chapters, and MADD and RID and crime

1 victims groups and women's groups that are
2 funded through this student fee?

3 SENATOR JOHNSON: Senator, I -- I
4 can't name the chapters, perhaps you can. The
5 significant thing is that this is an
6 organization which is a political organization
7 which I don't feel should be funded by student
8 activity fees. Nonetheless my bill doesn't
9 prohibit that.

10 My bill says it should be an
11 optional payment; it shouldn't be a part of your
12 mandatory student activity fee which, as you
13 know, Senator, if you don't pay you don't get
14 your grades, you don't get ready for next year
15 so you got to pay this. It's a \$400 fee. If
16 you subtract the \$7 out and pay 393, you will
17 not get your grades, you will not be registered
18 for the next class because you didn't pay NYPIRG
19 \$7. That isn't fair; it isn't right; it isn't
20 democratic.

21 SENATOR ABATE: Will Senator
22 Johnson continue to yield?

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

25 SENATOR ABATE: But, am I

1 correct, Senator Johnson, this bill doesn't say
2 NYPIRG, it says political organizations, so
3 beyond NYPIRG what organizations would be
4 covered? Could it cover just about any organi
5 zation that's involved in voter registration or
6 is involved in, for instance, a tuition hike
7 rally or demonstration, or invites a legislator
8 to their meeting?

9 I don't see this as just a NYPIRG
10 issue. It seems to encompass many organizations
11 would be covered by this bill.

12 SENATOR JOHNSON: I don't -- I
13 don't believe that's correct, Senator. I think
14 you're misinterpreting it.

15 SENATOR ABATE: So this bill only
16 deals with NYPIRG, no other organization?

17 SENATOR JOHNSON: That's the -
18 that's the organization which is involved in the
19 political lobbying, fraudulent science, mis
20 education of the public and pronouncement of
21 their ideologies that are detrimental to the
22 greater society of this state.

23 SENATOR ABATE: But by your
24 definition, if Hillel was involved and lobbied
25 legislators because they wanted a hate crimes

1 bill, they wanted the bill that's been before
2 this house for many years, it doesn't come out
3 of committee, and let's stay Hillel and the
4 Catholic organizations lobbied for that bill.
5 They would be covered by this -- by this
6 proposed legislation, am I correct?

7 SENATOR JOHNSON: Senator, I'm
8 not discussing that legislation. I'm talking -
9 I'm not discussing whatever organization you're
10 referring to. Quite frankly, NYPIRG has been a
11 -- a source of concern for years and we're only
12 talking about primarily political organizations.
13 We're not talking about the Catholic Church or
14 any other group, primarily political
15 organizations and you should know, students are
16 being involved in activities which deliver
17 fraudulent reports, upon which improper public
18 action may very well be taken, legislative
19 action.

20 I have a letter here from Dr.
21 John Chamberlain, Professor, chairman of the
22 Department of Geology of Brooklyn College, and
23 he tells me, In September 1996 I sent you a
24 scholarly report which demonstrated that NYPIRG
25 falsified data in a study of New York's

1 recycling capacity and I'd like to inform you
2 NYPIRG's research misconduct is more pervasive
3 after examining evidence in several NYPIRG
4 studies, and so forth -- it's a very long
5 letter, and they're saying here that CUNY has
6 failed to take action against NYPIRG and its
7 unfortunate reports, in trying to develop false
8 public policy based upon those reports. This is
9 signed by more than 50 members of Brooklyn
10 College, and they said regrettably that SUNY has
11 thus far failed to fulfill its oversight
12 responsibility or provide the chancellor
13 evidence that NYPIRG has falsified data, and
14 that the University maintains there is no need
15 for action on its part.

16 I might add, Senator, that they
17 say, the Legislature must get involved because
18 this organization is doing wrong things for the
19 people of the state of New York, wrong things
20 for the students. All I'm saying is we
21 shouldn't force students to pay for an
22 organization which is permitting so many
23 improper activities. As a matter of fact,
24 Senator, it's been very hard to get rid of
25 them. In 1994 they were voted out, out of

1 funding in the Brooklyn College, and yet the
2 trustees -- as was asked by someone -- the
3 trustees reversed that and would not permit the
4 vote to be taken, I believe, so they didn't even
5 have the democratic right to vote yes or no on
6 NYPIRG.

7 All we're saying is we're going
8 to give them a democratic right to choose to
9 contribute or not contribute to this
10 organization. The fact that they're doing bad
11 things is just a good reason not to fund them
12 mandatorily, but it doesn't mean if people who
13 agree with them and if they don't mind the false
14 science and mis-education they're giving to
15 youngsters, that they can contribute to them.
16 They shouldn't be forced to do it.

17 SENATOR ABATE: On the bill.

18 ACTING PRESIDENT KUHL: Senator
19 Abate. Senator Abate, on the bill.

20 SENATOR ABATE: Yes. We may be
21 looking at different bills. I don't see
22 anywhere in the bill that talks about NYPIRG and
23 only NYPIRG. It describes political
24 organization as any political organization
25 that's directly or indirectly concerned with the

1 forming of policy or political campaigns,
2 engaging in lobbying, et cetera, et cetera.

3 That is broad; it is vague. It
4 could entail all student activities, because I
5 dare say what we want to encourage through this
6 student fee is people getting involved, being
7 more knowledgeable about what happens in public
8 and civic affairs, whether it's through their
9 religious organizations or gender or racial
10 organizations, whatever it is, that they have a
11 better understanding of what's happening in the
12 world around them.

13 So it may involve inviting a
14 legislator. It may involve voter registration.
15 It may involve a student demonstration and under
16 this bill, just about every organization that a
17 student could be involved in would be covered by
18 the definition under the bill, of political
19 organizations.

20 Why are we getting involved in
21 this issue when there's so many critical issues
22 at hand at SUNY and CUNY? The issues around
23 tuition, how they're going to finance
24 themselves, staffing, standards, implementation
25 of those standards, even rethinking SUNY.

1 The Governor said, Let's give
2 more autonomy to campuses. What we're saying
3 today, we don't trust students. The students
4 can't decide how they want their student fee to
5 be utilized. They vote on this. That's called
6 democracy. We allow students to vote. We think
7 students are capable of learning, but we're
8 saying to them they're not capable of deciding
9 how their fees should be utilized.

10 I think it's wrong. I think the
11 state Senate should be involved in much more
12 important activity. So what we should be doing
13 is encouraging student involvement, giving them
14 an autonomy to make important decisions about
15 their lives and how they want to grow and learn
16 because we want young people to learn. What
17 we're saying through this bill is we want them
18 to go to classes and complete their classes and
19 not interact in a meaningful way through
20 extracurricular activities.

21 I think this is a misguided
22 bill. It's misdirected and we should allow
23 students in a democratic way to decide their own
24 destiny. I vote against the bill.

25 ACTING PRESIDENT KUHL: Senator

1 Paterson.

2 SENATOR PATERSON: Mr. President,
3 I don't want to belabor the point. I think that
4 Senator Abate made it very well. It just needs
5 to be restated and restated and it's the reason
6 that we're going to ask for a slow roll call on
7 this particular piece of legislation. There are
8 a lot of organizations -- Catholic organiza
9 tions, the Newman Society is one of them, Jewish
10 organizations, the Hillel society is one of
11 them, women's organizations, women, minority
12 organizations, black student unions, all types
13 of groups that have all types of points of view
14 which is what is really most exciting about -
15 about having that kind of discourse on college
16 campuses. It's very interesting to note that
17 back in the '60s which is a period of tremendous
18 student activity and vast disagreement in this
19 country on different points of view, but
20 interestingly enough at that period of time with
21 all of the public discourse, there was the
22 highest -- there were the lowest incidences of
23 dropout rates from schools and the highest
24 incidence of student involvement on those
25 issues. So just the disagreement on ideology

1 does not necessarily -- is something that we
2 should actually be encouraging.

3 Now, Senator Johnson made some
4 charges against one of the organizations. He
5 said that they committed fraud. If that's the
6 case, I think that information needs to be taken
7 to a law enforcement agency and not transposed
8 through any bill to try to stop the advancement
9 of public policy, and, therefore, when I think
10 about all the organizations that would possibly
11 lose funding -- CUNY right now allows students
12 that if they're not interested in the New York
13 Public Interest Research Group, that they can
14 have that money returned to them and SUNY
15 conducts elections locally on the campuses to
16 determine where their funds are going to go as
17 we all, as taxpayers, live by the vote of the
18 majority and certainly around here we certainly
19 have learned to live by the vote of the
20 majority. So I am going to recommend a vote
21 against this legislation.

22 ACTING PRESIDENT KUHL: Senator
23 Johnson.

24 SENATOR JOHNSON: Well, Mr.
25 President, I really have to correct a couple of

1 misapprehensions that people share here.

2 First, I would like to correct
3 Senator Abate. It's probably my fault because
4 she must have the previous print, not the "A"
5 print. Our bill does not read "directly or
6 indirectly", "indirectly" was removed, so it
7 only deals with groups that are directly
8 involved in political activities such as NYPIRG,
9 would not include a lot of other organizations
10 to which you made reference.

11 Senator Oppenheimer says, if it
12 ain't broke, don't fix it. Well, I've been
13 receiving letters for several years about the
14 fraudulent research activities, and, Suzi, I can
15 give it to you because you're interested in
16 waters and bays and things like that, and the
17 research they put out is fraudulent and the
18 decisions have been made based upon the
19 fraudulent research and it's demonstrated here,
20 as I mentioned, by this letter from 50
21 professors.

22 I've received mail the past two
23 years about that. I think there's good reason
24 to suspect that NYPIRG is only a political
25 organization and their research is a cover for

1 presenting ideological objectives that they'd
2 like to see enacted into legislation. I think
3 that's pretty well demonstrated.

4 If you want to show how democracy
5 works, Senator, you wouldn't require people to
6 show their support through student activity fees
7 organizations with which they disagree. As a
8 matter of fact, in last November in Wisconsin,
9 the U.S. District Court ruled that the
10 University of Wisconsin had violated the First
11 Amendment rights of three students when it
12 required them pay activity fees to subsidize
13 campus organizations with missions which they
14 opposed.

15 I think that's democracy, not
16 forcing them to support alien objectives, alien
17 objectives which are not familiar, not
18 compatible with your own views. You shouldn't
19 be forced to do that, so democracy means giving
20 people a chance if they want to, to contribute
21 to those organizations and that's what my bill
22 does.

23 ACTING PRESIDENT KUHL: Senator
24 Oppenheimer, why do you rise?

25 SENATOR OPPENHEIMER: I would ask

1 a question of Senator Johnson.

2 ACTING PRESIDENT KUHL: Senator
3 Johnson, do you yield to a question from Senator
4 Oppenheimer? He yields.

5 SENATOR OPPENHEIMER: It was my
6 understanding in New York State that if a
7 student objected -- granted the student fees are
8 mandatory, they are required, the student fees
9 -- and the student fees go to fund all kinds of
10 student activities, political, cultural, social,
11 but I -- it was my understanding that if a
12 student said, I do not support X organization,
13 that that amount of funding that went to that
14 organization from that student's fees would be
15 refunded to the student.

16 SENATOR JOHNSON: That would be
17 -- Senator Oppenheimer, that would be the
18 result of my bill, but that is not the case
19 presently. I think you've been misinformed. If
20 that were the case, the bill would not be before
21 us today.

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

24 SENATOR JOHNSON: Also, I'm sorry
25 I don't want to prolong this.

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

3 SENATOR JOHNSON: I'll explain my
4 vote.

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

7 THE SECRETARY: Section 5. This
8 act shall take effect August 1st.

9 ACTING PRESIDENT KUHL: Call the
10 roll.

11 (The Secretary called the roll.)

12 SENATOR GOLD: Slow roll call.

13 ACTING PRESIDENT KUHL: Slow roll
14 call has been requested. There are five
15 Senators in the chamber who are standing or
16 semi-standing who have requested it, so a slow
17 roll call being requested will be called.
18 Secretary will read the roll.

19 THE SECRETARY: Senator Abate.

20 SENATOR ABATE: No.

21 THE SECRETARY: Senator Alesi.

22 SENATOR ALESI: Yes.

23 THE SECRETARY: Senator Breslin.

24 SENATOR BRESLIN: No.

25 THE SECRETARY: Senator Bruno.

1 (Affirmative indication.)
2 Senator Connor.
3 (Negative indication.)
4 THE SECRETARY: Senator Cook.
5 SENATOR COOK: Yes.
6 THE SECRETARY: Senator
7 DeFrancisco.
8 SENATOR DeFRANCISCO: Yes.
9 THE SECRETARY: Senator
10 Dollinger.
11 SENATOR DOLLINGER: No.
12 THE SECRETARY: Senator Farley.
13 SENATOR FARLEY: Aye.
14 THE SECRETARY: Senator Gentile.
15 SENATOR GENTILE: No.
16 THE SECRETARY: Senator Gold.
17 SENATOR GOLD: Speaking for this
18 side of the aisle, I vote no.
19 THE SECRETARY: Senator
20 Gonzalez.
21 (There was no response.)
22 Senator Goodman.
23 (There was no response.)
24 Senator Hannon.
25 (Affirmative indication.)

1 THE SECRETARY: Aye.
2 Senator Hoffmann.
3 SENATOR HOFFMANN: No.
4 THE SECRETARY: Senator Holland.
5 (Affirmative indication.)
6 ACTING PRESIDENT KUHL: Senator
7 Goodman, why do you rise?
8 SENATOR GOODMAN: Ask my name be
9 called, please.
10 ACTING PRESIDENT KUHL: Secretary
11 will read.
12 THE SECRETARY: Senator Goodman.
13 SENATOR GOODMAN: Aye.
14 ACTING PRESIDENT KUHL: Continue
15 the roll call.
16 THE SECRETARY: Senator Johnson.
17 SENATOR JOHNSON: Mr. President,
18 to explain my vote.
19 ACTING PRESIDENT KUHL: Senator
20 Johnson, to explain his vote.
21 SENATOR JOHNSON: I would commend
22 to my city colleagues a New York Post editorial
23 of April 26th, 1997 entitled "NYPIRG's Fiction
24 Science" and it says among other things that, in
25 New York City Chancellor Ann Reynolds should

1 conduct a probe of CUNY because of the \$470,000
2 a year extracted from SUNY students against
3 their wishes. NYPIRG has an ideological ax to
4 grind and Reynolds should certainly pursue the
5 allegations brought by this professor and his 59
6 colleagues.

7 So I say, Senator, if you want to
8 be on the right track, you City Senators, vote
9 for this bill.

10 ACTING PRESIDENT KUHL: Senator
11 Johnson will be recorded in the affirmative.

12 Continue to call the roll
13 slowly.

14 THE SECRETARY: Senator Kruger.

15 SENATOR KRUGER: No.

16 THE SECRETARY: Senator Kuhl.

17 SENATOR KUHL: Aye.

18 THE SECRETARY: Senator Lachman.

19 SENATOR LACHMAN: No.

20 THE SECRETARY: Senator Lack.

21 SENATOR LACK: Aye.

22 THE SECRETARY: Senator Larkin.

23 (There was no response.)

24 Senator LaValle.

25 SENATOR LAVALLE: Aye.

1 THE SECRETARY: Senator Leibell.
2 SENATOR LEIBELL: Aye.
3 THE SECRETARY: Senator
4 Leichter.
5 SENATOR LEICHTER: No.
6 THE SECRETARY: Senator Levy
7 excused.
8 Senator Libous.
9 SENATOR LIBOUS: Aye.
10 THE SECRETARY: Senator Maltese.
11 (There was no response.)
12 Senator Marcellino.
13 SENATOR MARCELLINO: Aye.
14 THE SECRETARY: Senator Marchi
15 excused.
16 Senator Markowitz.
17 (There was no response.)
18 Senator Maziarz.
19 SENATOR MAZIARZ: Yes.
20 THE SECRETARY: Senator Meier.
21 SENATOR MEIER: Yes.
22 THE SECRETARY: Senator Mendez.
23 SENATOR LARKIN: Mr. President,
24 can we get a little order in here? We can't hear
25 the roll call.

1 (Negative indication.)

2 ACTING PRESIDENT KUHL: Senator
3 Larkin, your point is very well taken. For the
4 benefit of the members, we are not proceeding on
5 the roll call until there is some order in the
6 chamber. So Senator Hoffmann, Senator Smith
7 over here on this side, we have the members
8 please take their chairs. Staff, if you have
9 conversations, take them out of the chamber.

10 Senator Gold, I'd be happy to
11 talk to you about your golf game but would you
12 please stop the conversations? We'd like some
13 quiet.

14 Secretary will continue to call
15 the roll.

16 THE SECRETARY: Senator
17 Montgomery.

18 SENATOR MONTGOMERY: No.

19 THE SECRETARY: Senator Nanula.

20 SENATOR NANULA: No.

21 THE SECRETARY: Senator
22 Nozzolio.

23 (There was no response.)

24 Senator Onorato.

25 SENATOR ONORATO: No.

1 THE SECRETARY: Senator
2 Oppenheimer.
3 SENATOR OPPENHEIMER: No.
4 THE SECRETARY: Senator Padavan.
5 SENATOR PADAVAN: Yes.
6 THE SECRETARY: Senator
7 Paterson.
8 SENATOR PATERSON: No.
9 THE SECRETARY: Senator Present.
10 SENATOR PRESENT: Yes.
11 THE SECRETARY: Senator Rath.
12 (There was no response.)
13 Senator Rosado.
14 SENATOR ROSADO: No.
15 THE SECRETARY: Senator Saland.
16 SENATOR SALAND: Aye.
17 THE SECRETARY: Senator Sampson.
18 SENATOR SAMPSON: No.
19 THE SECRETARY: Senator
20 Santiago.
21 (There was no response.)
22 Senator Seabrook.
23 SENATOR SEABROOK: No.
24 THE SECRETARY: Senator Seward.
25 SENATOR SEWARD: Yes.

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

1 THE SECRETARY: Senator Wright.
2 SENATOR WRIGHT: Aye.
3 ACTING PRESIDENT KUHL: Call the
4 absentees.
5 THE SECRETARY: Senator
6 Gonzalez.
7 (There was no response.)
8 Senator Maltese.
9 SENATOR MALTESE: Aye.
10 THE SECRETARY: Senator
11 Nozzolio.
12 SENATOR NOZZOLIO: Aye.
13 SENATOR STAVISKY: Results.
14 SENATOR SKELOS: We have the
15 results.
16 ACTING PRESIDENT KUHL: Senator
17 Skelos, we're not through with the absentee call
18 yet.
19 THE SECRETARY: Senator Rath.
20 (There was no response.)
21 Senator Santiago.
22 (There was no response.)
23 Senator Velella.
24 (There was no response.)
25 ACTING PRESIDENT KUHL: Senator

1 Paterson, why do you rise?

2 SENATOR PATERSON: To request the
3 results, Mr. President.

4 ACTING PRESIDENT KUHL: Yeah,
5 we're just trying to determine whether or not
6 there were any other members -- I understand
7 Senator Santiago had an emergency call out of
8 the chamber -- Senator Gonzalez, several
9 members, but if you're requesting it, Senator
10 Paterson, Secretary will read the results.

11 THE SECRETARY: Ayes 31, nays 23.

12 ACTING PRESIDENT KUHL: The bill
13 is passed. Senator Larkin, what's your pleasure?

14 SENATOR LARKIN: Mr. President,
15 can we return to regular Calendar Number 280.

16 ACTING PRESIDENT KUHL: Secretary
17 will read.

18 THE SECRETARY: Calendar Number
19 280, by Senator Johnson, Senate Print 2514-A, an
20 act to amend the Real Property Tax Law.

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

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

25 SENATOR OPPENHEIMER: Explanation.

1 ACTING PRESIDENT KUHL: Senator
2 Johnson, an explanation of Calendar Number 280
3 has been requested by Senator Oppenheimer.

4 SENATOR JOHNSON: Mr. President,
5 this bill would amend the real property law in
6 relation to liability for environmental clean-up
7 on real property acquired by a tax district or
8 an in rem foreclosure.

9 Right now -- right now, the
10 municipalities have been precluded from taking
11 this property because they don't want to be
12 responsible for environmental damages that might
13 be expensive -- require an expensive clean-up.
14 All this does is say that they can take it and
15 they're not responsible for that clean-up, but
16 it doesn't eliminate the responsibility of the
17 previous owner from whom they've taken it.

18 There is an outlandish example in
19 the city of Schenectady, and I'm sure there are
20 many others, where taxes are owed since 1986
21 exceeding \$25,000. The city cannot take the
22 property in rem because -- because they don't
23 want to have the responsibility for the clean-up
24 which still would remain with the previous owner
25 so they haven't been able to take the property.

1 Meanwhile they've had to take that, every year
2 pay the taxes for the villages and towns and the
3 schools in their respective areas, but yet they
4 don't have any control over that property, so
5 what we'd like to do is let them foreclose on
6 this property so an owner cannot enjoy the
7 benefit of using this polluted property year
8 after year; he doesn't clean it up; nobody can
9 do anything about it.

10 In this case, the county would
11 take it over, pay the taxes to the various
12 municipalities and then do what they can about
13 getting it cleaned up by the next owner or
14 pursuing action. But to preclude in rem
15 proceedings with this scenario of being afraid
16 of the property, is very detrimental and the
17 fact that the city of New York, the City
18 Council, the Conference of Mayors, all the
19 counties and associations, bar associations,
20 treasurers, county directors, county attorneys,
21 and so forth are all in favor of this bill to
22 clear up a situation which is intolerable at the
23 present time.

24 ACTING PRESIDENT KUHL: Senator
25 Oppenheimer.

1 SENATOR OPPENHEIMER: I -- I
2 appreciate the local point of view, Senator
3 Johnson, but I think the other side should also
4 be presented in this issue.

5 The local government has a choice
6 in taking and going -- taking in rem parcels.
7 They don't have to take them, and if they take a
8 -- a parcel that has contamination or
9 pollution, they know that they are taking that
10 parcel with contamination or pollution right on
11 the property, and to exempt the taxing district
12 from the obligation of cleaning up this
13 property, I think, is definitely the wrong way
14 to go. It simply under -- undercuts the
15 restoration programs that we are trying to put
16 in place with the Clean Water/Clean Air Bond
17 Act.

18 I think exempting tax districts
19 from third-party liability for injuries or for
20 property damage which is caused by the
21 contamination of the site simply says that,
22 Neighbor, we are not interested in protecting
23 you from the exposure to these toxins, and I -
24 I think it is the wrong way for government to be
25 handling sites that are toxin. They should be

1 handling them in a responsible and concerned way
2 for the citizens who live in that area, and
3 taking away the liability is -- that has always
4 been a very strong incentive for mitigating
5 hazards, and this bill would remove a very
6 important motivation for the tax district to
7 manage the property, the contaminated property
8 in what I consider a reasonable manner.

9 I'll be voting no.

10 ACTING PRESIDENT KUHL: Secretary
11 -- Senator Leichter.

12 SENATOR LEICHTER: Senator
13 Johnson yield, please?

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

17 SENATOR LEICHTER: Senator
18 Johnson, under your bill, what happens if a
19 municipality after having acquired the parcel
20 now sells it to a third person? Would that third
21 person not have the protection and the immunity
22 from liability that the municipality had?

23 SENATOR JOHNSON: Definitely not,
24 Senator. He does not acquire any immunity as a
25 result of this. This only deals with the -

1 with the county that takes the property over, or
2 the city. It does not insulate the following
3 succeeding owner from any responsibility for the
4 contamination.

5 SENATOR LEICHTER: Senator
6 Johnson, if you'd continue to yield, please.
7 I'm not -- I'm not sure your answer is correct,
8 Senator, because you've now interposed in the
9 chain of ownership an owner who has no liability
10 or responsibility for clean-up. That owner
11 passes along the rights and liabilities that the
12 owner has. That owner doesn't have a
13 responsibility, or liability for clean-up.

14 It would seem to me that the
15 purchaser from the taxing district similarly
16 would not have an obligation or liability for
17 the condition of this property.

18 SENATOR JOHNSON: Well, I know
19 that's an opinion which has been expressed by
20 the Trial Lawyers, but I don't believe that's
21 the correct opinion.

22 Yeah. Senator, I personally have
23 had some experience with a case in my district
24 where a new owner was held responsible at the
25 same time they went back to the previous owner

1 who they're after to get the majority of the
2 money, so this does not insulate the previous
3 owner or any succeeding owners who buy
4 contaminated property from their obligation to
5 remediate the situation. This only protects the
6 county who takes the property.

7 SENATOR LEICHTER: Mr. President,
8 if Senator Johnson continues to yield, please.

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

11 SENATOR JOHNSON: Yes.

12 ACTING PRESIDENT KUHL: Senator
13 yields.

14 SENATOR LEICHTER: Senator, I
15 think your bill is certainly clear as to the
16 previous owner. It would be a very simple
17 matter to make it clear that succeeding owners
18 do not possess that same immunity from
19 liability. All you'd have to do is just write
20 it into the bill. I don't believe it is, and I
21 think you've left an issue. Frankly, you say
22 the Trial Lawyers have raised this problem with
23 you. Nobody raised it with me, but it just
24 sprung at me reading the bill.

25 So I think that it's -- it's an

1 issue that's going to be raised. I'm not sure
2 that that would cure the bill as far as Senator
3 Oppenheimer and I and others are concerned, but
4 it would certainly avoid, it seems to me what is
5 an even bigger loophole from environmental laws
6 by having succeeding owners now also enjoy the
7 immunity from liability.

8 SENATOR JOHNSON: Senator, I
9 could agree with you but -- if I agreed with
10 you, if I thought your argument was correct, I
11 would certainly hold this bill and amend it. I
12 don't believe your argument is correct, but by
13 the same token, I don't want to take a chance in
14 doing that because I certainly think -- well,
15 first of all I say as a lawyer you probably know
16 whether you have real estate or not, that nobody
17 is buying any property these days without an
18 environmental assessment. So it's not likely
19 they would buy it and be unaware of it and think
20 that they could possess and never clean it up
21 and not be responsible. They are responsible.
22 Succeeding owners are responsible. Even banks
23 are responsible if they foreclose property which
24 is polluted. They have a responsibility to
25 clean it up, so everyone knows that's the way

1 the system works, and I don't think they'd be
2 out of it but, quite frankly, I'd like to have a
3 bill that would -- that would pass both houses
4 without any hang-ups, and I think perhaps right
5 now, Senator, we'll lay it aside for the moment
6 so that you and I can explore this more fully.

7 SENATOR LEICHTER: Thank you very
8 much, Senator Johnson.

9 I'm really not, you know, urging
10 you to do this, because even if you did it, I
11 would have problems with the bill, but I think
12 that it would cure, to my mind, what could be a
13 real loophole and something that I think others
14 will look at and might discourage people from
15 supporting the bill or supporting this concept.
16 I mean in some respects, I can understand, we
17 want to avoid placing a burden on taxing
18 authorities. They want to take property that
19 may be in rem on foreclosure, and so on. Why
20 make them clean up?

21 That's your -- your point,
22 Senator Johnson, and I think it has some
23 credibility, but I -- I think the other argument
24 is really more persuasive. It was well made by
25 Senator Oppenheimer, which is that we have a

1 great public and social concern to get this
2 property cleaned up, and one way of doing it is
3 by saying anybody that owns this property, this
4 property which is a danger to the health of
5 people, is going to have to clean it up, and
6 that should include taxing districts. I mean
7 who are taxing districts? They're the people.
8 Who's affected by contaminated land? It's the
9 people.

10 So I would -- I would say to you
11 that really, exempting taxing districts from
12 what should be an across-the-board obligation if
13 you are the owner of contaminated land, you owe
14 it to your neighbors, you owe it to your
15 community to see that that property is cleaned
16 up. I would -- I would apply it to taxing
17 districts.

18 ACTING PRESIDENT KUHL: Secretary
19 will -

20 SENATOR JOHNSON: May I respond?
21 Senator, that responsibility for the clean-up
22 still resides with the previous owner. No
23 subsequent owner is going to buy it when it's
24 contaminated and think they can use it without
25 cleaning it up.

1 Senator, in view of the fact the
2 city of New York, the city of Schenectady,
3 Conference of Mayors, counties, Association of
4 Counties and Towns have all read this bill and
5 feel it's appropriate, I don't feel that they're
6 going to let anybody off the hook for cleaning
7 up the property because we say the county can
8 take this property back without incurring any
9 liability doesn't really say that it doesn't
10 have to be cleaned up from now on; so I think
11 it's a misinterpretation of the bill and in this
12 case, I'd just call the bill.

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

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

17 ACTING PRESIDENT KUHL: Call the
18 roll.

19 (The Secretary called the roll.)

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

22 THE SECRETARY: Those recorded in
23 the negative on Calendar Number 280 are Senators
24 Abate, Breslin, Connor, Dollinger, Gentile,
25 LaValle, Leibell, Leichter, Montgomery, Onorato,

1 Oppenheimer, Rosado, Sampson, Seabrook and
2 Stavisky. Ayes 43, nays 15.

3 ACTING PRESIDENT KUHL: The bill
4 is passed.

5 Secretary will continue to call
6 the controversial calendar commencing next with
7 Calendar Number 498.

8 THE SECRETARY: Calendar Number
9 498, by Senator Maziarz, Senate Print 403-A, an
10 act to amend the Executive Law.

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

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

15 ACTING PRESIDENT KUHL: Call the
16 roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes 58.

19 ACTING PRESIDENT KUHL: The bill
20 is passed.

21 SENATOR OPPENHEIMER: Mr.
22 President.

23 ACTING PRESIDENT KUHL: Senator
24 Oppenheimer, why do you rise?

25 SENATOR OPPENHEIMER: I would

1 like the record to show that I wasn't in the
2 chamber when a particular bill passed on June
3 4th. That would be bill 5404, Calendar Number
4 1130. If I had been in the chamber, I would
5 have voted no.

6 ACTING PRESIDENT KUHL: The
7 record will so reflect, Senator Oppenheimer.

8 Secretary will continue to call
9 the controversial calendar.

10 THE SECRETARY: Calendar Number
11 633, substituted earlier today, by the Assembly
12 Committee on Rules, Assembly Print 8009-A, an
13 act to amend Chapter 521 of the Laws of 1994.

14 ACTING PRESIDENT KUHL: The
15 Senate bill was high. The Assembly bill is not
16 high. It's before the house. Secretary will
17 read the last section.

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

20 ACTING PRESIDENT KUHL: Call the
21 roll.

22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes 58.

24 ACTING PRESIDENT KUHL: The bill
25 is passed.

1 THE SECRETARY: Calendar Number
2 982, by Senator Saland, Senate Print 2703-B, an
3 act to amend the Vehicle and Traffic Law, in
4 relation to authorizing.

5 ACTING PRESIDENT KUHL: Home rule
6 message is at the desk. Secretary will read the
7 last section.

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

10 ACTING PRESIDENT KUHL: Call the
11 roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes 58.

14 ACTING PRESIDENT KUHL: The bill
15 is passed.

16 THE SECRETARY: Calendar Number
17 1135, by Senator Kuhl, Senate Print 2244-A, an
18 act to amend the General Municipal Law and the
19 Town Law, in relation to the practice of
20 forestry.

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

23 ACTING PRESIDENT MARCELLINO:
24 Senator Kuhl, an explanation of your bill has
25 been asked for.

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

3 This is a very simply explained
4 bill. The bill essentially allows for the
5 continuation of the practice of harvesting
6 timber in the state of New York without the
7 unnecessary and overburdensome interference by
8 local municipalities.

9 SENATOR OPPENHEIMER: Thank you
10 for that in-depth explanation.

11 ACTING PRESIDENT MARCELLINO:
12 Read the last section.

13 SENATOR OPPENHEIMER: No, I -

14 ACTING PRESIDENT MARCELLINO: Oh,
15 I misunderstood. I apologize, Senator.

16 SENATOR OPPENHEIMER: I meant to
17 be funny.

18 ACTING PRESIDENT MARCELLINO: Can
19 only try.

20 SENATOR OPPENHEIMER: I guess
21 it's who defines the language here. The bill
22 would prohibit state agencies and local
23 government -- it would prohibit state agencies
24 from adopting regulations that affect forestry
25 practices that are, quote/unquote, "recognized"

1 by the industry. Unfortunately, the determiner
2 of what is a "recognized", quote/unquote,
3 practice or procedure is apparently the forestry
4 products industry itself, so we are saying,
5 Industry, mind yourself, and do not let
6 constraints of local government interfere with
7 your -- your practices, because this distinctly
8 limits the ability of local government -

9 ACTING PRESIDENT MARCELLINO:
10 Excuse me, Senator. Are you speaking on the
11 bill?

12 SENATOR OPPENHEIMER: Yes, I am.

13 ACTING PRESIDENT MARCELLINO:
14 Senator Oppenheimer is speaking on the bill.

15 SENATOR OPPENHEIMER: Sorry.

16 It distinctly says that local
17 governments may not unreasonably burden the
18 cultivation and harvesting of trees. It seems
19 to be unreasonably restrictive of what local
20 authorities can do in regard to forestry
21 practices.

22 I don't understand why the
23 measure is -- is required. I have to assume
24 that some local governments are -- are being
25 more restrictive than the forestry industry

1 would like them to be, but I think that the
2 legislative intent section here endorses
3 forestry practices and forest management as
4 environmentally sound. However, many forestry
5 practices are not considered so terribly sound
6 by the environmental community because they lead
7 to soil erosion and they lead -- it leads to
8 siltation in streams and rivers, and often leads
9 to destruction of fish and wildlife habitat. It
10 leads to watershed damage occasionally, and to
11 flooding.

12 So I think it's a very healthy
13 thing that -- that government is involved and is
14 trying to preserve the land as best it can in
15 consideration of the needs of the forestry
16 industry as long as it is also environmentally
17 sound.

18 So I will voting no, and I would
19 say that there are many memos in opposition to
20 this particular bill from the Alliance for
21 Consumer Rights, from the Citizen Campaign for
22 the Environment, from the Adirondack Council,
23 and a couple of smokestacks from Environmental
24 Advocates/EPL.

25 I'll be voting no.

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ACTING PRESIDENT MARCELLINO:

Senator Kuhl.

SENATOR KUHL: Yes, just briefly, and I, like some other Senators, I realize this is the last day, but I did want to correct one, perhaps, misunderstanding that Senator Oppenheimer had was, and she mentioned that this prohibited state agencies from having control, and that's not true. This bill only affects local municipalities' impact on this industry and this bill comes from experience where some localities have, in fact, shut down completely any harvesting of timber products in those municipalities.

Certainly that's not fair given the outline and diversity of the economics in this state. Our state is tremendously occupied with timber, and it is a very big economic industry in this state which needs to be preserved and is actively being cultivated.

What you didn't say, Senator, is there are a number of people like the Empire State Products Association which supports this bill. The Farm Bureau of the state of New York supports this bill. The Association of Towns

1 takes no position on this bill. The Association
2 of -- the New York State Conference of Mayors
3 takes no position in opposition to the bill, so
4 the very people who this piece of legislation
5 would have an impact on don't have an objection
6 to the bill because they recognize the language
7 in the amended version allows for a reasonable
8 ness and not an unreasonableness as far as their
9 activities as it takes on these individuals, and
10 the other thing and perhaps the most important
11 part of this bill is it only really affects
12 those private property owners, doesn't impact
13 public ownership at all. It's those people who
14 own and want to cultivate their property in
15 growing timber and who want to make a growing
16 enterprise out of it. It simply says you'll be
17 allowed to do that on your own property without
18 interference coming from the localities.

19 ACTING PRESIDENT MARCELLINO:

20 Senator Kuhl, will you yield to Senator
21 Oppenheimer?

22 SENATOR KUHL: Certainly.

23 ACTING PRESIDENT MARCELLINO: He
24 does.

25 SENATOR OPPENHEIMER: Just two

1 short questions. Who determines what is
2 "reasonable"?

3 SENATOR KUHL: I think it's
4 already pre-determined, Senator, by those
5 overriding issues and requirements and
6 regulations that the state imposes on the
7 industry.

8 SENATOR OPPENHEIMER: But it is
9 in effect -

10 SENATOR KUHL: So things like -
11 things like, if you would, complete -- what do
12 they call it, cross-cutting without dealing with
13 erosion. That's already controlled by the state
14 agencies, Department of Environmental
15 Conservation. That would continue.

16 SENATOR OPPENHEIMER: And if the
17 Senator will yield again.

18 ACTING PRESIDENT MARCELLINO:
19 Senator, do you yield to another question?

20 SENATOR KUHL: Absolutely.

21 ACTING PRESIDENT MARCELLINO: He
22 yields, Senator.

23 SENATOR OPPENHEIMER: The vast
24 majority of our forests in New York State are
25 under private control, are they not?

1 SENATOR KUHL: The major
2 percentage, yes, private property. The property
3 in New York is owned by private individuals,
4 yes.

5 SENATOR OPPENHEIMER: Right, but
6 my point is that most forests are privately
7 held?

8 SENATOR KUHL: Those that are not
9 currently under control, I think it's roughly 92
10 percent is privately owned; about 8 percent is
11 publicly owned.

12 SENATOR OPPENHEIMER: Thank you,
13 Senator.

14 ACTING PRESIDENT MARCELLINO: Any
15 other Senator wishing to be heard?

16 Read the last section.

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

19 ACTING PRESIDENT MARCELLINO:
20 Call the roll.

21 (The Secretary called the roll.)

22 ACTING PRESIDENT MARCELLINO:
23 Record the negatives and announce the results.

24 THE SECRETARY: Those recorded in
25 the negative on Calendar Number 1135 are

1 Senators Breslin, Connor, Dollinger, Gentile,
2 Gold, Goodman, Hannon, Kruger, LaValle, Leibell,
3 Leichter, Nanula, Onorato, Oppenheimer,
4 Paterson, Sampson, Seabrook, Spano, Stachowski,
5 Stavisky and Tully. Ayes 37, nays 21.

6 SENATOR NANULA: Mr. President.

7 THE SECRETARY: Also Senator
8 Padavan. Ayes 36, nays 22.

9 ACTING PRESIDENT MARCELLINO:
10 Senator Nanula, why do you rise?

11 SENATOR NANULA: Mr. President, I
12 would like to request I should say, unanimous
13 consent to be recorded in the negative on
14 Calendar Number 280.

15 ACTING PRESIDENT MARCELLINO: We
16 just have to announce the results and pass this
17 particular bill.

18 SENATOR NANULA: Thank you, Mr.
19 President.

20 ACTING PRESIDENT MARCELLINO: The
21 bill is passed. Senator Nanula. I apologize.

22 SENATOR NANULA: Thank you, Mr.
23 President.

24 I'd like to request unanimous
25 consent to be recorded in the negative on

1 Calendar Number 280.

2 ACTING PRESIDENT MARCELLINO:

3 Without objection, Senator Nanula will be
4 recorded in the negative on Calendar Number
5 280.

6 SENATOR NANULA: Thank you.

7 ACTING PRESIDENT MARCELLINO:

8 Senator Hannon.

9 SENATOR HANNON: I'd also like to
10 to be recorded in the negative on Calendar
11 Number 280.

12 ACTING PRESIDENT MARCELLINO:

13 Without objection, Senator Hannon will be
14 recorded in the negative on Calendar Number
15 280.

16 Senator Rath, I'm sorry, why do
17 you rise?

18 SENATOR RATH: Yes, Mr.

19 President. I request that the record should
20 reflect that when bill number -- Calendar Number
21 124 went through, I was out of the chamber on
22 Senate business, and I'd like to be recorded in
23 the affirmative.

24 ACTING PRESIDENT MARCELLINO: The
25 record will show reflect -- so reflect.

1 Senator Larkin.

2 SENATOR LARKIN: Would you now
3 call Calendar Number 1396 for Senator Maltese.

4 ACTING PRESIDENT MARCELLINO:
5 Secretary will read Calendar Number 1396.

6 THE SECRETARY: Calendar Number
7 1396, by Senator Maltese, Senate Print 1173, an
8 act to amend the Retirement and Social Security
9 Law.

10 SENATOR LEICHTER: Explanation.

11 ACTING PRESIDENT MARCELLINO:
12 Senator Maltese, an explanation has been
13 requested.

14 SENATOR MALTESE: Mr. President,
15 this is an act to amend the Retirement and
16 Social Security Law, in relation to the return
17 of member contributions. The purpose is to
18 allow Tier II and III New York City correction
19 officers below the rank of captain who
20 participate in the 20-year improved benefit
21 retirement plan to withdraw their contributions
22 when they cease to be members of such plan
23 regardless of their length of service.

24 The contributions that are made
25 under the 20-year improved benefit retirement

1 plan are designed to provide an enhanced pension
2 benefit upon retirement as a correction officer
3 below the rank of captain. The pension benefit
4 that may be received by an individual who leaves
5 this plan regardless of reason or time in
6 service, is determined by other provisions of
7 the Retirement or Social Security Law and are
8 not dependent upon these additional
9 contributions.

10 Basically, Mr. President, the -
11 the opposition, or the city of New York has
12 issued a memorandum in opposition. One of their
13 main arguments appears to be that the
14 Legislature should not intrude in the collective
15 bargaining procedure. Every other union
16 similarly situated has this benefit. The -
17 their objection arises out of a contract with
18 the Correction Officers Benevolent Association
19 up until 1990. Since then, continuously, I am
20 advised that the correction officers have
21 attempted to negotiate -- to renegotiate this
22 aspect of the contract and the City, through
23 successive administrations, has refused to do
24 so.

25 It does seem -- it does seem fair

1 to allow these correction officers who serve on
2 the front lines, so to speak, to have the same
3 benefits as every other union similarly
4 situated.

5 SENATOR LEICHTER: Mr.
6 President.

7 ACTING PRESIDENT MARCELLINO: It
8 should be stated, Senator Leichter, before you
9 rise, before I acknowledge you, that there is a
10 home rule message at the desk on this particular
11 piece of legislation.

12 Senator Leichter.

13 SENATOR LEICHTER: Mr. President,
14 if Senator Maltese would yield for one or more
15 questions.

16 ACTING PRESIDENT MARCELLINO:
17 Senator Maltese, will you yield? He yields,
18 Senator.

19 SENATOR LEICHTER: Senator
20 Maltese, isn't it true that at one time these
21 very correction officers entered into a contract
22 with the city of New York where they said rather
23 than having this benefit, we want you to give us
24 another benefit; isn't that true?

25 SENATOR MALTESE: That's

1 basically true, Mr. President.

2 SENATOR LEICHTER: And what
3 you're saying to us is that they would like to
4 renegotiate it now, and the City says, You made
5 an agreement with us. We offered you what every
6 other union had, but you said, No, we won't take
7 that, we want something else and the City said,
8 O.K., economically we'll give you that other
9 thing which is about equal to your giving up
10 this particular right, and I assume that's the
11 reason that the City won't renegotiate that;
12 isn't that -- isn't that true?

13 SENATOR MALTESE: Well,
14 basically, Mr. President, the enhanced half-pay
15 pension plan which was the agreed-upon price, if
16 you will, of agreeing to this, only inures to
17 the benefit of those who remain in the pension
18 plan 20 years or more, so we have a situation
19 where these members who are involved in a
20 participatory pension plan, a contributory plan,
21 are contributing their money plus interest and
22 are the only ones that have been denied this
23 benefit in collective bargaining with the city
24 of New York.

25 It does not seem to be fair to

1 deny this, and it affects all correction
2 officers below the rank of captain, and
3 correction officers in the city of New York
4 basically they don't have the rank of sergeant,
5 captain is equivalent to sergeant, so you have
6 all line correction officers affected by this
7 failure of the City to agree to treat them
8 equitably.

9 SENATOR LEICHTER: Thank you very
10 much, Senator Maltese. You know, on the bill.

11 ACTING PRESIDENT MARCELLINO:
12 Senator Leichter, on the bill.

13 SENATOR LEICHTER: I like to be
14 as generous and maybe more generous than most
15 people. I'm called, you know, a big spender,
16 and I don't mind spending on certain social
17 matters and I also think we ought to pay our
18 municipal and public employees well. They
19 provide a real service, and correction officers,
20 God knows, it's a difficult job. I want to see
21 them well paid.

22 But I'm troubled, Senator
23 Maltese, when you come before us with a bill
24 where a particular provision that was bargained
25 for by these correction officers with the city

1 of New York, where they said we'll take another
2 economic benefit and we will give up the right,
3 which other unions have, to have monies on our
4 pension system paid out to us with interest when
5 we leave that pension system.

6 Having made that deal, they now
7 run to the Legislature and they say change it
8 for us. Is that the role really that we want to
9 take onto ourselves. We're interfering in the
10 management of the city of New York. We're
11 sticking our nose into collective bargaining
12 negotiations, and we're allowing public
13 employees -- I don't say it critically of them,
14 because I have a very good relationship with
15 them, based on my respect for them, but I don't
16 think we ought to be in a situation where once
17 public employees make a deal they then want to
18 appear and have us do that deal or better that
19 deal for them or change the deal or undo the
20 deal that they voluntarily entered into, and
21 that's what you're doing here, Senator Maltese.

22 Much as I'd like to see us do -
23 be generous to all public employees, I think
24 that we've got a greater responsibility here and
25 that's to a proper process, to the City where

1 you and I live, Senator Maltese, and really to
2 the basic fairness. It's just not fair for
3 these employees to make a deal and then run to
4 the Legislature and say, Now, give us something
5 better.

6 ACTING PRESIDENT MARCELLINO:
7 Read the last section, please.

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

10 ACTING PRESIDENT MARCELLINO:
11 Call the roll.

12 (The Secretary called the roll.)

13 ACTING PRESIDENT MARCELLINO:
14 Announce the results. Count the negatives.

15 THE SECRETARY: Ayes 57, nays
16 one, Senator Leichter recorded in the negative.

17 ACTING PRESIDENT MARCELLINO: The
18 bill is passed.

19 Senator Tully, why do you rise?

20 SENATOR TULLY: Mr. President,
21 may I have unanimous consent to be recorded in
22 the negative on Calendar Number 280.

23 ACTING PRESIDENT MARCELLINO: The
24 record will reflect Senator Tully in the
25 negative on Calendar Number 280.

1 SENATOR LACHMAN: Mr. President.

2 ACTING PRESIDENT MARCELLINO:

3 Senator Lachman, why do you rise?

4 SENATOR LACHMAN: Mr. President,
5 I request unanimous consent of this body to also
6 be recorded in the negative on Calendar Item
7 280.

8 ACTING PRESIDENT MARCELLINO:
9 Senator Lachman will also be recorded in the
10 negative on Calendar Number 280.

11 Secretary will read.

12 Senator Larkin?

13 SENATOR LARKIN: Mr. President,
14 Can we now take up Calendar Number 371, by
15 Senator Goodman.

16 ACTING PRESIDENT MARCELLINO:
17 Secretary will read Calendar 371, by Senator
18 Goodman.

19 THE SECRETARY: Calendar Number
20 371, substituted earlier today, by member of the
21 Assembly McLaughlin, Assembly Print 5036-B, an
22 act to amend the Transportation Law.

23 ACTING PRESIDENT MARCELLINO:
24 Read the last section.

25 An explanation has been asked

1 for. Senator Goodman.

2 SENATOR GOODMAN: Mr. President,
3 one day a couple of years ago a reporter came
4 into my office and said, "I just observed a
5 wheel rolling off a double decker bus." The
6 wheel apparently was not properly attached
7 with a lug nut in a fashion which is customary
8 to keep wheels attached to vehicles, which gave
9 rise within the alert Investigations Committee
10 of the state Senate, to a small investigation of
11 who inspects buses, and which gave further rise
12 to the indication that the authority to do so is
13 quite ambiguous.

14 This bill unambiguously charges
15 the Commissioner of the state Department of
16 Transportation with the responsibility to
17 inspect double decker sightseeing buses and also
18 makes it clear that the operator of such buses
19 shall bear the cost of such inspection.

20 ACTING PRESIDENT MARCELLINO:
21 Read the last section.

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

24 ACTING PRESIDENT MARCELLINO:
25 Call the roll.

1 (The Secretary called the roll.)

2 THE SECRETARY: Ayes 58.

3 ACTING PRESIDENT MARCELLINO: The
4 bill is passed.

5 Senator Abate, why do you rise?

6 SENATOR ABATE: Yes, I ask for
7 unanimous consent to be recorded in the negative
8 on Calendar Number 1135.

9 ACTING PRESIDENT MARCELLINO:
10 Senator Abate will be counted in the negative on
11 Calendar Number 1135.

12 Senator Leichter, why do you
13 rise?

14 SENATOR LEICHTER: I was just
15 stretching.

16 ACTING PRESIDENT MARCELLINO:
17 Senator Leichter will be recorded as
18 stretching.

19 Senator Montgomery, why do you
20 rise?

21 SENATOR MONTGOMERY: Mr.
22 President, I would like unanimous consent to be
23 recorded in the negative on Calendar Number
24 1135.

25 ACTING PRESIDENT MARCELLINO: I'm

1 sorry. Say the number again, Senator.

2 SENATOR MONTGOMERY: Number
3 1135.

4 ACTING PRESIDENT MARCELLINO:
5 Senator Montgomery will be recorded in the
6 negative on Calendar Number 1135.

7 Secretary will read.

8 Senator Larkin, what is your
9 pleasure?

10 SENATOR LARKIN: Mr. President,
11 can we go on the "A" calendar, 1429, by Senator
12 Spano.

13 ACTING PRESIDENT MARCELLINO:
14 Secretary will read.

15 THE SECRETARY: Calendar Number
16 1429, by Senator Spano, Senate Print 2707-A, an
17 act to amend the Public Health Law.

18 SENATOR LEICHTER: Explanation.

19 ACTING PRESIDENT MARCELLINO:
20 Senator Spano, an explanation has been
21 requested.

22 SENATOR SPANO: Thank you, Mr.
23 President.

24 This bill clarifies the
25 provisions in the Public Health Law with regard

1 to granting hospital privileges to -- to
2 podiatrists. The -- right now, the existing law
3 does in an appropriate way clarify the
4 making of an improper practice by a hospital to
5 refuse to grant an application of a -- to give
6 staff membership or hospital privileges to a
7 podiatrist.

8 This legislation clears up that
9 problem in the statute.

10 ACTING PRESIDENT MARCELLINO:
11 Senator Stachowski.

12 SENATOR STACHOWSKI: Mr.
13 President, would Senator Spano yield to a couple
14 questions?

15 ACTING PRESIDENT MARCELLINO:
16 Senator, would you yield to a couple questions?
17 He yields, Senator.

18 SENATOR SPANO: Yes.

19 SENATOR STACHOWSKI: Last year
20 HANYS, the Health Care Association, and the
21 Medical Society were opposed. All we have is
22 last year's and then they said they were still
23 opposed. Are you aware if these two groups are
24 still opposed, or do you have any kind of notice
25 of opposition because all we have is last

1 year's?

2 SENATOR SPANO: The Medical
3 Society has memo'd against it; I believe HANYS
4 is also opposed to it, but I don't have a memo.

5 SENATOR STACHOWSKI: Thank you,
6 Mr. President.

7 SENATOR LEICHTER: Yes.

8 ACTING PRESIDENT MARCELLINO:
9 Senator Leichter, why do you rise?

10 SENATOR LEICHTER: Would Senator
11 Spano yield, please.

12 ACTING PRESIDENT MARCELLINO:
13 Hold on one second. The stenographer holds -
14 can we have some order in the house, please. We
15 can't hear the debate, and that's important.
16 I'm sorry, Senator.

17 SENATOR LEICHTER: Senator Spano,
18 if a hospital takes presently the position
19 that it will not have any podiatrists whatsoever
20 who will have admitting privileges to that
21 hospital, does that -- does your bill now
22 prevent a hospital from making that sort of
23 decision?

24 SENATOR SPANO: What this bill
25 would basically just say is that the hospital

1 could not make a decision based solely upon the
2 practitioner's category of licensure, so if a -
3 if a podiatrist is -- is providing services to a
4 -- to a patient, this patient should be -
5 should not be forced to change doctors or travel
6 long distance, so the answer to your question is
7 yes, it does require it.

8 SENATOR LEICHTER: Thank you,
9 Senator Spano. On the bill.

10 ACTING PRESIDENT MARCELLINO:
11 Senator Leichter, on the bill.

12 SENATOR LEICHTER: I just don't
13 know why we're telling hospitals that they've
14 got to have podiatrists who have admitting
15 privileges. I mean I think these are decisions
16 that hospitals ought to be able to make on their
17 own. If they decide that they don't want to
18 have a particular category of doctors, they
19 should be allowed to do it. I mean I'm always
20 somewhat amused in the course of a session, but
21 particularly at the end, you seem to get all of
22 the inconsistencies.

23 I mean I hear other people,
24 people on the other side of the aisle speaking
25 about government shouldn't interfere, let the

1 market decide, let's get rid of government
2 regulation, and then on something of this sort,
3 well, hospitals certainly ought to be able to
4 govern themselves in this respect. We're
5 telling them, you can't exclude podiatrists.

6 I don't know what particular
7 social purpose is served by our doing that. I
8 don't know if there's knowledge in this chamber
9 as to how hospitals ought to be operated. Every
10 hospital in this state, to say that three must
11 have podiatrists on their staff. I just think
12 that's an improper interference on our part, in
13 the operation of hospitals. I don't believe we
14 should be doing this.

15 ACTING PRESIDENT MARCELLINO:
16 Senator Dollinger.

17 SENATOR DOLLINGER: Sponsor yield
18 to a question, Mr. President?

19 ACTING PRESIDENT MARCELLINO:
20 Senator Spano, do you yield to Senator
21 Dollinger?

22 SENATOR SPANO: Yes.

23 ACTING PRESIDENT MARCELLINO:
24 Senator Dollinger, he yields.

25 SENATOR DOLLINGER: Senator, has

1 this bill been amended since the bill we did
2 last year? I notice it's an "A" print, and if
3 so, what was the amendment?

4 SENATOR SPANO: Yes, it has. If
5 you remember, Senator, the Governor vetoed this
6 bill last year and because he felt that the bill
7 was possibly too broadly written, that it would
8 include more than podiatrists, so what we did
9 was added the word in the last line of the bill,
10 we added line 17 of the bill added the word
11 "podiatrist" instead of "practitioner" so that
12 we made it specifically clear about what
13 profession we were speaking about, so that we
14 could remove that objection of the Governor.

15 SENATOR DOLLINGER: Again through
16 you, Mr. President, if Senator Spano would
17 continue to yield to a question.

18 ACTING PRESIDENT MARCELLINO:
19 Senator, you continue to yield?

20 SENATOR SPANO: Yes.

21 ACTING PRESIDENT MARCELLINO: He
22 yields, Senator.

23 SENATOR DOLLINGER: What types of
24 practice -- you remove the word "practitioner"
25 and substitute "podiatrist" but then you used

1 the word "practitioner", you describe "practi
2 tioner" the last four words, "practitioner's
3 category of licensure."

4 What does that phrase mean? Are
5 there particular kinds of podiatrists that would
6 be involved in this? Are there other categories
7 of licensure?

8 SENATOR SPANO: No, there's no
9 other categories of licensure within -- I mean a
10 podiatrist is a podiatrist and the -- I felt,
11 frankly, that we did not need to -- to amend
12 this word, but the Governor felt otherwise, so
13 we -- so we added the word "podiatrist" in that
14 sentence just to -- just so that we can remove
15 any question on the part of the Governor's
16 counsel's staff.

17 Frankly, I don't think it makes
18 much of a difference. The -- it -- it, the fact
19 that "podiatrist" and "practitioner" are -- are
20 used interchangeably, I think, is a common
21 practice.

22 SENATOR DOLLINGER: Again through
23 you, Mr. President, just so I understand.

24 It says "privileges to
25 podiatrists", I understand that this would

1 require hospitals -- prevent hospitals from
2 denying privileges solely because they're
3 podiatrists, but based solely on the
4 "practitioner's category of license". I just
5 don't understand the phrase "category of
6 licenses". Are there categories of licensures
7 for podiatrists? I mean are there like a Class A
8 podiatrist, a Class B podiatrist or, as you
9 know, Senator, we do create for physicians, for
10 M.D.s, we have limited licenses which allow them
11 to practice in underserved areas.

12 The reason why I'm asking is, I'm
13 trying to find out is there a similar category
14 for podiatrists and, if so, is this requiring
15 them to take people of all -- of the limited
16 licenses or full licenses? If you're a
17 podiatrist you get in no matter what, and that
18 addresses the point Senator Leichter made.

19 SENATOR SPANO: There is not -
20 there are no different categories within
21 podiatry. There is one -- one license. There
22 are no different categories within that
23 licensure, so it would be the fact that we're
24 including podiatrists is based solely upon a
25 particular practitioner's category of licensure,

1 and the category of licensure would be the fact
2 that they are licensed as a podiatrist.

3 SENATOR DOLLINGER: O.K. Just
4 through you, Mr. President, just on the bill.

5 ACTING PRESIDENT MARCELLINO:
6 Senator Dollinger, on the bill.

7 SENATOR DOLLINGER: Senator
8 Spano, I don't understand your explanation. I'm
9 still not quite sure why that language is in
10 there, but I voted against your bill last year.
11 I'm going to vote against it again this year. I
12 agree with Senator Leichter, the scope of
13 services provided in the hospitals, we ought to
14 leave that up to the hospitals.

15 I've done a lot of work with
16 privileges. There are a lot of things about
17 2801 that I would change to prevent more
18 arbitrary removal of privileges by hospitals
19 but, frankly, adding podiatrists, while it may
20 make some sense, is something that's best left
21 to the judgment of the individual hospitals.

22 ACTING PRESIDENT MARCELLINO: Any
23 other Senator? Read the last section.

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

1 ACTING PRESIDENT MARCELLINO:
2 Call the roll.
3 (The Secretary called the roll.)
4 ACTING PRESIDENT MARCELLINO:
5 Record the negatives and announce the results.
6 THE SECRETARY: Those recorded in
7 the negative on Calendar Number 1429 are
8 Senators DeFrancisco, Dollinger and Leichter.
9 Ayes 55, nays 3.
10 ACTING PRESIDENT MARCELLINO: The
11 bill is passed.
12 Senator Larkin, what is your
13 pleasure?
14 SENATOR LARKIN: How about
15 Calendar Number 877, please.
16 ACTING PRESIDENT MARCELLINO:
17 Secretary will read Calendar Number -
18 SENATOR LARKIN: On the main
19 calendar.
20 ACTING PRESIDENT MARCELLINO: -
21 877.
22 THE SECRETARY: Calendar Number
23 877, by Senator Lack, Senate Print Number
24 2699-B, an act to amend the Alcoholic Beverage
25 Control Law, in relation to interests.

1 ACTING PRESIDENT MARCELLINO:
2 Senator Lack. Can we lay that bill aside
3 temporarily? Oh, Senator Lack is here, I'm
4 sorry.

5 Senator Lack, an explanation of
6 your bill 877 has been requested.

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

9 Mr. President, this bill would
10 create an acceptance of the "tidehouse" law.
11 Let me explain briefly what a "tidehouse" law
12 was. It dates from English common law where
13 there was a requirement for a pub owner to serve
14 the beverages of only one manufacturer or
15 brewer. This common law enactment became
16 statute in New York in 19 -- in 1933, and it
17 prevents monopolies whereby a liquor or beer
18 manufacturer, distiller or brewer, could through
19 mortgaging or other types of financing control
20 the products that would be sold at retail and
21 prevent what we today call vertical integration
22 of a specific industry.

23 In the main the law has worked
24 very well because retail sellers of alcoholic
25 products are always much smaller than the

1 manufacturers or brewers who manufac... who make
2 or distribute the products. This particular
3 exception is to recognize -

4 Will you excuse me, please?
5 Hello! Would you move over because I think
6 Senator Gold and I are engaging in something.

7 This particular exception is to
8 recognize what's happened in the '90s as there
9 has been a rapid expansion and change in the
10 manner by which large brewers, liquor
11 distilleers, et cetera, have engaged in the
12 business.

13 This particular one has to do
14 with Dream Works which is owned by Stephen
15 Spielberg and Universal Studios, and Sega Game
16 Works. Universal Studios is, by itself, a
17 subsidiary of MCA, which is a subsidiary of
18 Seagram's and Universal Studios, together with
19 Sega, Dream Works and Stephen Spielberg are
20 engaging in a joint venture to establish an
21 entertainment complex, entertainment complexes
22 for adult games throughout the United States
23 which will offer and sell liquor as part of the
24 Game Works.

25 Seagram's, which has a minor

1 percentage through two other subsidiaries, and
2 Sega Game Works would be prevented under New
3 York's "tidehouse" laws from allowing Dream
4 Works to open up establishments in New York.
5 This exception would establish a footprint of
6 eight different requirements in order for such a
7 facility to operate legally in New York,
8 including the prohibition of any liquor
9 advertising, et cetera. It is merely a way to
10 accommodate and recognize the fact that we
11 should still have a "tidehouse" law but
12 understand that you can have a conglomerate
13 that's engaged in the liquor business that owns
14 a lot of other businesses as well.

15 ACTING PRESIDENT MARCELLINO:

16 Read the last section.

17 Senator Paterson, why do you
18 rise?

19 SENATOR PATERSON: Just one
20 moment, Mr. President.

21 ACTING PRESIDENT MARCELLINO:

22 Senator Paterson.

23 SENATOR PATERSON: Thank you.

24 ACTING PRESIDENT MARCELLINO:

25 Senator Paterson, are you ready?

1 SENATOR PATERSON: Mr.
2 President. Senator Lack stated that there are
3 eight standards that are set forth in this
4 legislation that would, in a sense, provide the
5 threshold for what would establish an exception
6 to the "tidehouse" law, and as good as that may
7 be, I hope that eight is enough, because since
8 we have excepted in these types of cases before,
9 I would just like to say -- and then I'm going
10 to vote for the bill -- but I would just like to
11 say that perhaps what would be a better way to
12 do it because it's not protect -- the interests
13 that we're serving in this particular
14 legislation that I'm concerned about, it's just
15 that we maintain the integrity of why we have
16 the "tidehouse" law in the first place and I'm
17 just saying that perhaps what we need to do is
18 just codify what the threshold is and the
19 particular -- the particular issues that would
20 -- that are in this particular bill that
21 perhaps we make a law that would encompass them
22 and that would satisfy what the standard would
23 be, and then in the other areas that don't fall
24 within the ambit of the law, the "tidehouse" law
25 would still have its full effect.

1 SENATOR GOLD: Last section.

2 ACTING PRESIDENT MARCELLINO:

3 Read the last section, please.

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

6 ACTING PRESIDENT MARCELLINO:

7 Call the roll.

8 (The Secretary called the roll.)

9 THE SECRETARY: Ayes 58.

10 ACTING PRESIDENT MARCELLINO: The
11 bill is passed.

12 Secretary will read Calendar
13 Number 641? Senator Larkin, thank you.
14 Calendar Number 641.

15 THE SECRETARY: Calendar Number
16 641, by Senator Larkin, Senate Print 4194, an
17 act to amend the Racing, Pari-mutuel Wagering
18 and Breeding Law.

19 SENATOR GOLD: Explanation.

20 ACTING PRESIDENT MARCELLINO:

21 Senator Larkin, an explanation has been
22 requested.

23 SENATOR LARKIN: Mr. President.

24 ACTING PRESIDENT MARCELLINO: For
25 those members who are wondering where we're

1 going, we're on the main original calendar.

2 Senator Larkin.

3 SENATOR LARKIN: First of all,
4 this bill is based on an agreement between the
5 New York Breeders -- Horsemen's Association and
6 the New York Breeders Association and the Racing
7 Association as a whole and basically what this
8 bill does, it would amend the law to clarify
9 that owners' premiums shall not be considered as
10 purse money for thoroughbred racing in New York
11 State.

12 In essence, the bill would ensure
13 that New York bred horses will not have to amend
14 the races for which they are eligible to run
15 based on artificially inflated purse winnings
16 which instead reflect the amount of the premium
17 and the amount of the purse.

18 ACTING PRESIDENT MARCELLINO:
19 Read the last section.

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

22 ACTING PRESIDENT MARCELLINO:
23 Call the roll.

24 (The Secretary called the roll.)

25 THE SECRETARY: Ayes 58.

1 ACTING PRESIDENT MARCELLINO: The
2 bill is passed.

3 Can we read Calendar Number 343,
4 Senator Larkin.

5 The Secretary will read.

6 THE SECRETARY: Calendar Number
7 343, by Senator Velella, Senate Print 3102-A, an
8 act to amend the Insurance Law, in relation to
9 the retention of group life insurance.

10 ACTING PRESIDENT MARCELLINO:
11 Senator Velella, an explanation has been
12 requested.

13 SENATOR VELELLA: Yes, Mr.
14 President.

15 This bill gives employees or
16 members of covered -- who are covered under a
17 group life insurance policy the option to
18 continue their life -- to continue their term
19 life insurance coverage for one year after
20 leaving a group if such member was terminated
21 because such employee or member was permanently
22 or totally disabled.

23 After a period of one year, that
24 disabled person will have an option to convert
25 to either whole life or a term policy based on

1 their age at the time that they want to convert
2 the policy.

3 I apologize for my voice.

4 ACTING PRESIDENT MARCELLINO: Can
5 I again ask -- can I again ask for some silence
6 in the chamber. We cannot hear the members.
7 Will you take the conversations out of the room,
8 please.

9 Thank you.

10 SENATOR GOLD: Mr. President.

11 ACTING PRESIDENT MARCELLINO:
12 Senator Gold.

13 SENATOR GOLD: Yeah. This is -
14 my comment is not necessarily on this bill but
15 as a member of the Rules Committee, I have the
16 advantage of seeing the calendars and asking
17 questions in the Committee, but there are many
18 members who don't have that advantage, and I
19 just wanted to suggest very, very respectfully
20 to the Majority, that if we stay on one
21 calendar, if that's what we're doing, great, but
22 stay on one calendar and go through it with some
23 predictability, I think that members may have
24 less suspicion as to what bills are and what
25 they're about.

1 So I'm not -- I have no problem
2 with this, Senator Velella, but I would just
3 suggest that, Mr. President, if we could go
4 through one calendar orderly and then take the
5 next one, I think it just makes it easier for
6 the members instead of grabbing for papers and
7 that's why some of these explanations are being
8 asked for because people are afraid they're
9 going to miss something in the transition. So
10 that's just a very respectful suggestion.

11 ACTING PRESIDENT MARCELLINO: On
12 the basis of that, the bills that we will be
13 picking up after this one is passed are Senate
14 -- Calendar Number 467 and 1098, so that
15 members can read ahead.

16 SENATOR GOLD: Mr. President, you
17 are a wise man, and I appreciate that.

18 ACTING PRESIDENT MARCELLINO:
19 Thank you, Senator. I'll use that in my
20 endorsement piece.

21 Senator Lack.

22 SENATOR GOLD: I wish you
23 wouldn't.

24 ACTING PRESIDENT MARCELLINO:
25 Call the roll -- read the last section. I'm

1 sorry.

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

4 ACTING PRESIDENT MARCELLINO:
5 Call the roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes 58.

8 ACTING PRESIDENT MARCELLINO: The
9 bill is passed.

10 Senator Lachman, why are you
11 rising?

12 SENATOR LACHMAN: Mr. President,
13 I would like to have unanimous consent to be
14 recorded in the negative on item 1135.

15 ACTING PRESIDENT MARCELLINO: The
16 record will show reflect -- will so reflect.

17 The Secretary will read Calendar
18 Number 467.

19 THE SECRETARY: Calendar Number
20 467, by Senator Velella, Senate Print 3204-A, an
21 act to amend the Insurance Law and the Vehicle
22 and Traffic Law.

23 ACTING PRESIDENT MARCELLINO:
24 Read the last section.

25 THE SECRETARY: Section 8. This

1 act shall take effect in 90 days.

2 ACTING PRESIDENT MARCELLINO:

3 Call the roll.

4 (The Secretary called the roll.)

5 THE SECRETARY: Ayes 58.

6 ACTING PRESIDENT MARCELLINO: The
7 bill is passed.

8 The Secretary will read 1098.

9 THE SECRETARY: Calendar Number
10 1098, by the Committee on Rules, Senate Print
11 4799, an act to amend Chapter 272 of the Laws of
12 1991.

13 ACTING PRESIDENT MARCELLINO:
14 Read the last section.

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

17 ACTING PRESIDENT MARCELLINO:
18 Call the roll.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes 58.

21 ACTING PRESIDENT MARCELLINO: The
22 bill is passed.

23 Senator Paterson.

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

1 ACTING PRESIDENT MARCELLINO:

2 Thank you, Senator.

3 SENATOR LEICHTER: Can we have an
4 explanation.

5 SENATOR LARKIN: Would you please
6 call Senator Spano's -

7 SENATOR GOLD: Explanation, Mr.
8 President.

9 SENATOR LARKIN: Announce the
10 results.

11 ACTING PRESIDENT MARCELLINO: We
12 did that already.

13 SENATOR GOLD: Last section.

14 ACTING PRESIDENT MARCELLINO: We
15 read the last section on 1098. The bill has
16 already been passed.

17 SENATOR LARKIN: Mr. President,
18 can we now return to motions and resolutions. I
19 believe you have a couple of privileged
20 resolutions at the desk. Just please read the
21 title only.

22 ACTING PRESIDENT MARCELLINO: The
23 Secretary will read.

24 THE SECRETARY: By Senator
25 Leibell, Legislative Resolution congratulating

1 Sol and Ruth Kroll upon the occasion of their
2 50th wedding anniversary, July 3rd, 1997.

3 ACTING PRESIDENT MARCELLINO: On
4 the resolution, all in favor signify by saying
5 aye.

6 (Response of "Aye".)

7 Opposed, nay.

8 (There was no response.)

9 The resolution is passed
10 unanimously.

11 The Secretary will read.

12 THE SECRETARY: By Senator
13 Saland, Legislative Resolution commending
14 Dolores Alexander for her distinguished service
15 as a board trustee for the Wappingers Central
16 School District.

17 ACTING PRESIDENT MARCELLINO: The
18 motion is on the resolution. All in favor
19 signify by saying aye.

20 (Response of "Aye".)

21 Opposed, nay.

22 (There was no response.)

23 The resolution is passed.

24 Senator Larkin, can we take up
25 the report of the Rules Committee.

1 SENATOR LARKIN: Can we now
2 return to reports of standing committees, the
3 Rules report.

4 ACTING PRESIDENT MARCELLINO:
5 Thank you, Senator.

6 The Secretary will read the
7 report of the Rules Committee.

8 THE SECRETARY: Senator Bruno,
9 from the Committee on Rules, offers up the
10 following bills:

11 1401-A, by Senator LaValle, an
12 act to amend the Tax Law;

13 2092, by Senator Volker, an act
14 to amend the Civil Practice Law and Rules;

15 2576, by Senator Montgomery, an
16 act authorizing the city of New York;

17 3438-B, by Senator Alesi, an act
18 to amend the Insurance Law;

19 3520-A, by Senator Velella, an
20 act to amend the Insurance Law;

21 3526-A, by Senator Alesi, an act
22 requiring further consumer protections;

23 4242, by Senator Trunzo, an act
24 to permit members of the retirement system;

25 4299-A, by Senator Alesi, an act

1 to amend the General Business Law;
2 4439, by Senator Skelos, an act
3 to amend the Retirement and Social Security Law;
4 4662-A, by Senator Trunzo, an act
5 to amend the Retirement and Social Security Law;
6 4706, by Senator Velella, an act
7 to amend the Insurance Law;
8 4733-B, by Senator Farley, an act
9 to amend the Banking Law;
10 4821, by Senator Skelos, an act
11 to amend the Civil Service Law;
12 4968-A, by Senator Hannon, an act
13 to amend the Public Health Law;
14 5371-A, by Senator Goodman, an
15 act to amend the Real Property Tax Law;
16 5395-A, by Senator Bruno, an act
17 to amend the Navigation Law;
18 5413, by Senator Cook, an act to
19 amend the Public Health Law;
20 5439, by Senator Markowitz, an
21 act authorizing the city of New York;
22 5483, by Senator Seward, an act
23 to amend the Public Service Law;
24 5504, by Senator Cook, an act to
25 authorize payment;

1 5509, by Senator Spano, an act to
2 amend Chapter 824 of the Laws of 1987; and

3 5524, by Senator Kuhl, an act to
4 amend the Alcoholic Beverage Control Law.

5 All bills directly for third
6 reading.

7 SENATOR LARKIN: Move we accept
8 the report, Mr. President.

9 ACTING PRESIDENT MARCELLINO:
10 Thank you, Senator Larkin.

11 The motion is to accept the
12 report of the Rules Committee. All in favor
13 signify by saying aye.

14 (Response of "Aye".)

15 Opposed, nay.

16 (There was no response.)

17 The report is accepted.

18 Senator, can we return to the
19 order of motions and resolutions. We have a
20 motion.

21 SENATOR LARKIN: Yes. Recognize
22 Senator Rath, please.

23 ACTING PRESIDENT MARCELLINO:
24 Senator Rath.

25 SENATOR RATH: Mr. President, I

1 move that the following bills be discharged from
2 their respective committees and be recommended
3 with instructions to strike the enacting
4 clause: Senate 1504, on behalf of Senator
5 Abate.

6 ACTING PRESIDENT MARCELLINO: The
7 bill is recommitted and the enacting clause is
8 stricken. Thank you, Senator Rath.

9 Ladies and gentlemen, we are now
10 looking at the non-controversial reading of
11 Senate Supplemental Calendar Number 59-B which
12 was placed on your desks earlier. So if you
13 have a problem, look at 59-B.

14 The Secretary will read.

15 SENATOR LARKIN: The
16 non-controversial calendar, Mr. President.

17 ACTING PRESIDENT MARCELLINO:
18 Thank you, Senator.

19 THE SECRETARY: Calendar Number
20 1440, by Senator LaValle, Senate Print 1401-A,
21 an act to amend the Tax Law, in relation to
22 providing exemption.

23 ACTING PRESIDENT MARCELLINO:
24 Read the last section.

25 THE SECRETARY: Section 5. This

1 act shall take effect in 180 days.

2 ACTING PRESIDENT MARCELLINO:

3 Call the roll.

4 (The Secretary called the roll.)

5 THE SECRETARY: Ayes 58.

6 ACTING PRESIDENT MARCELLINO: The
7 bill is passed.

8 THE SECRETARY: Calendar Number
9 1441, by Senator Volker, Senate Print 2092, an
10 act to amend -

11 ACTING PRESIDENT MARCELLINO: Lay
12 the bill aside.

13 THE SECRETARY: -- the Civil
14 Practice Law and Rules.

15 Calendar Number 1442, by Senator
16 Montgomery, Senate Print 2576, an act
17 authorizing the city of New York.

18 ACTING PRESIDENT MARCELLINO:
19 Ladies and gentlemen, there's no home rule
20 message for this bill, so we'll lay it aside.

21 THE SECRETARY: Calendar Number
22 1443, by Senator Alesi, Senate Print 3438-B, an
23 act to amend the Insurance Law.

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

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

3 ACTING PRESIDENT MARCELLINO:
4 Call the roll.

5 (The Secretary called the roll.)

6 THE SECRETARY: Ayes 58.

7 ACTING PRESIDENT MARCELLINO: The
8 bill is passed.

9 THE SECRETARY: Calendar Number
10 1444, by Senator Velella, Senate Print 3520-A,
11 an act to amend the Insurance Law, in relation
12 to including.

13 ACTING PRESIDENT MARCELLINO:
14 Read the last section.

15 THE SECRETARY: Section 2. This
16 act shall take effect in 120 days.

17 ACTING PRESIDENT MARCELLINO:
18 Call the roll.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes 58.

21 ACTING PRESIDENT MARCELLINO: The
22 bill is passed.

23 THE SECRETARY: Calendar Number
24 1445, by Senator Alesi, Senate Print 3526-A, an
25 act to amend the General Business Law, in

1 relation to providing.

2 ACTING PRESIDENT MARCELLINO:

3 Read the last section.

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

6 ACTING PRESIDENT MARCELLINO:

7 Call the roll.

8 (The Secretary called the roll.)

9 THE SECRETARY: Ayes 58.

10 ACTING PRESIDENT MARCELLINO: The
11 bill is passed.

12 THE SECRETARY: Calendar Number
13 1447, by Senator Trunzo, Senate Print 4242, an
14 act to permit members of the retirement system.

15 ACTING PRESIDENT MARCELLINO:

16 Read the last section.

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

19 ACTING PRESIDENT MARCELLINO:

20 Call the roll.

21 (The Secretary called the roll.)

22 THE SECRETARY: Ayes 58.

23 ACTING PRESIDENT MARCELLINO: The
24 bill is passed.

25 THE SECRETARY: Calendar Number

1 1448, by Senator Alesi, Senate Print 4299-A, an
2 act to amend the General Business Law.

3 ACTING PRESIDENT MARCELLINO:
4 Read the last section.

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

7 ACTING PRESIDENT MARCELLINO:
8 Call the roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes 58.

11 ACTING PRESIDENT MARCELLINO: The
12 bill is passed.

13 THE SECRETARY: Calendar Number
14 1449, by Senator Skelos, Senate Print 4439, an
15 act to amend the Retirement and Social Security
16 Law.

17 SENATOR LEICHTER: Lay it aside.

18 ACTING PRESIDENT MARCELLINO: Lay
19 the bill aside.

20 THE SECRETARY: In relation to
21 Calendar Number 1450, Senator Trunzo moves to
22 discharge from the Committee on Rules Assembly
23 Print 7894-A and substitute it for the identical
24 Senate bill, Third Reading 1450.

25 ACTING PRESIDENT MARCELLINO:

1 Read the last section -- the substitution is
2 ordered and lay the bill aside.

3 THE SECRETARY: 1451, by Senator
4 Velella, Senate Print 4706, an act to amend the
5 Insurance Law, in relation to automobile
6 insurance rates.

7 ACTING PRESIDENT MARCELLINO:
8 Read the last section.

9 THE SECRETARY: Section 4. This
10 act shall take effect on the 180th day.

11 ACTING PRESIDENT MARCELLINO:
12 Call the roll.

13 (The Secretary called the roll.)

14 THE SECRETARY: Ayes 58.

15 ACTING PRESIDENT MARCELLINO: The
16 bill is passed.

17 THE SECRETARY: Calendar Number
18 1452, by Senator Farley, Senate Print 4733-B, an
19 act to amend the Banking Law, in relation to
20 creating certain exemptions.

21 SENATOR LEICHTER: Lay it aside.

22 ACTING PRESIDENT MARCELLINO: Lay
23 the bill aside, please.

24 THE SECRETARY: Calendar Number
25 1453, by Senator Skelos, Senate Print 4821, an

1 act to amend the Civil Service Law, in relation
2 to reimbursement.

3 ACTING PRESIDENT MARCELLINO:
4 Read the last section.

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

7 ACTING PRESIDENT MARCELLINO:
8 Call the roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes 58.

11 ACTING PRESIDENT MARCELLINO: The
12 bill is passed.

13 THE SECRETARY: Calendar Number
14 1454, by Senator Hannon, Senate Print 4968-A, an
15 act to amend the Public Health Law.

16 ACTING PRESIDENT MARCELLINO:
17 Read the last section.

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

20 ACTING PRESIDENT MARCELLINO:
21 Call the roll.

22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes 58.

24 ACTING PRESIDENT MARCELLINO: The
25 bill is passed.

1 THE SECRETARY: Calendar Number
2 1455, by Senator Goodman, Senate Print 5371-A,
3 an act to amend the Real Property Tax Law, in
4 relation to tax exemption.

5 ACTING PRESIDENT MARCELLINO:
6 Read the last section.

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

9 SENATOR LEICHTER: Lay it aside.

10 ACTING PRESIDENT MARCELLINO: Lay
11 Senator Goodman's bill aside, please.

12 THE SECRETARY: Calendar Number
13 1456, by Senator Bruno, Senate Print 5395, an
14 act to amend the Navigation Law, in relation to
15 regulating the speed of vessels on Saratoga
16 Lake.

17 ACTING PRESIDENT MARCELLINO:
18 Read the -- call the roll -- there is a home
19 rule message at the desk. Read the last
20 section.

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

23 ACTING PRESIDENT MARCELLINO:
24 Call the roll.

25 (The Secretary called the roll.)

1 THE SECRETARY: Ayes 58.

2 ACTING PRESIDENT MARCELLINO: The
3 bill is passed.

4 THE SECRETARY: Calendar Number
5 1457, by Senator Cook, Senate Print 5413, an act
6 to amend the Public Health Law, in relation to
7 funding.

8 ACTING PRESIDENT MARCELLINO:
9 Read the last section.

10 THE SECRETARY: Section 2. This
11 act shall take effect on the same date as a
12 chapter of the Laws of 1997.

13 SENATOR PATERSON: Lay it aside.

14 ACTING PRESIDENT MARCELLINO: Lay
15 this bill aside.

16 THE SECRETARY: Calendar Number
17 1458, by Senator Markowitz -

18 ACTING PRESIDENT MARCELLINO: Lay
19 this bill aside. There is no home rule message
20 at the desk.

21 THE SECRETARY: Calendar Number
22 1459, by Senator Seward, Senate Print 5483, an
23 act to amend the Public Service Law.

24 SENATOR PATERSON: Lay it aside.

25 ACTING PRESIDENT MARCELLINO: Lay

1 the bill aside.

2 THE SECRETARY: Calendar Number
3 1460, by Senator Cook, Senate Print 5504, an act
4 to authorize payment of transportation aid.

5 ACTING PRESIDENT MARCELLINO:
6 Read the last section and there is a local
7 fiscal impact message at the desk.

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

10 ACTING PRESIDENT MARCELLINO:
11 Call the roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes 58.

14 ACTING PRESIDENT MARCELLINO: The
15 bill is passed.

16 THE SECRETARY: Calendar Number
17 1461, by Senator Spano, Senate Print 5509, an
18 act to amend Chapter 824 of the Laws of 1987.

19 ACTING PRESIDENT MARCELLINO:
20 Read the last section, please.

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

23 ACTING PRESIDENT MARCELLINO:
24 Call the roll.

25 (The Secretary called the roll.)

1 THE SECRETARY: Ayes 58.

2 ACTING PRESIDENT MARCELLINO: The
3 bill is passed.

4 THE SECRETARY: Calendar Number
5 1462, by Senator Kuhl, Senate Print 5524, an act
6 to amend the Alcoholic Beverage Control Law, in
7 relation to wineries and farm wineries.

8 ACTING PRESIDENT MARCELLINO:
9 Read the last section.

10 THE SECRETARY: Section 5. This
11 act shall take effect on the 30th day.

12 ACTING PRESIDENT MARCELLINO:
13 Call the roll.

14 (The Secretary called the roll.)

15 SENATOR LEICHTER: Lay it aside,
16 please.

17 ACTING PRESIDENT MARCELLINO: Can
18 we lay this bill aside, please. Thank you.

19 That completes the reading of the
20 non-controversial calendar, Senator. Shall we
21 go ahead with the controversial reading?

22 SENATOR LARKIN: Is there any
23 housekeeping at the desk?

24 ACTING PRESIDENT MARCELLINO:
25 Yes, we do, Senator. We have some.

1 SENATOR LARKIN: Okay.

2 ACTING PRESIDENT MARCELLINO:

3 Senator Maziarz, my co-president of our
4 graduating class.

5 SENATOR MAZIARZ: Thank you, Mr.
6 President.

7 On page number 43, I offer the
8 following amendments to Calendar Number 495,
9 Senate Print Number 300-B, and ask that said
10 bill retain its place on the Third Reading
11 Calendar.

12 ACTING PRESIDENT MARCELLINO: The
13 amendments are received and accepted. The bill
14 will retain its place on the Third Reading
15 Calendar.

16 Senator, may we continue with the
17 reading of the controversial calendar.

18 SENATOR LARKIN: Yes.

19 ACTING PRESIDENT MARCELLINO: The
20 Secretary will read the controversial calendar
21 of 59-B. The calendar is -- I'm sorry.

22 SENATOR LARKIN: Would you please
23 call up Calendar 449 by Senator Skelos, please.

24 ACTING PRESIDENT MARCELLINO: Can
25 we call up -- yes, we can, Senator. Calendar

1 Number 449, Supplemental 59-B.

2 THE SECRETARY: Calendar Number
3 449, by Senator Skelos, Senate Print 4439, an
4 act to amend the Retirement and Social Security
5 Law, in relation to State Police disability
6 retirement allowance.

7 ACTING PRESIDENT MARCELLINO:
8 Read the last section.

9 SENATOR LEICHTER: Mr. President.

10 ACTING PRESIDENT MARCELLINO:
11 Senator Leichter.

12 SENATOR LEICHTER: Yeah. Senator
13 Skelos, if you would be good enough to yield.

14 ACTING PRESIDENT MARCELLINO:
15 Senator Skelos, do you yield to Senator
16 Leichter? He yields, Senator.

17 SENATOR LEICHTER: Yesterday we
18 had a bill by Senator Meier where we allowed a
19 transfer to the State Police system which cost
20 180,000 for one individual. The fiscal note, I
21 see that it -- your bill would apply to six
22 retired members and at a total cost of \$1.1
23 million. In addition, there may be additional
24 costs for members and retirees who we have not
25 identified. Can you tell us -

1 SENATOR SKELOS: Let me explain
2 this bill to you.

3 SENATOR LEICHTER: Yes.

4 SENATOR SKELOS: When the Parkway
5 Police on Long Island were merged into the State
6 Police, the people that were brought over to the
7 State Police were Tier I employees. They were
8 brought over as Tier I employees for everything
9 but disability benefits where they are Tier II
10 employees. The money over the years was paid
11 into the system. In fact, the Comptroller has
12 no objection to what we're trying to do, and the
13 State Police are supportive of this since the
14 money has already been paid into the retirement
15 system, for these people now to get the same
16 percentage of disability, which I believe is 75
17 percent as against 55 percent if they were
18 treated as the Tier I employee.

19 So this is not a hit on the
20 treasury or anything. It's money that's been
21 paid in in the past.

22 SENATOR LEICHTER: Let me just
23 see if I fully understand it, if you'll yield to
24 one more question.

25 ACTING PRESIDENT MARCELLINO:

1 Senator, do you yield? He yields.

2 SENATOR LEICHTER: In other
3 words, there's been a transfer of whatever
4 credits these employees have.

5 SENATOR SKELOS: I believe it
6 happened in 1980 -- in 1980.

7 SENATOR LEICHTER: Okay. Thank
8 you.

9 SENATOR GOLD: Mr. President.

10 ACTING PRESIDENT MARCELLINO:
11 Senator Gold.

12 SENATOR GOLD: Yeah. I just have
13 one short question for Senator Skelos.

14 ACTING PRESIDENT MARCELLINO:
15 Senator Skelos, do you yield? He yields,
16 Senator Gold.

17 SENATOR GOLD: I just want to
18 clarify, Senator, something that maybe some
19 other people are interested in also. This bill,
20 if it costs any amount of money -- I thought we
21 were not permitted to pass legislation that,
22 quotes, makes appropriations or it does
23 expenditures until we pass the budget, and I
24 know that's a very technical area because
25 somehow some bills get out and somehow some

1 bills don't.

2 I know there's no prohibition
3 against bringing out a bill to the floor. I
4 know there's no prohibition against passing a
5 bill which sets up a program subject to an
6 appropriation, but it seems to me if this has a
7 fiscal note and it's spending money, I don't
8 know how we do it before the budget.

9 SENATOR SKELOS: This money has
10 already been paid into the retirement system.
11 It's not new money that has to be paid because
12 when they were making the -

13 SENATOR GOLD: But it's an -
14 it's an authorization for payment.

15 SENATOR SKELOS: From the
16 retirement system, disability benefits.

17 SENATOR GOLD: Well, Senator, I'm
18 certainly not opposed to the bill. It's just a
19 question of timing, and I think that we -- I'm
20 just not sure it's a timely bill. It doesn't
21 mean that we wouldn't support it at any other
22 time, and I'm not going to oppose it at this
23 point, but I really do question whether we
24 should be spending any monies before budget.

25 ACTING PRESIDENT MARCELLINO:

1 Read the last section, please.

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

4 ACTING PRESIDENT MARCELLINO:
5 Call the roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes 58.

8 ACTING PRESIDENT MARCELLINO: The
9 bill is passed.

10 Senator Larkin, return to regular
11 order?

12 SENATOR LARKIN: Let's go back to
13 Calendar 1450, by Senator Trunzo.

14 ACTING PRESIDENT MARCELLINO: The
15 Secretary will read Calendar Number 1450, page
16 2, if anybody's looking, on the supplemental
17 calendar. Read the last -

18 THE SECRETARY: Calendar Number
19 1450, substituted earlier today, by the Assembly
20 Committee on Rules, Assembly Print 7894-A, an
21 act to amend the Retirement and Social Security
22 Law.

23 SENATOR LEICHTER: Explanation.

24 ACTING PRESIDENT MARCELLINO: Did
25 I hear an explanation asked for? Explanation,

1 Senator Trunzo, has been requested.

2 SENATOR TRUNZO: Mr. President,
3 what this bill does is, this would create the
4 same disability program for EnCon police and the
5 Park Police as the New York State Police have.

6 These police officers are state
7 policemen and, therefore, they have statewide
8 jurisdiction in specific areas of law
9 enforcement. So what we're doing is putting the
10 Park Police and the EnCon police with the same
11 disability effects that the State Police have
12 because they are state policemen.

13 SENATOR LEICHTER: Mr. President,
14 just -

15 ACTING PRESIDENT MARCELLINO:
16 Senator Trunzo, will you yield to Senator
17 Leichter?

18 SENATOR TRUNZO: Yeah.

19 ACTING PRESIDENT MARCELLINO: I
20 believe he yields, Senator.

21 SENATOR LEICHTER: Senator, I
22 assume presently, as employees of the Department
23 of Environmental Conservation, they're entitled
24 to whatever disability benefits the employees of
25 the Department are entitled to; is that right?

1 (Senator Trunzo nods head.)

2 SENATOR LEICHTER: And I assume
3 this bill will give them greater disability
4 benefits.

5 SENATOR TRUNZO: Greater, and the
6 equity with the other state police.

7 SENATOR LEICHTER: And is that
8 based on the fact that the functions that they
9 perform as peace officers or police officers
10 present certain risks, and so on?

11 SENATOR TRUNZO: That's right.

12 SENATOR LEICHTER: And is the
13 nature of their functions such that they're
14 likely to incur the same sort of disabilities as
15 members of the State Police?

16 SENATOR TRUNZO: Yes.

17 SENATOR LEICHTER: In what
18 respect is that?

19 SENATOR TRUNZO: They have the
20 same jurisdictional work as policeman do, the
21 State Police. They patrol the parks and, you
22 know, those areas and as a result they encounter
23 the same type of problems that any police
24 officer would encounter. They're in uniform.
25 They are cops and the different agency other

1 than the state troopers but -- so they have the
2 same jurisdictions and the same -

3 SENATOR LEICHTER: If you would
4 yield just to one more question. I understand
5 the matter of jurisdiction, but I think what we
6 need to look at is the risks that they face.

7 SENATOR TRUNZO: Well, they face
8 the same safety factors as anyone else, any
9 other policemen.

10 SENATOR LEICHTER: They're not on
11 the highway -

12 SENATOR TRUNZO: No.

13 SENATOR LEICHTER: -- and cars
14 going 80, 90 miles an hour, which I assume is a
15 particular risk to the State Police. I just
16 want to make sure, Senator, that you've looked
17 at this carefully and that these people are
18 really entitled to the more generous disability
19 benefits that they're now going to be entitled
20 to get.

21 SENATOR TRUNZO: Well, I honestly
22 believe that very strongly because even in their
23 patrolling of the state parks, they can
24 encounter the various problems and things that
25 happen at picnics and other things that may go

1 on in the state parks.

2 SENATOR LEICHTER: Run into a
3 bear.

4 SENATOR TRUNZO: And EnCon.

5 ACTING PRESIDENT MARCELLINO:
6 Read the last section, please.

7 THE SECRETARY: Section 2. This
8 act shall take effect on the 60th day.

9 ACTING PRESIDENT MARCELLINO:
10 Call the roll.

11 (The Secretary called the roll.)

12 THE SECRETARY: Ayes 58.

13 ACTING PRESIDENT MARCELLINO: The
14 bill is passed.

15 Senator Larkin, what's your
16 pleasure?

17 SENATOR LARKIN: Regular order.
18 Senator Farley.

19 ACTING PRESIDENT MARCELLINO: May
20 we return to -- Senator, that's not the regular
21 order. Senator Farley's bill. Farley's bill,
22 1452.

23 The Secretary will please read
24 Senator Farley's bill, 1452.

25 THE SECRETARY: Calendar Number

1 1452, by Senator Farley, Senate Print 4733-B, an
2 act to amend the Banking Law.

3 SENATOR LEICHTER: Explanation.

4 ACTING PRESIDENT MARCELLINO:
5 Senator, an explanation has been requested.

6 SENATOR FARLEY: Is that my
7 colleague and friend, Senator Leichter, that
8 would like this?

9 ACTING PRESIDENT MARCELLINO: Who
10 else?

11 SENATOR FARLEY: The friend of
12 the American banker. Actually, this is not a
13 banking situation, but it would authorize the
14 Superintendent of Banks to increase the maximum
15 percentage that a limited trust company may
16 invest in the obligations of a foreign nation.

17 This bill is important to New
18 York companies to compete in the global custody
19 business. Franz, this is not a special interest
20 bill. There's 38 of these, not four or five or
21 whatever it might be, 38 of these companies and
22 the global custody business often involves
23 short-term investment of foreign currencies.

24 The main options are to deposit
25 such assets in a foreign bank or to invest such

1 assets in foreign government securities or
2 obligations. Both these options are subject to
3 the statutory limits based on the institution's
4 capital stock.

5 However, the Superintendent of
6 Banks, may, on a case-by-case basis, establish
7 higher limits for deposits in banks and has done
8 so on numerous occasions. In other words, they
9 can go into banks. The Superintendent, in my
10 judgment, in this bill's judgment, and the
11 Banking Department's judgment, should have
12 similar flexibility to establish higher limits
13 for investments in foreign government
14 obligations and repurchase agreements. That's
15 the essence of it.

16 These investments often have
17 advantages over deposits in foreign banks
18 because there's more security, there's less
19 credit exposures. The yields are generally
20 better and repurchase agreements, in particular,
21 are generally more liquid and also, as an aside,
22 there's no limits at all on investments in the
23 United States and New York State obligations and
24 since trust companies are increasingly managing
25 foreign currencies, it is appropriate that the

1 law regarding investments in foreign government
2 obligations be revisited and to provide some
3 increased flexibility subject to discretion of
4 the Superintendent.

5 SENATOR LEICHTER: Mr. President,
6 if Senator Farley will yield for one or two -

7 ACTING PRESIDENT MARCELLINO:
8 Senator Farley -- excuse me one second.

9 Ladies and gentlemen, once again,
10 please. Thank you.

11 Senator, he yields for a
12 question.

13 SENATOR FARLEY: Thank you, Mr.
14 President.

15 SENATOR LEICHTER: Senator, I
16 appreciate that these are trust companies that
17 don't take deposits from the public so we're not
18 placing that money at risk but, nevertheless,
19 they could be sister companies of companies that
20 do take monies from the public and certainly if
21 any of these 38 trust companies were to get into
22 a financial difficulty, you would have a great
23 impact on the people of the state of New York.

24 I just have one question to you,
25 Senator, and I don't mind giving them certain

1 added authority to invest in foreign securities,
2 but is there going to be a periodic check by the
3 Superintendent? Are there going to be
4 examinations so that we don't find ourselves in
5 a situation where one of these bank companies
6 gets too heavily involved in the obligations of
7 a foreign country?

8 SENATOR FARLEY: Good question.

9 SENATOR LEICHTER: Thank you.

10 SENATOR FARLEY: The Department
11 -- the Banking Department examines these
12 people, reviews these decisions and
13 incidentally, we're talking about government
14 securities which are, generally speaking, more
15 secure and are safer than some of the bank
16 deposits.

17 SENATOR LEICHTER: Thank you very
18 much, Senator Farley, and when we see that
19 Farley-Leichter bill -

20 SENATOR FARLEY: I'm ready. I'm
21 working on it.

22 ACTING PRESIDENT MARCELLINO:
23 Senator Gold, why do you rise?

24 SENATOR GOLD: If I see a
25 Farley-Leichter bill, I'm going to debate it.

1 ACTING PRESIDENT MARCELLINO:

2 Read the last section, please.

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

5 ACTING PRESIDENT MARCELLINO:

6 Call the roll.

7 (The Secretary called the roll.)

8 THE SECRETARY: Ayes 58.

9 ACTING PRESIDENT MARCELLINO: The
10 bill is passed.

11 Senator Larkin.

12 SENATOR LARKIN: Senator Seward
13 has a Conference Committee, so we'll take his
14 bill now, 1459, so he can finish it.

15 ACTING PRESIDENT MARCELLINO:

16 Yes. Will the Secretary please read Calendar
17 Number 1459.

18 THE SECRETARY: Calendar Number
19 1459, by Senator Seward, Senate Print 5483, an
20 act to amend the Public Service Law, in relation
21 to cellular telephone services.

22 ACTING PRESIDENT MARCELLINO:

23 Read the last section.

24 SENATOR GOLD: Yeah, Mr.

25 President.

1 ACTING PRESIDENT MARCELLINO: I'm
2 sorry.

3 SENATOR STAVISKY: Explanation,
4 please.

5 ACTING PRESIDENT MARCELLINO:
6 Senator Seward, an explanation has been
7 requested.

8 SENATOR SEWARD: Certainly, Mr.
9 President.

10 This is a bill which passed
11 unanimously last year. We're presenting it
12 again this year because unlike last year we do
13 have an Assembly sponsor, Assemblyman Vann in
14 the other house, who is intending to pass it
15 over there.

16 Basically this bill would suspend
17 the regulation by the Public Service Commission
18 of cellular telephone services. However, we
19 make it very clear in the legislation that, in
20 the event the PSC finds that because of customer
21 complaints and other factors that they, after
22 one year -- after the effective date of the
23 legislation, they could reimpose regulations
24 should they determine that that is necessary.
25 So we do make that provision and the other part

1 of the legislation is that -- that it states
2 very clearly that the tax status of the cellular
3 telephone corporations remains the same.

4 There's no change in that, but basically the
5 reason for the bill is in the cellular business,
6 in terms of telephones, there's so much
7 competition today. It's growing all the time
8 and it seems that if one customer is having a
9 problem, there are plenty of other cellular
10 providers available to take their business. So
11 competition is very evident there and it is
12 taking away really the need for regulation.

13 Also, the FCC at the federal
14 level, the Federal Communications Commission,
15 has determined that the states have very, very
16 limited authority to exercise regulation. In
17 fact, they've taken away the Commission's right
18 to exercise entry and rate jurisdiction. So
19 there's very -- basically there's very little
20 left that we would regulate anyway.

21 So for those reasons, I'm
22 presenting the bill, and I'm calling for its
23 passage.

24 SENATOR GOLD: Mr. President.

25 ACTING PRESIDENT MARCELLINO:

1 Senator Gold.

2 SENATOR GOLD: Would the
3 distinguished gentleman from Central New York
4 yield to a question?

5 SENATOR SEWARD: Certainly.

6 ACTING PRESIDENT MARCELLINO:
7 Senator Seward, do you yield? He yields.

8 SENATOR GOLD: Senator, are there
9 more cellular companies doing business in New
10 York than there are banks doing business in New
11 York?

12 SENATOR SEWARD: Banks, did you
13 say?

14 SENATOR GOLD: Yeah, banks.

15 SENATOR SEWARD: I've never -- to
16 be honest with you, Senator, I've never
17 compared.

18 SENATOR GOLD: You never cared?

19 SENATOR SEWARD: I've never
20 compared. I've never taken a count.

21 SENATOR GOLD: Senator, if you'll
22 yield to question. Are there more cellular
23 phone companies doing business in New York than
24 there are insurance companies?

25 SENATOR SEWARD: I have never

1 compared the numbers.

2 SENATOR GOLD: Senator, if you'll
3 yield to one more question.

4 SENATOR SEWARD: Certainly.

5 SENATOR GOLD: Senator, I really
6 don't understand the bill at all because to say
7 there's competition and, therefore, we don't
8 have to regulate -- I thought we had competition
9 in the banking field and I don't see Senator
10 Farley -- Professor Farley telling us we
11 shouldn't regulate the banks. I mean, there's
12 all these insurance companies out there
13 competing, the mail that comes in, the phone
14 calls that come in, and I don't hear us being
15 told we shouldn't regulate the insurance
16 industry. It's just a situation where there's a
17 big gap in logic that I see here.

18 I understand the federal
19 government has certain controls and that that's
20 fine, but from the point of view of protecting
21 consumers, to say that consumers are protected
22 because they can change service, I can make that
23 same argument about a bank, an insurance company
24 or any other industry that we regulate. So I
25 don't see the logic.

1 It just seems incredible that we
2 would take cellular phones and determine that
3 for some reason we exempt them from these laws.
4 What is the real reason here?

5 SENATOR SEWARD: I've stated very
6 clearly, Mr. President, the -

7 ACTING PRESIDENT MARCELLINO: I
8 understood it.

9 SENATOR SEWARD: Thank you. No,
10 seriously, the fact is that, as I said, the FCC
11 has taken away the state's authority to regulate
12 in some very key areas, such as the entry and
13 the rates, and I see some difference in terms of
14 the examples you've mentioned.

15 The cellular service is
16 predominantly a non-essential -- it's a
17 discretionary service that's being provided by a
18 very dynamic and rapidly changing market
19 structure. I see that as a difference when
20 compared to some of the other examples that you
21 outlined.

22 SENATOR GOLD: Mr. President.

23 ACTING PRESIDENT MARCELLINO:
24 Senator Gold.

25 SENATOR GOLD: I don't -- I don't

1 have to ask the Senator any more questions.

2 I'll just make my comments.

3 ACTING PRESIDENT MARCELLINO:

4 Senator Gold, on the bill.

5 SENATOR GOLD: Senator Seward, I

6 respect you but this bill, I'm missing

7 something. It doesn't make any sense to me.

8 For example, we say that the FCC

9 is now regulating some areas. Well, that's an

10 honest man talking, Senator Seward. It doesn't

11 regulate all the areas. So if we drop our

12 regulation, it seems to me there are going to be

13 areas that are unregulated.

14 Secondly, you say that it is a

15 non-essential service and, Senator, to me,

16 what's an essential service? If you want to say

17 you need a doctor, you need a hospital, that's

18 essential. You have to eat. That's essential.

19 Well, Senator, in the real word today, cellular

20 phones is essential. There are people who

21 believe that.

22 Now, if you're saying to me every

23 human being in the world doesn't have a cellular

24 phone, you're right, but businesses use them

25 regularly, people not in business use them and

1 they have dropped in their cost to some extent
2 and to say they're non-essential, I don't think
3 is really an accurate picture unless you want to
4 just determine that the word "essential" means
5 health services and food and things like that,
6 and housing.

7 I am prepared to support a bill
8 that makes sense if it makes sense but, in all
9 fairness and with no disrespect meant to you, I
10 haven't heard one logical reason why these
11 people should be treated differently from other
12 telephone companies or from banks or from
13 insurance companies or other kinds of businesses
14 like that. The state is now there. They are -
15 they are subject to our laws for the protection
16 of consumers, and I just don't understand based
17 upon what I've heard so far, why we would
18 justify taking them out of the protections of
19 the law.

20 ACTING PRESIDENT MARCELLINO:

21 Senator Stavisky.

22 SENATOR STAVISKY: Will the
23 sponsor yield to a couple of questions?

24 ACTING PRESIDENT MARCELLINO:

25 Senator Seward, do you yield?

1 SENATOR SEWARD: Certainly.

2 ACTING PRESIDENT MARCELLINO: He
3 yields.

4 SENATOR STAVISKY: Senator
5 Seward, are you familiar with a study that was
6 undertaken by Canadian scientists at the
7 University of Toronto and republished widely
8 here in the United States on the relationship
9 between the use of cellular phones and driving?
10 Are you familiar with that study?

11 SENATOR SEWARD: Senator, I've
12 seen some publicity regarding the issue. I'm
13 not intimately familiar with the study.

14 SENATOR STAVISKY: Senator
15 Seward, the study found that the use of a
16 cellular phone while driving dramatically
17 increased the danger -- the danger to the
18 driver, passengers in the car and other drivers
19 and pedestrians to the extent that it was
20 comparable to the increase in hazards caused by
21 alcohol consumption. That was the study.

22 There was a second study at the
23 Rochester Institute of Technology here in New
24 York State which came out with the very same
25 conclusion and, if you have not become familiar

1 with this issue, I would suggest that you do so
2 before sponsoring this legislation. The
3 research is very recent. It came out in the
4 past year and, if there is a relationship
5 between hazards to other drivers, pedestrians
6 and the use of a cellular phone while driving, I
7 think that you should think of the other aspect
8 of the regulation or non-regulation of this
9 industry.

10 I know the cellular phone
11 industry is good for the economy. I know that
12 it creates business and job opportunities and
13 I'm not challenging that issue, but it seems to
14 me that if the use of a cellular phone by a
15 person driving a motor vehicle creates a hazard
16 comparable to driving with a .10 alcohol level
17 in the blood, then that should be an important
18 part of any attempt to deal with this industry,
19 and I would urge you to hold this bill until you
20 can become familiar with that aspect of the
21 issue so that you will have before you not only
22 the desire to suspend the regulations but
23 perhaps the desire to put some other teeth into
24 a warning. "Do not drive while operating a
25 cellular phone" and that should be included in a

1 piece of legislation rather than this attitude
2 we don't have to do anything about it.

3 Would you be willing to consider
4 holding this bill until the research -- which,
5 by the way, has come out since the 1996 piece of
6 legislation.

7 SENATOR SEWARD: Well, Mr.
8 President, I understand what Senator Stavisky is
9 saying. However, it does not have a
10 relationship to this particular piece of
11 legislation. Whether or not people use a
12 cellular phone while driving or what the risks
13 are, and so on, that's not a matter that would
14 be addressed by the Public Service Commission.
15 That's a -- would be another -- if this
16 Legislature -- it would require this Legislature
17 to do so -- wish to get involved in that type of
18 regulation, that would require additional
19 statutes, amending other sections of the law.
20 It's not a Public Service Commission issue in
21 terms of whether or not the cellular telephone
22 companies have to file papers at the commission
23 regarding their rates and if they want to
24 provide new services they've got to file that
25 information with the commission. That's what

1 we're talking about here in terms of
2 regulation. Nothing to do with those -- what I
3 would consider to be health and safety issues
4 which you're outlining.

5 I would like to proceed with this
6 legislation. I know there's legislation that
7 others have introduced dealing with the issues
8 that you are outlining and -

9 SENATOR STAVISKY: Chairman Levy
10 has introduced a bill. I have introduced a bill
11 on this subject. I would encourage you -

12 ACTING PRESIDENT MARCELLINO:
13 Excuse me, gentlemen.

14 SENATOR STAVISKY: Forgive me for
15 interjecting.

16 ACTING PRESIDENT MARCELLINO:
17 Back and forth, the questions directed through
18 the Chair, please.

19 Senator Stavisky, you have
20 further questions?

21 SENATOR STAVISKY: Yes.

22 ACTING PRESIDENT MARCELLINO:
23 Senator Seward, do you yield? He yields.

24 SENATOR STAVISKY: Norman Levy
25 has introduced a bill to begin collecting this

1 data, and I have introduced legislation to
2 research and also get answers to the question of
3 the relationship between the use of a cellular
4 phone by a driver. I'm not saying that we
5 should stop the use of cellular phones. I'm
6 simply saying that there should be some
7 regulation that would address the issue of
8 safety. A person on a cellular phone cannot -

9 ACTING PRESIDENT MARCELLINO:

10 Excuse me. Senator Stavisky, are you speaking
11 on the bill?

12 SENATOR STAVISKY: I'm speaking
13 on the bill.

14 ACTING PRESIDENT MARCELLINO:
15 Senator Stavisky, on the bill.

16 SENATOR STAVISKY: A person on a
17 cellular phone cannot -- cannot be aware of what
18 the impact will be on the driver's safety
19 record. As a matter of fact, talking to someone
20 at the other end of a cellular phone poses a
21 greater risk than any other distraction in the
22 car. If there, for example, is a situation
23 where passengers are distracting in the car or
24 where the driver is listening to a radio, there
25 is still not the danger that a cellular phone

1 use while driving poses because you become so
2 engrossed in the conversation that it becomes a
3 distraction.

4 I think that we will be sending
5 the wrong message if we are to pass this
6 legislation in the wake of the recent research
7 and the findings that have been widely reported
8 since the last vote on this, and I would hope
9 that the members would be mindful of what I'm
10 suggesting, that there has got to be a
11 willingness to address the safety issue because
12 the mere fact that you're using a cellular
13 phone, whether it's hand held or, in fact,
14 installed in the vehicle itself and is not hand
15 held, poses a problem for other drivers, the
16 passengers and pedestrians alike and if we are
17 discontinuing all regulations as this bill
18 proposes, then we will never address the issue
19 of the safety of the use of a cellular phone.

20 I'm not suggesting that cellular
21 phone not be used. It could still be used for a
22 limited period of time, a window of opportunity
23 to make a call, to report an emergency, to do
24 any of the things that are necessary in the use
25 of a cellular phone, and I think it would be

1 untoward to pass such legislation in the wake of
2 the findings.

3 I would hope that the sponsor
4 would not proceed with this while there are
5 safety features that deserve to be considered
6 and I would hope that the sponsor would be
7 willing. Hold your horses. Don't have a
8 vehicle hurtling forward while a driver is
9 distracted and, if the driver is distracted for
10 whatever reason, calling the boss, calling a
11 girlfriend, speaking on a -- on a phone call
12 aimed at changing the -- changing the
13 arrangements for a meeting later in the day,
14 whatever the reason is, the person at the other
15 end of the phone has no knowledge of what's
16 going on with the traffic conditions and that, I
17 think, should take equal precedent in this
18 legislation as well as the desire to discontinue
19 unnecessary reporting.

20 I would hope that the sponsor -
21 I would hope that the sponsor would reconsider
22 his position. If he's not able to reconsider
23 his position, I would hope that the members of
24 this body would be willing to vote no in order
25 to give us sufficient time to examine the

1 ramifications of this legislation and the
2 ramifications of the use of cellular phones by
3 drivers, no one else. A passenger in the
4 vehicle could still make the call. Anyone not
5 driving could still make the call, but I'm
6 saying that the driver should not be able to
7 make the call with an impunity and allow this to
8 be a hazard.

9 The findings of the study I'm
10 citing indicated that the risk of accident and
11 injury and even death was increased four-fold,
12 400 percent increased by the use of a cellular
13 phone by the driver and this bill does not
14 address that issue and it moves us in the
15 opposite direction.

16 I would hope that the sponsor
17 would reconsider his position on this.

18 ACTING PRESIDENT MARCELLINO:
19 Senator Abate.

20 SENATOR ABATE: Yes. Would
21 Senator Seward yield to a question.

22 ACTING PRESIDENT MARCELLINO:
23 Senator, do you yield to Senator Abate?

24 SENATOR SEWARD: Yes, I do.

25 ACTING PRESIDENT MARCELLINO: He

1 yields, Senator.

2 SENATOR ABATE: It's my
3 understanding that the Public Service Commission
4 has the power to currently regulate customer
5 billing information and practices, billing
6 disputes, customer protection matters such as
7 privacy, false advertising and service quality.

8 Do you agree, Senator, that
9 consumers still have problems in these areas
10 vis-a-vis cellular phone service?

11 SENATOR SEWARD: Senator, I have
12 reached out to the Public Service Commission -
13 in fact, this is a -- one of their program
14 bills, and I have been told by the Commission
15 that the complaints in these areas over the last
16 ten years are practically nil and so that is the
17 reason that it is believed that we can move
18 forward to lift the regulation from the cellular
19 telephone companies with the understanding,
20 though, that regulations in the areas that
21 you've outlined could be reinstated if the
22 complaints increase.

23 SENATOR ABATE: But if, as you
24 say -- and I have not checked that. I certainly
25 trust you, if you reached out to the PSC and

1 they say it's no longer a problem. If it's no
2 longer a problem and these regulations are not
3 burdensome -- because many complaints are not
4 filed with PSC -- why do we need to deregulate
5 the cellular phone industry if it's not a
6 burden?

7 SENATOR SEWARD: Well, Senator, I
8 -- through you, Mr. President -- I didn't say
9 that it wasn't a burden for the companies. I'm
10 suggesting that in terms of the complaints
11 coming in to the PSC have been very, very few
12 over the last ten years but still the companies
13 need to -- when they change a procedure, they
14 have to file papers and it seems to be
15 unnecessary paperwork and expense to the
16 company, particularly when we have -- and I
17 think this is the reason why there are so few
18 complaints, because of the fact that we have a
19 variety of providers in the various service
20 markets. We have new types of technology coming
21 on-line very rapidly and, frankly, because of
22 this very competitive atmosphere that's out
23 there, should someone have a problem with their
24 cellular carrier, boy, there's another carrier
25 right there ready to assume your business.

1 So for that reason, why would we
2 want to continue to regulate and to cause
3 unnecessary paperwork, delay in moving out new
4 products and services because of having to file
5 papers at the PSC?

6 SENATOR ABATE: Would you
7 continue to -- Mr. President, would Senator
8 Seward continue to yield.

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

11 SENATOR SEWARD: Certainly.

12 ACTING PRESIDENT MARCELLINO: He
13 yields, Senator.

14 SENATOR ABATE: I'm hearing about
15 the burden to certain companies because of
16 paperwork. There are two separate issues. If
17 an individual regulation is burdensome or how
18 that regulation is implemented in terms of
19 paperwork, shouldn't we be looking at elimin
20 ating a regulation but not just deregulating an
21 entire practice or industry? Isn't there a
22 middle ground? Let's look at those regulations,
23 make some evaluations instead of suspending all
24 of them, taking away from PSC its power and
25 responsibility to ensure consumer protection in

1 this area?

2 SENATOR SEWARD: Well, Mr.
3 President, I feel our legislation does strike
4 that so-called middle ground by saying that we
5 will lift these regulations, what few the state
6 can under FCC regulations and rules continue to
7 impose.

8 We do strike that middle ground
9 because we are suspending the regulations for
10 one year and after that one-year period, the PSC
11 can take a look at the experience of that -
12 over that year period and then if it's
13 determined that regulation is needed, they can
14 reimpose it.

15 So I feel that we are striking
16 that middle ground and trying this approach and
17 if need be to go back to regulation, we give the
18 PSC the authority to do that.

19 SENATOR ABATE: Last question,
20 Senator.

21 ACTING PRESIDENT MARCELLINO:
22 Senator, do you yield for one more question?

23 SENATOR SEWARD: Yes, I will.

24 ACTING PRESIDENT MARCELLINO: He
25 yields.

1 SENATOR ABATE: What happens in
2 that year experiment where we suspend the
3 regulations and I am a consumer and I do not
4 have money to hire an attorney or enter into a
5 class action suit and I want relief? I've
6 entered into a long-term contract. I'm
7 receiving poor service. I'm being charged
8 exorbitant rates. False advertising is involved
9 by this company. I want relief from
10 government. I want to still go to PSC and say
11 "I want you to investigate. I need you to
12 review patterns and practices." What are we
13 going to say to those consumers throughout the
14 state because we want to experiment and suspend
15 these rules for a year? What would your answer
16 be?

17 SENATOR SEWARD: Well, Mr.
18 President -- I think you will like my answer,
19 Senator Abate. I would suggest they call the
20 Attorney General.

21 SENATOR ABATE: That's one
22 avenue. That's a very expensive avenue.

23 SENATOR SEWARD: I don't think
24 the Attorney General charges in their Consumer
25 Frauds Unit, and I don't mean to be facetious

1 here. I'm merely making the point, the Attorney
2 General does have a utility unit that would
3 handle a complaint such as this, as well as the
4 regular Consumer Fraud Unit. The Consumer
5 Protection Board is in place to handle
6 complaints and that would take care of a matter
7 that you're suggesting and, of course, the PSC,
8 both of these agencies also have direct contact
9 on an ongoing basis with the PSC. So if this is
10 a problem, then the regulation would be
11 reinstated but in addition to calling these
12 agencies which we have in place to handle
13 consumer complaints, the customer that you
14 outlined could very easily switch to another
15 provider and if they are experiencing a problem
16 -

17 SENATOR ABATE: This is after the
18 damage has been rendered and they're seeking
19 relief, though.

20 SENATOR SEWARD: M-m h-m-m.

21 SENATOR ABATE: If I could, on
22 the bill very briefly.

23 ACTING PRESIDENT MARCELLINO:
24 Senator Abate, on the bill.

25 SENATOR ABATE: In terms of the

1 Attorney General's office, if you eliminate
2 rules and regulations, the responsibility of the
3 Attorney General is to enforce local and state,
4 federal rules and right now, the PSC has joint
5 jurisdiction with the Attorney General on a
6 whole host of issues in telecommunications.

7 We saw recently in the NYNEX-Bell
8 Atlantic merger, everyone was concerned that
9 there be -- competition remain in the state,
10 that with this new merger, we were concerned
11 about whether jobs would stay here, what would
12 happen with service quality, the cost to the
13 consumer. If PSC moved out of that arena, as
14 you're suggesting, with a cellular phone system,
15 the consumers would lose.

16 We're seeing now even with these
17 regulations enormous expansion in the
18 telecommunications market on all levels, whether
19 it's issues of Inter-LATA rates that are going
20 to be looked at and regional rates and long
21 distance, as well as cellular. It is much too
22 early to experiment with total deregulation.

23 A much more sensible route would
24 be to look at individual regulations that no
25 longer make sense to be amended because they're

1 burdensome but to take the PSC out of review
2 altogether on cellular phones would put
3 consumers at risk throughout the state.

4 So I suggest and I hope that you
5 will look to amend this bill, take a middle
6 ground because I believe we need a balanced
7 approach, a balanced approach that protects
8 consumers while allowing a healthy and
9 competitive market in the telecommunications
10 field.

11 ACTING PRESIDENT MARCELLINO: Any
12 other Senator wishing to be heard?

13 (There was no response.)

14 Read the last section.

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

17 ACTING PRESIDENT MARCELLINO:
18 Call the roll.

19 (The Secretary called the roll.)

20 ACTING PRESIDENT MARCELLINO:
21 Record the negatives and announce the results,
22 please.

23 SENATOR STAVISKY: To explain my
24 vote.

25 ACTING PRESIDENT MARCELLINO:

1 Senator Stavisky, to explain his vote.

2 SENATOR STAVISKY: I have a
3 feeling that what I suggested here is a problem
4 has not sunk in. What will happen in the course
5 of a year if there are people who are injured,
6 who are dying because of accidents resulting
7 from the improper use of a cellular phone?

8 I have in my possession in the
9 office an advertisement taken from the cellular
10 phone industry which clearly, clearly shows the
11 dangers. There's a picture of a woman driving a
12 car while using a cellular phone and two
13 children are in the front seat with her where
14 they don't belong, and I think that that
15 exemplifies the wrong direction taken by this
16 legislation which deregulates instead of
17 addressing the problems, the real problem
18 associated with the use of cellular phones.

19 What will happen over the course
20 of this year if nothing is done? No warning
21 label? No warning label? "Do not drive while
22 operating a motor vehicle and using a cellular
23 phone unless there is an emergency." That could
24 be added to the bill and that could begin to
25 address the problem, but I see no effort being

1 made in this legislation except to say that we
2 are deregulating and we will continue to
3 deregulate in the public interest.

4 Now, if a public interest
5 involves the safety and the health of people, I
6 think that is a serious enough consideration.
7 If the research that I've cited is valid -

8 ACTING PRESIDENT MARCELLINO:
9 Senator, your two minutes to explain your vote
10 has expired.

11 SENATOR STAVISKY: I will
12 conclude. If the research I've cited is valid,
13 there will be hundreds and thousands of
14 accidents in New York State caused by the
15 distractions emanating from the use of a
16 cellular phone, and I would not wish to be on
17 the side of ignoring this record of safety or
18 lack of safety without an attempt being made to
19 amend this bill.

20 ACTING PRESIDENT MARCELLINO:
21 Senator, your two minutes is up. Please
22 announce the results.

23 SENATOR STAVISKY: For this
24 reason I'm going to be recorded in the negative.

25 ACTING PRESIDENT MARCELLINO:

1 Senator Stavisky in the negative.

2 SENATOR GOLD: Mr. President.

3 ACTING PRESIDENT MARCELLINO:

4 Senator Gold.

5 SENATOR GOLD: Mr. President,

6 I -

7 ACTING PRESIDENT MARCELLINO: Are
8 you explaining your vote, Senator?

9 SENATOR GOLD: Yes. If you don't
10 mind, Mr. President.

11 ACTING PRESIDENT MARCELLINO: I
12 don't mind.

13 SENATOR GOLD: Mr. President, I
14 respect the sincerity from my colleague from
15 upstate, but I really think this is a mystifying
16 bill.

17 Let me say to you, when you say
18 the complaints are minimum, then the costs are
19 minimum and they can keep it, and while I would
20 be very comfortable with the fact that if there
21 was a complaint made to Attorney General Abate,
22 that she would be sympathetic. The fact is that
23 under this bill, you take away the protections
24 in the Public Service Law, so there's nothing
25 the Attorney General can do.

1 Senator, let me just tell you one
2 very, very quick story. I came home one night a
3 number of years ago, I got my bill, I went
4 upstairs and I said to my wife in front of the
5 children, "Judy, this is the last straw. It's
6 all over. This marriage isn't working." She
7 said, "What are you talking about?" I said,
8 "Take a look at this" and I showed her a
9 cellular bill, which I just called to verify the
10 amount, was \$35,000. Now, for a month that
11 might be a little bit much even in your home,
12 Senator Seward. The point is that obviously it
13 was a fraud situation. Under existing law, I
14 called the company. They were very nice.
15 Things get taken care of.

16 Senator, now with all of the
17 fraud that goes on, they're getting not quite so
18 nice. Now they say, well, I know, we know
19 there's some fraud but why don't you identify
20 this and why don't you identify that.

21 I'm telling you, Senator, if you
22 take away the protections of the Public Service
23 Law, there's still going to be fraud but now how
24 do you enforce your rights? Now they say, Well,
25 okay, maybe fraud was part of it and now you're

1 involved in a whole negotiation.

2 All I'm saying to you is there
3 are problems in this field. The people going
4 into it are decent people. The companies are
5 decent but the concept of taking this mass
6 market and the people involved in it and taking
7 away all controls is going too far too fast and
8 it's wrong.

9 I vote in the negative.

10 ACTING PRESIDENT MARCELLINO:

11 Senator, your two minutes is up. Senator Gold
12 in the negative. Would you please announce the
13 results.

14 THE SECRETARY: Those recorded in
15 the negative on Calendar Number 1459, Senators
16 Abate, Gentile, Gold, Leichter, Onorato,
17 Stavisky and Waldon. Ayes 51, nays 7.

18 ACTING PRESIDENT MARCELLINO: The
19 bill is passed.

20 SENATOR WALDON: Mr. President.

21 ACTING PRESIDENT MARCELLINO:

22 Senator Waldon, why do you rise?

23 SENATOR WALDON: Mr. President, I
24 was away from the chamber on other Senate
25 business when the house considered Calendar 280

1 and 1135. I respectfully request unanimous
2 consent to be recorded in the negative on those
3 two bills.

4 ACTING PRESIDENT MARCELLINO:
5 Without exception, calendar -- Senator Waldon
6 will be recorded in the negative on those two
7 bills.

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

10 ACTING PRESIDENT MARCELLINO:
11 Senator Larkin, what is your pleasure?

12 SENATOR LARKIN: Call up Calendar
13 Number 1455, by Senator Goodman.

14 ACTING PRESIDENT MARCELLINO: The
15 Secretary will please read Calendar Number 1455,
16 by Senator Goodman.

17 THE SECRETARY: Calendar Number
18 1455, by Senator Goodman, Senate Print 5371-A,
19 an act to amend the Real Property Tax Law, in
20 relation to tax exemption.

21 SENATOR LEICHTER: Explanation.

22 ACTING PRESIDENT MARCELLINO:
23 Senator Goodman, an explanation has been
24 requested.

25 SENATOR GOODMAN: May I ask who

1 requested it, Mr. President?

2 ACTING PRESIDENT MARCELLINO: I

3 believe either Senator Leichter -

4 SENATOR GOODMAN: Senator

5 Leichter, all right.

6 Mr. President, this bill would
7 extend the terms of the Section 421 (a) of the
8 Real Property Law by one year. This is, I
9 think, familiar legislation to most of us in the
10 City. It was responsible over the past number
11 of years for the building of 111,000 units with
12 the accommodation of approximately one-third of
13 a million people in new housing accommodations.

14 It is a bill which, as you know,
15 is designed by creating a tax abatement to
16 induce realtors and construction developers to
17 build buildings in the city of New York, which
18 is, of course, a very important part of our
19 city's economy.

20 In the early years of this
21 legislation, the focal point of this was high
22 rise luxury building, but over time the
23 legislation was altered to make it clear that
24 this was not to be done within the so-called
25 luxury band from 96th Street to 14th Street on

1 the East Side of Manhattan and that became a
2 geographic exclusion area. So that 421 (a)
3 scope is outside of that area and it will
4 encourage construction in both the outer
5 boroughs and parts of Manhattan that do not
6 focus upon luxury housing.

7 May I say that, in the event that
8 the housing is constructed under this law, that
9 a provision is made, developers must finance the
10 construction of off-site affordable units equal
11 to 20 percent of the units in the projects in
12 order to obtain a ten-year 421 (a) benefit. In
13 the non-excluded areas, ten-year benefits are
14 available as of right.

15 SENATOR LEICHTER: Mr. President,
16 if Senator Goodman would yield, please.

17 SENATOR GOODMAN: Yes, I will.

18 ACTING PRESIDENT MARCELLINO: The
19 Senator yields to a question.

20 SENATOR GOODMAN: Incidentally,
21 this is a City program bill.

22 SENATOR LEICHTER: Senator, you
23 mention the fact that initially this program
24 really just led to the construction of luxury
25 housing. Presently, as I understand it, to be

1 entitled to take this 421 (a) benefit, the tax
2 abatement exemption, you need to at least
3 provide 20 percent low income housing.

4 SENATOR GOODMAN: In the excluded
5 zone, that's correct.

6 SENATOR LEICHTER: Within the
7 excluded zone, but there's nothing in your bill
8 that provides for that. Is that under the city
9 law?

10 SENATOR GOODMAN: Well, let's see
11 if I can give you a direct response to that. I
12 know it's the law, but I can't tell you where
13 it's codified.

14 SENATOR LEICHTER: I do believe
15 that that is the provision of the City
16 Administrative Code and it might make a lot of
17 sense to also embody this in the state
18 legislation, but there's another aspect that I'm
19 concerned about. I want to ask you if you'll
20 continue to yield, Senator.

21 SENATOR GOODMAN: Yes, I will.

22 ACTING PRESIDENT MARCELLINO:
23 Senator Goodman continues to yield.

24 SENATOR LEICHTER: While I
25 applaud the fact that we restricted the use of

1 421 (a), my impression is -- and I don't have
2 the figures; this is an impression -- that we're
3 still seeing a great deal of construction,
4 mainly in Manhattan, parts of your district,
5 parts of my district, where really there is no
6 need to subsidize or to spur on the construction
7 of new housing and that, if you take a look at
8 the construction in the other boroughs, you take
9 a look at the construction in northern
10 Manhattan, Lower East Side, there's relatively
11 little of that going on, and my concern is that
12 this is still, in large part, a program that
13 seems to be directed at the construction of,
14 even the subsidizing of luxury housing.

15 SENATOR GOODMAN: Senator, as you
16 know, this very problem was what prompted the
17 bill's modification to the 20 percent provision
18 and it's my judgment that this creates a well
19 balanced series of incentives and benefits to
20 the public-at-large when one-fifth of all of the
21 housing constructed within the restricted zone
22 will be devoted to moderate income housing.

23 It seems to me this is a very
24 constructive total package. It's one which has
25 in a period of housing shortage with which we're

1 very familiar and which was amply discussed on
2 the night of the rent discussions here in this
3 chamber. This is good legislation because it
4 provides a very muscular incentive in the form
5 of a tax abatement for the purpose of building
6 buildings and incidentally provide stabilization
7 during the period of that abatement, as you
8 know.

9 So that this is, I think, well
10 proportioned and I guess honest men will differ
11 as to the precise ways in which it might be
12 done, but I think it's in good balance and I
13 would not only encourage this but I think other
14 similar legislation is now called for to try to
15 alleviate the housing shortage.

16 SENATOR LEICHTER: Mr. President,
17 just very briefly on the bill.

18 I think Senator Goodman is
19 correct when he says that the program has been
20 improved. I'm not sure it's been improved
21 sufficiently. I'm going to support it because I
22 think it is important for parts of the City,
23 Senator, but I'm concerned, for instance, in my
24 district where a very large, primarily luxury
25 housing development is under way. This is

1 Donald Trump's Riverside South, is going to have
2 some of the most expensive housing in the world,
3 maybe outside of Hong Kong and maybe even more
4 expensive than Hong Kong, yet that program may
5 very well be entitled to this 421 (a) housing
6 subsidy, and that's really the problem.

7 Well-intentioned as the program
8 is and carefully crafted as Senator Goodman,
9 city officials have sought to limit the program
10 so that it would be mainly available for the
11 construction of affordable housing, it's still
12 used in large measure to build luxury housing,
13 and I think we've got to ask ourselves whether
14 we're in a position and whether we want to
15 subsidize what is going to be primarily luxury
16 housing.

17 So I would like to see further
18 restrictions written in the program to direct
19 this money where it's needed, affordable
20 housing, not luxury housing, and I hope that
21 maybe in the City Council we can achieve some of
22 those changes.

23 Thank you.

24 ACTING PRESIDENT MARCELLINO:

25 Read the last section, please.

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

3 ACTING PRESIDENT MARCELLINO:
4 Call the roll.

5 (The Secretary called the roll.)

6 THE SECRETARY: Ayes 58.

7 ACTING PRESIDENT MARCELLINO: The
8 bill is passed.

9 Can we call up -

10 SENATOR LARKIN: 1457.

11 ACTING PRESIDENT MARCELLINO: -
12 Calendar Number 1457, Senator Cook's bill,
13 please.

14 THE SECRETARY: Calendar Number
15 1457, by Senator Cook, Senate Print 5413, an act
16 to amend the Public Health Law.

17 ACTING PRESIDENT MARCELLINO:
18 Read the last section.

19 THE SECRETARY: Section 2. This
20 act shall take effect on the same date as a
21 chapter of the laws of 1997.

22 ACTING PRESIDENT MARCELLINO:
23 Call the roll.

24 (The Secretary called the roll.)

25 THE SECRETARY: Ayes 58.

1 ACTING PRESIDENT MARCELLINO: The
2 bill is passed.

3 Senator Paterson.

4 SENATOR PATERSON: Mr. President,
5 with unanimous consent, I'd like to be recorded
6 in the negative on Calendar Number 459 -- 1459.
7 Sorry.

8 ACTING PRESIDENT MARCELLINO: The
9 record will show Senator Paterson will be
10 recorded in the negative on Calendar Number
11 1459.

12 SENATOR SPANO: Mr. President.

13 ACTING PRESIDENT MARCELLINO:
14 Senator Spano, why do you rise?

15 SENATOR SPANO: Can I be recorded
16 in the negative on Calendar 1457, please.

17 ACTING PRESIDENT MARCELLINO:
18 Senator Spano will be recorded in the negative
19 on Calendar Number 1457.

20 Senator Stachowski.

21 SENATOR STACHOWSKI: Mr.
22 President, can I have unanimous consent to be
23 recorded in the negative on Calendar Number
24 1459.

25 ACTING PRESIDENT MARCELLINO:

1 Senator Stachowski will be recorded in the
2 negative on Calendar Number 1459.

3 Senator Larkin, what's your
4 pleasure?

5 SENATOR LARKIN: Calendar 1462,
6 by Senator Kuhl, please.

7 ACTING PRESIDENT MARCELLINO: The
8 Secretary will read Calendar Number 1462, by
9 Senator Kuhl.

10 THE SECRETARY: Calendar Number
11 1462, by Senator Kuhl, Senate Print 5524, an act
12 to amend the Alcoholic Beverage Control Law.

13 ACTING PRESIDENT MARCELLINO:
14 Read the last section.

15 THE SECRETARY: Section 5. This
16 act shall take effect in 30 days.

17 ACTING PRESIDENT MARCELLINO:
18 Call the roll.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes 58.

21 ACTING PRESIDENT MARCELLINO: The
22 bill is passed.

23 SENATOR OPPENHEIMER: Mr.
24 President.

25 ACTING PRESIDENT MARCELLINO:

1 Senator Oppenheimer, why do you rise?

2 SENATOR OPPENHEIMER: I would
3 appreciate unanimous consent to be recorded in
4 the negative on 1459.

5 ACTING PRESIDENT MARCELLINO:
6 Senator Oppenheimer will be recorded in the
7 negative on Calendar Number 1459.

8 Senator Larkin.

9 SENATOR LARKIN: Mr. President,
10 could we return to motions and resolutions for
11 one item. I believe you have a privileged
12 resolution at the desk. Please read the title.

13 ACTING PRESIDENT MARCELLINO: The
14 Secretary will read the title to the privileged
15 resolution.

16 THE SECRETARY: By Senator
17 Leibell, Legislative Resolution commending Dr.
18 Mark Levy upon the occasion of his 30
19 distinguished years as an educator with the
20 Mohonk Central School District.

21 ACTING PRESIDENT MARCELLINO: The
22 motion is on the resolution. All in favor
23 signify by saying aye.

24 (Response of "Aye".)

25 Opposed, nay.

1 (There was no response.)

2 The resolution is passed.

3 Senator Larkin.

4 SENATOR LARKIN: Mr. President,
5 can we now go on Calendar 59-B, page 1, Senator
6 Volker's bill, Calendar Number 1441, Senate
7 Print 2092.

8 ACTING PRESIDENT MARCELLINO: The
9 Secretary will read Calendar Number 1441,
10 please.

11 SENATOR ABATE: Explanation.

12 ACTING PRESIDENT MARCELLINO:
13 Explanation has been asked for, Senator -- I'm
14 sorry. Let the Senator -- let the Secretary
15 read the -

16 THE SECRETARY: Calendar Number
17 1441, by Senator Volker, Senate Print 2092, an
18 act to amend the Civil Practice Law and Rules.

19 ACTING PRESIDENT MARCELLINO:
20 Senator Volker, an explanation has been
21 requested.

22 SENATOR VOLKER: Mr. President,
23 we go from sexual predators to certificate of
24 merit. Well, at any rate, this is a bill that
25 has passed this house before, by the way, at

1 least once and possibly twice, which relates to
2 extending the certificate of merit in actions
3 for negligence or malpractice against architects
4 who are professional engineers.

5 Presently, this doctrine is used
6 in relation to medical, dental and podiatric
7 malpractice suits and what this bill would do
8 would be to extend that concept to architects
9 and professional engineers.

10 Now, the process would be that,
11 in such an action, the person who made the
12 complaint would have to involve an architect or
13 professional engineer and accompany it with a
14 certificate of merit from an attorney showing
15 that at least one architect or professional
16 engineer has been consulted and the attorney has
17 concluded there is a reasonable basis for the
18 action and, Senator, now that we're here, we
19 can -

20 SENATOR PATERSON: Now that I'm
21 here, we can debate it.

22 Mr. President, if Senator Volker
23 would -

24 ACTING PRESIDENT MARCELLINO:
25 Senator, you have a question of Senator Volker?

1 SENATOR PATERSON: Would Senator
2 Volker yield for a question?

3 ACTING PRESIDENT MARCELLINO:
4 Senator Volker, do you yield to a question?

5 SENATOR PATERSON: Thank you,
6 Senator Volker. Why don't you hang around while
7 I think of one.

8 Senator, this section 3012 (a) of
9 the Civil Practice Law and Rules was enacted in
10 1986 really in a special situation involving
11 physicians, podiatrists, medical professionals
12 who very much needed this legislation because of
13 the crisis at that time in the area of medical
14 malpractice.

15 Do you think that the architects
16 and engineers have any basis to make a -- to be
17 trying to have this Legislature act on a
18 comparable statute when it appears that there
19 isn't really any relevant data at all that they
20 have been the victims of excessive lawsuits?

21 SENATOR VOLKER: Senator, and you
22 and I, I believe were here in 1986 and it was a
23 crisis. There's no question about it at that
24 time. It was a severe crisis and, Senator, you
25 were here also, but I think there is a crisis in

1 the area of architects and professional
2 engineers and the crisis is, in fact, pervading
3 through so much of the areas of construction and
4 various areas that, in effect, rely on the fact
5 that insurance premiums are such an integral
6 part of the life blood of these different
7 organizations.

8 The lawsuits against such
9 organizations as architects and engineers have
10 been escalating dramatically over the years and
11 not that the judgments against these people have
12 necessarily been so much higher because the
13 judgments probably have been lessened except
14 that in certain specific cases these people end
15 up sharing in some of the judges -- judgments,
16 maybe on a questionable basis, but the problem
17 is that the numbers of lawsuits, the exposure of
18 the insurance companies -- because the real
19 problem that I don't think is understood is that
20 a great deal of the problem that we have with
21 costs in our society relates to exposure and
22 that is the fact that you have to purchase
23 extremely high priced insurance that relates to
24 consumer costs. It's a major reason why
25 building costs have gone up dramatically.

1 So I think what we're trying to
2 do here is develop a better process, frankly, so
3 that we can do construction in a much more
4 cheaper way and a better way. I think there is
5 a crisis, I think, in regards to architects and
6 engineers, and I think we're trying to deal with
7 that here.

8 SENATOR PATERSON: One other
9 question, if the Senator would yield.

10 SENATOR VOLKER: Certainly.

11 ACTING PRESIDENT MARCELLINO: The
12 Senator yields for another question.

13 SENATOR PATERSON: Senator, just
14 the issue of establishing the information that
15 would be requisite to bringing a suit, it would
16 appear to me that there's a greater encumbrance
17 that would be set upon the counsel for the
18 plaintiff in an action -- counsel really for one
19 who is being -- the plaintiff who is trying to
20 bring an action in a situation such as exists in
21 this bill, as opposed to medical malpractice.

22 In medical malpractice, it's not
23 very difficult to get the medical records to
24 consult with the other physicians that worked on
25 the case. They all work in hospitals. There's

1 a regular network of people who work in the
2 health care industry that can be accessed. The
3 medical records are pretty straightforward.
4 They might be difficult for you and I to read
5 but not for people who are actually in the
6 industry, whereas the counsel for the plaintiff
7 in an action where perhaps a building has fallen
8 and has caused someone an injury is going to
9 have a devil of a time trying to compile the
10 evidence for discovery because you have not only
11 the architect but the subcontractors and other
12 companies that may have participated in the
13 structure of the building. You don't know that
14 the architect's plans were followed correctly.
15 There is a lot of interaction between those
16 different elements of the construction of the
17 building that may have gone wrong and it's going
18 to be very hard to pin an action on anyone.

19 So to pass legislation in this
20 regard where they would be able to have the
21 certificate of merit as is proposed, in my
22 opinion, creates almost a shield that would
23 almost make it impossible for a plaintiff to
24 successfully gain relief.

25 SENATOR VOLKER: Senator, I don't

1 agree with that. I think it -- I'm not saying
2 that it might not be a little bit more difficult
3 than it would be in the area of medical
4 malpractice, but that's why -- one of the
5 reasons that we put in Section 2 of this bill,
6 by the way, that the attorney was unable to
7 obtain the consultation required and that, in
8 effect, gives some out to the attorney, but let
9 me point out to you that it's true, I guess,
10 that this would make it a little more
11 difficult.

12 What it really means is that you
13 have to have some proof and some real solid
14 proof in these cases against these architects
15 and engineers rather than just including them in
16 a suit that may have absolutely nothing to do
17 with them but because they were there and
18 because they had something -- just a peripheral
19 connection, they end up in a situation where
20 they have to defend -- their insurance company
21 has to defend and the attorneys that represent
22 them have to defend and the cost to the people
23 soars.

24 I think that there are enough
25 architects and engineers around, to tell you the

1 truth, who can advise in these kinds of
2 situations. So that I think it's much more
3 practical probably than it was even a few years
4 ago when we first started talking about this
5 bill, and I think the ability is there to do
6 it. I would agree with you that it's a little
7 more difficult maybe than it would be in
8 malpractice against doctors, and so forth.

9 SENATOR PATERSON: Thank you, Mr.
10 President.

11 On the bill.

12 ACTING PRESIDENT MARCELLINO:
13 Senator Paterson, on the bill.

14 SENATOR PATERSON: I'm somewhat
15 satisfied that there probably are engineers and
16 architects that could come in and render a
17 degree with -- a certain degree of professional
18 certitude what -- certainty what the actual
19 result may have been and would be able to give
20 good guidance on who may have been at fault in
21 the case of a collapsed building.

22 However, it would seem to me,
23 going back to my first question, that a decade
24 ago we came together to put in this new section
25 in the Civil Practice Law and Rules, 3012 (a) in

1 what was a highly special circumstance, one that
2 was very well known. It was documented. There
3 was a great degree of loss and suffering by
4 physicians and others in the medical
5 professional world and we gave them some relief.

6 What I think really has occurred
7 here is that you have a second group of
8 professionals who are now seeking the same
9 relief but don't really have the same problem
10 and one wonders where this will end? Will we
11 now have attorneys and perhaps accountants,
12 psychologists, teachers, anybody that feels that
13 their profession has come under great scrutiny
14 will now be running to the umbrella of Section
15 3012 (a) to try to get protection when, in fact,
16 the plaintiffs are put in these situations, I
17 would much prefer that there be a joint and
18 several liability where the contributors to the
19 erect -- erecting of the building might be held
20 responsible and let them work it out whose fault
21 it is between each other, but where you have an
22 injured party and they seek relief and it's
23 clear that it wasn't caused through any action
24 of the plaintiff, I think the action, in this
25 case, the legislation proposal should be denied

1 and that we continue to reserve the CPLR section
2 that we put in a decade ago for the cases that
3 are totally clear and very special, such as what
4 we did for physicians and podiatrists and other
5 medical professionals.

6 ACTING PRESIDENT MARCELLINO:

7 Read the last section, please.

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

11 ACTING PRESIDENT MARCELLINO:

12 Call the roll.

13 (The Secretary called the roll.)

14 ACTING PRESIDENT MARCELLINO:

15 Senator DeFrancisco, do you rise to explain your
16 vote?

17 SENATOR DeFRANCISCO: I do. I
18 vote no on this proposal, for several reasons.

19 First of all, there is -- we do
20 have it for doctors and podiatrists and dental
21 people and it's really a needless step because
22 if you have a lawsuit that's a legitimate
23 lawsuit, you certainly are going to get a doctor
24 to say it's a legitimate lawsuit. There's
25 doctors out there that will review a file to do

1 that. The same thing with dentists and
2 podiatrists. It's a needless expense, a
3 needless step in the judicial process.

4 Secondly, to give a special
5 category to one profession or another profession
6 sets the law on its head. Everyone should be
7 treated the same way if they're negligent no
8 matter what profession or if they're a
9 professional or not.

10 So for both reasons, I think this
11 bill is ill-advised and I vote no.

12 ACTING PRESIDENT MARCELLINO:
13 Count the negatives and announce the results,
14 please.

15 THE SECRETARY: Those recorded in
16 the negative on Calendar Number 1441 are
17 Senators Abate, Connor, DeFrancisco, Gold,
18 Leichter, Paterson and Stavisky. Ayes 51, nays
19 7.

20 ACTING PRESIDENT MARCELLINO: The
21 bill is passed.

22 Senator LaValle, why do you
23 rise?

24 SENATOR LAVALLE: Mr. President,
25 may I have unanimous consent to be recorded in

1 the negative on Calendar Number 1459, please.

2 ACTING PRESIDENT MARCELLINO:
3 Senator LaValle, you will be counted in the
4 negative on Calendar 1459.

5 SENATOR LAVALLE: Thank you.

6 ACTING PRESIDENT MARCELLINO:
7 Senator Larkin, what is your pleasure, sir?

8 SENATOR LARKIN: Would you now
9 call Calendar 223 on the regular calendar.

10 ACTING PRESIDENT MARCELLINO: Say
11 it again, Senator. I didn't hear the number.

12 Calendar Number 223, please read.

13 THE SECRETARY: Calendar Number
14 223, by Senator Skelos, Senate Print 476-B, an
15 act to amend the Business Corporation Law, in
16 relation to corporate finance.

17 ACTING PRESIDENT MARCELLINO:
18 Read the last section.

19 THE SECRETARY: Section -

20 SENATOR LEICHTER: Explanation.
21 What calendar number is that again?

22 ACTING PRESIDENT MARCELLINO:
23 Calendar Number 223. It was on the original
24 schedule. It was not taken up earlier.

25 SENATOR LEICHTER: Mr. President,

1 I have been told this bill is coming up, but I
2 don't see it on the calendar.

3 ACTING PRESIDENT MARCELLINO: It
4 was a bill that was starred previously. The
5 star was removed earlier today.

6 SENATOR LEICHTER: The bill was
7 -- I thought there was a one-day notice
8 requirement before a star could be removed.

9 Mr. President, let me raise a
10 point of order whether this bill is properly
11 before us.

12 ACTING PRESIDENT MARCELLINO: If
13 we can just hold a second, we may have an answer
14 for you.

15 Can we lay this bill aside
16 temporarily.

17 SENATOR LARKIN: Lay it aside
18 temporarily.

19 ACTING PRESIDENT MARCELLINO:
20 Thank you, Senator.

21 Senator Larkin, that -

22 SENATOR LARKIN: Is there any
23 housekeeping?

24 ACTING PRESIDENT MARCELLINO: No,
25 Senator. We don't have any housekeeping.

1 SENATOR LARKIN: Let's stand at
2 ease.

3 ACTING PRESIDENT MARCELLINO: At
4 ease.

5 (Whereupon, the Senate stood at
6 ease from 5:25 p.m. until 5:36 p.m.)

7 ACTING PRESIDENT KUHL: Senate
8 will come to order, please. Members take their
9 places.

10 SENATOR BRUNO: Mr. President,
11 can we at this time take up Calendar Number 223,
12 by Senator Skelos.

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

15 THE SECRETARY: Calendar Number
16 223, by Senator Skelos, Senate Print 476-B, an
17 act to amend the Business Corporation Law.

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

20 THE SECRETARY: Section 71. This
21 act shall take effect on the 180th day.

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

24 SENATOR LEICHTER: Mr. President,
25 I will explain my vote. Is this Calendar 223?

1 ACTING PRESIDENT KUHL: This is
2 Calendar Number 223.

3 SENATOR LEICHTER: 223. Mr.
4 President -

5 ACTING PRESIDENT KUHL: You want
6 to explain you vote, Senator?

7 SENATOR LEICHTER: I would like
8 to explain my vote.

9 ACTING PRESIDENT KUHL: Let me
10 get to the roll call first, if you would.

11 The Secretary will call the
12 roll.

13 (The Secretary called the roll.)

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

16 SENATOR LEICHTER: All right.
17 Mr. President, last year we debated a similar
18 bill at quite some time. This bill has some
19 revisions and some of the objectionable features
20 that some of us found in the bill regarding
21 eliminating the liability of directors and
22 shareholders for the wages of corporations, as I
23 understand, has been taken out of the bill.

24 There were also objections that
25 some of us raised about the authority that was

1 given directors to make loans to other
2 directors. That power has somehow been
3 circumscribed but there's still a way in which
4 directors can make loans and provide loans to
5 other directors.

6 It seems to me one of the big
7 issues in corporations is to provide for more
8 openness, for more democratic procedures within
9 the corporation and to cut down on the golden
10 parachutes, the enormous payouts, all of the
11 many ways in which shareholders are being denied
12 their rights.

13 This bill, I feel, goes in the
14 opposite direction. It does not provide for
15 greater shareholder democracy or greater
16 fiduciary responsibility on the part of
17 directors. I think it allows directors and
18 principal shareholders to deal with a
19 corporation pretty much as if it was exclusively
20 and solely their own rather than a business
21 entity that had responsibility to all of its
22 owners and for that reason, Mr. President, I
23 vote in the negative.

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

1 Announce the results.

2 THE SECRETARY: Ayes 57, nays 1,
3 Senator Leichter recorded in the negative.

4 ACTING PRESIDENT KUHL: The bill
5 is passed.

6 Senator Bruno.

7 SENATOR BRUNO: Mr. President, we
8 are at this time printing the emergency
9 appropriation bill to extend the budget for a
10 week and it appears that it's going to take, oh,
11 at least an hour. So since everyone has been
12 working so hard, it would appear to be prudent
13 and make sense for us to stand at ease until
14 7:00 o'clock and -- 7:00 o'clock sharp, and I
15 know that that limits the opportunity to have an
16 extended dinner but what we're trying to
17 accomplish, Mr. President, is to get what we can
18 get done tonight which would allow us to leave
19 and not be back tomorrow and not be back Monday,
20 hopefully, if we can get the bills done that we
21 have to be dealing with and then come back
22 Tuesday.

23 So if we're here at 7:00, I would
24 hope that we will have the agenda to complete
25 within the following hour or two, okay? Do you

1 hear any objections, Mr. President? I don't
2 hear any.

3 ACTING PRESIDENT KUHL: The
4 Senate will stand at ease until 7:00 p.m.
5 sharp.

6 (Whereupon, the Senate stood at
7 ease from 5:40 p.m. until 7:15 p.m.)

8 ACTING PRESIDENT KUHL: The
9 Senate will come to order.

10 SENATOR BRUNO: Can we at this
11 time take up Calendar Number 507.

12 ACTING PRESIDENT KUHL: Secretary
13 will read Calendar Number 507.

14 THE SECRETARY: Calendar number
15 507, by Senator Leibell, Senate Print 3580-A, an
16 act to amend the Private Housing Finance Law.

17 SENATOR SAMPSON: Explanation.

18 SENATOR BRUNO: Lay it aside.

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

21 Senator Skelos, or excuse me,
22 Senator Bruno.

23 SENATOR BRUNO: Mr. President, at
24 this time can we take up Calendar Number 899.

25 ACTING PRESIDENT KUHL: Secretary

1 will read Calendar Number 899.

2 THE SECRETARY: Calendar Number
3 899, by the Committee on Rules, Senate Print
4 4314-B, an act to amend the Tax Law, in relation
5 to extending -

6 ACTING PRESIDENT KUHL: There is
7 a home rule -- excuse me, Senator Bruno. The
8 bill is high, but there is a message at the
9 desk. Would you like to move to accept the
10 message?

11 ACTING PRESIDENT KUHL: Motion is
12 to accept the message of necessity on Calendar
13 Number 899, which is at the desk. All those in
14 favor signify by saying aye.

15 (Response of "Aye.")

16 Opposed nay.

17 (There was no response.)

18 The message is accepted.

19 Senator Skelos, an explanation
20 has been requested of Calendar Number 899.

21 SENATOR SKELOS: Mr. President,
22 this legislation would amend the Tax Law in
23 relation to extending the authority of the
24 county of Nassau to impose additional sales and
25 compensating use taxes, extending the local

1 government assistance program to towns and
2 cities, further authorize the establishment of a
3 local government assistance program for the
4 villages in the county.

5 ACTING PRESIDENT KUHL: Senator
6 Sampson. Explanation satisfactory. Secretary
7 will read the last section.

8 THE SECRETARY: Section 3. This
9 act shall take effect January 1st, 1998.

10 SENATOR SAMPSON: Slow roll call.

11 ACTING PRESIDENT KUHL: Slow roll
12 call has been requested. Are there five
13 Senators in the chamber requesting? Would they
14 stand? I don't see five. Slow roll call is not
15 honored.

16 Secretary will read the last
17 section, or the roll call.

18 (The Secretary called the roll.)

19 THE SECRETARY: Ayes 58.

20 ACTING PRESIDENT KUHL: The bill
21 is passed.

22 Secretary will read Calendar
23 Number -

24 THE SECRETARY: Ayes 57, nays
25 one, Senator Gentile recorded in the negative.

1 ACTING PRESIDENT KUHL: The bill
2 is passed.

3 Senator Bruno. Senator Bruno,
4 what's your pleasure?

5 SENATOR BRUNO: Mr. President,
6 can we at this time take up Senator -- Senate
7 Calendar Number 1425, by Senator Montgomery.

8 ACTING PRESIDENT KUHL: Secretary
9 will read the title.

10 THE SECRETARY: Calendar Number
11 1425, by Senator Montgomery, Senate Print 2574,
12 an act authorizing the city of New York to
13 reconvey.

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

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

19 ACTING PRESIDENT KUHL: Call the
20 roll.

21 (The Secretary called the roll.)

22 THE SECRETARY: Ayes 58.

23 ACTING PRESIDENT KUHL: The bill
24 is passed.

25 Senator Bruno.

1 SENATOR BRUNO: Mr. President,
2 can we at this time take up Calendar Number
3 1389, by Senator Levy.

4 ACTING PRESIDENT KUHL: Secretary
5 will read.

6 THE SECRETARY: Calendar Number
7 1389, by Senator Levy, Senate Print 5566-A, an
8 act to authorize the incorporated village of
9 Freeport.

10 ACTING PRESIDENT KUHL: Senator
11 Bruno.

12 SENATOR BRUNO: Is there a
13 message at the desk, Mr. President?

14 ACTING PRESIDENT KUHL: There is.

15 SENATOR BRUNO: Move we accept
16 the message.

17 ACTING PRESIDENT KUHL: The
18 motion is to accept the message of necessity on
19 Calendar Number 1389 by Senator Levy. All those
20 in favor signify by saying aye.

21 (Response of "Aye.")

22 Opposed nay.

23 (There was no response.)

24 The message is accepted.

25 There is a home rule request at

1 the desk. The Secretary will read the last
2 section.

3 THE SECRETARY: Section 8. This
4 act shall take effect immediately.

5 ACTING PRESIDENT KUHL: Call the
6 roll.

7 (The Secretary called the roll.)

8 THE SECRETARY: Ayes 58.

9 ACTING PRESIDENT KUHL: The bill
10 is passed.

11 Senator Bruno.

12 SENATOR BRUNO: Mr. President,
13 can we at this time take up Calendar Number 752,
14 Senator Padavan's bill sorry, it's 1252.

15 SENATOR HOFFMANN: What calendar
16 number?

17 ACTING PRESIDENT KUHL: Calendar
18 1252, Senator Bruno? It's on the regular
19 calendar, regular calendar of the day, Calendar
20 Number 59, I believe it is. Calendar Number
21 1252, by Senator Padavan. I'll ask the
22 Secretary to read.

23 THE SECRETARY: Calendar Number
24 1252, by Senator Padavan, Senate Print 5359-A,
25 an act to amend the Tax Law and the

1 Administrative Code of the city of New York.

2 SENATOR PATERSON: Explanation.

3 ACTING PRESIDENT KUHL: Senator
4 Bruno.

5 SENATOR BRUNO: Is there a
6 message at the desk, Mr. President?

7 ACTING PRESIDENT KUHL: There is,
8 Senator Bruno.

9 SENATOR BRUNO: Move we accept
10 the message.

11 ACTING PRESIDENT KUHL: The
12 motion is to accept the message of necessity on
13 Calendar Number 1292 by Senator Padavan -- All
14 those in -- excuse me, 1252 by Senator Padavan.
15 All those in favor signify by saying aye.

16 (Response of "Aye.")

17 Opposed nay.

18 (There was no response.)

19 The message is accepted. The
20 bill is before the house. An explanation has
21 been requested.

22 Senator Padavan.

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

25 This bill comes to us at the

1 request of the city of New York and their memo
2 gives a more succinct and direct explanation.
3 I'll read that part of it.

4 It says: This bill is designed
5 to provide relief from the City real property
6 transfer tax in cases in which a residence
7 subject to a pre-existing mortgage or lien is
8 transferred and the transferee takes subject to
9 or assumes that mortgage or lien.

10 Now, under the current law, the
11 taxable consideration for the transfer includes
12 the amount of the mortgage or the lien which is
13 really unfair and certainly a penalty to the new
14 buyer, so by passing this bill, it would bring
15 the City transfer tax into conformity with the
16 New York State transfer tax which has an
17 exclusion that's now allowed for continuing
18 liens.

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

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

23 ACTING PRESIDENT KUHL: Call the
24 roll.

25 (The Secretary called the roll.)

1 THE SECRETARY: Ayes 58.

2 ACTING PRESIDENT KUHL: The bill
3 is passed.

4 SENATOR SAMPSON: Mr. President.

5 ACTING PRESIDENT KUHL: Senator
6 Skelos.

7 SENATOR SKELOS: Please take
8 Calendar Number 792 by Senator -

9 ACTING PRESIDENT KUHL: Secretary
10 will read Calendar Number 792.

11 THE SECRETARY: Calendar Number
12 792, by Senator Trunzo, Senate Print 5237-A, an
13 act to provide for adjustment of stipends.

14 ACTING PRESIDENT KUHL: Senator
15 Skelos.

16 SENATOR SKELOS: Is there a
17 message at the desk?

18 ACTING PRESIDENT KUHL: There is
19 a message of appropriation at the desk on
20 Calendar Number 792.

21 SENATOR SKELOS: Move to accept.

22 ACTING PRESIDENT KUHL: Motion is
23 to accept the message. All those in favor
24 signify by saying aye.

25 (Response of "Aye.")

1 Opposed nay.
2 (There was no response.)
3 The message of appropriation is
4 accepted.
5 Secretary will read the last
6 section.
7 THE SECRETARY: Section 8. This
8 bill shall take effect immediately.
9 ACTING PRESIDENT KUHL: Call the
10 roll.
11 (The Secretary called the roll.)
12 ACTING PRESIDENT KUHL: The bill
13 is passed.
14 SENATOR SAMPSON: Mr. President.
15 ACTING PRESIDENT KUHL: Senator
16 Sampson, why do you rise?
17 SENATOR SAMPSON: I would like
18 unanimous consent to be recorded in the negative
19 on Calendar Number 855.
20 SENATOR KUHL: Without objection,
21 Senator Sampson will be recorded in the negative
22 on Calendar Number 855 passed earlier today.
23 Senator Skelos.
24 SENATOR SKELOS: Could you call
25 up Calendar Number 1442, by Senator Montgomery.

1 ACTING PRESIDENT KUHL: Secretary
2 will read the title to Calendar Number 1442, by
3 Senator Montgomery.

4 THE SECRETARY: Calendar Number
5 1442, by Senator Montgomery, Senate Print 2576,
6 an act authorizing the city of New York to
7 reconvey.

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

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

13 ACTING PRESIDENT KUHL: Call the
14 roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes 58.

17 ACTING PRESIDENT KUHL: The bill
18 is passed.

19 Senator Skelos.

20 SENATOR SKELOS: Please call up
21 Calendar Number 495, by Senator Hannon.

22 ACTING PRESIDENT KUHL: Secretary
23 will read the title to Calendar Number 495.

24 THE SECRETARY: Calendar Number
25 495, by Senator Hannon, Senate Print 3000-C, an

1 act to enact the Cancer Research Improvement Act
2 of 1997.

3 ACTING PRESIDENT KUHL: Senator
4 Skelos.

5 SENATOR SKELOS: Is there a
6 message at the desk?

7 ACTING PRESIDENT KUHL: There is
8 a message of necessity at the desk.

9 SENATOR SKELOS: Move we accept.

10 ACTING PRESIDENT KUHL: The
11 motion is to accept the message of necessity on
12 Calendar 495. All those in favor signify by
13 saying aye.

14 (Response of "Aye.")

15 Opposed nay.

16 (There was no response.)

17 The message is accepted.

18 Secretary will read the last section.

19 Secretary will read the last
20 section.

21 SENATOR SKELOS: Mr. President,
22 could you lay that aside temporarily.

23 ACTING PRESIDENT KUHL: We'll lay
24 aside Calendar Number 5 -- excuse me, 495, by
25 Senator Hannon, temporarily, Senator Skelos.

1 SENATOR SKELOS: And I'd ask the
2 members to please assemble so that we can
3 complete in an orderly and reasonably early
4 fashion.

5 Next would you call up Calendar
6 Number 507, by Senator Leibell.

7 ACTING PRESIDENT KUHL: Secretary
8 will read the title.

9 THE SECRETARY: Calendar Number
10 507, by Senator Leibell, Senate Print 3580-A, an
11 act to amend the Private Housing Finance Law.

12 ACTING PRESIDENT KUHL: Senator
13 Skelos.

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

16 ACTING PRESIDENT KUHL: There
17 is.

18 SENATOR SKELOS: Move to accept.

19 ACTING PRESIDENT KUHL: Motion is
20 to accept the message of necessity on Calendar
21 Number 507, by Senator Leibell. All those in
22 favor signify by saying aye.

23 (Response of "Aye.")

24 Opposed nay.

25 (There was no response.)

1 The message is accepted.

2 Secretary will read the last section.

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

5 ACTING PRESIDENT KUHL: Call the
6 roll.

7 (The Secretary called the roll.)

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

10 THE SECRETARY: Ayes 57, nays
11 one, Senator Leichter recorded in the negative.

12 ACTING PRESIDENT KUHL: The bill
13 is passed.

14 Senator Seabrook, why do you
15 rise?

16 SENATOR SEABROOK: Yes, Mr.
17 President. I'd like to have unanimous consent
18 to be recorded in the negative on Calendar
19 Number 855.

20 ACTING PRESIDENT KUHL: Without
21 objection, hearing no objection, Senator
22 Seabrook will be recorded in the negative on
23 Calendar Number 855.

24 Senator Skelos.

25 SENATOR SKELOS: Mr. President,

1 would you call up Calendar Number 1409, by
2 Senator Stachowski.

3 ACTING PRESIDENT KUHL: Secretary
4 will read the title of Calendar Number 1409, by
5 Senator Stachowski.

6 THE SECRETARY: Calendar Number
7 1409, by Senator Stachowski, Senate Print 5297,
8 an act to permit the reopening of the
9 twenty-year retirement plan for Thomas W.
10 Schultz.

11 ACTING PRESIDENT KUHL: There is
12 a home rule message at the desk or a facsimile
13 thereof. Secretary will read the last section.

14 (The Secretary called the roll.)

15 THE SECRETARY: Ayes 58.

16 ACTING PRESIDENT KUHL: The bill
17 is passed.

18 SENATOR SKELOS: Would you call
19 up Calendar Number 495, by Senator Hannon.

20 ACTING PRESIDENT KUHL: Secretary
21 will read the title of Calendar Number 495.

22 THE SECRETARY: Calendar Number
23 495, by Senator Hannon, Senate Print 3000-C, an
24 act to enact the Cancer Research Improvement Act
25 of 1997.

1 ACTING PRESIDENT KUHL: Senator
2 Skelos.

3 SENATOR SKELOS: Is there a
4 message at the desk?

5 ACTING PRESIDENT KUHL: There
6 is.

7 SENATOR SKELOS: Move to accept.

8 ACTING PRESIDENT KUHL: Motion is
9 to accept the message of necessity on Calendar
10 Number 495. All those in favor signify by
11 saying aye.

12 (Response of "Aye.")

13 Opposed nay.

14 (There was no response.)

15 The message is accepted.

16 Secretary will read the last section.

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

19 ACTING PRESIDENT KUHL: Call the
20 roll.

21 (The Secretary called the roll.)

22 THE SECRETARY: Ayes 58.

23 ACTING PRESIDENT KUHL: The bill
24 is passed.

25 Senator Skelos.

1 SENATOR SKELOS: Please call up
2 Calendar Number 1379.

3 ACTING PRESIDENT KUHL: Secretary
4 will read the title to Calendar Number 1379.

5 THE SECRETARY: Calendar Number
6 1379, by the Committee on Rules, Senate Print
7 5506, an act in relation to granting Tier I
8 retirement status.

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

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

13 SENATOR PATERSON: Explanation.

14 ACTING PRESIDENT KUHL: Senator
15 Stafford, an explanation -

16 SENATOR SKELOS: Lay it aside.

17 ACTING PRESIDENT KUHL: Bill is
18 laid aside.

19 SENATOR SKELOS: Mr. President,
20 would you call up Calendar Number 1105.

21 ACTING PRESIDENT KUHL: Secretary
22 will read the title to Calendar Number 1105.

23 THE SECRETARY: Calendar Number
24 1105, by Senator Markowitz, Senate Print 304, an
25 act authorizing the city of New York to

1 reconvey.

2 ACTING PRESIDENT KUHL: There is
3 a home rule message at the desk or a facsimile
4 thereof. Secretary will read the last section.

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

7 ACTING PRESIDENT KUHL: Call the
8 roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes 58.

11 ACTING PRESIDENT KUHL: The bill
12 is passed.

13 Senator Skelos.

14 SENATOR SKELOS: Could we just
15 stand at ease for a moment, Mr. President.

16 ACTING PRESIDENT KUHL: Senate
17 will stand at ease for a moment.

18 SENATOR SKELOS: Mr. President.

19 ACTING PRESIDENT KUHL: Senator
20 Skelos.

21 SENATOR SKELOS: Would you please
22 call up Calendar Number 1376.

23 ACTING PRESIDENT KUHL: Secretary
24 will read the title.

25 THE SECRETARY: Calendar Number

1 1376, by the Committee on Rules, Senate Print
2 5490, an act to amend the Tax Law, in relation
3 to extending.

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

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

8 ACTING PRESIDENT KUHL: Call the
9 roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes 58.

12 ACTING PRESIDENT KUHL: The bill
13 is passed.

14 Senator Skelos.

15 SENATOR SKELOS: Please call up
16 Calendar Number 1377.

17 ACTING PRESIDENT KUHL: Secretary
18 will read the title.

19 THE SECRETARY: Calendar Number
20 1377, by the Committee on Rules, an act to amend
21 the Tax Law, and Chapter 535 of the Laws of
22 1987.

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

25 THE SECRETARY: Section 5. This

1 act shall take effect immediately.

2 ACTING PRESIDENT KUHL: Call the
3 roll.

4 (The Secretary called the roll.)

5 THE SECRETARY: Ayes 58.

6 ACTING PRESIDENT KUHL: The bill
7 is passed.

8 SENATOR SKELOS: Mr. President.

9 ACTING PRESIDENT KUHL: Senator
10 Skelos.

11 SENATOR SKELOS: There will be an
12 immediate meeting of the Finance Committee in
13 the Majority Conference Room.

14 ACTING PRESIDENT KUHL: Immediate
15 meeting of the Finance Committee. Immediate
16 meeting of the Finance Committee in the Majority
17 Conference Room, Room 332. Immediate meeting of
18 the Finance Committee in the Majority Conference
19 Room, Room 332.

20 SENATOR SKELOS: Mr. President,
21 can we stand at ease.

22 ACTING PRESIDENT KUHL: The
23 Senate will stand at ease.

24 (The Senate stood at ease from
25 7:44 p.m., until 8:03 p.m.)

1 ACTING PRESIDENT KUHL: Senate
2 will come to order. Ask the members to find
3 their places, staff to find their places.

4 Senator Skelos.

5 SENATOR SKELOS: Mr. President,
6 would you please recognize Senator Saland
7 first.

8 ACTING PRESIDENT KUHL: Senator
9 Saland.

10 SENATOR SALAND: Mr. President,
11 I'd like to request unanimous consent to be
12 recorded in the negative on Calendar Number
13 1377.

14 SENATOR GOLD: Without
15 objection.

16 ACTING PRESIDENT KUHL: Without
17 objection and with Senator Gold's consent,
18 Senator Saland will be recorded in the negative
19 on Calendar Number 1377.

20 Senator Skelos.

21 SENATOR SKELOS: Would you call
22 up Calendar Number 517, by Senator Goodman.

23 ACTING PRESIDENT KUHL: Secretary
24 will read the title of Calendar Number 517.

25 THE SECRETARY: Calendar Number

1 517, by member of the Assembly Feldman, Assembly
2 Print 6658-A, an act to amend the Real Property
3 Law.

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

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

8 ACTING PRESIDENT KUHL: Call the
9 roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes 58.

12 ACTING PRESIDENT KUHL: The bill
13 is passed.

14 Senator Skelos.

15 SENATOR SKELOS: Stand at ease,
16 Mr. President.

17 ACTING PRESIDENT KUHL: Senate
18 will stand at ease, momentarily.

19 (The Senate stood at ease
20 briefly.)

21 SENATOR HOFFMANN: Mr.
22 President.

23 ACTING PRESIDENT KUHL: Senator
24 Hoffmann.

25 SENATOR HOFFMANN: As a

1 convenience to the Senators, when you read the
2 calendar number, I wonder if you could also read
3 us the number of the calendar so we'll know
4 where the reference is.

5 ACTING PRESIDENT KUHL: We'll
6 attempt to do that, Senator Hoffmann. That's a
7 very good point.

8 SENATOR SKELOS: Mr. President.

9 ACTING PRESIDENT KUHL: Senator
10 Skelos.

11 SENATOR SKELOS: Please call up
12 Calendar Number 891, on the original calendar,
13 by Senator Goodman.

14 ACTING PRESIDENT KUHL: On
15 Calendar Number 59, first calendar of the day,
16 brown/tan cover, we're going to up Calendar
17 Number 891, by Senator Goodman. Secretary will
18 read the title.

19 THE SECRETARY: Calendar Number
20 891, by Senator Goodman, Senate Print 4052, an
21 act to amend the Arts and Cultural Affairs Law,
22 in relation to the trust for cultural
23 resources.

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

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

3 ACTING PRESIDENT KUHL: Call the
4 roll.

5 (The Secretary called the roll.)

6 THE SECRETARY: Ayes 58.

7 ACTING PRESIDENT KUHL: The bill
8 is passed.

9 Senator Skelos.

10 SENATOR SKELOS: If we could
11 return to reports of standing committees. I
12 believe there's a report of the Finance
13 Committee at the desk. I ask that it be read.

14 ACTING PRESIDENT KUHL: We'll
15 return to the order of reports of standing
16 committees. There is a report of the Finance
17 Committee at the desk. Secretary will read.

18 THE SECRETARY: Senator Stafford,
19 from the Committee on Finance, reports the
20 following bill: Senate Print 6646, by the
21 Committee on Rules, an act making appropriation
22 for the support of government.

23 ACTING PRESIDENT KUHL: Senator
24 Skelos. Motion is to accept the report of the
25 Finance Committee. All those in favor

1 significant by saying aye.

2 (Response of "Aye.")

3 Opposed nay.

4 (There was no response.)

5 The report is accepted.

6 Senator Skelos. Senator Skelos.

7 SENATOR SKELOS: Mr. President,

8 there will be an immediate meeting of the Rules

9 Committee in the Majority Conference Room.

10 ACTING PRESIDENT KUHL: Immediate

11 meeting of the Rules Committee. Immediate

12 meeting of the Rules Committee in the Majority

13 Conference Room, Room 332.

14 Chair recognizes Senator

15 Breslin.

16 SENATOR BRESLIN: Mr. President,

17 I would like to request with unanimous consent

18 to be in the negative on Calendar Number 855,

19 also would request unanimous consent to be

20 recorded in the affirmative on Calendar Number

21 280, 2-8-0.

22 ACTING PRESIDENT KUHL: Without

23 objection, hearing no objection, Senator Breslin

24 will be recorded in the negative on Calendar

25 Number 855 and on Calendar Number 280, Senator

1 Breslin will be recorded in the affirmative.

2 (The Senate stood at ease.)

3 ACTING PRESIDENT KUHL: Senate
4 will come to order. Ask the members to take
5 their chairs, staff to take their places.

6 SENATOR LARKIN: President Kuhl,
7 will you recognize Senator Stachowski, please.

8 SENATOR STACHOWSKI: Mr.
9 President, may I please have unanimous consent
10 to be recorded in the negative on Calendar
11 Number 855, please.

12 ACTING PRESIDENT KUHL: Without
13 objection, Senator Stachowski will be recorded
14 in the negative on Calendar Number 855.

15 Senator Larkin, we have one piece
16 of housekeeping if we could do that.

17 SENATOR LARKIN: Motions and
18 resolutions.

19 ACTING PRESIDENT KUHL: Motions
20 and resolutions. Return to that order.

21 Chair recognizes Senator Farley.

22 SENATOR FARLEY: Thank you, Mr.
23 President.

24 On behalf of Senator Holland, on
25 page 9, I offer the following amendments to

1 Calendar 339, Senate Print -- or excuse me,
2 Assembly Print 453-C, and I ask that that bill
3 retain its place.

4 ACTING PRESIDENT KUHL:
5 Amendments to Calendar Number 339 are received
6 and adopted; bill will retain its place on the
7 Third Reading Calendar.

8 Senator Larkin.

9 SENATOR LARKIN: Mr. President, we
10 have a privileged resolution at the desk, if we
11 could just read the title.

12 ACTING PRESIDENT KUHL: There is
13 a privileged resolution at the desk. Secretary
14 will read the title.

15 THE SECRETARY: By Senator
16 Larkin, Legislative Resolution congratulating
17 Mr. and Mrs. L. Robert Scanlon on their 50th
18 wedding anniversary.

19 ACTING PRESIDENT KUHL: Question
20 is on the resolution. All those in favor
21 signify by saying aye.

22 (Response of "Aye.")

23 Opposed nay.

24 (There was no response.)

25 The resolution is adopted.

1 Senator Larkin.

2 SENATOR LARKIN: We'll take up now
3 Calendar 1480, Senator.

4 ACTING PRESIDENT KUHL: Secretary
5 will read Calendar Number 1480.

6 THE SECRETARY: Calendar Number
7 1480, Senator Stafford moves to discharge from
8 the Committee on Finance, Assembly Bill 8444 and
9 substitute it for the identical Third Reading
10 1480.

11 ACTING PRESIDENT KUHL:
12 Substitution is ordered. Secretary will read
13 the title.

14 THE SECRETARY: Calendar Number
15 1480, by the Assembly Committee on Rules,
16 Assembly Print 8444, an act making appropriation
17 for the support of government.

18 ACTING PRESIDENT KUHL: Senator
19 Larkin.

20 SENATOR LARKIN: Move to accept
21 the message.

22 ACTING PRESIDENT KUHL: Motion is
23 to accept the message of necessity and
24 appropriation which is at the desk on Calendar
25 Number 1480. All those in favor signify by

1 saying aye.

2 (Response of "Aye.")

3 Opposed nay.

4 (There was no response.)

5 The message is accepted. The
6 bill is before the house.

7 Secretary will read the last
8 section.

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

11 ACTING PRESIDENT KUHL: Call the
12 roll.

13 (The Secretary called the roll.)

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

16 THE SECRETARY: Ayes 57, nays
17 one, Senator Dollinger recorded in the
18 negative.

19 ACTING PRESIDENT KUHL: The bill
20 is passed.

21 Senator Larkin.

22 SENATOR LARKIN: Mr. President,
23 there's a report of the Rules Committee at the
24 desk. Can we have it read.

25 ACTING PRESIDENT KUHL: We'll

1 return to the order of reports of standing
2 committees. There is a report of the Rules
3 Committee at the desk. The Secretary will read.

4 THE SECRETARY: Senator Bruno,
5 from the Committee on Rules, offers up the
6 following bills:

7 Senate Print 1347-B, by Senator
8 Kuhl, an act to amend the Public Service Law;
9 1919, by Senator Libous, an act
10 to amend the General Business Law;

11 5248, by Senator Smith, an act
12 authorizing the city of New York;

13 4946, by Senator Breslin, an act
14 to amend the Vehicle and Traffic Law;

15 3510, by Senator Rath, an act to
16 amend the Tax Law;

17 4463-A, by Senator Leibell, an
18 act to amend the Real Property Tax Law;

19 4637, by Senator LaValle,
20 authorizing the creation;

21 4712-A, by Senator Nozzolio, an
22 act to amend the General Business Law;

23 4913, by Senator Alesi, an act to
24 amend the General Business Law;

25 5339-A, by Senator Velella, an

1 act to amend the Insurance Law;
2 5510, by Senator Maziarz, an act
3 to amend Chapter 41 of the Laws of 1997;
4 5568, by Senator Maziarz, an act
5 to amend the Election Law;
6 5574, by Senator Hannon, an act
7 to amend Chapter 884 of the Laws of 1990;
8 5578, by Senator Kuhl, an act in
9 relation to the issuance of serial bonds;
10 5597, by the Committee on Rules,
11 an act to amend the Environmental Conservation
12 Law;
13 5599, by the Committee on Rules,
14 an act to amend the Civil Service Law;
15 5605, by Senator DeFrancisco, an
16 act in relation to reapportionment;
17 5613, by Senator Leibell, an act
18 to amend the Real Property Tax Law.
19 All bills directly to third
20 reading.
21 ACTING PRESIDENT KUHL: Senator
22 Larkin.
23 SENATOR LARKIN: Move to accept
24 the Rules report.
25 ACTING PRESIDENT KUHL: Motion is

1 to accept the report of the Rules Committee.

2 All those in favor signify by saying aye.

3 (Response of "Aye.")

4 Opposed nay.

5 (There was no response.)

6 The Rules report is accepted.

7 Bills are ordered directly to third reading.

8 Senator Larkin.

9 SENATOR LARKIN: Stand at ease
10 for a few minutes, Mr. President.

11 ACTING PRESIDENT KUHL: Have some
12 order in the house, please.

13 Senator Farley, have some order,
14 please. Have to have conversations, take them
15 out of the chamber.

16 Senator Larkin.

17 SENATOR LARKIN: Mr. President,
18 we'll now go to Calendar 59-C,
19 non-controversial.

20 ACTING PRESIDENT KUHL: Secretary
21 will read the non-controversial reading of
22 Senate Supplemental Calendar 59-C which is on
23 all the members' desks, beginning with Calendar
24 Number 1446.

25 THE SECRETARY: Calendar Number

1 1446, by Senator Kuhl, Senate Print 1347-B, an
2 act to amend the Public Service Law.

3 SENATOR FARLEY: Explanation!

4 ACTING PRESIDENT KUHL: Senator
5 Larkin? Motion is to accept the message of
6 necessity at the desk. All those in favor
7 signify by saying aye.

8 (Response of "Aye.")

9 Opposed nay.

10 (There was no response.)

11 The message is accepted.

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

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

16 ACTING PRESIDENT KUHL: Call the
17 roll.

18 (The Secretary called the roll.)

19 THE SECRETARY: Ayes 58.

20 ACTING PRESIDENT KUHL: The bill
21 is passed.

22 THE SECRETARY: Ayes 57, nays
23 one, Senator Leichter recorded in the negative.

24 ACTING PRESIDENT KUHL: Senator
25 Leichter, you voting in the negative on that

1 bill? The bill is passed.

2 Secretary will continue to call
3 the non-controversial calendar.

4 THE SECRETARY: Senate Print
5 1463, by Senator Libous, Senate Print 1919, an
6 act to amend the General Business Law.

7 SENATOR LEICHTER: Senator
8 Libous, did I hear you saying lay aside?

9 SENATOR LIBOUS: Yes, Mr.
10 President.

11 ACTING PRESIDENT KUHL: Did I
12 hear you say lay aside the bill?

13 SENATOR LIBOUS: Is that the
14 opinion of the Chair?

15 ACTING PRESIDENT KUHL: I was
16 just asking, Senator Libous.

17 The Secretary will read the last
18 section.

19 SENATOR LEICHTER: Lay it aside.

20 ACTING PRESIDENT KUHL: Senator
21 Leichter wishes to lay the bill aside.

22 SENATOR LIBOUS: Lay that bill
23 aside.

24 ACTING PRESIDENT KUHL: Bill will
25 be laid aside.

1 THE SECRETARY: Calendar Number
2 1464, by Senator Smith, Senate Print 5248, an
3 act authorizing the city of New York.

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

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

9 ACTING PRESIDENT KUHL: Call the
10 roll.

11 (The Secretary called the roll.)

12 THE SECRETARY: Ayes 58.

13 ACTING PRESIDENT KUHL: The bill
14 is passed.

15 Secretary will continue to call
16 the non-controversial calendar.

17 THE SECRETARY: Calendar Number
18 1465, by Senator Breslin.

19 SENATOR LACK: Lay aside.

20 THE SECRETARY: Senate Print
21 4946, an act to amend the Vehicle and Traffic
22 Law.

23 ACTING PRESIDENT KUHL: There is
24 a home rule message at the desk. The bill will
25 be laid aside.

1 THE SECRETARY: Calendar Number
2 1466, by Senator Rath, Senate Print 3510, an act
3 to amend the Tax Law.

4 SENATOR PATERSON: Lay aside.

5 ACTING PRESIDENT KUHL: Bill will
6 be laid aside.

7 THE SECRETARY: Calendar Number
8 1467, by Senator Leibell, Senate Print 4463-A,
9 an act to amend the Real Property Tax Law.

10 SENATOR PATERSON: Lay aside.

11 ACTING PRESIDENT KUHL: Lay the
12 bill aside.

13 THE SECRETARY: Calendar Number
14 1468, by Senator LaValle, Senate Print 4637, an
15 act authorizing the creation of a greenway.

16 SENATOR PATERSON: Lay it aside.

17 ACTING PRESIDENT KUHL: Lay the
18 bill aside.

19 THE SECRETARY: Calendar Number
20 1469, by Senator Nozzolio, Senate Print 4712-A,
21 an act to amend the General Business Law.

22 SENATOR PATERSON: Lay aside.

23 ACTING PRESIDENT KUHL: Lay the
24 bill aside.

25 THE SECRETARY: In relation to

1 Calendar Number 1470, Senator Alesi moves to
2 discharge from the Committee on Rules Assembly
3 Print 2224-B and substitute it for the identical
4 Senate bill, Third Reading 1470.

5 ACTING PRESIDENT KUHL:
6 Substitution is ordered. Secretary will read.

7 THE SECRETARY: Calendar Number
8 1470, by member of the Assembly Lafayette,
9 Assembly Print 2224-A, an act to amend the
10 General Business Law.

11 SENATOR PATERSON: Lay aside.

12 ACTING PRESIDENT KUHL: Lay the
13 bill aside.

14 THE SECRETARY: Calendar Number
15 1471, by Senator Velella, Senate Print 5339-A,
16 an act to amend the Insurance Law, in relation
17 to investment.

18 SENATOR PATERSON: Lay aside.

19 ACTING PRESIDENT KUHL: Lay the
20 bill aside.

21 THE SECRETARY: Calendar Number
22 1472, by Senator Maziarz, Senate Print 5510, an
23 act to amend Chapter 41 of the Laws of 1997.

24 SENATOR PATERSON: Lay it aside.

25 ACTING PRESIDENT KUHL: Lay the

1 bill aside.

2 THE SECRETARY: Calendar Number
3 1473, by Senator Maziarz, Senate Print 5568, an
4 act to amend the Election Law.

5 SENATOR GOLD: Lay it aside.

6 ACTING PRESIDENT KUHL: Lay the
7 bill aside.

8 Senator Maziarz, why do you rise?

9 SENATOR MAZIARZ: Yeah, I just
10 have a question. On Calendar 1472, was that
11 laid aside by Senator Libous or by Senator
12 Paterson?

13 ACTING PRESIDENT KUHL: That was
14 laid aside by Senator Paterson.

15 SENATOR MAZIARZ: Thank you.

16 ACTING PRESIDENT KUHL: Secretary
17 will continue to read.

18 THE SECRETARY: Calendar Number
19 1474, Senator Hannon moves to discharge from the
20 Committee on Rules, Assembly Bill Number 8110
21 and substitute it for the identical Senate Bill
22 Third Reading 1474.

23 ACTING PRESIDENT KUHL:
24 Substitution is ordered. Secretary will read.

25 THE SECRETARY: Calendar Number

1 1474, by the Committee on Rules, Assembly Print
2 8110, an act to amend Chapter 884 of the Laws of
3 1990.

4 SENATOR PATERSON: Lay aside.

5 ACTING PRESIDENT KUHL: Lay the
6 bill aside.

7 THE SECRETARY: Calendar Number
8 1475, by Senator Kuhl, Senate Print 5578, an act
9 in relation to the issuance of serial bonds.

10 ACTING PRESIDENT KUHL: There is
11 a home rule message at the desk.

12 SENATOR PATERSON: Lay aside.

13 ACTING PRESIDENT KUHL: Lay the
14 bill aside.

15 THE SECRETARY: Calendar Number
16 1476, by the Committee on Rules, Senate Print
17 5597, an act to amend the Environmental
18 Conservation Law, in relation to use of
19 information.

20 SENATOR PATERSON: Lay aside,
21 please.

22 ACTING PRESIDENT KUHL: Senator
23 Larkin, did you wish to move to accept the
24 message of necessity at the desk?

25 SENATOR LARKIN: Move to accept

1 the message.

2 ACTING PRESIDENT KUHL: Motion is
3 to accept the message of necessity which is at
4 the desk on Calendar Number 1476. All those in
5 favor signify by saying aye.

6 (Response of "Aye.")

7 Opposed nay.

8 (There was no response.)

9 The message is accepted.

10 Senator Paterson, you wish to lay
11 the bill aside?

12 SENATOR PATERSON: Yes.

13 ACTING PRESIDENT KUHL: Bill will
14 be laid aside.

15 Secretary will continue to read.

16 THE SECRETARY: Calendar Number
17 1477, by the Committee on Rules, Senate Print
18 5599, an act to amend the Civil Service Law.

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

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

23 ACTING PRESIDENT KUHL: Call the
24 roll.

25 (The Secretary called the roll.)

1 SENATOR PATERSON: Lay aside.

2 ACTING PRESIDENT KUHL: Lay the
3 bill aside.

4 THE SECRETARY: Calendar Number
5 1478, by Senator DeFrancisco, Senate Print 5605,
6 an act in relation to the apportionment of
7 transportation.

8 SENATOR PATERSON: Lay aside.

9 ACTING PRESIDENT KUHL: There is
10 a local fiscal impact note at the desk. Bill
11 will be laid aside.

12 THE SECRETARY: Calendar Number
13 1479, by Senator Leibell, Senate Print 5613, an
14 act to amount the Real Property Tax Law.

15 SENATOR LARKIN: Is there a
16 message?

17 ACTING PRESIDENT KUHL: There is
18 a message of necessity at the desk on 1479.

19 SENATOR LARKIN: Move to accept
20 the message it.

21 ACTING PRESIDENT KUHL: Motion is
22 to accept the message. All in favor signify by
23 saying aye.

24 (Response of "Aye.")

25 Opposed nay.

1 (There was no response.)

2 The message is accepted. Bill is
3 before the house.

4 SENATOR PATERSON: Lay aside.

5 ACTING PRESIDENT KUHL: Bill is
6 laid aside at the request of Senator Paterson.
7 Senator Larkin.

8 SENATOR LARKIN: Mr. President,
9 on Calendar 59-C, let's start with 1463 on the
10 controversial.

11 ACTING PRESIDENT KUHL: Secretary
12 will read the title to Calendar Number 1463.

13 THE SECRETARY: Calendar Number
14 1463, by Senator Libous, Senate Print 1919, an
15 act to amend the General Business Law, in
16 relation to store sale and rental of X-rated and
17 NC-17 rated films.

18 SENATOR PATERSON: Explanation.

19 SENATOR LIBOUS: Somebody ask for
20 an explanation?

21 ACTING PRESIDENT KUHL: Which
22 Senator asked for an explanation? I didn't hear
23 it.

24 SENATOR LEICHTER: Senator
25 Paterson.

1 ACTING PRESIDENT KUHL: Senator
2 Libous, an explanation of Calendar Number 1463
3 has been requested by Senator Leichter, please.

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

6 Basically the bill would require
7 that the owner/operator of an establishment that
8 sells or rents motion pictures with an X rating
9 to maintain that these films or advertisements
10 for such films be in separate areas from the
11 non-X rated films.

12 Basically what we're saying is we
13 don't want to walk into Video King or a store -
14 I don't mean to mention that particular store,
15 but any one of these stores -- and we don't want
16 the movie, The Lion King, and Debbie Does Dallas
17 next to each other. There's requirements here,
18 we don't want people walking in to see.

19 ACTING PRESIDENT KUHL: Senator
20 Leichter.

21 SENATOR LEICHTER: If Senator
22 Libous would yield, please.

23 SENATOR LIBOUS: Yes.

24 SENATOR LEICHTER: Senator, I -

25 ACTING PRESIDENT KUHL: Senator

1 Leichter. Senator Leichter, excuse me just a
2 minute. I don't know whether you can hear
3 Senator Libous, but I know I'm having a very
4 difficult time. If we could just have a little
5 order in the house.

6 SENATOR LEICHTER: Mr. President,
7 always possible to hear Senator Libous. If you
8 would be good enough to yield, Senator Libous.

9 ACTING PRESIDENT KUHL: Senator
10 Libous, do you yield?

11 SENATOR LIBOUS: I'd be happy to,
12 Mr. President.

13 SENATOR LEICHTER: Senator, I -

14 ACTING PRESIDENT KUHL: Senator
15 yields.

16 SENATOR LEICHTER: You know, it's
17 with some diffidence that I ask you questions on
18 a bill in an area where obviously you're very
19 expert as we've seen by the way you were able to
20 advise us of certain titles that you didn't want
21 to be shown next to The Lion King, but -

22 SENATOR LIBOUS: I'm well read,
23 Mr. President, I'm well read.

24 SENATOR LEICHTER: But in all
25 seriousness, Senator, I think in an ideal world

1 you certainly probably ought to do what you
2 suggest. I just question whether it's
3 practical.

4 Let me first point out you're not
5 talking about X rated movies, you're also
6 talking about movies NP-17. There's a lot of
7 movies that don't fall into what would be
8 considered pornographic category. I just
9 wondered, you have thousands of video stores
10 throughout this state. For instance, in the
11 upstate community, Senator Stafford's district,
12 there's a wonderful little store called
13 Everybody That Has Videos.

14 I just don't know how practical
15 it is to ask each of these stores now to set up
16 a separate area.

17 SENATOR LIBOUS: Mr. President,
18 actually, most of the stores are beginning to
19 set up on their own that way. It's very simple
20 with a door or curtain. It's really not an
21 awful lot of work. Many of the stores are
22 actually, Senator Leichter, beginning to do this
23 on their own. We just want to ensure that all
24 stores were doing it.

25 SENATOR LEICHTER: What? Mr.

1 President, again if Senator Libous would yield.

2 ACTING PRESIDENT KUHL: Senator
3 Libous do you continue to yield? Senator
4 continues to yield.

5 SENATOR LEICHTER: Senator, and
6 I'm -- I don't watch any videos, let me quickly
7 say, but while it's possible for some store to
8 do it, I think it is extremely difficult for
9 stores to partition off areas of their store. I
10 just really don't think it's practical, and I
11 think that you're going to very seriously
12 interfere with stores that sell Videos.

13 This is a big business. You talk
14 about, you know, economic life in New York
15 State. I submit to you, you're going to be
16 hindering that economic life. You're going to
17 be hindering people because the only alternative
18 is not to carry these particular titles or see
19 movies that they want to see.

20 I just really don't think it's
21 practical.

22 SENATOR GOLD: Mr. President.

23 ACTING PRESIDENT KUHL: Senator
24 Gold.

25 SENATOR GOLD: Yeah, I had some

1 concern, Senator Leichter, but the truth of the
2 matter is that I mean I still have one young son
3 at home and my kids come home, and we happen to
4 be a family that likes movies, and so we go into
5 these stores and, Senator, if you go in and you
6 do movie rentals, you will find that the -- if
7 you want to find The Sound of Music or things
8 like that, you're crushed into more and more of
9 a corner of the store because apparently they do
10 a big business in this area and most of the
11 stores that I go into, they have already done
12 this, so economically they want to stock the
13 movies that are selling, and apparently these
14 movies sell pretty good, and most of the stores
15 have already set up these booths because
16 otherwise they can't get people to come in, so I
17 think the business world has already done this
18 and I think this bill is only catching up with
19 what the reality is.

20 ACTING PRESIDENT KUHL: Secretary
21 will read -- Senator Paterson, sorry.

22 SENATOR PATERSON: Mr. President,
23 would Senator Libous yield for a question?

24 ACTING PRESIDENT KUHL: Senator
25 Libous, do you yield for a question?

1 SENATOR LIBOUS: Yes, I would.

2 ACTING PRESIDENT KUHL: Senator
3 yields.

4 SENATOR PATERSON: Thank you,
5 Senator.

6 Under the laws of the state of
7 New York, we require that the videos that are
8 sold in the stores display the motion picture
9 industry's labeling of what the content of the
10 movie is; is that correct?

11 SENATOR LIBOUS: Are you asking
12 me if that's correct?

13 SENATOR PATERSON: Yes.

14 SENATOR LIBOUS: I believe it to
15 be correct, but I would have to read the law,
16 check it thoroughly, but would I believe it to
17 be correct.

18 SENATOR PATERSON: No, I believed
19 it was correct; I wasn't totally sure.

20 SENATOR LIBOUS: Are you
21 answering your own question, Senator?

22 SENATOR PATERSON: I wanted to
23 know if you knew as fact what I believed, but my
24 question is why are we leaving to the motion
25 picture industry and not deciding as a state

1 ourselves what that designation should be?

2 SENATOR LIBOUS: Senator, that's
3 certainly an option that the state or any member
4 of this chamber can do in the future. Right now
5 I believe there's a need to address this issue
6 and, as has been mentioned by Senator Gold and
7 others, that some of the stores are beginning to
8 address the issue. Certainly any member can put
9 a bill in to do whatever they choose or whatever
10 they deem necessary. I happen to believe that
11 for right now, this is the right way to go.

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

14 Mr. President, on the bill.

15 ACTING PRESIDENT KUHL: Senator
16 Paterson, on the bill.

17 SENATOR PATERSON: I agree with
18 Senator Libous it is the right way to go. It
19 just struck me when I looked at the bill that
20 here we are as a state actually taking what the
21 motion picture industry designation of what the
22 -- what the movie's rating should be and
23 perhaps even in terms of our separating those
24 movies out in the actual video store, we may not
25 be separating them out as distinctly as we

1 could be, so I'm in support of Senator Libous'
2 bill and since we're on the subject, I would
3 hope that in the future he might consider
4 perhaps even setting up a task force or some
5 commission so that we can make our own
6 determination, and perhaps Senator Leichter and
7 Gold could sit on the committee and that way
8 they could get to see all the movies without
9 anyone ever really knowing.

10 ACTING PRESIDENT KUHL: Senator
11 Smith.

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

14 Would the sponsor yield for a
15 question, please?

16 ACTING PRESIDENT KUHL: Senator
17 Libous, do you yield?

18 SENATOR LIBOUS: Mr. President, I
19 would be just pleased to yield to Senator
20 Smith.

21 ACTING PRESIDENT KUHL: Senator
22 yields.

23 SENATOR SMITH: I believe that
24 I'm in favor of this bill, but I desire a
25 further clarification. I understand The Lion

1 King, but could you please give me an
2 explanation of Debbie Does Dallas?

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

5 SENATOR LIBOUS: No comment.

6 THE SECRETARY: Section 2. This
7 act shall take effect on the first day of
8 January.

9 ACTING PRESIDENT KUHL: Call the
10 roll.

11 (The Secretary called the roll.)

12 ACTING PRESIDENT KUHL: Record
13 the negatives. Announce the results.

14 THE SECRETARY: Ayes 57, nays
15 one, Senator Leichter recorded in the negative.

16 ACTING PRESIDENT KUHL: The bill
17 is passed.

18 Senator Larkin.

19 SENATOR LARKIN: Mr. President,
20 will you now take up Calendar 1472.

21 ACTING PRESIDENT KUHL: Secretary
22 will read.

23 THE SECRETARY: Calendar Number
24 1472, by Senator Maziarz, Senate Print 5510, an
25 act to amend Chapter 41 of the Laws of 1997.

1 SENATOR PATERSON: Explanation.

2 ACTING PRESIDENT KUHL: Senator
3 Maziarz, an explanation of 1472 has been
4 requested by Senator Paterson.

5 SENATOR MAZIARZ: Thank you, Mr.
6 President.

7 Mr. President, employees of the
8 public university systems who participate in
9 private annuity-based retirement programs
10 receive as the retirement incentive benefit, not
11 service credit as is the case for participants
12 in the public employees retirement system but
13 rather cash payments based upon years of service
14 and annual salary.

15 In 1995 and 1996, such payments
16 were subject to federal, state and local income
17 tax. The payments were also treated as current
18 income by the Comptroller and thereby adversely
19 affecting the amount of Social Security benefits
20 such that retirees would receive if they were
21 eligible for such benefits.

22 The tax treatment discourages the
23 number of persons who might possibly avail
24 themselves of the retirement incentive, thus
25 lessening the savings realized by the university

1 systems in the state.

2 I also have a memo, Mr. President
3 and Senator Paterson, from SUNY-Brockport which
4 is in my district, and I think this is the case
5 throughout many of the SUNY units in the state
6 of New York, where they estimate that an
7 additional 33 individuals would probably take
8 advantage of the early retirement incentive
9 retirement package if this bill were passed. We
10 also have a letter of support from John W.
11 Ryan, Chancellor of SUNY.

12 Thank you, Mr. President.

13 ACTING PRESIDENT KUHL: Senator
14 Paterson, you wish to -

15 SENATOR PATERSON: Explanation
16 was quite satisfactory, Mr. President. Both
17 Senator Libous and I are satisfied. He actually
18 asked me to lay it aside.

19 THE SECRETARY: Secretary will
20 read the last section.

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

23 ACTING PRESIDENT KUHL: Call the
24 roll.

25 (The Secretary called the roll.)

1 THE SECRETARY: Ayes 58.

2 ACTING PRESIDENT KUHL: The bill
3 is passed.

4 Senator Larkin.

5 SENATOR LARKIN: Would you now
6 take up Calendar 1473.

7 ACTING PRESIDENT KUHL: Secretary
8 will read.

9 THE SECRETARY: Calendar Number
10 1473, by Senator Maziarz, Senate Print 5568, an
11 act to amend the Election Law, in relation to
12 special federal voters.

13 SENATOR PATERSON: Explanation.

14 ACTING PRESIDENT KUHL: Senator
15 Maziarz, an explanation has been requested.

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

18 Is Senator Libous in the chamber,
19 Mr. President? Oh, there he is. I thought that
20 since Senator Libous asked that this bill be
21 laid aside, that he'd be interested in the
22 explanation.

23 Mr. President, there are many
24 U. S. Citizens who have never resided in a state
25 and under current law are not entitled to vote.

1 They are usually first and second generation
2 citizens who are subject to U.S. income tax and
3 all other requirements for citizenship except
4 for the fact that they have never resided in a
5 state.

6 They would be eligible to vote in
7 federal elections only, and this bill would
8 allow that in the state of New York. This bill
9 was sent over by the New York State Board of
10 Elections.

11 ACTING PRESIDENT KUHL: Senator
12 Paterson.

13 SENATOR PATERSON: I'm sorry, Mr.
14 President. If Senator Maziarz would yield for a
15 question?

16 ACTING PRESIDENT KUHL: Senator
17 Maziarz, do you yield?

18 SENATOR MAZIARZ: Surely.

19 ACTING PRESIDENT KUHL: Senator
20 yields.

21 SENATOR PATERSON: Thank you,
22 Senator.

23 These are individuals who never
24 resided in the United States.

25 SENATOR MAZIARZ: These may be

1 children of military personnel or people who are
2 U. S. citizens who are employed outside of the
3 country, missionaries.

4 SENATOR PATERSON: And you're
5 saying that they might participate in elections
6 on the federal level.

7 SENATOR MAZIARZ: On the federal
8 level only. That's what the Board of Elections
9 is saying, Senator Paterson.

10 SENATOR PATERSON: I see. What
11 is the explanation for why we wouldn't want them
12 to participate in any other elections; in other
13 words, what public policy would we fulfill by
14 doing this?

15 SENATOR MAZIARZ: I believe that
16 the answer is, Senator, that by federal
17 legislation they are designated as only special
18 federal voters. That's what the Board of
19 Elections memo said to us.

20 SENATOR PATERSON: Right, but my
21 question is, they're not allowed to vote in an
22 election that would concern the state, is that
23 correct?

24 SENATOR MAZIARZ: Correct.

25 SENATOR PATERSON: And my

1 question is, even if that's how the federal
2 election law sees them, why would we as a state,
3 since we're legislating here tonight, why would
4 we want to impinge upon their ability to
5 participate in any state election?

6 SENATOR MAZIARZ: I'm sorry,
7 Senator. Could you repeat that question?

8 SENATOR PATERSON: I guess I'm
9 just asking why we're restricting them to the -
10 to voting in the federal elections?

11 SENATOR MAZIARZ: I believe that
12 since they never resided in a state, Senator
13 Paterson, federal law will only allow them to
14 vote in the federal election since they don't
15 reside in any one particular state and never
16 have resided in any one particular state.

17 SENATOR PATERSON: Thank you,
18 Senator. I think your answers have been quite
19 responsive. I think it's possible I may be
20 missing something about this bill, so I
21 apologize if I have confused you at all.

22 SENATOR GOLD: Mr. President.

23 ACTING PRESIDENT KUHL: Senator
24 Gold.

25 SENATOR GOLD: Would the

1 gentleman yield to a couple of questions?

2 SENATOR MAZIARZ: Certainly, Mr.
3 President.

4 ACTING PRESIDENT KUHL: Senator
5 yield.

6 SENATOR GOLD: Senator, I hate to
7 go backwards a little bit but I heard the
8 dialogue with Senator Paterson, and to tell you
9 the truth, I am really very stunned and don't
10 understand it. I'm certainly in favor of doing
11 everything possible to allow American citizens
12 to vote. I certainly I am not for that kind of
13 a limit, but I am perplexed as to what we are
14 really talking about here.

15 The memo says, according to the
16 federal voting assistance program in the
17 Department of Defense there are usually first or
18 second generation citizens who are subject to
19 U. S. income tax and all other requirements of
20 citizenship except for the fact they've never
21 resided in the United States. Is that what this
22 is about?

23 SENATOR MAZIARZ: Yes.

24 SENATOR GOLD: Can you tell me
25 what we're talking about in different kinds of

1 terms? First of all, to vote you have to be a
2 certain age, is that correct?

3 SENATOR MAZIARZ: Right.

4 SENATOR GOLD: So these people
5 are now adults.

6 SENATOR MAZIARZ: Yes.

7 SENATOR GOLD: Living in a
8 foreign country. Never lived in America, and I
9 don't understand the issue here. If they are
10 living in -- pick a country, I don't care, in
11 Europe, let's say and they're -- they've got
12 their lives involved in that country, they could
13 be married, for all I know; working, for all I
14 know, whatever, where is the exercise of
15 interest so that they would want to vote here?

16 SENATOR MAZIARZ: Well, that's
17 their choice, Senator. Apparently enough of
18 them have contacted the state Board of Elections
19 with a desire to vote and that's why they
20 forwarded this bill over to the Legislature.

21 SENATOR GOLD: Now, this says
22 that they in some way are subject to U.S.
23 income tax. Are these people who have done
24 anything affirmative in order to become U. S.
25 citizens, in other words, I assume that if you

1 have a U. S. citizen who happens to be, let's
2 say in Spain, part of the government, and they
3 are born in Spain of American parents then I
4 believe they are citizens, is that correct?

5 SENATOR MAZIARZ: That's
6 correct.

7 SENATOR GOLD: The child is
8 brought up in Spain, lives in Spain his or her
9 whole life, the parents come back to America.
10 Now, the child can be 24, 25 years old and
11 working in Spain, never been in America. Are
12 you saying that they are subject to American
13 income tax?

14 SENATOR MAZIARZ: I don't know
15 what the answer is on the tax question,
16 Senator. My learned counsel over here, Senator
17 Farley, is telling me that if they visit the
18 U. S. that they are subject to U. S. income
19 tax.

20 SENATOR GOLD: If they visit.
21 Well, Senator, I'm trying to -- I'm trying to
22 understand the situation. I certainly don't
23 have a problem with U. S. citizens who are out
24 of the country voting by absentee ballot because
25 they happen to be out temporarily or with people

1 who work for the State Department, who happen to
2 be out of the country and exercising their
3 rights. This one is an unusual class and I
4 think that some of us are just having trouble
5 understanding who really makes up this class. I
6 mean who are they?

7 SENATOR MAZIARZ: I think it
8 would be primarily children of American citizens
9 who were born overseas but who have never been
10 in the United States.

11 ACTING PRESIDENT KUHL: Senator
12 Gold.

13 SENATOR GOLD: Yeah. I have -
14 if the gentleman will yield to a question.

15 ACTING PRESIDENT KUHL: Senator
16 Maziarz, do you yield again?

17 SENATOR MAZIARZ: Yes, yes.

18 ACTING PRESIDENT KUHL: Senator
19 yields.

20 SENATOR GOLD: Senator, I'm
21 really curious to know, for example, what we're
22 talking about in terms of numbers. It sounds
23 like -- I mean let me put it in the form of a
24 question because I know Senator Rath wants -

25 SENATOR MAZIARZ: I'm

1 clairvoyant, Senator. I anticipate what your
2 question is going to be.

3 SENATOR GOLD: That's because you
4 sit next to Senator Leibell. That'll do it.

5 SENATOR MAZIARZ: You're right.

6 SENATOR GOLD: I mean, first of
7 all, I feel sorry for all of these people who
8 never had the opportunity to go to Cuzco on
9 Saturday and Sunday, and Senator Leibell will
10 explain it, but when you put a bill in front of
11 us, and it says that, you know, you want to open
12 the door for U. S. citizens to vote, of course,
13 everybody on this side of the aisle looks at
14 their flag and feel very patriotic, but then I
15 say to myself, what are we talking about, and if
16 -- how many people are out there? What are we
17 talking about? We talking about people who have
18 nothing to do with this country apparently
19 except for the fact that they may have been born
20 from an American U. S. parent, and I say to
21 myself, why would they want to vote? If they
22 want to come back here as citizens, I would say
23 open our arms and certainly I don't want to
24 exclude anybody but it's just the whole thing
25 sounds a little bit bizarre to me.

1 You got a 35-year-old man or a
2 35-year-old woman who lives in Australia or
3 Austria or Germany or Italy and they're living
4 their lives and they're working and they do this
5 or they do that, and they've got their family
6 and we're worried about whether they want to
7 vote in the United States election, and I don't
8 understand it.

9 SENATOR MAZIARZ: Well, Senator
10 Gold, it's really up to them whether they want
11 to vote in a federal election or not.

12 SENATOR GOLD: Don't you think we
13 have any interest in that?

14 SENATOR MAZIARZ: Pardon me?

15 SENATOR GOLD: Don't you think we
16 have any interest in that?

17 If the Senator would yield to a
18 question.

19 SENATOR MAZIARZ: Yes.

20 SENATOR GOLD: Senator, we got
21 bills on this floor which deal with the issue of
22 whether college students should be able to vote,
23 for example, in Ithaca if they're going to
24 Ithaca College or Cornell or whether we should
25 mandate that they vote where their parents live

1 where their home is, because there could be
2 perhaps an unfair influence on local elections
3 by people who may be transients, so to speak.
4 These are college students actually living some
5 place maybe for four, six, five years, whatever
6 it is, and some of your colleagues have raised
7 the question as to their interest in the
8 locality, whether they should vote.

9 On the other hand we're being
10 told now that there are some people who have
11 never been in America, who are living in all
12 parts of the world, apparently no interest in
13 coming back here and we're putting in a bill
14 because they want to vote for who's president,
15 vice-president of this country, and I guess
16 Congress -- Congresspeople. That's a federal
17 election. I don't know whether they're included
18 in this bill or not, but they're going to turn
19 out to vote to decide who represents a
20 Congressional district where they don't live,
21 have no apparent desire to come back and are
22 living fruitful, lovely lives in Italy, France,
23 Spain, England or whatever. I'm trying to find
24 the rationale.

25 SENATOR MAZIARZ: Senator Gold, I

1 have to say that I'm somewhat shocked that you
2 want to limit an individual's participation in
3 -- in government. I'm stunned, quite frankly.

4 SENATOR GOLD: I didn't say I
5 did.

6 SENATOR MAZIARZ: The way I -
7 the way I interpret your statement, I think you
8 did.

9 SENATOR GOLD: Well, if you will
10 yield to a question. Senator, I'm not saying I
11 want to limit anything. I'm trying to
12 understand the rationale, the difference in
13 philosophy between bills that have been put in
14 by your side of the aisle.

15 On the one hand you think that
16 college students, where it has been a matter of
17 years, where college students have no interest
18 where they're really living for years, but
19 you're suggesting that people who have never set
20 foot in America should be voting to determine
21 who our Congressmen are and who our Senators
22 are, who our presidents are. I don't understand
23 that particular philosophy.

24 I'm not saying they shouldn't do
25 it. Maybe you'll convince me. Question mark.

1 SENATOR MAZIARZ: O.K. The
2 federal government, Board of Elections is
3 encouraging these people have a right to vote,
4 they're paying taxes, and I would do anything to
5 encourage voter participation. Now, you keep
6 referring to a law about college students. I
7 don't recall that law being voted on in the two
8 and a half years I've been here, Senator Gold,
9 but I -- I would not have voted for any
10 legislation that would have curtailed anyone's
11 right to vote in an election.

12 SENATOR GOLD: Senator -- Mr.
13 President, on the bill.

14 ACTING PRESIDENT KUHL: Senator
15 Gold, on the bill.

16 SENATOR GOLD: First of all -
17 first of all, Mr. President, I'm happy to hear
18 the statement that was made by Senator Maziarz
19 about he would not have voted to stop college
20 students from voting, and in all fairness, I
21 appreciate that. There are people on your side
22 of the aisle who were very concerned about that
23 particular issue.

24 I don't blame anybody -- anybody
25 in the world for wanting to be a U. S. citizen,

1 and coming here and having the opportunity to
2 play golf with Mike Tully or just to enjoy our
3 country in general.

4 VOICE: The Assembly's adjourned,
5 I want you to know.

6 SENATOR GOLD: They're out? O.K.
7 I can't blame anybody for wanting
8 to be a citizen, so, Senator Maziarz, there are
9 people who come here illegally. There are
10 people who use all kinds of ruses in order to
11 get into our shores, just to live here and there
12 are people involved in immigration fraud. It's
13 a wonderful thing to be a U. S. citizen. So if
14 you've got somebody who in fact is technically
15 and in the most technical sense is a U. S.
16 citizen, because of birth, the accident of
17 birth, I don't blame them at all for cherishing
18 that citizenship and for wanting to take full
19 advantage of all of the rights of the citizens.
20 I don't blame them at all.

21 I do, however, find it strange -
22 well, let me go back one before that. I'd
23 really like to know the circumstances under
24 which they pay U. S. taxes. I don't pretend to
25 be an expert in that field, but the -- but I

1 guess under federal tax laws, you only have to
2 pay taxes on what you earn in America and then
3 you probably get some kind of exemption if you
4 earn the money outside of America, so when you
5 say pay taxes, it maybe the most minimal of
6 taxes. If somebody wants to give us any money,
7 I guess just to keep the door open to being a U.
8 S. citizen, I guess that's very admirable and I
9 don't want to discourage them; but I do find it
10 a little ironic that we are passing legislation
11 and opening up the ballot boxes in things like
12 national elections, and again I didn't ask you
13 the question directly but from your lack of
14 response I gather I was correct when I included
15 Congressional races and U.S. Senate races
16 because it says federal elections.

17 Of course, I don't know -- I
18 don't know how you work the ballot. I guess
19 they get sent a special ballot which would only
20 have the federal candidates on it and, for
21 example, it wouldn't have as distinguished as
22 Senator Gentile is, I guess his name wouldn't be
23 on a ballot coming from that district, but it
24 just seems to me strange that people who are, by
25 choice at this point, because we're talking

1 about adults choosing to live in various
2 countries all over the world and not set foot in
3 America, want to be that much involved with our
4 political system.

5 I know that it would be strange
6 if having come over here, and all of us at some
7 point came from some place else, if we all of a
8 sudden started to petition Poland or Hungary or
9 Russia for the right to -- to vote because at
10 one point in time some people in our family had
11 an interest.

12 So I say to myself, you know,
13 hurray for the federal government for a bill
14 which sets up a process, and I know that the
15 states of Georgia and Iowa and Tennessee and
16 Oregon have passed similar legislation. I think
17 it would be fascinating, Senator, to know how
18 many people actually have registered whose
19 parents, for example, were in Tennessee and went
20 across to Europe -- and I got about another 17
21 more points, but I see Senator Paterson is
22 standing.

23 Do you want me to yield, Senator?

24 SENATOR PATERSON: Mr. President.

25 ACTING PRESIDENT KUHL: Senator

1 Paterson, why do you rise?

2 SENATOR PATERSON: Would Senator
3 Gold yield for a question?

4 SENATOR GOLD: Yes, sir.

5 ACTING PRESIDENT KUHL: Senator
6 yields.

7 SENATOR PATERSON: Senator, we
8 seem to have a different point of view about
9 this bill as I was expressing to Senator
10 Maziarz.

11 If individuals are connected with
12 this country, they may not live in this country
13 but they're connected with this country, and
14 they have voiced an opportunity, they have
15 voiced an interest in voting in state and local
16 elections here, I can only surmise, and perhaps
17 we'd have to ask Senator Maziarz, as to the
18 reason why, in other words, I don't know if
19 there's been any survey or any information that
20 would tell us why they want to be voting in
21 these particular elections.

22 I don't think there are enough of
23 them so this could be an organized effort to try
24 to swing or sway any campaign, but if they had
25 this interest, I would think that since they are

1 really technically citizens of this country,
2 that we would want to encourage them. Perhaps
3 they're thinking of moving to the States when
4 they complete their service overseas or
5 something like that, and so my question to you
6 is, why would we not want to encourage them?
7 The participation might eventually lead to their
8 relocating in that particular area. There's
9 some reason that they want to have that interest
10 and I was wondering if you would comment on that
11 or -

12 SENATOR GOLD: I'll be glad to.
13 Senator Paterson, first of all, I understand
14 your point, and I think there is a lot of logic
15 to your point. If somebody is going to be
16 registered in the state and why would they not
17 care about the state elections as much as
18 federal elections.

19 But what I -- you made one
20 comment, Senator Paterson, and you make an
21 assumption which may or may not be true. You
22 say when they finish with their term, Senator.
23 The bill talks about people who are citizens and
24 they never have been here, and what I'm
25 suggesting to you is, that for the most part

1 this could be children of people who work in the
2 foreign service and who stayed over there and
3 who are not in the foreign service at all, but
4 maybe their parents were in the foreign service,
5 they were born, they're technically American
6 citizens. They've gone to Italian schools.
7 They -- as many of us who have been to Italy
8 fall in love with the country and they decide to
9 stay there and visit the museums and live their
10 lives in some of the beautiful cities and now
11 have made a choice.

12 ACTING PRESIDENT KUHL: Senator
13 Gold, Senator Gold. Could I interrupt you just
14 for a minute.

15 SENATOR GOLD: Of course, sir.

16 ACTING PRESIDENT KUHL: The
17 monologie that you seem to be going through now
18 is so illuminating that we want to make sure
19 it's captured on the transcript and the
20 stenographer has sent a message to me indicating
21 that she is having a very difficult time hearing
22 you as you're turning around and turning your
23 back to the microphone, so if you could just for
24 the ease of the stenographer if nobody else,
25 talk into the microphone, I would appreciate it

1 and I know she would.

2 SENATOR GOLD: Mr. President, I
3 have always had the greatest admiration and
4 respect for our stenographer. The fact that she
5 now wants to hear what I'm saying has lowered
6 her a little bit in my estimation.

7 ACTING PRESIDENT KUHL: Senator
8 Gold, I didn't say that.

9 SENATOR GOLD: Yes, Mr.
10 President, I'd be glad to be cooperative.

11 What I was saying, Senator
12 Paterson, and I hope you'll excuse my back, is
13 that these are not people as I see it who have
14 been here and who are away on diplomatic
15 missions and coming back, but people as defined
16 by the bill itself who have never been in
17 America, and since they are adults and of voting
18 age, I can only make the assumption that they
19 have chosen to live in another country, and
20 while I am very, very chauvinistic about America
21 and I tell you that I wouldn't want to live any
22 place else in the world, I would be untruthful
23 if I didn't tell you that on the number of
24 occasions I have been to Italy, I love it, I'm
25 comfortable there. The people are wonderful and

1 I can understand why somebody lives in Italy and
2 enjoys Italy, and -- but if they're there and
3 they're doing that and they are comfortable, I
4 say to myself, I'm not saying close the door on
5 their voting here, but I say what is behind this
6 bill. Why would they want to vote in elections
7 for a country that they have never ever been in?

8 Now, I have ancestors. My
9 ancestry come from Hungary and from Poland and
10 every once in a while I may or may not like
11 something that happens in those areas of the
12 world and I say, Wouldn't it be interesting if I
13 could vote in those elections and turn around
14 some of the things in their government, and most
15 people here would say that's kind of ludicrous,
16 and I'm just wondering therefore, you know,
17 really, what gets behind this bill?

18 Where is this mass of people that
19 the federal government passed this legislation,
20 this enabling legislation, and why states are
21 getting all excited about it?

22 So, Senator Paterson, I think you
23 are probably right on target, if we're going to
24 do this, I don't know why we wouldn't say, well,
25 if they're that interested in America, and they

1 feel American that strongly that they want to
2 vote, why not go all of the way, you know, why
3 not, not only let them vote in the -- for the
4 president and the vice-president and for the
5 United States Senate -- I think, Mr. President,
6 that my distinguished friend from Syracuse is
7 trying to get your attention, Mr. President. I
8 know I've lulled you a little but I think he's
9 trying to -

10 ACTING PRESIDENT KUHL: Senator
11 DeFrancisco, why do you rise?

12 SENATOR DeFRANCISCO: I wonder if
13 Senator Gold would yield to a question.

14 ACTING PRESIDENT KUHL: Senator
15 Gold?

16 SENATOR GOLD: Yes, I could use
17 the rest.

18 ACTING PRESIDENT KUHL: Senator
19 yields.

20 SENATOR DeFRANCISCO: Knowing
21 that you're a very intelligent man, and that you
22 always do things for a purpose.

23 SENATOR GOLD: I wish you
24 wouldn't go any further than that.

25 SENATOR DeFRANCISCO: And it's

1 obvious that the purpose of your dialogue or
2 monologue here is not to illuminate anybody on
3 anything, I would request if you would please be
4 honest enough to tell everybody here assembled
5 at 9:35 what the true motive of this nonsense
6 is.

7 SENATOR GOLD: Well, Senator,
8 since I'm not the one responsible for the
9 nonsense, I can't tell you the motive behind it.

10 SENATOR DeFRANCISCO: Well, if
11 you -

12 SENATOR GOLD: And let me finish
13 my answer saying this, Senator. We all have our
14 pluses, our minuses. We all have our
15 personalities and one -- one of my -- we all
16 have press clippings. You can't be in politics
17 without having press clippings. But the
18 proudest -- one of my proudest press clippings,
19 Senator, goes back to college and they wrote up
20 one of my boxing matches and the guy was smart
21 enough to realize that I was more of a counter
22 puncher than anything and the other guy would
23 take the first punch and then I was very
24 fortunate in college; I managed to get enough in
25 so that I never lost a fight, but I had to get

1 hit first.

2 So I react, Senator, and if there
3 is nonsense going on here, believe me, it is not
4 me with the first punch. Me on this side,
5 Senator Gold and others, we're counter punchers
6 and so, if there's nonsense here, there's a way
7 of ending it, but unfortunately you have to talk
8 to the people who started it.

9 SENATOR DeFRANCISCO: Would you
10 yield? Would Senator Gold yield to another
11 question?

12 SENATOR GOLD: To you, of
13 course.

14 ACTING PRESIDENT KUHL: Senator
15 Gold yields.

16 SENATOR DeFRANCISCO: Would you
17 answer my question as to whether or not the
18 reason for your monologue is that the Senate
19 Majority had the audacity of laying some bills
20 aside of the Senate Minority?

21 SENATOR GOLD: I hadn't noticed.
22 Did they do that?

23 SENATOR DeFRANCISCO: I'm asking
24 you, could you honestly answer that question?

25 SENATOR GOLD: Well, I think

1 that, Senator, I think that the level of honesty
2 in this chamber is something which is very
3 important, and I think that again as someone who
4 reacts, it is up to the Majority to set that
5 level of honesty and I tell you I will not go
6 below that level of honesty, but I'm not going
7 to go too much the other way either, and if
8 you're telling me, Senator, and I'm shocked to
9 hear it, shocked to hear it, that the Majority
10 has laid aside some bills of the Minority
11 members in this house, I say to myself what
12 possibly could be the motivation for such a vile
13 act?

14 But I -- you're telling me
15 something, I haven't really been following the
16 calendar. I just feel that there is a Senator
17 in this house by the name of Maziarz who I like
18 a lot and I figure, if he puts a bill on this
19 floor that it's something that is deserving of
20 serious consideration, and you can't respect -
21 God bless you; somebody sneezed on the truth -
22 and Senator, the only way you can show respect
23 is by showing respect. You don't talk about
24 it. You show it and, therefore, the respect I
25 have for the Senator is such that I wanted to

1 show my respect by paying full attention to this
2 bill and making sure that I understood it
3 properly before I cast a vote.

4 SENATOR DeFRANCISCO: And that's
5 your honest answer.

6 SENATOR GOLD: That's a tough
7 question. That's a tough one, but that is my
8 answer.

9 SENATOR DeFRANCISCO: May I ask
10 Senator Gold one other question?

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

13 SENATOR GOLD: Pleasure to
14 yield.

15 SENATOR DeFRANCISCO: Senator
16 Gold, do you think it's appropriate -- a proper
17 course of action for someone to lay a bill aside
18 in the event that they had a question about a
19 bill?

20 SENATOR GOLD: Senator, I -- to
21 give you an easy answer, yes. I wish you'd
22 please tell that to Senator Skelos. He seems to
23 resent it more than most.

24 SENATOR DeFRANCISCO: Well,
25 apparently others do tonight as well.

1 My question is, if someone had a
2 legitimate question, would it be all right to
3 ask a Minority member whose bill has been laid
4 aside?

5 SENATOR GOLD: I would be
6 disappointed if you didn't.

7 SENATOR DeFRANCISCO: Well, with
8 that clarification and that show of sincere
9 honesty by Senator Gold, I have nothing further
10 to ask him.

11 SENATOR GOLD: Will the Senator
12 yield to a question?

13 SENATOR PATERSON: Mr.
14 President.

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

17 SENATOR PATERSON: Mr. President,
18 I want to know if Senator DeFrancisco would
19 yield to a question?

20 SENATOR DeFRANCISCO:
21 Absolutely.

22 SENATOR GOLD: Why do you ask him
23 to yield to a question?

24 SENATOR PATERSON: My money is as
25 good as yours.

1 ACTING PRESIDENT KUHL: Senator
2 Paterson, Senator DeFrancisco has indicated that
3 he would yield to a question.

4 SENATOR PATERSON: Senator, if
5 there was a question about a bill that was
6 introduced by a member of the Minority, perhaps
7 you and I might be able to settle this whole
8 issue right here.

9 I would suggest that we ask
10 Senator Maziarz if he would lay his bill aside,
11 that we call up that bill by the member of the
12 Minority and that right now we would be more
13 than willing to listen to the questions.

14 SENATOR DeFRANCISCO: So what is
15 the question?

16 SENATOR PATERSON: The question
17 is what do you think?

18 SENATOR DeFRANCISCO: I think
19 it's immaterial. We have many bills to go, and
20 I would think that once the bills were called on
21 the Minority members, questions would be asked
22 and you would have your answer, but to -- we'll
23 probably have another Rules meeting. If you
24 want to hold bills up, you can do that but to go
25 on a monologue of -- well, to go on a monologue

1 like the monologue we have been hearing is not
2 productive.

3 SENATOR PATERSON: Mr. President.

4 SENATOR DeFRANCISCO: Yes -- oh,
5 excuse me. I'm not Mr. President.

6 SENATOR PATERSON: Mr. President,
7 I think that Senator DeFrancisco has done us a
8 huge favor, and I think that perhaps his
9 entering the discussion may truncate this whole
10 process considerably because he's raised an
11 issue relating to what might be the validity of
12 this discussion and while I was particularly
13 interested -- and I had a few more questions for
14 Senator Gold, but maybe we'll take our
15 conversation out of the chamber -- the reality
16 is that this is not an isolated incident. This
17 is a pattern of occasions where we feel that we
18 were assured that there was legislation coming
19 before the floor. It went through the Rules
20 Committee and somewhere between the Rules
21 Committee and the floor it didn't seem to
22 materialize, and so if the question is should we
23 go in order and wait for the bill to come up, we
24 don't know the point at which whatever vital
25 legislation that the Majority felt needed to

1 come on the floor tonight would actually have
2 been fulfilled and then at that point I
3 understand this is a last day, we might recommit
4 all the bills and we'll be back here in January
5 starting the process all over again. Now -

6 ACTING PRESIDENT KUHL: Senator
7 Paterson, may I just interrupt for a minute. I
8 think we're trying to be or at least the Chair
9 is trying to be very accommodating this evening.

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

12 ACTING PRESIDENT KUHL: And we
13 are really stretching the question of
14 germaneness to the bill that's before us. I
15 think you're addressing more the issue -

16 SENATOR PATERSON: You know, Mr.
17 President, I thought the germaneness should have
18 come up about ten minutes ago. I'm surprised it
19 came up when I had the floor, but I'll conclude.

20 ACTING PRESIDENT KUHL: Senator
21 Paterson, I think you had one win this session
22 and I don't want to extend it any farther, and
23 that's not a mean-spirited statement. I just
24 want to try to keep some decorum and we really
25 are rambling far beyond the topic that Senator

1 Maziarz' bill addresses. I never have an idea
2 as to who's going to ask what type of question
3 up here, but it's obvious from the pattern of
4 the dialogue that's gone back and forth between
5 Senator DeFrancisco, Senator Gold and now
6 yourself, that this discussion really is not
7 germane to the topic before the house.

8 So I would hope that you would
9 conclude your statements. If you have some
10 questions relative to Mr. -- or Senator Maziarz'
11 bill, I certainly would entertain them.

12 SENATOR PATERSON: You are right,
13 Mr. President. I am going to conclude. I
14 thought it had to do with citizenship and I
15 thought it had to do with democracy and I
16 thought it had to do with what this state's
17 Constitution stands for, an equal
18 representation.

19 42 percent of the members of this
20 house happen to be in the Minority party. I
21 would like to take the number of bills passed by
22 the Minority, divide them by the whole and I'll
23 bet we come out with something less than three
24 percent.

25 So that really is vital to what

1 Senator Maziarz is talking about. He's talking
2 about inclusion. He's talking about people who
3 aren't even in this country who we're going to
4 give the opportunity to vote in the state
5 elections. I'm talking about individuals who
6 are right here in this chamber and don't seem to
7 have the opportunity to participate in the
8 business of the Senate right here in this
9 chamber, but you are right, Mr. President. If
10 you don't feel it's germane, I'll conclude just
11 by saying this.

12 I think what we might do at this
13 point is to ask the Majority to lay this bill
14 aside. We'll take up the issue since we
15 understand this bill is coming before the floor
16 and we can debate it right now and then go back
17 to regular order and then everyone's interest
18 would be satisfied. It would just be a matter
19 of moving one bill. It should take whatever
20 time it takes to ask and answer those questions
21 and I suggest, as I conclude, that that would
22 end this process. We would be well on our way
23 to conclusion this evening.

24 ACTING PRESIDENT KUHL: Senator
25 Waldon, why do you rise?

1 SENATOR WALDON: I was trying to
2 ask the learned gentleman from the village of
3 Harlem a question or two but was not recognized
4 in a timely fashion.

5 Would he permit me to ask a
6 question or two? I was out of the chamber when
7 we began the discussion on 5568.

8 ACTING PRESIDENT KUHL: Senator
9 Waldon, what's your request again?

10 SENATOR WALDON: I would like to
11 ask Senator Paterson a question or two. I asked
12 would the gentleman from the village of Harlem
13 yield.

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

17 SENATOR PATERSON: Mr. President,
18 with just the proviso that it does relate to
19 Senator Maziarz' bill, I would be happy to
20 answer the question. So long as I feel it's
21 germane, Senator Waldon.

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

24 The gentleman yields.

25 SENATOR WALDON: Thank you, Mr.

1 President.

2 I would sincerely hope that
3 within what I say, you will find something which
4 is germane.

5 Senator Paterson, do you recall
6 that on this floor we've dealt recently with
7 some bills proposed by Senator Padavan which
8 spoke to the issue -- he's not here -- which
9 spoke to the issue of people who are foreign
10 born attending colleges and having other
11 benefits which normally just the citizens of
12 this country are allowed to receive, according
13 to his thought process in his bill.

14 Is there any possibility from
15 your awareness of this bill that the people
16 excluded by what Senator Padavan would like to
17 propose could ever vote on what Senator Maziarz
18 has just proposed?

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

21 Senator Waldon, apparently we
22 have different classifications of citizenship.
23 We have individuals that may not have ever been
24 present on our soil, may not have really
25 participated in our government and may not

1 actually have any interest in what goes on here,
2 as Senator Gold pointed out quite thoroughly,
3 and yet they are preferred in some respects to
4 individuals who may have actually lived here,
5 may have actually in many ways contributed large
6 amounts of their government -- large amounts of
7 their salaries and large amounts of their
8 personal resources to sustain our government and
9 are basically heavily scrutinized right here in
10 our land, but I would imagine that the answer
11 that Senator Maziarz would have given or what
12 he's putting forth in his bill is that since
13 there's no dispute over the classification of
14 their citizenship, that they, therefore, would
15 be entitled not only to vote in federal
16 elections but with the enabling federal statute
17 that's been passed, would grant us in the state
18 and local governments the opportunity to vote in
19 the local elections.

20 ACTING PRESIDENT KUHL: Senator
21 Waldon.

22 SENATOR WALDON: Would the
23 gentleman yield to one or two more questions,
24 Mr. President?

25 ACTING PRESIDENT KUHL: Senator

1 Paterson, do you continue to yield?

2 SENATOR PATERSON: I'd be
3 delighted.

4 SENATOR WALDON: Senator
5 Paterson, the people who Senator Padavan was
6 targeting his legislation towards, to my
7 understanding, as a group are not very active in
8 terms of holding public office. If you know
9 better than that, correct me, but would the
10 people covered by Senator Maziarz' bill be
11 allowed to hold public office in this country?

12 SENATOR PATERSON: I would
13 imagine, Senator Waldon, that in spite of the
14 citizenship, they would be barred from holding
15 public office and if Senator Maziarz has further
16 information, I'd be certainly willing to have
17 him join us in this part of the discussion, that
18 they would not conform to our residency
19 requirements since they do not actually live
20 anywhere in the jurisdiction of any of the 50
21 states and, therefore, I would -- I would
22 imagine in that respect that they would be
23 barred from running for public office.

24 However, just by simply moving
25 into the jurisdictions within a year of any

1 election, that would give them that opportunity
2 even though, as compared to those who seem to be
3 the targets of Senator Padavan's legislation,
4 they actually would have only that period of
5 time to learn our government, to learn our ways,
6 to learn our culture and yet would be far more
7 eligible than those who may have resided here
8 for long periods of time, including legal
9 permanent residents who are not allowed to vote
10 in any of the states and are restricted in New
11 York State to only voting in school board
12 elections where, in fact, we have only a five to
13 seven percent turnout in these elections.

14 So at a point when we have under
15 50 percent of the people voting in our
16 presidential elections, nearly one-fifth of our
17 population voting in primaries -- in our New
18 York State primaries for the Governor and the
19 United States Senate in 1994 and so few people
20 voting in elections and we're constantly talking
21 about trying to -- to encourage people to vote,
22 why we would not want to extend that courtesy to
23 individuals -- 11 of them who were legal
24 permanent residents in New York State died in
25 the conflict in Desert Storm -- is really an

1 anathema to me, and I think it's a point well
2 taken, very germane to the legislation but very
3 apt for the topic when we start comparing human
4 beings and what burdens we put on them based on
5 what really are some technical classifications.

6 SENATOR WALDON: Last question,
7 if I may, Mr. President, if the learned
8 gentleman will continue to yield.

9 ACTING PRESIDENT KUHL: Senator
10 Paterson, do you continue to yield? The Senator
11 continues to yield.

12 SENATOR PATERSON: Yes, I do, Mr.
13 President.

14 SENATOR WALDON: Thank you very
15 much, Mr. President, for your patience and yours
16 as well, Senator Paterson.

17 Senator Paterson, the people
18 covered by Senator Maziarz' bill, to your
19 knowledge, are they dual citizens if this works
20 in terms of allowing them to vote in the federal
21 elections, or are they dual citizens because
22 they have a parent who is an American? Is there
23 a distinction between this group of people
24 characterized by this proposal versus those
25 characterized by the proposals of Senator

1 Padavan in terms of the legislation that he has
2 proposed which restricts benefits for school, et
3 cetera, et cetera, et cetera? And that's my
4 last question, Senator Paterson.

5 SENATOR PATERSON: Mr. President,
6 my response to Senator Waldon's comment is that
7 I think that it's actually the residing country
8 that would make the decision in that regard
9 since the United States does not have a dual
10 citizenship policy, to my knowledge, and,
11 therefore, if the individual, for instance,
12 lived in the United States as what has happened
13 to a number of citizens in this country who hail
14 from the Dominican Republic, they were granted
15 dual citizenship by their new president Lionel
16 Fernandez and, therefore, as of last August when
17 he was sworn into office, they were allowed to
18 vote in the United States and retain their
19 Dominican citizenship and that's the reason that
20 so many of them voted and the first Dominican
21 was elected to statewide office in New York
22 State, Assemblyman Espaillat, who resides in my
23 Senatorial District.

24 At the same time, we, in terms of
25 those individuals who are outside the country

1 who are part of Senator Maziarz' bill, would
2 have to make the choice since the United States
3 does not allow for the dual citizenship status.

4 SENATOR WALDON: Thank you very
5 much, Senator Paterson.

6 Thank you, Mr. President.

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

9 (There was no response.)

10 The Secretary will read the last
11 section.

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

14 ACTING PRESIDENT KUHL: Call the
15 roll.

16 (The Secretary called the roll.)

17 THE SECRETARY: Ayes 58.

18 ACTING PRESIDENT KUHL: The bill
19 is passed.

20 Senator Larkin.

21 SENATOR LARKIN: Mr. President,
22 can we now take up 1474, by Senator Hannon.

23 ACTING PRESIDENT KUHL: The
24 Secretary will read the title to Calendar Number
25 1474.

1 THE SECRETARY: Calendar Number
2 1474, substituted earlier today, by the Assembly
3 Committee on Rules, Assembly Print 8110, an act
4 to amend Chapter 884 of the Laws of 1990.

5 SENATOR PATERSON: Explanation,
6 please.

7 ACTING PRESIDENT KUHL: Senator
8 Hannon, an explanation of Calendar Number 1474
9 has been requested.

10 SENATOR HANNON: This is an
11 extender of the current law that allows there be
12 paid to diagnostic and treatment centers and
13 certified home health agencies money from the
14 bad debt and charity care pools.

15 ACTING PRESIDENT KUHL: Senator
16 Paterson.

17 SENATOR PATERSON: Thank you very
18 much.

19 Would Senator Hannon yield for a
20 question?

21 SENATOR HANNON: Yes, Mr.
22 President.

23 ACTING PRESIDENT KUHL: Senator
24 Hannon, do you yield? The Senator yields.

25 SENATOR PATERSON: Senator, the

1 extender that we're acting upon tonight is an
2 extension of what would be awarded from the bad
3 debt and charity pool emanating from legislation
4 that commenced when?

5 SENATOR HANNON: Commenced when?

6 SENATOR PATERSON: In other
7 words, when was the period that we first passed
8 this? We're granting a one-year extender, and
9 so often it's the case that we extend things so
10 much around here, we don't know when they
11 started, and so that's just my question. When
12 did we first start doing this?

13 SENATOR HANNON: January 1, 1997.

14 ACTING PRESIDENT KUHL: Senator
15 Paterson.

16 SENATOR PATERSON: Do you have
17 any information that you can share with me as to
18 whether or not we've granted this authority from
19 the bad debt and charity pool prior to this
20 year?

21 SENATOR HANNON: The predecessor
22 pools which existed under the predecessor
23 financing system had monies that paid money into
24 the -- these entities, but those -- those pools
25 no longer exist because on January 1 of this

1 year we have new pools.

2 ACTING PRESIDENT KUHL: Senator
3 Paterson.

4 SENATOR PATERSON: I guess my
5 question to Senator Hannon was how were the
6 original pools enacted? What's the variance
7 between what we've had for the last six months
8 and what existed up until January 1st, 1997?

9 SENATOR HANNON: We had a
10 regulated system and that was a whole different
11 thing and last year we passed the reform act and
12 it kicked in in the beginning of this year. I'm
13 not going to go through the whole thing because
14 it's, frankly, not germane to this. It had been
15 in existence in this state for 20 years.

16 What we're dealing with is the
17 current system and this allows these entities
18 which are diagnostic and treatment centers and
19 which are certified home health agencies, which
20 serve many people in your district and need
21 these payments in order to pay for those
22 individuals who don't have the money and who
23 would otherwise -- there would be no payment
24 from Medicaid for them and in order to provide
25 those vital services to them, we need to

1 continue these payments.

2 I had hoped that this would have
3 been done in a budget but for reasons beyond my
4 control, it's not. So we have to extend this
5 ability which otherwise expires in the next
6 couple of days.

7 SENATOR PATERSON: Senator, you
8 bring me to really the point, and I don't want
9 to belabor asking you to define what the actual
10 pools were or -- but it's just that we went
11 through an entire reform of this whole process
12 last year and, as you pointed out yourself, we
13 have been doing this for 20 years.

14 So I guess you wouldn't find it
15 to be too obtuse or in any way not germane for
16 me to ask you if we created this reform and
17 we're now extending it for one year, was the
18 six-month period to see whether or not it worked
19 or if the six-month period was, why are we just
20 extending it for just one year? In other words,
21 we just went through without going into detail a
22 complete reform of the system and just to give
23 an example of why I'm asking this question,
24 suppose we extend this granting authority for
25 one year. We come back this time next year. We

1 haven't passed a budget and exactly what is
2 frustrating you perhaps this evening and me as
3 well -- because, as you pointed out, so many
4 individuals that are in my district and in other
5 districts that have similar problems have this
6 need and we want to do this, but having had it
7 intertwined in the budget process as much as
8 possible, why would we want to extend it one
9 year when we can run right into this situation
10 where the inability of our state to resolve a
11 budget negotiation obfuscates the opportunity to
12 bring these needed services to areas all over
13 the state as we seem to have gotten ourselves
14 into this situation tonight?

15 SENATOR HANNON: Yes!

16 SENATOR PATERSON: Marv Albert
17 has joined us.

18 Senator Hannon, if you would
19 continue to yield.

20 SENATOR HANNON: Yes.

21 SENATOR PATERSON: Can you give
22 me a reason why we would not create a structure
23 in which this process would not last for more
24 than one year?

25 SENATOR HANNON: No, I don't have

1 an answer.

2 SENATOR PATERSON: Thank you.

3 That was a much more detailed
4 answer than I got from the last question.

5 My -- if the Senator would
6 continue to yield.

7 SENATOR HANNON: Yes.

8 SENATOR PATERSON: I get as much
9 information from when he yields as when I
10 actually ask the question but, Senator, very
11 seriously, we're in a budget negotiating process
12 in which we aren't sure when we think it should
13 end. It would be certainly fine with myself and
14 -- well, it was fine with Senator Gold, but I
15 see he's walking away now but he's coming back
16 -- that there's a need for us not to lose this
17 vital opportunity based on the fact that we're
18 unable to complete this actual process, and what
19 I'm just trying to put forth is what is a -
20 what is a service that's very important and goes
21 to different parts of the state and is certainly
22 needed.

23 My question is, what is the
24 priority of determination that enables us to
25 know which of the -- which of -- in what

1 diagnostic sense and to which agencies the funds
2 from the bad debt and charity pool will be
3 distributed?

4 SENATOR HANNON: The entire pool
5 had, before we changed the finance system
6 around, a number of incentives for the
7 institutions that received the money to add a
8 lot of overhead into the costs of the pool and
9 it was generally acknowledged that there was -
10 it was not being -- the monies were not being
11 directed as wisely as we would have hoped. In
12 the HCRA 1996 Act, Health Care Reform Act -

13 SENATOR PATERSON: Excuse me, Mr.
14 President. Senator Hannon, the 1996 -

15 SENATOR HANNON: Health Care
16 Reform Act, HCRA -- we changed the methodology
17 by which a bad debt is determined. I don't have
18 all that detail at hand but basically we just
19 made sure that bad debt was more closely to what
20 everybody would acknowledge is the inability of
21 the individual treated to pay and so we're -- we
22 were not able to extend that on a long-term
23 basis.

24 How it's actually working, it's
25 too soon to know, but I can tell you on a

1 historic basis that 50 percent -- or over 50
2 percent of this money goes to agencies of the
3 city of New York. So where it's going, that's
4 where it's going. How it will flow in the
5 future, we don't know but it is all designed to
6 go for care for those people who cannot afford
7 to pay for it.

8 SENATOR PATERSON: Thank you,
9 Senator.

10 Mr. President, if the Senator
11 would continue to yield.

12 ACTING PRESIDENT MARCELLINO:
13 Senator Hannon, do you continue to yield?

14 SENATOR HANNON: Yes.

15 ACTING PRESIDENT MARCELLINO: He
16 does, sir.

17 SENATOR PATERSON: Senator, at
18 the point that we passed the legislation last
19 year, was it believed at the time -- and I know
20 of the involvement that you dedicated to it -
21 that there would be a better assessment of how
22 the program is working at the point that we
23 would be considering granting an extension at
24 this time?

25 SENATOR HANNON: I was hopeful

1 but did I know predicting what would happen
2 when? Absolutely not.

3 SENATOR PATERSON: The -- Mr.
4 President, if the Senator would continue to
5 yield.

6 ACTING PRESIDENT MARCELLINO:
7 Senator Hannon continues to yield.

8 SENATOR HANNON: Yes.

9 SENATOR PATERSON: Senator, I
10 don't know if you can answer this question or
11 not but I'll certainly accept it if you feel
12 that this calls for too much of an opinion, but
13 my question at this point would be, at what
14 point does -- do health care professionals or
15 analysts such as yourself feel that we would get
16 an idea whether or not we've actually corrected
17 some of the discrepancies that we may have had
18 in the system, in the mechanism up to when we
19 tried to pass the reform act? How long will it
20 take before we start to get any indication as to
21 where the money is going and whether or not it's
22 reflecting need or prioritization?

23 SENATOR HANNON: I think it's
24 always a changing scene, just as you try to
25 attempt to address the problems that were before

1 us as of 1996, you get a number of other factors
2 that enter the picture that were the not there
3 then.

4 Entering the picture now, we have
5 the further penetration into insurance coverage
6 of health maintenance organizations which
7 continue to up the share of insurance coverage
8 for all concerned.

9 In addition to that, we have the
10 effect of the welfare enactments by Congress
11 last year which cut off eligibility for certain
12 individuals all without our participation.

13 We know now that pending in the
14 house, in the Senate in Washington there is a
15 potential for cuts in Medicare or Medicaid of
16 \$130 billion over the next five years. So -
17 and everything keeps changing.

18 One of the major statistics that
19 came out of the United Hospital Association just
20 recently was a note that in the two-year period
21 last noted that hospital visits in the city of
22 New York for the first six months of the year -
23 and it was comparing 1993 to 1995 -- had
24 decreased by one million patient days over the
25 comparable six-month period. All of those folks

1 didn't get better all of a sudden. Still
2 probably had pretty much the same amount of
3 illness and ailments. Where did they go? They
4 probably went to these very same institutions
5 that we are directing this money to, the
6 diagnostic and treatment centers and if they
7 didn't get to the clinics, then to being taken
8 care of by the home health care agency.

9 So it's a changing dynamic. You
10 put amendments in to try to meet the needs as
11 you best perceive them and you adjust it
12 accordingly when the situation changes.

13 SENATOR PATERSON: Thank you,
14 Senator.

15 Before I comment on the bill, I
16 think that from your answers I now have a very
17 good idea of why you would want to put a
18 one-year extender on this. Apparently the
19 relative information is not clear and in spite
20 of the fact that preliminary indications would
21 seem to be that this is going to be very
22 effective, you wouldn't want to lock the state
23 into any kind of a process for any long period
24 of time absent any evidence to give us any kind
25 of indication as to how well the program is

1 going. Is that correct?

2 SENATOR HANNON: I think that's
3 an appropriate summation, Senator.

4 SENATOR PATERSON: Thank you.
5 Thank you very much for your
6 answers, Senator Hannon.

7 Mr. President, on the bill.

8 ACTING PRESIDENT MARCELLINO:
9 Senator Paterson on the bill.

10 SENATOR PATERSON: It does seem
11 that the visits to hospitals are decreasing and
12 the whole evolution of the hospital systems
13 seems to be changing right before our eyes as we
14 move more to clinics and diagnostic centers as
15 Senator Hannon certainly demonstrated.

16 You would understand that I am
17 representing a district that has lost eight
18 major hospitals in the last 25 years, hospitals
19 like Arthur Logan, Knickerbocker Hospital,
20 Flower Hospital, Fifth Avenue Hospital, Mother
21 Cabrini Hospital, the Joint Center of Diseases,
22 Francis Dellafield Hospital and, of course, the
23 major controversy in 1983-1984 when Siedman
24 Hospital was closed, there was a feeling in our
25 area that these closures were really reducing

1 the amount of service to our particular area and
2 we are not totally satisfied that that has not
3 been the case but certainly recent information
4 certainly demonstrates that there has been a
5 greater movement in just the whole system based
6 on the presence of HMOs and certainly the
7 different types of health care maintenance that
8 actually exists. We're now finding that the
9 types of centers that Senator Hannon is
10 referring to have been very effective and in
11 many ways reduce costs and increase the ability
12 to have care.

13 So for that reason, there's
14 certainly a concern and if Senator Hannon is
15 right -- and I know that he is right -- but I'm
16 just pointing out that at this point we are very
17 pleased to know that so many people are being
18 serviced and in more cost-effective way, that
19 much of it is being funded by the information
20 that Senator Hannon gave us and by the
21 legislation that's going to continue this
22 program for another year and having understood
23 that, I support it and urge all my colleagues to
24 vote for it.

25 Thank you.

1 SENATOR GOLD: Mr. President.

2 ACTING PRESIDENT MARCELLINO: Oh,
3 I was going to read the last section.

4 Senator Gold.

5 SENATOR GOLD: Mr. President, I'm
6 not going to stop you from reading the last
7 section. It's just a question of when, I guess.

8 Would Senator Hannon yield to a
9 question?

10 SENATOR HANNON: Yes, Mr.
11 President.

12 ACTING PRESIDENT MARCELLINO: I
13 think Senator Hannon is yielding, sir.

14 SENATOR GOLD: Senator Hannon, I
15 was in the room for most of the question and
16 answers with Senator Paterson, but I did have to
17 step out for a minute and if -- I don't want to
18 impose upon you for maybe 35, 40 seconds, but if
19 you could -- I didn't understand why we're
20 talking in terms of just the one-year extender
21 and in looking at the bill history, I see back
22 in 1990, '93, '96. So I gather that it is like
23 some seven, eight years, but can you just
24 explain to me -- and I'll take 30 seconds of
25 it. I don't want to drag it out -- why we're

1 just doing the one-year?

2 SENATOR HANNON: New health care
3 act, January 1, 1996 redid bad debt and charity
4 care. This group of clinics and agencies may
5 have extra costs and different costs and
6 different ways and impositions and, therefore,
7 it's most appropriate and given the facts out
8 there, it would only be done for a year.

9 SENATOR GOLD: You did it 30
10 seconds. Would the Senator now yield to one
11 other question?

12 ACTING PRESIDENT MARCELLINO:
13 Senator Hannon, do you yield for one more
14 question?

15 SENATOR GOLD: Senator, I
16 understand what you've said, but isn't it
17 possible to do a bill that sets up a situation
18 where depending upon certain variables, we -- we
19 can make these adjustments without us doing it
20 legislatively each year?

21 SENATOR HANNON: Yes.

22 SENATOR GOLD: Do we have such a
23 bill in?

24 SENATOR HANNON: No.

25 SENATOR GOLD: Well, if the

1 Senator would yield to one more question.

2 ACTING PRESIDENT MARCELLINO:

3 Senator, do you yield to one more question for
4 the third time?

5 SENATOR HANNON: One more
6 question.

7 SENATOR GOLD: Yeah. Senator, is
8 there a reason why perhaps you have not done
9 that and rather than just say yes or no, can you
10 explain to me what the reason might be?

11 SENATOR HANNON: I thought this
12 was the most appropriate bill to put in because
13 it gives -- continues to give the Legislature
14 oversight. Any type of mechanism gets you into
15 a bureaucratic morass and the one year is
16 appropriate in my judgment.

17 SENATOR GOLD: Thank you.

18 Mr. President, first of all, I
19 know Senator Hannon's -- Senator Hannon pretty
20 well and -

21 ACTING PRESIDENT MARCELLINO:

22 Senator Gold, are you speaking on the bill?

23 SENATOR GOLD: Yes. May I.

24 ACTING PRESIDENT MARCELLINO:

25 Senator Gold, on the bill.

1 SENATOR GOLD: Thank you.

2 ACTING PRESIDENT MARCELLINO:

3 Before you do, Senator, can we just ask -- this
4 is insightful discussion. Can we have it a
5 little quiet?

6 Thank you.

7 SENATOR GOLD: I know we all get
8 to know pretty well the different personalities,
9 and I know certain members have more tolerance
10 for certain things than other members and with
11 that in mind, let me preface my remarks saying,
12 Senator Hannon, you have been around all day.
13 We have been here about 12 hours except for our
14 dinner break and up until about an hour ago, I
15 think the record will indicate, I don't think I
16 spent more than a total of two or three minutes
17 total on anything in this session and certainly
18 I don't think you as a fair gentleman would
19 criticize me for any actions prior to about an
20 hour ago, but things change and I ask you as
21 somebody I respect to understand that it is not
22 me that makes these changes single-handedly. So
23 with that in mind, I ask your indulgence.

24 Mr. President, I find it
25 difficult in certain areas to constantly be

1 arguing, debating, voting on bills year after
2 year because the Legislature doesn't do
3 something more creative that terminates some of
4 these issues, and I understand that with regard
5 to some issues. Some people have the feeling
6 that if we hang certain groups out there and
7 make them come back every year or two, that
8 that's good politics. It's probably not the
9 situation in this bill and I'm not certainly
10 accusing this particular sponsor, who I happen
11 to believe is an honorable man and I don't say
12 that in anything but in a sincere way, but there
13 are situations when we get bills that -- it's a
14 good bill.

15 I'll vote for it.

16 ACTING PRESIDENT MARCELLINO:

17 Read the last section.

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

20 ACTING PRESIDENT MARCELLINO:

21 Call the roll.

22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes 58.

24 ACTING PRESIDENT MARCELLINO: The
25 bill is passed finally.

1 Senator Larkin.

2 SENATOR LARKIN: Please call up
3 1475, Senator Kuhl's Senate Bill 5578.

4 ACTING PRESIDENT MARCELLINO: The
5 Secretary will please read.

6 THE SECRETARY: Calendar Number
7 1475, by Senator Kuhl, Senate Print 5578, an act
8 in relation to the issuance of serial bonds by
9 the village of Penn Yan, Yates County.

10 ACTING PRESIDENT MARCELLINO:
11 There is a home rule message at the desk. Read
12 the last section.

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

15 ACTING PRESIDENT MARCELLINO:
16 Call the roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes 58.

19 ACTING PRESIDENT MARCELLINO: The
20 bill is passed.

21 Senator Larkin.

22 SENATOR LARKIN: 1476, sir.

23 ACTING PRESIDENT MARCELLINO: The
24 Secretary will read 1476.

25 THE SECRETARY: Calendar Number

1 1476 -

2 ACTING PRESIDENT MARCELLINO:

3 Excuse me one second.

4 Senator Waldon, why do you rise?

5 SENATOR WALDON: Thank you very
6 much.

7 I was out of the chamber when the
8 chamber considered 1441. I respectfully request
9 unanimous consent to be recorded in the
10 negative.

11 ACTING PRESIDENT MARCELLINO: It
12 shall be done, sir.

13 SENATOR WALDON: Thank you, sir.

14 ACTING PRESIDENT MARCELLINO: The
15 Secretary will read -- I'm sorry.

16 Senator Dollinger.

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

19 Could I also have unanimous
20 consent to be recorded in the negative on
21 Calendars Number 899 and 1377, Mr. President.

22 ACTING PRESIDENT MARCELLINO:
23 Without objection, that shall be done.

24 SENATOR DOLLINGER: Thank you.

25 ACTING PRESIDENT MARCELLINO: The

1 Secretary will read.

2 THE SECRETARY: Calendar Number
3 1476, by the Committee on Rules, Senate Print
4 5597, an act to amend the Environmental
5 Conservation Law.

6 ACTING PRESIDENT MARCELLINO:
7 Read the last section.

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

10 ACTING PRESIDENT MARCELLINO:
11 Call the roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes 58.

14 ACTING PRESIDENT MARCELLINO: The
15 bill is passed.

16 Senator Larkin.

17 SENATOR LARKIN: Continue, 1477.

18 THE SECRETARY: Calendar Number
19 1477, by the Committee on Rules, Senate Print
20 5599, an act to amend the Civil Service Law, in
21 relation to proceedings.

22 ACTING PRESIDENT MARCELLINO:
23 Read the last section.

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

1 ACTING PRESIDENT MARCELLINO:
2 Call the roll.
3 (The Secretary called the roll.)
4 THE SECRETARY: Ayes 58.
5 ACTING PRESIDENT MARCELLINO: The
6 bill is passed.
7 SENATOR LARKIN: 1478.
8 THE SECRETARY: Calendar Number
9 1478, by Senator DeFrancisco, Senate Print 5605,
10 an act in relation to the apportionment of
11 transportation aid.
12 ACTING PRESIDENT MARCELLINO:
13 There is a local fiscal impact statement on the
14 bill. Read the last section.
15 THE SECRETARY: Section 4. This
16 act shall take effect immediately.
17 ACTING PRESIDENT MARCELLINO:
18 Call the roll.
19 (The Secretary called the roll.)
20 THE SECRETARY: Ayes 58.
21 ACTING PRESIDENT MARCELLINO: The
22 bill is passed.
23 THE SECRETARY: Calendar Number
24 1479, by Senator Leibell, Senate Print 5613, an
25 act to amend the Real Property Tax Law.

1 ACTING PRESIDENT MARCELLINO:

2 Read the last section.

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

5 ACTING PRESIDENT MARCELLINO:

6 Call the roll.

7 (The Secretary called the roll.)

8 THE SECRETARY: Ayes 58.

9 ACTING PRESIDENT MARCELLINO: The
10 bill is passed.

11 SENATOR LARKIN: Mr. President,
12 call up 1466, by Senator Rath.

13 ACTING PRESIDENT MARCELLINO: The
14 secretary please read 1476, Senator?

15 SENATOR LARKIN: '66.

16 ACTING PRESIDENT MARCELLINO:

17 '66.

18 THE SECRETARY: Calendar Number
19 1466, by Senator Rath, Senate Print 3510, an act
20 to amend the Tax Law, in relation to excluding.

21 ACTING PRESIDENT MARCELLINO:

22 Read the last section.

23 THE SECRETARY: Section 6. This
24 act -

25 ACTING PRESIDENT MARCELLINO:

1 Excuse me? An explanation has been called for.

2 Senator Rath.

3 SENATOR RATH: Mr. President, is
4 that Senator Leichter who's asking for an
5 explanation?

6 Senator Leichter, I would say I'm
7 pleased to be sponsoring this bill with Senator
8 Nanula, Senator Maziarz, Senator Present,
9 Senator Stachowski and Senator Volker.

10 The bill has a great impact on
11 Western New York which is an emerging call
12 center area and what this bill will do will be
13 to take companies who decide to come into
14 Western New York and in this case there has been
15 as many as 3,000 new jobs in the last couple of
16 years. This call center industry is a very new
17 kind of industry and instead of taxing a
18 business twice for the state that they reside
19 in, if they come to New York to locate the call
20 center because we have the space, we have the
21 kind of work force, et cetera, we don't want to
22 tax them a second time and discourage them from
23 coming to New York. So that's what this bill
24 provides for.

25 SENATOR LEICHTER: Senator, if

1 you would yield for a question.

2 ACTING PRESIDENT MARCELLINO:

3 Senator Leichter -- excuse me, Senator.

4 Senator Rath, do you yield?

5 SENATOR RATH: Surely.

6 ACTING PRESIDENT MARCELLINO: The

7 Senator yields.

8 SENATOR LEICHTER: Excuse me,

9 Senator. We're having difficulty locating the
10 bill. Senator -

11 ACTING PRESIDENT MARCELLINO:

12 Senator Leichter, the Senator has yielded

13 already.

14 SENATOR LEICHTER: Senator Rath,

15 I understand the point you're making of the
16 importance of this for the northwestern New
17 York, but I take it the bill has a statewide
18 application, is that correct?

19 SENATOR RATH: It does.

20 SENATOR LEICHTER: And what is
21 the fiscal implication for the state if we enact
22 this bill?

23 SENATOR RATH: It's a
24 clarification, Senator Leichter, of the Tax
25 Law. There is no fiscal implication except to

1 the businesses that would be discouraged from
2 coming to New York State. I might point out
3 that in Buffalo, a number of the new jobs -- of
4 the 3,000 new jobs are in the city; very, very
5 important to have jobs in the city.

6 SENATOR LEICHTER: So the point
7 you're making is that the firms that would be
8 coming into the state that would be taking
9 advantage of this would more than make up the
10 loss of any revenue that we would have?

11 SENATOR RATH: "Western New York
12 emerges to take a prominent role in call center
13 industry." The second press release, "Toronto
14 company plans to bring at least 300 jobs to the
15 area."

16 No, there is no revenue
17 implication, Senator. It has to do with not
18 taxing companies twice. If they think about
19 coming to New York State in order to locate call
20 center industries, the bill will define what the
21 call center industry does and not tax them a
22 second time if they decide to put those jobs in
23 New York State.

24 SENATOR LEICHTER: I understand
25 it now, and I thank you.

1 SENATOR RATH: Thank you.

2 ACTING PRESIDENT MARCELLINO:

3 Read the last section, please.

4 THE SECRETARY: Section 6. This
5 act shall take effect September 1st, 1997.

6 ACTING PRESIDENT MARCELLINO:

7 Call the roll.

8 (The Secretary called the roll.)

9 THE SECRETARY: Ayes 58.

10 ACTING PRESIDENT MARCELLINO: The
11 bill is passed.

12 THE SECRETARY: Calendar Number
13 1467, by Senator Leibell, Senate Print 4463-A,
14 an act to amend the Real Property Tax Law.

15 ACTING PRESIDENT MARCELLINO:

16 Read the last section.

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

19 ACTING PRESIDENT MARCELLINO:

20 Call the roll.

21 (The Secretary called the roll.)

22 THE SECRETARY: Ayes 58.

23 ACTING PRESIDENT MARCELLINO: The
24 bill is passed.

25 THE SECRETARY: Calendar Number

1 1468, by Senator LaValle, Senate Print 4637, an
2 act authorizing the creation of a Greenway
3 Riverside Park.

4 ACTING PRESIDENT MARCELLINO: We
5 have a home rule message at the desk. Read the
6 last section.

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

9 ACTING PRESIDENT MARCELLINO:
10 Call the roll.

11 (The Secretary called the roll.)

12 THE SECRETARY: Ayes 58.

13 ACTING PRESIDENT MARCELLINO: The
14 bill is passed.

15 THE SECRETARY: Calendar Number
16 1469, by Senator Nozzolio, Senate Print 4712-A,
17 an act to amend the General Business Law, in
18 relation to improvements.

19 ACTING PRESIDENT MARCELLINO:
20 Read the last section.

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

23 ACTING PRESIDENT MARCELLINO:
24 Call the roll.

25 (The Secretary called the roll.)

1 THE SECRETARY: Ayes 58.

2 ACTING PRESIDENT MARCELLINO: The
3 bill is passed.

4 THE SECRETARY: Calendar Number
5 1470, by member of the Assembly Lafayette,
6 Assembly Print 2224-A, an act to amend the
7 General Business Law.

8 ACTING PRESIDENT MARCELLINO:
9 Read the last section.

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

12 ACTING PRESIDENT MARCELLINO:
13 Call the roll.

14 (The Secretary called the roll.)

15 THE SECRETARY: Ayes 58.

16 ACTING PRESIDENT MARCELLINO: The
17 bill is passed.

18 THE SECRETARY: Calendar Number
19 1471, by Senator Velella, Senate Print 5339-a,
20 an act to amend the Insurance Law.

21 ACTING PRESIDENT MARCELLINO:
22 Read the last section.

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

25 ACTING PRESIDENT MARCELLINO:

1 Call the roll.

2 (The Secretary called the roll.)

3 THE SECRETARY: Ayes 58.

4 ACTING PRESIDENT MARCELLINO: The
5 bill is passed.

6 Senator Larkin, we finished the
7 controversial calendar.

8 SENATOR LARKIN: Any
9 housekeeping?

10 ACTING PRESIDENT MARCELLINO: No
11 housekeeping, Senator.

12 SENATOR LARKIN: Let's stand at
13 ease for a few minutes.

14 ACTING PRESIDENT MARCELLINO: The
15 Senate will stand at ease for a few minutes.

16 (Whereupon, the Senate stood at
17 ease.)

18 ACTING PRESIDENT MARCELLINO:
19 Senator Skelos.

20 SENATOR SKELOS: There will be an
21 immediate meeting of the Rules Committee in the
22 Majority Conference Room, Rules Committee,
23 Majority Conference Room immediately. The
24 Senate will stand at ease.

25 (Whereupon, the Senate stood at

1 ease from 10:30 p.m. until 11:00 p.m.).

2 SENATOR BRUNO: Mr. President.

3 ACTING PRESIDENT MAZIARZ:

4 Senator Bruno.

5 SENATOR BRUNO: Can we ask for an
6 immediate conference of the Majority in Room
7 332.

8 ACTING PRESIDENT MAZIARZ: There
9 will be an immediate conference of the Majority
10 in Room 332.

11 Senator Paterson.

12 SENATOR PATERSON: Mr. President,
13 we would like to announce a meeting of the
14 integrity -- I mean the Minority in Room 314.

15 ACTING PRESIDENT MAZIARZ: There
16 will be an immediate meeting of the Minority
17 Conference in Room 314.

18 (Whereupon, the Senate stood at
19 ease from 11:01 p.m. until 11:31 p.m.)

20 ACTING PRESIDENT KUHL: The
21 Senate will come to order.

22 The Chair recognizes Senator
23 Bruno.

24 SENATOR BRUNO: Good evening, Mr.
25 President. I would like to ask for an immediate

1 meeting of the Rules Committee in Room 332.

2 ACTING PRESIDENT KUHL: There
3 will be an immediate meeting of the Rules
4 Committee, immediate meeting of the Rules
5 Committee in the Majority Conference Room, Room
6 332.

7 SENATOR BRUNO: Mr. President.

8 ACTING PRESIDENT KUHL: Senator
9 Bruno.

10 SENATOR BRUNO: Mr. President,
11 can we return to the reports of standing
12 committees, and I believe there is a report from
13 the Rules Committee, and I would recommend that
14 we accept that report at this time.

15 ACTING PRESIDENT KUHL: I'll ask
16 the Secretary to read the report of the Rules
17 Committee.

18 THE SECRETARY: Senator Bruno,
19 from the Committee on Rules, reports the
20 following bills:

21 1937, by Senator DeFrancisco, an
22 act to amend the State Finance Law;

23 2615-A, by Senator Padavan, an
24 act to amend the Administrative Code of the city
25 of New York;

1 3683, by Senator Wright, an act
2 to amend the Economic Development Law;

3 4395-A, by Senator Maltese, an
4 act to amend the Administrative Code of the city
5 of New York;

6 4514-A, by Senator Farley, an act
7 to amend the Banking Law;

8 4933, by Senator Spano, an act to
9 amend the Workers' Compensation Law;

10 4974, by Senator Hannon, an act
11 to enact the Health Care Ambassador Match Act;

12 5016-A, by Senator Volker, an act
13 to amend the Tax Law;

14 5025-A, by Senator Farley, an act
15 to amend the Parks, Recreation and Historic
16 Preservation Law;

17 5071-C, by Senator Marcellino, an
18 act to amend the Labor Law;

19 5414, by Senator Montgomery, an
20 act to amend the Education Law;

21 5604, by the Committee on Rules,
22 an act to amend the Racing, Pari-mutuel Wagering
23 and Breeding Law.

24 All bills directly for third
25 reading.

1 ACTING PRESIDENT KUHL: The
2 motion is to accept the report of the Rules
3 Committee. All those in favor signify by saying
4 aye.

5 (Response of "Aye".)

6 Opposed, nay.

7 SENATOR DOLLINGER: Could I have
8 an explanation as to why we should accept the
9 Rules Committee report.

10 ACTING PRESIDENT KUHL: Senator
11 Dollinger, just a minute.

12 SENATOR DOLLINGER: That's fine,
13 Mr. President.

14 SENATOR BRUNO: Mr. President, an
15 explanation was requested on what we're doing
16 here in accepting the Rules Committee.

17 ACTING PRESIDENT KUHL: I believe
18 that's the question, Senator.

19 SENATOR BRUNO: I believe the
20 rules of the Senate are such that when Rules
21 meet, they debate bills and those bills that are
22 deemed appropriate by the Majority of the
23 members of the Rules Committee recommend that
24 that be put on an agenda and that agenda appears
25 at the front desk and we then, before we can

1 take it up, vote on accepting the Rules
2 Committee report and by that vote, we are in a
3 position to debate each and every bill and then
4 you can say what you please up or down,
5 sideways, inside, out as relates to the issue
6 and after we have had that exhaustive
7 deliberation, the bills will pass.

8 SENATOR DOLLINGER: Again through
9 you, Mr. President. It's my understanding that
10 the acceptance of the Rules Committee report is
11 to further the business of the Senate, to get
12 the business of the Senate done. It's now 25
13 minutes to 12:00 on the last day of session and
14 there is a Rules Committee report before us.

15 What I understand that signifies,
16 Mr. President, is that there are some important
17 bills that the Rules Committee has determined
18 need to be acted upon by this body tonight.

19 My question to the President of
20 the Senate is, if there are other bills
21 currently on the calendar that also should be
22 acted on tonight and why we haven't done those
23 bills before we go on to a new agenda of putting
24 new bills from the Rules Committee -- there are
25 Rules Committee reports that are before this

1 body right now and we could act on right now
2 before we accept this committee report and that
3 we should act on right now because they need to
4 be done tonight too.

5 My question is why should we
6 accept more work when we haven't finished the
7 work we've already started?

8 ACTING PRESIDENT KUHL: Senator
9 Dollinger, you're directing that question you
10 said to the President of the Senate, which I
11 believe is the title that I'm currently acting
12 in.

13 Are you directing that to me, or
14 are you directing that to some other member?

15 SENATOR DOLLINGER: I'm directing
16 it to the Temporary President, Mr. President, to
17 the Majority Leader, whichever title -
18 whichever hat he's wearing at the current time.

19 ACTING PRESIDENT KUHL: So
20 Majority Leader, you're asking him. Now, you
21 should understand there's a question as to
22 whether or not that question is relevant. The
23 question before us as to whether or not we
24 should accept the report of the Rules Committee,
25 that is a motion properly before this house, as

1 you know, and if you consulted the rules, which
2 I'm sure you have at this point, you know that
3 you're entitled to a half hour debate as the
4 Minority on this issue.

5 So at this point the debate is
6 about four minutes on your side and you have
7 about 26 minutes left, if that's what you wish
8 to do.

9 Now, if you wish to exhaust that
10 time in debate by asking the Majority Leader of
11 this house questions and he wishes to respond,
12 then certainly that is your prerogative.

13 Now, is that your desire?

14 SENATOR DOLLINGER: That is my
15 desire, Mr. President. Once again you have -
16 even at this late hour at this late day you have
17 both articulated the rule and I think
18 evenhandedly applied it.

19 So I appreciate that, Mr.
20 President.

21 ACTING PRESIDENT KUHL: Senator
22 Bruno, would you like to respond?

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

25 Mr. President, may I suggest that

1 we lay this motion aside?

2 ACTING PRESIDENT KUHL: The
3 motion is laid aside.

4 SENATOR BRUNO: Laid aside.
5 That's a good move, isn't it? And, Mr.
6 President, I would recommend that we return to
7 standing committees, and I believe the Rules
8 Committee has met and they now have a report
9 that is at the desk. I would ask that that
10 report be read and move for its acceptance.

11 ACTING PRESIDENT KUHL: There is
12 another report of the Rules Committee at the
13 desk.

14 I'll ask the Secretary to read.

15 THE SECRETARY: Senator Bruno,
16 from the Committee on Rules, reports the
17 following bill:

18 5651, by the Committee on Rules,
19 an act to amend the Insurance Law.

20 ACTING PRESIDENT KUHL: Senator
21 Bruno.

22 SENATOR BRUNO: Move to accept
23 the report, Mr. President.

24 ACTING PRESIDENT KUHL: The
25 motion is to accept the report of the Rules

1 Committee. All those in favor signify by saying
2 aye.

3 (Response of "Aye".)

4 Opposed, nay.

5 (There was no response.)

6 The Rules report is accepted.

7 Senator Bruno -- the bill is
8 ordered directly to third reading.

9 Senator Bruno.

10 SENATOR BRUNO: Read the last
11 section, Mr. President.

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

14 THE SECRETARY: Calendar Number
15 1504, by the Committee on Rules, Senate Print
16 5651, an act to amend the Insurance Law, in
17 relation to medical malpractice insurance.

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

20 THE SECRETARY: Section 8. This
21 act shall take effect immediately.

22 ACTING PRESIDENT KUHL: Call the
23 roll.

24 SENATOR BRUNO: Mr. President.

25 ACTING PRESIDENT KUHL: Senator

1 Bruno.

2 SENATOR BRUNO: Was there a
3 message at the desk?

4 ACTING PRESIDENT KUHL: Yes,
5 there is, Senator Bruno.

6 SENATOR BRUNO: I move we accept
7 the message.

8 ACTING PRESIDENT KUHL: The
9 motion is to accept the message of necessity on
10 Calendar Number 1504. All those in favor
11 signify by saying aye.

12 (Response of "Aye".)

13 Opposed, nay.

14 (There was no response.)

15 The message is accepted. The
16 bill is before the house.

17 The Secretary will read the last
18 section.

19 THE SECRETARY: Section 8. This
20 act shall take effect immediately.

21 ACTING PRESIDENT KUHL: Call the
22 roll.

23 (The Secretary called the roll.)

24 THE SECRETARY: Ayes 58.

25 ACTING PRESIDENT KUHL: The bill

1 is passed.

2 SENATOR BRUNO: Mr. President,
3 there being no further business to come before
4 the Senate, I would move that we stand adjourned
5 until Tuesday, at 11:00 a.m.

6 ACTING PRESIDENT KUHL: Without
7 objection, the Senate stands adjourned until
8 Tuesday, at 11:00 a.m., intervening days to be
9 legislative days.

10 SENATOR BRUNO: Mr. President,
11 intervening days to be legislative days.

12 (Whereupon, at 11:41 p.m., the
13 Senate adjourned.)

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