ALBANY, NEW YORK

June 25, 1997

10:15 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

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

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

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

Reverend Perkins.

REVEREND AMY PERKINS: Let us pray.

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

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

THE PRESIDENT: Reading of the Journal.

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

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

The Chair recognizes Senator Hannon.

SENATOR HANNON: Yes, Mr. President.

On behalf of Senator Skelos,

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

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

Senator Hannon.

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

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

Senator Bruno.

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

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

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

ACTING PRESIDENT KUHL: Question

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

Senator Bruno, that brings us to the calendar.

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

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

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

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR PATERSON: Lay aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR PATERSON: Lay aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: The bill

is high. Lay the bill aside.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary

will read the last section.

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

SENATOR PATERSON: Lay aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: The bill

is passed.

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

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2. This

act shall take effect April 1st.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENMATOR PATERSON: Lay aside.

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

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 9. This

act shall take effect June 30th.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR PADAVAN: No.

THE SECRETARY: Calendar 1392 -

SENATOR PADAVAN: In the negative.

ACTING PRESIDENT KUHL: Senator

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

SENATOR PADAVAN: That is correct, Mr. President.

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

Secretary will continue to read the non-controversial calendar.

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

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

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

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

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR LEICHTER: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT KUHL: The bill is passed.

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

Senator Tully, why do you rise?

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

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

Senator Hannon?

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

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

Number 1384.

Senator Bruno.

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

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

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

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

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

SENATOR LEICHTER: Explanation.

SENATOR BRUNO: Lay aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

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

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

SENATOR PATERSON: Explanation.

SENATOR BRUNO: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

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

SENATOR PATERSON: Explanation.

SENATOR BRUNO: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

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

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

THE SECRETARY: Calendar Number

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

SENATOR PATERSON: Explanation.

SENATOR BRUNO: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 633, by Senator Tully.

ACTING PRESIDENT KUHL: Senator Bruno.

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

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

Secretary will continue to read the controversial calendar.

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

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

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

SENATOR PATERSON: Explanation.

SENATOR BRUNO: Lay it aside temporarily, please.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

SENATOR PATERSON: Mr. President.

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

SENATOR MARCELLINO: Mr. President, can I have unanimous consent to be recorded -

ACTING PRESIDENT KUHL: No.

SENATOR MARCELLINO: No?

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

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

ACTING PRESIDENT KUHL: Lay the bill aside.

Now, Senator Marcellino.

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

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

SENATOR MARCELLINO: Thank you, Mr. President.

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

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

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

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

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

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

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

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

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

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

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

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

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

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

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

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

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

SENATOR SKELOS: No objection.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: Senator Paterson.

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

SENATOR SKELOS: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

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

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

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

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

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

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

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

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos.

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

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 1417.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

her largest following of all;

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

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

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

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

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

transmitted to the family of Dr. Betty Shabazz.

ACTING PRESIDENT KUHL: Any Senator wishing to speak on the resolution? Hearing none -

SENATOR WALDON: Wait a minute.

ACTING PRESIDENT KUHL: Senator Waldon.

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

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

do in regard to the Malcolm X Foundation.

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

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

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

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

Thank you very much.

ACTING PRESIDENT KUHL: Senator Paterson, on the resolution.

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

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

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

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

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

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

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

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

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

I want to thank Senator Seabrook

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

ACTING PRESIDENT KUHL: Senator Smith, on the resolution.

SENATOR SMITH: Thank you, Mr. Chairman.

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

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

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

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

Thank you.

ACTING PRESIDENT KUHL: Senator Lachman, on the resolution.

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

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

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

Thank you.

ACTING PRESIDENT KUHL: Senator

Oppenheimer, on the resolution.

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

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

ACTING PRESIDENT KUHL: Senator Seabrook, on the resolution.

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

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

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

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is unanimously adopted.

Senator Skelos.

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

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

Senator Abate, why do you rise?

SENATOR ABATE: Yes. I ask for

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

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

Senator Skelos.

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

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

SENATOR SEABROOK: Yes.

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

Senator Seabrook?

SENATOR SKELOS: Senate will stand at ease.

ACTING PRESIDENT KUHL: Senate

will stand at ease.

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

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

Senator Skelos.

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

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

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

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

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

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

of Criminal Justice Services;

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

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

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

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

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

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

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

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

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

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

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

4741, by Senator LaValle, an act

to amend Chapter 554;

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

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

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

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

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

All bills ordered direct for third reading.

ACTING PRESIDENT KUHL: Senator Skelos.

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

ACTING PRESIDENT KUHL: Motion is to accept the report of the Rules Committee. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The report is accepted.

Senator Skelos.

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

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

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

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

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominee is confirmed. Secretary will read.

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

Member of the Metropolitan

Transportation Authority, Andrew Saul, of Katonah.

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominee is confirmed.

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

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

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominee is confirmed.

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

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

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominees are confirmed.

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

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

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nomination is confirmed.

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

following nomination:

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

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominees are confirmed. Secretary will continue to read.

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

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

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

(Response of "Aye.")

Opposed nay.

The nominees are confirmed.

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

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

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominee is confirmed.

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

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

Yousey, Sr., of Lowville.

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominees are confirmed.

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

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

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominee is confirmed.

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

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

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominees are confirmed.

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

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

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominee is confirmed.

THE SECRETARY: Senator Stafford,

from the Committee on Finance, reports the following nomination:

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

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nominee is confirmed.

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

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

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The nomination is confirmed.

Senator Skelos, that completes the Finance Committee report.

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

Would you please start with Calendar Number 784.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 784.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR SKELOS: Please call up

Calendar Number 855.

ACTING PRESIDENT KUHL: Secretary will read.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read.

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

ACTING PRESIDENT KUHL: Secretary

will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

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

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

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

SENATOR GOODMAN: Lay the bill aside.

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

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

SENATOR LEICHTER: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: There is

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

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary

will read the last section.

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

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

ACTING PRESIDENT KUHL: Lay the bill aside.

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

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

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

will be laid aside.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Sec...

SENATOR GOLD: What is that number?

ACTING PRESIDENT KUHL: 1433.

SENATOR GOLD: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR PATERSON: Lay aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

(The Secretary called the roll.)

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

SENATOR GOLD: Thank you, Mr. President.

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

Vote me in the affirmative, please.

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

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

SENATOR GOLD: Mr. President.

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

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

Vote me yes.

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

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

Secretary will continue to road.

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

SENATOR PATERSON: Explanation.

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

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

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

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

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

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

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

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

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

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

Remember, this is only for

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

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

SENATOR WALDON: Would the gentleman yield to a question?

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

Senator Paterson.

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

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

Senator Waldon.

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

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

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

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

SENATOR VOLKER: Certainly.

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

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

SENATOR WALDON: I said a cousin.

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

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

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

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

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

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

this type?

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

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

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

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

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

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

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

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

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

SENATOR WALDON: Would the gentleman continue to yield?

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

SENATOR VOLKER: Certainly.

ACTING PRESIDENT KUHL: The Senator continues to yield.

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

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

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

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

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

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

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

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

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

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

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

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

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

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

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

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

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: Thank you, Mr. President.

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

SENATOR VOLKER: Have I even been to what?

SENATOR WALDON: To Green Haven.

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

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

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

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

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

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

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

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

SENATOR WALDON: On the bill, Mr. President.

Thank you, Senator.

ACTING PRESIDENT KUHL: Senator Waldon, on the bill.

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

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

the wrong if we should let you out?

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

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

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

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator

Abate.

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

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

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

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

SENATOR VOLKER: The answer is beyond a reasonable doubt.

SENATOR ABATE: It would be beyond a reasonable doubt.

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

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

SENATOR ABATE: It's clear and convincing evidence.

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

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

SENATOR VOLKER: Certainly.

ACTING PRESIDENT KUHL: The

Senator continues to yield.

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

SENATOR VOLKER: That's exactly right.

SENATOR ABATE: -- with a periodic review.

SENATOR VOLKER: You're right.

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

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

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

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

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

to a jury trial in this case.

SENATOR VOLKER: Absolutely.

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

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

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

SENATOR VOLKER: Violent sexual

offense, yep.

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

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

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

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

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

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

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

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

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

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

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

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

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

SENATOR ABATE: Yes, I am.

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

Senator Volker, do you continue

to yield?

SENATOR VOLKER: I certainly do.

ACTING PRESIDENT KUHL: The Senator continues to yield.

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

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

SENATOR ABATE: All right. Okay.

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

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

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

SENATOR VOLKER: Certainly.

ACTING PRESIDENT KUHL: The Senator yields.

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

SENATOR VOLKER: Yeah.

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

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

SENATOR VOLKER: Absolutely.

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

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

SENATOR ABATE: Unfortunately I

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

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

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

SENATOR VOLKER: Pardon me?

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

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

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The

Senator continues to yield.

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

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

SENATOR ABATE: Okay. Thank you.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

Would Senator Volker yield to a

question?

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

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

SENATOR VOLKER: Not the jail, committed.

SENATOR GOLD: Committed. I'm sorry.

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

SENATOR GOLD: On the bill, Mr.

President.

ACTING PRESIDENT KUHL: Senator Gold, on the bill.

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

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

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

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

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

ACTING PRESIDENT KUHL: Senator Dollinger.

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

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

SENATOR VOLKER: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Thank you, Mr. President.

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

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

questions about the bill.

Who gives the notice?

SENATOR VOLKER: The -

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

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

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

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

SENATOR VOLKER: Yes.

ACTING PRESIDENT KUHL: He continues to yield.

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

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

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

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

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

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

questions, and then I'll address the bill.

SENATOR VOLKER: Sure.

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

SENATOR VOLKER: Right.

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

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

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

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

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

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

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

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

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

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

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

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

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

SENATOR VOLKER: No.

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

Here's my concern, Senator. Do

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

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

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

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

I guess my problem is if you say,

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

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

SENATOR VOLKER: No.

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

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

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

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

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

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

SENATOR VOLKER: No, no, Senator.

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

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

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

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

SENATOR DOLLINGER: Okay. You hear my concern there.

SENATOR VOLKER: Sure.

SENATOR DOLLINGER: May I just

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

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

SENATOR VOLKER: Mental health.

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

SENATOR VOLKER: Right.

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

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

SENATOR VOLKER: No.

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

of confinement?

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

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

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

briefly.

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

SENATOR VOLKER: Exactly.

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

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

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: The Chair recognizes Senator Padavan.

SENATOR PADAVAN: Thank you, Mr. President.

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Senator Leichter.

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

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

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

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

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

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

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

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

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

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

SENATOR VOLKER: Okay. All right, Senator.

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

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

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

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

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

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

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

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

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

SENATOR VOLKER: Page 3 -

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

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

SENATOR LEICHTER: Mental -

SENATOR VOLKER: By the way, Senator -

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

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

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

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

SENATOR LEICHTER: Senator -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SENATOR LEICHTER: I did, sir.

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

SENATOR LEICHTER: Always through you, Mr. President.

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

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

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

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

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

SENATOR VOLKER: Yep.

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Well,

Senator Leichter has the floor.

SENATOR LEICHTER: Sure. I'll yield.

ACTING PRESIDENT KUHL: Senator Leichter yields.

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

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

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

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

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

ACTING PRESIDENT KUHL: Senator Volker.

SENATOR VOLKER: Yep.

ACTING PRESIDENT KUHL: The Senator yields.

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

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

SENATOR LEICHTER: What line?

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

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

SENATOR LEICHTER: I accept that. Thank you.

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

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

SENATOR VOLKER: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

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

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

What we are saying here is that

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

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President.

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

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

SENATOR HOFFMANN: Senator

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

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

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

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

ACTING PRESIDENT KUHL: Senator Hoffmann passes.

Senator Paterson.

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

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

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

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

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

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

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

opportunity.

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

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

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

ACTING PRESIDENT KUHL: Senator Volker, do you yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator, if a

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

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

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

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

SENATOR VOLKER: Sure.

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

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

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

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

SENATOR PATERSON: Mr. President.

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

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Paterson, on the bill.

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

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

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

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

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

ACTING PRESIDENT KUHL: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

states then based their sexual predator laws.

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

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

raised.

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

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

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

ACTING PRESIDENT KUHL: The bill is passed.

Senator Present.

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

ACTING PRESIDENT KUHL: There

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

SENATOR HOFFMANN: Mr. President.

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

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

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

Senator Present.

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

ACTING PRESIDENT KUHL: The Secretary will read.

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

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

SENATOR LEICHTER: 1423? Explanation.

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

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

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

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Would Senator Velella yield, please?

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: Senator

Velella, do you yield? The Senator yields.

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

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

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

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

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

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

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

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

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

SENATOR VELELLA: Oh, okay.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Yes, I'm asking Senator -

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

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

Let me finish asking the question.

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

Senator Leichter?

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

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

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

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

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

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

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: If Senator Velella continues to yield?

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

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: Yes.

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

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

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

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

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

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

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

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

Senator Velella, do you continue to yield?

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

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

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

would clearly consider disabled who were denied disability pensions?

SENATOR VELELLA: Is that the question?

SENATOR LEICHTER: Yes.

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

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

may have occurred in the past. We're moving ahead to a better way of doing it.

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

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

SENATOR VELELLA: I'm not going to yield any more. I'll let the bill stay the way it is.

ACTING PRESIDENT KUHL: Senator refuses to yield.

SENATOR LEICHTER: O.K. Well, I think it's unfortunate, because I think there are some questions here as to the position of the city of New York. Is this a matter that's in collective bargaining? I'm sorry that Senator Velella doesn't want to defend his bill or address these issues, but I think I am troubled by the fact that unless we're given some sound reason as to why we should interfere in a matter which is basically settled by collective bargaining between the city of New York and its employees, and we have another bill on later today where this legislature meddles in what is really a matter of the city of New York and its

relationship it has with its employees.

So based on, you know, Senator Velella's answers and what he hasn't answered, I take this to be an infringement on the rights of the city of New York, maybe an interference in the collective bargaining. I know no reason why the current system is not working. I also don't know whether there's any effort here to broaden the bases upon which disability is granted.

Disability pensions cost an enormous amount to the city of New York and its taxpayers. Some are fair and some are very unfair and, frankly, people taking advantage of the city of New York. Is this an effort to try to broaden the people that are going to win disability pensions that have to be paid for by the people of the city of New York?

It might well be the case. We never -- we won't have all the answers because Senator Velella said he didn't have time to look at the nuances. I don't think I asked him to check with every member of the union. I don't know whether he checked with the commissioner. In fact, we have a former commissioner of corrections, Senator Velella, sits about 20 feet

from you. Maybe she might have given you some information or advice as to how well the current board was working.

Based on the information I have, I would urge members to vote against this bill.

ACTING PRESIDENT KUHL: Secretary will read the last section -

SENATOR VELELLA: Speak on the bill.

ACTING PRESIDENT KUHL: Senator Velella, on the bill.

SENATOR VELELLA: Mr. President, on the bill, I would like to point out to the members that there is a message at the desk from the city of New York that the City has approved this bill and is in full support of the bill so, again, we have a case of Senator Leichter's all-knowing knowledge superseding everybody else's ability to make decisions.

I would suggest that the state Senate is not the place for a classroom to educate someone as to everything that's going on in the city of New York. If the Senator has a particular question and a particular concern, it's their obligation also to look into the

issue. This bill is on the calendar; calls could be made to find out about it.

I believe we've met the obligation. The city of New York has requested it; the union has requested it; the administration has requested it. There is precedent for it. It's a better system to operate under despite Senator Leichter's concerns and lack of knowledge in terms of looking into what he has concerns about. I'm not here to educate him. I'm here to make proposals to improve the process.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

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

SENATOR LEICHTER: I raised the issue whether the city of New York's for the bill. I don't know; I just saw it. Senator Velella, I was going to ask you is the city of New York for it? I'll ask you to yield now.

Is it not the home rule message -- the City Council I understand. Is the city

of New York, your mayor, my mayor, have they come out in favor of the bill?

SENATOR VELELLA: The same answer that I gave you in the Rules Committee, the same answer that I'm giving you here now. Sometimes it doesn't get through your head when you hear something direct. There is a home rule message. I have not had any reason to believe anybody is against this bill. The mayor has not contacted me. There's been no memo that I have seen against it. If you have one, show it to me.

I appreciate your concern for the mayor of the city of New York, but if he had a problem, I assure you he would let me know. The Council has voted for it. Yes, I say the voices I have heard from the city of New York say they want this bill.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: There's a big difference saying that there's a home rule message which came from the City Council and saying the city of New York is for it. We've had a number of instances where there have been

home rule messages and the mayor has taken a different position.

I happen to have a lot of disagreements with the mayor, but I do happen to believe that when it comes to management issues between employer and employee that the chief execute ought to have freedom to work out that relationship.

So, Senator, I gather now that - and I thank you for answering -- that the city of New York has not approved the bill. You pointed out that they haven't opposed it. I have not seen a memo of opposition either, but what you were referring to is a home rule message which is far different than saying the city of New York supports the bill.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

THE SECRETARY: Ayes 55, nays one, Senator Leichter recorded in the negative.

ACTING PRESIDENT KUHL: Senator Larkin, we have some housekeeping at the desk we'd like to do if that's possible.

SENATOR LARKIN: Yes, please.

ACTING PRESIDENT KUHL: Return to the order of motions and resolutions. Secretary will read the substitutions.

THE SECRETARY: On page 5, Senator Farley moves to discharge from the Committee on Rules Assembly Print 5281 and substitute for the identical Senate Third Reading 147.

On page 9, Senator Velella moves to discharge from the Committee on Rules Assembly Print 7728-A, and substitute for the identical Senate Third Reading 340.

On page 10, Senator Goodman moves to discharge from the Committee on Rules Assembly Print 5036-B and substitute it for the identical Senate bill, Third Reading 371.

On page 17, Senator Tully moves to discharge from the Committee on Rules Assembly Print 8009-A and substitute it for the

identical Senate bill, Third Reading 633.

On page 26, Senator DeFrancisco moves to discharge from the Committee on Rules Assembly Print 6652-A and substitute it for the identical Senate bill, Third Reading 911.

ACTING PRESIDENT KUHL: Substitutions are ordered.

Chair recognizes Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

On page number 23, I offer the following amendments to Calendar Number 839, Senate Print Number 4124, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments to Calendar Number 839 are received and adopted and the bill will retain its place on the Third Reading Calendar.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I wish to call up, on behalf of Senator Leibell, Calendar Number 504, Assembly Print Number 2931.

ACTING PRESIDENT KUHL: Secretary

will read.

THE SECRETARY: By member of the Assembly Lopez, Assembly Print 2931, an act to amend the Private Housing Finance Law.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: I now move to reconsider the vote by which this Assembly bill was substituted for Senator Leibell's bill, Print Number 3508, on April 8th.

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: I now move that Assembly Bill Number 2931 be committed to the Committee on Rules and Senator Leibell's bill, Senate bill, be restored to the order of third reading.

ACTING PRESIDENT KUHL: The Assembly bill will be committed and the Senate bill will be restored.

SENATOR MARCELLINO: I now move to offer the following amendments.

ACTING PRESIDENT KUHL: The amendments are received and adopted.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I wish to call up Senator Leibell's bill, Print Number 3731, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: By Senator Leibell, Senate Print 3731, an act to amend Chapter 915 of the Laws of 1982.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I now move to reconsider the vote by which this bill was passed.

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: Senator

Marcellino.

SENATOR MARCELLINO: Mr. President, I now offer the following amendments.

ACTING PRESIDENT KUHL: Amendments are received and adopted.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I wish to call up Calendar Number 792, Assembly Print Number 8089.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: Calendar Number 792, by the assembly Committee on Rules, Assembly Print 8089, an act to provide for the adjustment of stipends.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President. I now move to reconsider the vote by which this Assembly bill was substituted for Senator Trunzo's bill, Senate Print Number 5237-A on June 9.

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: I now move that Assembly Bill Number 8089 be recommitted to the Committee on Rules and Senate Bill -- and Senator Trunzo's bill be restored to the order of Third Reading Calendar.

ACTING PRESIDENT KUHL: The Senate bill will be restored to the Third Reading Calendar.

SENATOR MARCELLINO: Thank you.

ACTING PRESIDENT KUHL: Thank you, Senator Marcellino.

Senator Larkin.

SENATOR LARKIN: Mr. President, may we now call up Calendar 1380, by Senator Goodman.

ACTING PRESIDENT KUHL: Secretary will read the title.

THE SECRETARY: Calendar Number 1380, by Senator Goodman, Senate Print 430-A, an act to amend the Education Law, in relation to

the unauthorized practice of a profession.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR LARKIN: Could we now proceed on regular order.

ACTING PRESIDENT KUHL: Calendar Number 1380 was passed.

We'll now go to regular order, commencing with Calendar Number 1424, by Senator Hannon.

SENATOR GENTILE: Mr. President.

ACTING PRESIDENT KUHL: Senator Gentile.

SENATOR GENTILE: I would just ask for unanimous consent to be recorded in the negative on Calendar Numbers 124 and 1135.

SENATOR KUHL: Without objection,

hearing no objection, Senator Gentile will be recorded in the negative on Calendar Number 124. Senator Gentile, we're just checking, but apparently you're on a different time schedule and calendar than we are because neither of those -- we appreciate your optimism and enthusiasm for the adoption of bills which have not been adopted by this chamber, so we're not able to record your votes at this time.

SENATOR GENTILE: Trying to speed the process along.

ACTING PRESIDENT KUHL: We appreciate that. Maybe you can talk with some of the other members of the house.

Secretary will continue to call the controversial calendar, commencing with Calendar Number 1424, by Senator Hannon.

THE SECRETARY: Calendar Number 1424, by Senator Hannon, Senate Print 2186, an act to amend the Education Law, in relation to experimental alternative institutional.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1425, by Senator Montgomery, Senate Print 2574, an act authorizing.

ACTING PRESIDENT KUHL: There is no home rule bill at the desk, so the bill will be laid aside. Continue to call the controversial calendar.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR LARKIN: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 1430, substituted earlier today, by member of the Assembly Parment, Assembly Print 5816-A, an act to amend the County Law, in relation to the allocation.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1433, by Senator Hannon, Senate Print 4707-A, an act to amend the Social Services Law, in relation to limiting the method of payment.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1437, by Senator Maziarz, Senate Print 5435, an act to amend the Family Court Act, in relation to violations.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect in 90 days.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Larkin.

SENATOR LARKIN: Mr. President, can we now return to motions and resolutions. I believe you have a privileged resolution at the desk -- would you just read the title -- by

Senator Rath.

ACTING PRESIDENT KUHL: There is a privileged resolution by Senator Rath at the desk. Secretary will read the title.

THE SECRETARY: By Senator Rath, Legislative Resolution commending Dr. Stuart Steiner, president of Genesee Community College upon the occasion of his designation by the Association of Community College Trustees as a recipient of the 1997 Northeastern United States Chief Executive Officer Award.

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

Senator Larkin, as long as we're on motions and resolutions, we do have two motions we'd like to take up at this time. Is that O.K. with you?

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator

Marcellino.

SENATOR MARCELLINO: Mr. President, on behalf of Senator Farley, on page number 7, I offer the following amendments to Calendar Number 275, Senate Print Number 2339, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments to 275 are received and adopted and the bill will retain its place on the Third Reading Calendar.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

On behalf behalf of Senator Leibell, I wish to call up his bill, Print Number 3580, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: Calendar Number 507, by Senator Leibell, Senate Print 3580, an act to amend the Private Housing Finance Law.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I move to reconsider the vote by which this bill was passed.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I now offer the following amendments.

ACTING PRESIDENT KUHL: Amendments are received and adopted.

SENATOR PADAVAN: Mr. President.

ACTING PRESIDENT KUHL: Senator Padavan.

SENATOR PADAVAN: Mr. President, I'd like, by unanimous consent, to be recorded in the negative on a bill that passed earlier today, Calendar 855, Senate Bill 3307-B.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Padavan will be recorded in the negative on Calendar Number 855.

Senator Larkin.

SENATOR LARKIN: Mr. President, can we now return to our original calendar and start with Calendar Number 78.

ACTING PRESIDENT KUHL: We'll return to the controversial reading of the original calendar of the day, Calendar 59, beginning with Calendar Number 78, but before we do that, we'll recognize Senator Trunzo.

SENATOR TRUNZO: Mr. President, there will be an immediate meeting of the Civil Service and Pension Committee meeting - Committee in the Conference Room, Room 332.

ACTING PRESIDENT KUHL: Immediate meeting of the Civil Service and Pensions Committee. Immediate meeting of the Civil Service and Pensions Committee in the Majority Conference Room, Room 332.

Secretary will read Calendar Number 78.

THE SECRETARY: Calendar Number 78, by Senator Wright, Senate Print 731-A, an act to legalize, ratify and confirm the acts and proceedings of the board of education of the Mexico Central School District.

ACTING PRESIDENT KUHL: Senator

Larkin.

SENATOR LARKIN: Is there a message, Mr. President?

ACTING PRESIDENT KUHL: There is a message of necessity for Calendar Number 78 at the desk.

SENATOR LARKIN: Move to accept the message.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted.

There is a local fiscal impact note at the desk also. Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 124, by Senator Johnson, Senate Print 738-A, an act to amend the Education Law, in relation to prohibiting.

ACTING PRESIDENT KUHL: Senator Johnson, an explanation of Calendar Number 124 has been requested.

SENATOR JOHNSON: Mr. President, this bill is intended to amend the Education Law in relation to prohibiting financing of political organizations through mandatory student fees by state universities and colleges.

This will assure that money raised by students is spent for student benefits, not for any other organization which has its own agenda. It does permit, however, optional fees to be paid by students who choose to support these types of organizations if that is approved by a majority vote of the students voting.

So I think it's one that clears up a lot of problems that we've had for years with a particular organization and still lets

them exist if they choose to do so but not mandatorily being paid by activity fees of students on the campuses.

ACTING PRESIDENT KUHL: Senator Oppenheimer.

SENATOR OPPENHEIMER: I think I'm going to borrow a statement from one of the Senators who said earlier today, if it ain't fixed don't break -- if it ain't broken, don't fix it.

Yes, there are, as Senator Johnson said, mandatory student activity fees for all kinds of extracurricular activity on campus, social and educational, recreational, cultural, but the fact is that if a student does not choose to see those fees put into a particular activity, they can request a portion of the fees back.

I think this would change the nature of all extracurricular activities on campuses and would really prevent the young people from advocating their opinions on a variety of public policy issues. I think this is critical if we want these young people to learn how democracy works and how better than to

take stands on public policy issues and try and work through them.

I think it's enormously important to our democratic form of government, and we always are talking about informed citizenry, and we also are always talking about how our young people have been turned off by the system and many of them are not voting. Now, if we keep talking about this and then say, on the other hand, the activities they do on campus concerning public policy and advocacy are not worthy and should be restrained, I think we're giving a terrible message.

I think we should be encouraging this kind of activity, not discouraging it, and -- and lastly, I would say that the students, they decide how they're going to spend their own money. It is their student government who decides every four years when all of the various organizations are enumerated, and there is a detailed discussion of how the money will be spent, so it's -- you know, we don't permit their own student government to determine how they should spend the money that they are putting up, the students are putting up. It has

nothing to do with our money, it is student money. Then I think we are giving them a message that democracy is not working and that we are not interested in the opinions of young people.

I'll be voting no.

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

SENATOR STAVISKY: Mr. President, this bill comes up periodically. We've debated it on the floor several years ago. It's been considered in committee, and it has been held. I don't know why we seek to resurrect this notion which is a "get NYPIRG" agenda. If someone has difficulty in accepting the positions of NYPIRG, so be it, but if there is no hidden agenda such as getting NYPIRG, then we should also consider that.

I don't believe there is any reason for presenting this bill except somewhere in the distant past, NYPIRG may have offended a member of the Legislature. I am not seeking to undermine anyone's opposition to NYPIRG, but this bill goes much further. It sends a

chilling message to many organizations that are on campus. It sends a chilling message to organizations such as student newspapers, campus radio stations, cultural and religious groups, speaker programs, ecology clubs and public interest research groups, all of which are in the business of trying to encourage students to participate, not to be turned off by the system.

I don't believe this is a well thought out bill. I don't believe that we should be considering this kind of legislation because someone's feelings may have been upset in the past by virtue of a position that NYPIRG may have taken. In that case, the sponsor perhaps could meet with NYPIRG, could discuss the reasons for the submission of this piece of legislation, but we in the Senate should not supersede what is voted upon by the students themselves as mandatory activity fees, and we should take -- take it easy. We should not be jumping to the conclusion that this should be discontinued.

The source of funding is important. No one would presume to take any

part of the funding away from a group that is performing a worthwhile function. We should not. We should not, in my opinion, define public policy issues as anything that affects the -- that affects the -- the -- that affects the rights of the students to determine which organization they are willing to support.

This is micromanagement of the State University of New York. It's micromanagement of the four-year institutions, the two-year community colleges, and may even have an impact on schools such as Syracuse University which does have a part that is involved in the State University system, the College of Forestry.

I think that those of us who are supportive of the university should not be misled in supporting this legislation. It's a mistake. I hope the sponsor will reconsider his effort to have this pass. It's a one-house bill, I believe. This is a bill that has never been passed in any form in the New York State Assembly, and I'm not asking the Senate to forego its own position, but rather I ask the Senate to avoid micromanaging the State

University.

There are new appointments that have been recommended by the Governor of this state to the Board of Trustees of the State University system, and even those new members who are now in a majority on the SUNY trustee board have not asked us to do this. Why should we? Why should we not hold our fire, keep our cool? No disrespect to our presiding officer, and avoid the micromanagement and I think the destructive micromanagement that is inherent in this bill.

I will be voting in the negative and I hope my colleagues, some of them, will join me.

ACTING PRESIDENT KUHL: Senator Abate.

SENATOR ABATE: Yes, would Senator Johnson yield to a couple questions?

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

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR ABATE: Senator, I've been told that 25 years ago CUNY and SUNY authorized the mandatory fee, student fee. What was their rationale for the institution of this or the initiation of this mandatory fee?

SENATOR JOHNSON: Well, Senator, back in those days a fellow named Ralph Nader was running around organizing a lot of political activities and one of the things he decided to do was organize students in a political group to advance his agenda.

SENATOR ABATE: Mr. President, I'm having a hard time hearing.

ACTING PRESIDENT KUHL: I think your point is very well taken. Excuse me, Senator Johnson.

SENATOR JOHNSON: Senator, is this one any better? No?

I said back in those years Ralph Nader was actively organizing political groups to advance his agenda in the nation and in the legislatures and the federal Congress as well, and NYPIRG was an outgrowth of the Nader movement where they decided to organize students to advance their agenda, and that's the origin

of NYPIRG.

SENATOR ABATE: But, Senator Johnson, would you continue to yield?

SENATOR JOHNSON: Yes.

SENATOR ABATE: But it's my understanding, and please correct me, that it was put in place to generate more opportunity for extracurricular activities, for more involvement in activity upon the student to organize, and as an outgrowth, can you tell me in the CUNY and SUNY systems what organizations have been formed as a result of this mandatory fee? Certainly not just NYPIRG or Nader organizations. Have there been other organizations that have been formed as a result of the mandatory fee?

SENATOR JOHNSON: Senator, I can only tell you that there are 2,000 lobbyists registered in this state. The only lobbyist organization getting money from student activity fees is NYPIRG.

SENATOR ABATE: But under this fee schedule, aren't there NAACP chapters and Hillel chapters and religious chapters and Catholic chapters, and MADD and RID and crime

victims groups and women's groups that are funded through this student fee?

SENATOR JOHNSON: Senator, I -- I can't name the chapters, perhaps you can. The significant thing is that this is an organization which is a political organization which I don't feel should be funded by student activity fees. Nonetheless my bill doesn't prohibit that.

My bill says it should be an optional payment; it shouldn't be a part of your mandatory student activity fee which, as you know, Senator, if you don't pay you don't get your grades, you don't get ready for next year so you got to pay this. It's a $400 fee. If you subtract the $7 out and pay 393, you will not get your grades, you will not be registered for the next class because you didn't pay NYPIRG $7. That isn't fair; it isn't right; it isn't democratic.

SENATOR ABATE: Will Senator Johnson continue to yield?

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

SENATOR ABATE: But, am I

correct, Senator Johnson, this bill doesn't say NYPIRG, it says political organizations, so beyond NYPIRG what organizations would be covered? Could it cover just about any organi zation that's involved in voter registration or is involved in, for instance, a tuition hike rally or demonstration, or invites a legislator to their meeting?

I don't see this as just a NYPIRG issue. It seems to encompass many organizations would be covered by this bill.

SENATOR JOHNSON: I don't -- I don't believe that's correct, Senator. I think you're misinterpreting it.

SENATOR ABATE: So this bill only deals with NYPIRG, no other organization?

SENATOR JOHNSON: That's the - that's the organization which is involved in the political lobbying, fraudulent science, mis education of the public and pronouncement of their ideologies that are detrimental to the greater society of this state.

SENATOR ABATE: But by your definition, if Hillel was involved and lobbied legislators because they wanted a hate crimes

bill, they wanted the bill that's been before this house for many years, it doesn't come out of committee, and let's stay Hillel and the Catholic organizations lobbied for that bill. They would be covered by this -- by this proposed legislation, am I correct?

SENATOR JOHNSON: Senator, I'm not discussing that legislation. I'm talking - I'm not discussing whatever organization you're referring to. Quite frankly, NYPIRG has been a -- a source of concern for years and we're only talking about primarily political organizations. We're not talking about the Catholic Church or any other group, primarily political organizations and you should know, students are being involved in activities which deliver fraudulent reports, upon which improper public action may very well be taken, legislative action.

I have a letter here from Dr. John Chamberlain, Professor, chairman of the Department of Geology of Brooklyn College, and he tells me, In September 1996 I sent you a scholarly report which demonstrated that NYPIRG falsified data in a study of New York's

recycling capacity and I'd like to inform you NYPIRG's research misconduct is more pervasive after examining evidence in several NYPIRG studies, and so forth -- it's a very long letter, and they're saying here that CUNY has failed to take action against NYPIRG and its unfortunate reports, in trying to develop false public policy based upon those reports. This is signed by more than 50 members of Brooklyn College, and they said regrettably that SUNY has thus far failed to fulfill its oversight responsibility or provide the chancellor evidence that NYPIRG has falsified data, and that the University maintains there is no need for action on its part.

I might add, Senator, that they say, the Legislature must get involved because this organization is doing wrong things for the people of the state of New York, wrong things for the students. All I'm saying is we shouldn't force students to pay for an organization which is permitting so many improper activities. As a matter of fact, Senator, it's been very hard to get rid of them. In 1994 they were voted out, out of

funding in the Brooklyn College, and yet the trustees -- as was asked by someone -- the trustees reversed that and would not permit the vote to be taken, I believe, so they didn't even have the democratic right to vote yes or no on NYPIRG.

All we're saying is we're going to give them a democratic right to choose to contribute or not contribute to this organization. The fact that they're doing bad things is just a good reason not to fund them mandatorily, but it doesn't mean if people who agree with them and if they don't mind the false science and mis-education they're giving to youngsters, that they can contribute to them. They shouldn't be forced to do it.

SENATOR ABATE: On the bill.

ACTING PRESIDENT KUHL: Senator Abate. Senator Abate, on the bill.

SENATOR ABATE: Yes. We may be looking at different bills. I don't see anywhere in the bill that talks about NYPIRG and only NYPIRG. It describes political organization as any political organization that's directly or indirectly concerned with the

forming of policy or political campaigns, engaging in lobbying, et cetera, et cetera.

That is broad; it is vague. It could entail all student activities, because I dare say what we want to encourage through this student fee is people getting involved, being more knowledgeable about what happens in public and civic affairs, whether it's through their religious organizations or gender or racial organizations, whatever it is, that they have a better understanding of what's happening in the world around them.

So it may involve inviting a legislator. It may involve voter registration. It may involve a student demonstration and under this bill, just about every organization that a student could be involved in would be covered by the definition under the bill, of political organizations.

Why are we getting involved in this issue when there's so many critical issues at hand at SUNY and CUNY? The issues around tuition, how they're going to finance themselves, staffing, standards, implementation of those standards, even rethinking SUNY.

The Governor said, Let's give more autonomy to campuses. What we're saying today, we don't trust students. The students can't decide how they want their student fee to be utilized. They vote on this. That's called democracy. We allow students to vote. We think students are capable of learning, but we're saying to them they're not capable of deciding how their fees should be utilized.

I think it's wrong. I think the state Senate should be involved in much more important activity. So what we should be doing is encouraging student involvement, giving them an autonomy to make important decisions about their lives and how they want to grow and learn because we want young people to learn. What we're saying through this bill is we want them to go to classes and complete their classes and not interact in a meaningful way through extracurricular activities.

I think this is a misguided bill. It's misdirected and we should allow students in a democratic way to decide their own destiny. I vote against the bill.

ACTING PRESIDENT KUHL: Senator

Paterson.

SENATOR PATERSON: Mr. President, I don't want to belabor the point. I think that Senator Abate made it very well. It just needs to be restated and restated and it's the reason that we're going to ask for a slow roll call on this particular piece of legislation. There are a lot of organizations -- Catholic organiza tions, the Newman Society is one of them, Jewish organizations, the Hillel society is one of them, women's organizations, women, minority organizations, black student unions, all types of groups that have all types of points of view which is what is really most exciting about - about having that kind of discourse on college campuses. It's very interesting to note that back in the '60s which is a period of tremendous student activity and vast disagreement in this country on different points of view, but interestingly enough at that period of time with all of the public discourse, there was the highest -- there were the lowest incidences of dropout rates from schools and the highest incidence of student involvement on those issues. So just the disagreement on ideology

does not necessarily -- is something that we should actually be encouraging.

Now, Senator Johnson made some charges against one of the organizations. He said that they committed fraud. If that's the case, I think that information needs to be taken to a law enforcement agency and not transposed through any bill to try to stop the advancement of public policy, and, therefore, when I think about all the organizations that would possibly lose funding -- CUNY right now allows students that if they're not interested in the New York Public Interest Research Group, that they can have that money returned to them and SUNY conducts elections locally on the campuses to determine where their funds are going to go as we all, as taxpayers, live by the vote of the majority and certainly around here we certainly have learned to live by the vote of the majority. So I am going to recommend a vote against this legislation.

ACTING PRESIDENT KUHL: Senator Johnson.

SENATOR JOHNSON: Well, Mr. President, I really have to correct a couple of

misapprehensions that people share here.

First, I would like to correct Senator Abate. It's probably my fault because she must have the previous print, not the "A" print. Our bill does not read "directly or indirectly", "indirectly" was removed, so it only deals with groups that are directly involved in political activities such as NYPIRG, would not include a lot of other organizations to which you made reference.

Senator Oppenheimer says, if it ain't broke, don't fix it. Well, I've been receiving letters for several years about the fraudulent research activities, and, Suzi, I can give it to you because you're interested in waters and bays and things like that, and the research they put out is fraudulent and the decisions have been made based upon the fraudulent research and it's demonstrated here, as I mentioned, by this letter from 50 professors.

I've received mail the past two years about that. I think there's good reason to suspect that NYPIRG is only a political organization and their research is a cover for

presenting ideological objectives that they'd like to see enacted into legislation. I think that's pretty well demonstrated.

If you want to show how democracy works, Senator, you wouldn't require people to show their support through student activity fees organizations with which they disagree. As a matter of fact, in last November in Wisconsin, the U.S. District Court ruled that the University of Wisconsin had violated the First Amendment rights of three students when it required them pay activity fees to subsidize campus organizations with missions which they opposed.

I think that's democracy, not forcing them to support alien objectives, alien objectives which are not familiar, not compatible with your own views. You shouldn't be forced to do that, so democracy means giving people a chance if they want to, to contribute to those organizations and that's what my bill does.

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

SENATOR OPPENHEIMER: I would ask

a question of Senator Johnson.

ACTING PRESIDENT KUHL: Senator Johnson, do you yield to a question from Senator Oppenheimer? He yields.

SENATOR OPPENHEIMER: It was my understanding in New York State that if a student objected -- granted the student fees are mandatory, they are required, the student fees -- and the student fees go to fund all kinds of student activities, political, cultural, social, but I -- it was my understanding that if a student said, I do not support X organization, that that amount of funding that went to that organization from that student's fees would be refunded to the student.

SENATOR JOHNSON: That would be -- Senator Oppenheimer, that would be the result of my bill, but that is not the case presently. I think you've been misinformed. If that were the case, the bill would not be before us today.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR JOHNSON: Also, I'm sorry I don't want to prolong this.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR JOHNSON: I'll explain my vote.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 5. This act shall take effect August 1st.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

SENATOR GOLD: Slow roll call.

ACTING PRESIDENT KUHL: Slow roll call has been requested. There are five Senators in the chamber who are standing or semi-standing who have requested it, so a slow roll call being requested will be called. Secretary will read the roll.

THE SECRETARY: Senator Abate.

SENATOR ABATE: No.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Breslin.

SENATOR BRESLIN: No.

THE SECRETARY: Senator Bruno.

(Affirmative indication.)
Senator Connor.
(Negative indication.)
THE SECRETARY: Senator Cook.
SENATOR COOK: Yes.
THE SECRETARY: Senator DeFrancisco.
SENATOR DeFRANCISCO: Yes.
THE SECRETARY: Senator Dollinger.
SENATOR DOLLINGER: No.
THE SECRETARY: Senator Farley.
SENATOR FARLEY: Aye.
THE SECRETARY: Senator Gentile.
SENATOR GENTILE: No.
THE SECRETARY: Senator Gold.
SENATOR GOLD: Speaking for this side of the aisle, I vote no.
THE SECRETARY: Senator Gonzalez.
(There was no response.)
Senator Goodman.
(There was no response.)
Senator Hannon.
(Affirmative indication.)

THE SECRETARY: Aye.
Senator Hoffmann.
SENATOR HOFFMANN: No.
THE SECRETARY: Senator Holland.
(Affirmative indication.)
ACTING PRESIDENT KUHL: Senator Goodman, why do you rise?
SENATOR GOODMAN: Ask my name be called, please.
ACTING PRESIDENT KUHL: Secretary will read.
THE SECRETARY: Senator Goodman.
SENATOR GOODMAN: Aye.
ACTING PRESIDENT KUHL: Continue the roll call.
THE SECRETARY: Senator Johnson.
SENATOR JOHNSON: Mr. President, to explain my vote.
ACTING PRESIDENT KUHL: Senator Johnson, to explain his vote.
SENATOR JOHNSON: I would commend to my city colleagues a New York Post editorial of April 26th, 1997 entitled "NYPIRG's Fiction Science" and it says among other things that, in New York City Chancellor Ann Reynolds should

conduct a probe of CUNY because of the $470,000 a year extracted from SUNY students against their wishes. NYPIRG has an ideological ax to grind and Reynolds should certainly pursue the allegations brought by this professor and his 59 colleagues.

So I say, Senator, if you want to be on the right track, you City Senators, vote for this bill.

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

Continue to call the roll slowly.

THE SECRETARY: Senator Kruger.

SENATOR KRUGER: No.

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lachman.

SENATOR LACHMAN: No.

THE SECRETARY: Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Larkin.

(There was no response.)

Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leibell.
SENATOR LEIBELL: Aye.
THE SECRETARY: Senator Leichter.
SENATOR LEICHTER: No.
THE SECRETARY: Senator Levy excused.
Senator Libous.
SENATOR LIBOUS: Aye.
THE SECRETARY: Senator Maltese.
(There was no response.)
Senator Marcellino.
SENATOR MARCELLINO: Aye.
THE SECRETARY: Senator Marchi excused.
Senator Markowitz.
(There was no response.)
Senator Maziarz.
SENATOR MAZIARZ: Yes.
THE SECRETARY: Senator Meier.
SENATOR MEIER: Yes.
THE SECRETARY: Senator Mendez.
SENATOR LARKIN: Mr. President, can we get a little order in here? We can't hear the roll call.

(Negative indication.)

ACTING PRESIDENT KUHL: Senator Larkin, your point is very well taken. For the benefit of the members, we are not proceeding on the roll call until there is some order in the chamber. So Senator Hoffmann, Senator Smith over here on this side, we have the members please take their chairs. Staff, if you have conversations, take them out of the chamber.

Senator Gold, I'd be happy to talk to you about your golf game but would you please stop the conversations? We'd like some quiet.

Secretary will continue to call the roll.

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: No.

THE SECRETARY: Senator Nanula.

SENATOR NANULA: No.

THE SECRETARY: Senator Nozzolio.

(There was no response.)

Senator Onorato.

SENATOR ONORATO: No.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: No.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: No.

THE SECRETARY: Senator Present.

SENATOR PRESENT: Yes.

THE SECRETARY: Senator Rath.

(There was no response.)

Senator Rosado.

SENATOR ROSADO: No.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Sampson.

SENATOR SAMPSON: No.

THE SECRETARY: Senator Santiago.

(There was no response.)

Senator Seabrook.

SENATOR SEABROOK: No.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Yes.

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

THE SECRETARY: Senator Wright.
SENATOR WRIGHT: Aye.
ACTING PRESIDENT KUHL: Call the absentees.
THE SECRETARY: Senator Gonzalez.
(There was no response.)
Senator Maltese.
SENATOR MALTESE: Aye.
THE SECRETARY: Senator Nozzolio.
SENATOR NOZZOLIO: Aye.
SENATOR STAVISKY: Results.
SENATOR SKELOS: We have the results.
ACTING PRESIDENT KUHL: Senator Skelos, we're not through with the absentee call yet.
THE SECRETARY: Senator Rath.
(There was no response.)
Senator Santiago.
(There was no response.)
Senator Velella.
(There was no response.)
ACTING PRESIDENT KUHL: Senator

Paterson, why do you rise?

SENATOR PATERSON: To request the results, Mr. President.

ACTING PRESIDENT KUHL: Yeah, we're just trying to determine whether or not there were any other members -- I understand Senator Santiago had an emergency call out of the chamber -- Senator Gonzalez, several members, but if you're requesting it, Senator Paterson, Secretary will read the results.

THE SECRETARY: Ayes 31, nays 23.

ACTING PRESIDENT KUHL: The bill is passed. Senator Larkin, what's your pleasure?

SENATOR LARKIN: Mr. President, can we return to regular Calendar Number 280.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: Calendar Number 280, by Senator Johnson, Senate Print 2514-A, an act to amend the Real Property Tax Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

SENATOR OPPENHEIMER: Explanation.

ACTING PRESIDENT KUHL: Senator Johnson, an explanation of Calendar Number 280 has been requested by Senator Oppenheimer.

SENATOR JOHNSON: Mr. President, this bill would amend the real property law in relation to liability for environmental clean-up on real property acquired by a tax district or an in rem foreclosure.

Right now -- right now, the municipalities have been precluded from taking this property because they don't want to be responsible for environmental damages that might be expensive -- require an expensive clean-up. All this does is say that they can take it and they're not responsible for that clean-up, but it doesn't eliminate the responsibility of the previous owner from whom they've taken it.

There is an outlandish example in the city of Schenectady, and I'm sure there are many others, where taxes are owed since 1986 exceeding $25,000. The city cannot take the property in rem because -- because they don't want to have the responsibility for the clean-up which still would remain with the previous owner so they haven't been able to take the property.

Meanwhile they've had to take that, every year pay the taxes for the villages and towns and the schools in their respective areas, but yet they don't have any control over that property, so what we'd like to do is let them foreclose on this property so an owner cannot enjoy the benefit of using this polluted property year after year; he doesn't clean it up; nobody can do anything about it.

In this case, the county would take it over, pay the taxes to the various municipalities and then do what they can about getting it cleaned up by the next owner or pursuing action. But to preclude in rem proceedings with this scenario of being afraid of the property, is very detrimental and the fact that the city of New York, the City Council, the Conference of Mayors, all the counties and associations, bar associations, treasurers, county directors, county attorneys, and so forth are all in favor of this bill to clear up a situation which is intolerable at the present time.

ACTING PRESIDENT KUHL: Senator Oppenheimer.

SENATOR OPPENHEIMER: I -- I appreciate the local point of view, Senator Johnson, but I think the other side should also be presented in this issue.

The local government has a choice in taking and going -- taking in rem parcels. They don't have to take them, and if they take a -- a parcel that has contamination or pollution, they know that they are taking that parcel with contamination or pollution right on the property, and to exempt the taxing district from the obligation of cleaning up this property, I think, is definitely the wrong way to go. It simply under -- undercuts the restoration programs that we are trying to put in place with the Clean Water/Clean Air Bond Act.

I think exempting tax districts from third-party liability for injuries or for property damage which is caused by the contamination of the site simply says that, Neighbor, we are not interested in protecting you from the exposure to these toxins, and I - I think it is the wrong way for government to be handling sites that are toxin. They should be

handling them in a responsible and concerned way for the citizens who live in that area, and taking away the liability is -- that has always been a very strong incentive for mitigating hazards, and this bill would remove a very important motivation for the tax district to manage the property, the contaminated property in what I consider a reasonable manner.

I'll be voting no.

ACTING PRESIDENT KUHL: Secretary -- Senator Leichter.

SENATOR LEICHTER: Senator Johnson yield, please?

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

SENATOR LEICHTER: Senator Johnson, under your bill, what happens if a municipality after having acquired the parcel now sells it to a third person? Would that third person not have the protection and the immunity from liability that the municipality had?

SENATOR JOHNSON: Definitely not, Senator. He does not acquire any immunity as a result of this. This only deals with the -

with the county that takes the property over, or the city. It does not insulate the following succeeding owner from any responsibility for the contamination.

SENATOR LEICHTER: Senator Johnson, if you'd continue to yield, please. I'm not -- I'm not sure your answer is correct, Senator, because you've now interposed in the chain of ownership an owner who has no liability or responsibility for clean-up. That owner passes along the rights and liabilities that the owner has. That owner doesn't have a responsibility, or liability for clean-up.

It would seem to me that the purchaser from the taxing district similarly would not have an obligation or liability for the condition of this property.

SENATOR JOHNSON: Well, I know that's an opinion which has been expressed by the Trial Lawyers, but I don't believe that's the correct opinion.

Yeah. Senator, I personally have had some experience with a case in my district where a new owner was held responsible at the same time they went back to the previous owner

who they're after to get the majority of the money, so this does not insulate the previous owner or any succeeding owners who buy contaminated property from their obligation to remediate the situation. This only protects the county who takes the property.

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

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

SENATOR JOHNSON: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR LEICHTER: Senator, I think your bill is certainly clear as to the previous owner. It would be a very simple matter to make it clear that succeeding owners do not possess that same immunity from liability. All you'd have to do is just write it into the bill. I don't believe it is, and I think you've left an issue. Frankly, you say the Trial Lawyers have raised this problem with you. Nobody raised it with me, but it just sprung at me reading the bill.

So I think that it's -- it's an

issue that's going to be raised. I'm not sure that that would cure the bill as far as Senator Oppenheimer and I and others are concerned, but it would certainly avoid, it seems to me what is an even bigger loophole from environmental laws by having succeeding owners now also enjoy the immunity from liability.

SENATOR JOHNSON: Senator, I could agree with you but -- if I agreed with you, if I thought your argument was correct, I would certainly hold this bill and amend it. I don't believe your argument is correct, but by the same token, I don't want to take a chance in doing that because I certainly think -- well, first of all I say as a lawyer you probably know whether you have real estate or not, that nobody is buying any property these days without an environmental assessment. So it's not likely they would buy it and be unaware of it and think that they could possess and never clean it up and not be responsible. They are responsible. Succeeding owners are responsible. Even banks are responsible if they foreclose property which is polluted. They have a responsibility to clean it up, so everyone knows that's the way

the system works, and I don't think they'd be out of it but, quite frankly, I'd like to have a bill that would -- that would pass both houses without any hang-ups, and I think perhaps right now, Senator, we'll lay it aside for the moment so that you and I can explore this more fully.

SENATOR LEICHTER: Thank you very much, Senator Johnson.

I'm really not, you know, urging you to do this, because even if you did it, I would have problems with the bill, but I think that it would cure, to my mind, what could be a real loophole and something that I think others will look at and might discourage people from supporting the bill or supporting this concept. I mean in some respects, I can understand, we want to avoid placing a burden on taxing authorities. They want to take property that may be in rem on foreclosure, and so on. Why make them clean up?

That's your -- your point, Senator Johnson, and I think it has some credibility, but I -- I think the other argument is really more persuasive. It was well made by Senator Oppenheimer, which is that we have a

great public and social concern to get this property cleaned up, and one way of doing it is by saying anybody that owns this property, this property which is a danger to the health of people, is going to have to clean it up, and that should include taxing districts. I mean who are taxing districts? They're the people. Who's affected by contaminated land? It's the people.

So I would -- I would say to you that really, exempting taxing districts from what should be an across-the-board obligation if you are the owner of contaminated land, you owe it to your neighbors, you owe it to your community to see that that property is cleaned up. I would -- I would apply it to taxing districts.

ACTING PRESIDENT KUHL: Secretary will -

SENATOR JOHNSON: May I respond? Senator, that responsibility for the clean-up still resides with the previous owner. No subsequent owner is going to buy it when it's contaminated and think they can use it without cleaning it up.

Senator, in view of the fact the city of New York, the city of Schenectady, Conference of Mayors, counties, Association of Counties and Towns have all read this bill and feel it's appropriate, I don't feel that they're going to let anybody off the hook for cleaning up the property because we say the county can take this property back without incurring any liability doesn't really say that it doesn't have to be cleaned up from now on; so I think it's a misinterpretation of the bill and in this case, I'd just call the bill.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

THE SECRETARY: Those recorded in the negative on Calendar Number 280 are Senators Abate, Breslin, Connor, Dollinger, Gentile, LaValle, Leibell, Leichter, Montgomery, Onorato,

Oppenheimer, Rosado, Sampson, Seabrook and Stavisky. Ayes 43, nays 15.

ACTING PRESIDENT KUHL: The bill is passed.

Secretary will continue to call the controversial calendar commencing next with Calendar Number 498.

THE SECRETARY: Calendar Number 498, by Senator Maziarz, Senate Print 403-A, an act to amend the Executive Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR OPPENHEIMER: Mr. President.

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

SENATOR OPPENHEIMER: I would

like the record to show that I wasn't in the chamber when a particular bill passed on June 4th. That would be bill 5404, Calendar Number 1130. If I had been in the chamber, I would have voted no.

ACTING PRESIDENT KUHL: The record will so reflect, Senator Oppenheimer.

Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 633, substituted earlier today, by the Assembly Committee on Rules, Assembly Print 8009-A, an act to amend Chapter 521 of the Laws of 1994.

ACTING PRESIDENT KUHL: The Senate bill was high. The Assembly bill is not high. It's before the house. Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 982, by Senator Saland, Senate Print 2703-B, an act to amend the Vehicle and Traffic Law, in relation to authorizing.

ACTING PRESIDENT KUHL: Home rule message is at the desk. Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Secretary will read the last section.

ACTING PRESIDENT MARCELLINO: Senator Kuhl, an explanation of your bill has been asked for.

SENATOR KUHL: Thank you, Mr. President.

This is a very simply explained bill. The bill essentially allows for the continuation of the practice of harvesting timber in the state of New York without the unnecessary and overburdensome interference by local municipalities.

SENATOR OPPENHEIMER: Thank you for that in-depth explanation.

ACTING PRESIDENT MARCELLINO: Read the last section.

SENATOR OPPENHEIMER: No, I -

ACTING PRESIDENT MARCELLINO: Oh, I misunderstood. I apologize, Senator.

SENATOR OPPENHEIMER: I meant to be funny.

ACTING PRESIDENT MARCELLINO: Can only try.

SENATOR OPPENHEIMER: I guess it's who defines the language here. The bill would prohibit state agencies and local government -- it would prohibit state agencies from adopting regulations that affect forestry practices that are, quote/unquote, "recognized"

by the industry. Unfortunately, the determiner of what is a "recognized", quote/unquote, practice or procedure is apparently the forestry products industry itself, so we are saying, Industry, mind yourself, and do not let constraints of local government interfere with your -- your practices, because this distinctly limits the ability of local government -

ACTING PRESIDENT MARCELLINO: Excuse me, Senator. Are you speaking on the bill?

SENATOR OPPENHEIMER: Yes, I am.

ACTING PRESIDENT MARCELLINO: Senator Oppenheimer is speaking on the bill.

SENATOR OPPENHEIMER: Sorry.

It distinctly says that local governments may not unreasonably burden the cultivation and harvesting of trees. It seems to be unreasonably restrictive of what local authorities can do in regard to forestry practices.

I don't understand why the measure is -- is required. I have to assume that some local governments are -- are being more restrictive than the forestry industry

would like them to be, but I think that the legislative intent section here endorses forestry practices and forest management as environmentally sound. However, many forestry practices are not considered so terribly sound by the environmental community because they lead to soil erosion and they lead -- it leads to siltation in streams and rivers, and often leads to destruction of fish and wildlife habitat. It leads to watershed damage occasionally, and to flooding.

So I think it's a very healthy thing that -- that government is involved and is trying to preserve the land as best it can in consideration of the needs of the forestry industry as long as it is also environmentally sound.

So I will voting no, and I would say that there are many memos in opposition to this particular bill from the Alliance for Consumer Rights, from the Citizen Campaign for the Environment, from the Adirondack Council, and a couple of smokestacks from Environmental Advocates/EPL.

I'll be voting no.

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

takes no position on this bill. The Association of -- the New York State Conference of Mayors takes no position in opposition to the bill, so the very people who this piece of legislation would have an impact on don't have an objection to the bill because they recognize the language in the amended version allows for a reasonable ness and not an unreasonableness as far as their activities as it takes on these individuals, and the other thing and perhaps the most important part of this bill is it only really affects those private property owners, doesn't impact public ownership at all. It's those people who own and want to cultivate their property in growing timber and who want to make a growing enterprise out of it. It simply says you'll be allowed to do that on your own property without interference coming from the localities.

ACTING PRESIDENT MARCELLINO: Senator Kuhl, will you yield to Senator Oppenheimer?

SENATOR KUHL: Certainly.

ACTING PRESIDENT MARCELLINO: He does.

SENATOR OPPENHEIMER: Just two

short questions. Who determines what is "reasonable"?

SENATOR KUHL: I think it's already pre-determined, Senator, by those overriding issues and requirements and regulations that the state imposes on the industry.

SENATOR OPPENHEIMER: But it is in effect -

SENATOR KUHL: So things like - things like, if you would, complete -- what do they call it, cross-cutting without dealing with erosion. That's already controlled by the state agencies, Department of Environmental Conservation. That would continue.

SENATOR OPPENHEIMER: And if the Senator will yield again.

ACTING PRESIDENT MARCELLINO: Senator, do you yield to another question?

SENATOR KUHL: Absolutely.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR OPPENHEIMER: The vast majority of our forests in New York State are under private control, are they not?

SENATOR KUHL: The major percentage, yes, private property. The property in New York is owned by private individuals, yes.

SENATOR OPPENHEIMER: Right, but my point is that most forests are privately held?

SENATOR KUHL: Those that are not currently under control, I think it's roughly 92 percent is privately owned; about 8 percent is publicly owned.

SENATOR OPPENHEIMER: Thank you, Senator.

ACTING PRESIDENT MARCELLINO: Any other Senator wishing to be heard?

Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

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

THE SECRETARY: Those recorded in the negative on Calendar Number 1135 are

Senators Breslin, Connor, Dollinger, Gentile, Gold, Goodman, Hannon, Kruger, LaValle, Leibell, Leichter, Nanula, Onorato, Oppenheimer, Paterson, Sampson, Seabrook, Spano, Stachowski, Stavisky and Tully. Ayes 37, nays 21.

SENATOR NANULA: Mr. President.

THE SECRETARY: Also Senator Padavan. Ayes 36, nays 22.

ACTING PRESIDENT MARCELLINO: Senator Nanula, why do you rise?

SENATOR NANULA: Mr. President, I would like to request I should say, unanimous consent to be recorded in the negative on Calendar Number 280.

ACTING PRESIDENT MARCELLINO: We just have to announce the results and pass this particular bill.

SENATOR NANULA: Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: The bill is passed. Senator Nanula. I apologize.

SENATOR NANULA: Thank you, Mr. President.

I'd like to request unanimous consent to be recorded in the negative on

Calendar Number 280.

ACTING PRESIDENT MARCELLINO: Without objection, Senator Nanula will be recorded in the negative on Calendar Number 280.

SENATOR NANULA: Thank you.

ACTING PRESIDENT MARCELLINO: Senator Hannon.

SENATOR HANNON: I'd also like to to be recorded in the negative on Calendar Number 280.

ACTING PRESIDENT MARCELLINO: Without objection, Senator Hannon will be recorded in the negative on Calendar Number 280.

Senator Rath, I'm sorry, why do you rise?

SENATOR RATH: Yes, Mr. President. I request that the record should reflect that when bill number -- Calendar Number 124 went through, I was out of the chamber on Senate business, and I'd like to be recorded in the affirmative.

ACTING PRESIDENT MARCELLINO: The record will show reflect -- so reflect.

Senator Larkin.

SENATOR LARKIN: Would you now call Calendar Number 1396 for Senator Maltese.

ACTING PRESIDENT MARCELLINO: Secretary will read Calendar Number 1396.

THE SECRETARY: Calendar Number 1396, by Senator Maltese, Senate Print 1173, an act to amend the Retirement and Social Security Law.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Maltese, an explanation has been requested.

SENATOR MALTESE: Mr. President, this is an act to amend the Retirement and Social Security Law, in relation to the return of member contributions. The purpose is to allow Tier II and III New York City correction officers below the rank of captain who participate in the 20-year improved benefit retirement plan to withdraw their contributions when they cease to be members of such plan regardless of their length of service.

The contributions that are made under the 20-year improved benefit retirement

plan are designed to provide an enhanced pension benefit upon retirement as a correction officer below the rank of captain. The pension benefit that may be received by an individual who leaves this plan regardless of reason or time in service, is determined by other provisions of the Retirement or Social Security Law and are not dependent upon these additional contributions.

Basically, Mr. President, the - the opposition, or the city of New York has issued a memorandum in opposition. One of their main arguments appears to be that the Legislature should not intrude in the collective bargaining procedure. Every other union similarly situated has this benefit. The - their objection arises out of a contract with the Correction Officers Benevolent Association up until 1990. Since then, continuously, I am advised that the correction officers have attempted to negotiate -- to renegotiate this aspect of the contract and the City, through successive administrations, has refused to do so.

It does seem -- it does seem fair

to allow these correction officers who serve on the front lines, so to speak, to have the same benefits as every other union similarly situated.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT MARCELLINO: It should be stated, Senator Leichter, before you rise, before I acknowledge you, that there is a home rule message at the desk on this particular piece of legislation.

Senator Leichter.

SENATOR LEICHTER: Mr. President, if Senator Maltese would yield for one or more questions.

ACTING PRESIDENT MARCELLINO: Senator Maltese, will you yield? He yields, Senator.

SENATOR LEICHTER: Senator Maltese, isn't it true that at one time these very correction officers entered into a contract with the city of New York where they said rather than having this benefit, we want you to give us another benefit; isn't that true?

SENATOR MALTESE: That's

basically true, Mr. President.

SENATOR LEICHTER: And what you're saying to us is that they would like to renegotiate it now, and the City says, You made an agreement with us. We offered you what every other union had, but you said, No, we won't take that, we want something else and the City said, O.K., economically we'll give you that other thing which is about equal to your giving up this particular right, and I assume that's the reason that the City won't renegotiate that; isn't that -- isn't that true?

SENATOR MALTESE: Well, basically, Mr. President, the enhanced half-pay pension plan which was the agreed-upon price, if you will, of agreeing to this, only inures to the benefit of those who remain in the pension plan 20 years or more, so we have a situation where these members who are involved in a participatory pension plan, a contributory plan, are contributing their money plus interest and are the only ones that have been denied this benefit in collective bargaining with the city of New York.

It does not seem to be fair to

deny this, and it affects all correction officers below the rank of captain, and correction officers in the city of New York basically they don't have the rank of sergeant, captain is equivalent to sergeant, so you have all line correction officers affected by this failure of the City to agree to treat them equitably.

SENATOR LEICHTER: Thank you very much, Senator Maltese. You know, on the bill.

ACTING PRESIDENT MARCELLINO: Senator Leichter, on the bill.

SENATOR LEICHTER: I like to be as generous and maybe more generous than most people. I'm called, you know, a big spender, and I don't mind spending on certain social matters and I also think we ought to pay our municipal and public employees well. They provide a real service, and correction officers, God knows, it's a difficult job. I want to see them well paid.

But I'm troubled, Senator Maltese, when you come before us with a bill where a particular provision that was bargained for by these correction officers with the city

of New York, where they said we'll take another economic benefit and we will give up the right, which other unions have, to have monies on our pension system paid out to us with interest when we leave that pension system.

Having made that deal, they now run to the Legislature and they say change it for us. Is that the role really that we want to take onto ourselves. We're interfering in the management of the city of New York. We're sticking our nose into collective bargaining negotiations, and we're allowing public employees -- I don't say it critically of them, because I have a very good relationship with them, based on my respect for them, but I don't think we ought to be in a situation where once public employees make a deal they then want to appear and have us do that deal or better that deal for them or change the deal or undo the deal that they voluntarily entered into, and that's what you're doing here, Senator Maltese.

Much as I'd like to see us do - be generous to all public employees, I think that we've got a greater responsibility here and that's to a proper process, to the City where

you and I live, Senator Maltese, and really to the basic fairness. It's just not fair for these employees to make a deal and then run to the Legislature and say, Now, give us something better.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Announce the results. Count the negatives.

THE SECRETARY: Ayes 57, nays one, Senator Leichter recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Tully, why do you rise?

SENATOR TULLY: Mr. President, may I have unanimous consent to be recorded in the negative on Calendar Number 280.

ACTING PRESIDENT MARCELLINO: The record will reflect Senator Tully in the negative on Calendar Number 280.

SENATOR LACHMAN: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Lachman, why do you rise?

SENATOR LACHMAN: Mr. President, I request unanimous consent of this body to also be recorded in the negative on Calendar Item 280.

ACTING PRESIDENT MARCELLINO: Senator Lachman will also be recorded in the negative on Calendar Number 280.

Secretary will read.

Senator Larkin?

SENATOR LARKIN: Mr. President, Can we now take up Calendar Number 371, by Senator Goodman.

ACTING PRESIDENT MARCELLINO: Secretary will read Calendar 371, by Senator Goodman.

THE SECRETARY: Calendar Number 371, substituted earlier today, by member of the Assembly McLaughlin, Assembly Print 5036-B, an act to amend the Transportation Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

An explanation has been asked

for. Senator Goodman.

SENATOR GOODMAN: Mr. President, one day a couple of years ago a reporter came into my office and said, "I just observed a wheel rolling off a double decker bus." The wheel apparently was not properly attached with a lug nut in a fashion which is customary to keep wheels attached to vehicles, which gave rise within the alert Investigations Committee of the state Senate, to a small investigation of who inspects buses, and which gave further rise to the indication that the authority to do so is quite ambiguous.

This bill unambiguously charges the Commissioner of the state Department of Transportation with the responsibility to inspect double decker sightseeing buses and also makes it clear that the operator of such buses shall bear the cost of such inspection.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Abate, why do you rise?

SENATOR ABATE: Yes, I ask for unanimous consent to be recorded in the negative on Calendar Number 1135.

ACTING PRESIDENT MARCELLINO: Senator Abate will be counted in the negative on Calendar Number 1135.

Senator Leichter, why do you rise?

SENATOR LEICHTER: I was just stretching.

ACTING PRESIDENT MARCELLINO: Senator Leichter will be recorded as stretching.

Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Mr. President, I would like unanimous consent to be recorded in the negative on Calendar Number 1135.

ACTING PRESIDENT MARCELLINO: I'm

sorry. Say the number again, Senator.

SENATOR MONTGOMERY: Number 1135.

ACTING PRESIDENT MARCELLINO: Senator Montgomery will be recorded in the negative on Calendar Number 1135.

Secretary will read.

Senator Larkin, what is your pleasure?

SENATOR LARKIN: Mr. President, can we go on the "A" calendar, 1429, by Senator Spano.

ACTING PRESIDENT MARCELLINO: Secretary will read.

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

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Spano, an explanation has been requested.

SENATOR SPANO: Thank you, Mr. President.

This bill clarifies the provisions in the Public Health Law with regard

to granting hospital privileges to -- to podiatrists. The -- right now, the existing law does in an appropriate way clarify the making of an improper practice by a hospital to refuse to grant an application of a -- to give staff membership or hospital privileges to a podiatrist.

This legislation clears up that problem in the statute.

ACTING PRESIDENT MARCELLINO: Senator Stachowski.

SENATOR STACHOWSKI: Mr. President, would Senator Spano yield to a couple questions?

ACTING PRESIDENT MARCELLINO: Senator, would you yield to a couple questions? He yields, Senator.

SENATOR SPANO: Yes.

SENATOR STACHOWSKI: Last year HANYS, the Health Care Association, and the Medical Society were opposed. All we have is last year's and then they said they were still opposed. Are you aware if these two groups are still opposed, or do you have any kind of notice of opposition because all we have is last

year's?

SENATOR SPANO: The Medical Society has memo'd against it; I believe HANYS is also opposed to it, but I don't have a memo.

SENATOR STACHOWSKI: Thank you, Mr. President.

SENATOR LEICHTER: Yes.

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

SENATOR LEICHTER: Would Senator Spano yield, please.

ACTING PRESIDENT MARCELLINO: Hold on one second. The stenographer holds - can we have some order in the house, please. We can't hear the debate, and that's important. I'm sorry, Senator.

SENATOR LEICHTER: Senator Spano, if a hospital takes presently the position that it will not have any podiatrists whatsoever who will have admitting privileges to that hospital, does that -- does your bill now prevent a hospital from making that sort of decision?

SENATOR SPANO: What this bill would basically just say is that the hospital

could not make a decision based solely upon the practitioner's category of licensure, so if a - if a podiatrist is -- is providing services to a -- to a patient, this patient should be - should not be forced to change doctors or travel long distance, so the answer to your question is yes, it does require it.

SENATOR LEICHTER: Thank you, Senator Spano. On the bill.

ACTING PRESIDENT MARCELLINO: Senator Leichter, on the bill.

SENATOR LEICHTER: I just don't know why we're telling hospitals that they've got to have podiatrists who have admitting privileges. I mean I think these are decisions that hospitals ought to be able to make on their own. If they decide that they don't want to have a particular category of doctors, they should be allowed to do it. I mean I'm always somewhat amused in the course of a session, but particularly at the end, you seem to get all of the inconsistencies.

I mean I hear other people, people on the other side of the aisle speaking about government shouldn't interfere, let the

market decide, let's get rid of government regulation, and then on something of this sort, well, hospitals certainly ought to be able to govern themselves in this respect. We're telling them, you can't exclude podiatrists.

I don't know what particular social purpose is served by our doing that. I don't know if there's knowledge in this chamber as to how hospitals ought to be operated. Every hospital in this state, to say that three must have podiatrists on their staff. I just think that's an improper interference on our part, in the operation of hospitals. I don't believe we should be doing this.

ACTING PRESIDENT MARCELLINO: Senator Dollinger.

SENATOR DOLLINGER: Sponsor yield to a question, Mr. President?

ACTING PRESIDENT MARCELLINO: Senator Spano, do you yield to Senator Dollinger?

SENATOR SPANO: Yes.

ACTING PRESIDENT MARCELLINO: Senator Dollinger, he yields.

SENATOR DOLLINGER: Senator, has

this bill been amended since the bill we did last year? I notice it's an "A" print, and if so, what was the amendment?

SENATOR SPANO: Yes, it has. If you remember, Senator, the Governor vetoed this bill last year and because he felt that the bill was possibly too broadly written, that it would include more than podiatrists, so what we did was added the word in the last line of the bill, we added line 17 of the bill added the word "podiatrist" instead of "practitioner" so that we made it specifically clear about what profession we were speaking about, so that we could remove that objection of the Governor.

SENATOR DOLLINGER: Again through you, Mr. President, if Senator Spano would continue to yield to a question.

ACTING PRESIDENT MARCELLINO: Senator, you continue to yield?

SENATOR SPANO: Yes.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR DOLLINGER: What types of practice -- you remove the word "practitioner" and substitute "podiatrist" but then you used

the word "practitioner", you describe "practi tioner" the last four words, "practitioner's category of licensure."

What does that phrase mean? Are there particular kinds of podiatrists that would be involved in this? Are there other categories of licensure?

SENATOR SPANO: No, there's no other categories of licensure within -- I mean a podiatrist is a podiatrist and the -- I felt, frankly, that we did not need to -- to amend this word, but the Governor felt otherwise, so we -- so we added the word "podiatrist" in that sentence just to -- just so that we can remove any question on the part of the Governor's counsel's staff.

Frankly, I don't think it makes much of a difference. The -- it -- it, the fact that "podiatrist" and "practitioner" are -- are used interchangeably, I think, is a common practice.

SENATOR DOLLINGER: Again through you, Mr. President, just so I understand.

It says "privileges to podiatrists", I understand that this would

require hospitals -- prevent hospitals from denying privileges solely because they're podiatrists, but based solely on the "practitioner's category of license". I just don't understand the phrase "category of licenses". Are there categories of licensures for podiatrists? I mean are there like a Class A podiatrist, a Class B podiatrist or, as you know, Senator, we do create for physicians, for M.D.s, we have limited licenses which allow them to practice in underserved areas.

The reason why I'm asking is, I'm trying to find out is there a similar category for podiatrists and, if so, is this requiring them to take people of all -- of the limited licenses or full licenses? If you're a podiatrist you get in no matter what, and that addresses the point Senator Leichter made.

SENATOR SPANO: There is not - there are no different categories within podiatry. There is one -- one license. There are no different categories within that licensure, so it would be the fact that we're including podiatrists is based solely upon a particular practitioner's category of licensure,

and the category of licensure would be the fact that they are licensed as a podiatrist.

SENATOR DOLLINGER: O.K. Just through you, Mr. President, just on the bill.

ACTING PRESIDENT MARCELLINO: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Senator Spano, I don't understand your explanation. I'm still not quite sure why that language is in there, but I voted against your bill last year. I'm going to vote against it again this year. I agree with Senator Leichter, the scope of services provided in the hospitals, we ought to leave that up to the hospitals.

I've done a lot of work with privileges. There are a lot of things about 2801 that I would change to prevent more arbitrary removal of privileges by hospitals but, frankly, adding podiatrists, while it may make some sense, is something that's best left to the judgment of the individual hospitals.

ACTING PRESIDENT MARCELLINO: Any other Senator? Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

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

THE SECRETARY: Those recorded in the negative on Calendar Number 1429 are Senators DeFrancisco, Dollinger and Leichter. Ayes 55, nays 3.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Larkin, what is your pleasure?

SENATOR LARKIN: How about Calendar Number 877, please.

ACTING PRESIDENT MARCELLINO: Secretary will read Calendar Number -

SENATOR LARKIN: On the main calendar.

ACTING PRESIDENT MARCELLINO: - 877.

THE SECRETARY: Calendar Number 877, by Senator Lack, Senate Print Number 2699-B, an act to amend the Alcoholic Beverage Control Law, in relation to interests.

ACTING PRESIDENT MARCELLINO: Senator Lack. Can we lay that bill aside temporarily? Oh, Senator Lack is here, I'm sorry.

Senator Lack, an explanation of your bill 877 has been requested.

SENATOR LACK: Thank you, Mr. President.

Mr. President, this bill would create an acceptance of the "tidehouse" law. Let me explain briefly what a "tidehouse" law was. It dates from English common law where there was a requirement for a pub owner to serve the beverages of only one manufacturer or brewer. This common law enactment became statute in New York in 19 -- in 1933, and it prevents monopolies whereby a liquor or beer manufacturer, distiller or brewer, could through mortgaging or other types of financing control the products that would be sold at retail and prevent what we today call vertical integration of a specific industry.

In the main the law has worked very well because retail sellers of alcoholic products are always much smaller than the

manufacturers or brewers who manufac... who make or distribute the products. This particular exception is to recognize -

Will you excuse me, please? Hello! Would you move over because I think Senator Gold and I are engaging in something.

This particular exception is to recognize what's happened in the '90s as there has been a rapid expansion and change in the manner by which large brewers, liquor distilleers, et cetera, have engaged in the business.

This particular one has to do with Dream Works which is owned by Stephen Spielberg and Universal Studios, and Sega Game Works. Universal Studios is, by itself, a subsidiary of MCA, which is a subsidiary of Seagram's and Universal Studios, together with Sega, Dream Works and Stephen Spielberg are engaging in a joint venture to establish an entertainment complex, entertainment complexes for adult games throughout the United States which will offer and sell liquor as part of the Game Works.

Seagram's, which has a minor

percentage through two other subsidiaries, and Sega Game Works would be prevented under New York's "tidehouse" laws from allowing Dream Works to open up establishments in New York. This exception would establish a footprint of eight different requirements in order for such a facility to operate legally in New York, including the prohibition of any liquor advertising, et cetera. It is merely a way to accommodate and recognize the fact that we should still have a "tidehouse" law but understand that you can have a conglomerate that's engaged in the liquor business that owns a lot of other businesses as well.

ACTING PRESIDENT MARCELLINO: Read the last section.

Senator Paterson, why do you rise?

SENATOR PATERSON: Just one moment, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Paterson.

SENATOR PATERSON: Thank you.

ACTING PRESIDENT MARCELLINO: Senator Paterson, are you ready?

SENATOR PATERSON: Mr. President. Senator Lack stated that there are eight standards that are set forth in this legislation that would, in a sense, provide the threshold for what would establish an exception to the "tidehouse" law, and as good as that may be, I hope that eight is enough, because since we have excepted in these types of cases before, I would just like to say -- and then I'm going to vote for the bill -- but I would just like to say that perhaps what would be a better way to do it because it's not protect -- the interests that we're serving in this particular legislation that I'm concerned about, it's just that we maintain the integrity of why we have the "tidehouse" law in the first place and I'm just saying that perhaps what we need to do is just codify what the threshold is and the particular -- the particular issues that would -- that are in this particular bill that perhaps we make a law that would encompass them and that would satisfy what the standard would be, and then in the other areas that don't fall within the ambit of the law, the "tidehouse" law would still have its full effect.

SENATOR GOLD: Last section.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Secretary will read Calendar Number 641? Senator Larkin, thank you. Calendar Number 641.

THE SECRETARY: Calendar Number 641, by Senator Larkin, Senate Print 4194, an act to amend the Racing, Pari-mutuel Wagering and Breeding Law.

SENATOR GOLD: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Larkin, an explanation has been requested.

SENATOR LARKIN: Mr. President.

ACTING PRESIDENT MARCELLINO: For those members who are wondering where we're

going, we're on the main original calendar.

Senator Larkin.

SENATOR LARKIN: First of all, this bill is based on an agreement between the New York Breeders -- Horsemen's Association and the New York Breeders Association and the Racing Association as a whole and basically what this bill does, it would amend the law to clarify that owners' premiums shall not be considered as purse money for thoroughbred racing in New York State.

In essence, the bill would ensure that New York bred horses will not have to amend the races for which they are eligible to run based on artificially inflated purse winnings which instead reflect the amount of the premium and the amount of the purse.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Can we read Calendar Number 343, Senator Larkin.

The Secretary will read.

THE SECRETARY: Calendar Number 343, by Senator Velella, Senate Print 3102-A, an act to amend the Insurance Law, in relation to the retention of group life insurance.

ACTING PRESIDENT MARCELLINO: Senator Velella, an explanation has been requested.

SENATOR VELELLA: Yes, Mr. President.

This bill gives employees or members of covered -- who are covered under a group life insurance policy the option to continue their life -- to continue their term life insurance coverage for one year after leaving a group if such member was terminated because such employee or member was permanently or totally disabled.

After a period of one year, that disabled person will have an option to convert to either whole life or a term policy based on

their age at the time that they want to convert the policy.

I apologize for my voice.

ACTING PRESIDENT MARCELLINO: Can I again ask -- can I again ask for some silence in the chamber. We cannot hear the members. Will you take the conversations out of the room, please.

Thank you.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Gold.

SENATOR GOLD: Yeah. This is - my comment is not necessarily on this bill but as a member of the Rules Committee, I have the advantage of seeing the calendars and asking questions in the Committee, but there are many members who don't have that advantage, and I just wanted to suggest very, very respectfully to the Majority, that if we stay on one calendar, if that's what we're doing, great, but stay on one calendar and go through it with some predictability, I think that members may have less suspicion as to what bills are and what they're about.

So I'm not -- I have no problem with this, Senator Velella, but I would just suggest that, Mr. President, if we could go through one calendar orderly and then take the next one, I think it just makes it easier for the members instead of grabbing for papers and that's why some of these explanations are being asked for because people are afraid they're going to miss something in the transition. So that's just a very respectful suggestion.

ACTING PRESIDENT MARCELLINO: On the basis of that, the bills that we will be picking up after this one is passed are Senate -- Calendar Number 467 and 1098, so that members can read ahead.

SENATOR GOLD: Mr. President, you are a wise man, and I appreciate that.

ACTING PRESIDENT MARCELLINO: Thank you, Senator. I'll use that in my endorsement piece.

Senator Lack.

SENATOR GOLD: I wish you wouldn't.

ACTING PRESIDENT MARCELLINO: Call the roll -- read the last section. I'm

sorry.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Lachman, why are you rising?

SENATOR LACHMAN: Mr. President, I would like to have unanimous consent to be recorded in the negative on item 1135.

ACTING PRESIDENT MARCELLINO: The record will show reflect -- will so reflect.

The Secretary will read Calendar Number 467.

THE SECRETARY: Calendar Number 467, by Senator Velella, Senate Print 3204-A, an act to amend the Insurance Law and the Vehicle and Traffic Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 8. This

act shall take effect in 90 days.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

The Secretary will read 1098.

THE SECRETARY: Calendar Number 1098, by the Committee on Rules, Senate Print 4799, an act to amend Chapter 272 of the Laws of 1991.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

SENATOR LEICHTER: Can we have an explanation.

SENATOR LARKIN: Would you please call Senator Spano's -

SENATOR GOLD: Explanation, Mr. President.

SENATOR LARKIN: Announce the results.

ACTING PRESIDENT MARCELLINO: We did that already.

SENATOR GOLD: Last section.

ACTING PRESIDENT MARCELLINO: We read the last section on 1098. The bill has already been passed.

SENATOR LARKIN: Mr. President, can we now return to motions and resolutions. I believe you have a couple of privileged resolutions at the desk. Just please read the title only.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: By Senator Leibell, Legislative Resolution congratulating

Sol and Ruth Kroll upon the occasion of their 50th wedding anniversary, July 3rd, 1997.

ACTING PRESIDENT MARCELLINO: On the resolution, all in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is passed unanimously.

The Secretary will read.

THE SECRETARY: By Senator Saland, Legislative Resolution commending Dolores Alexander for her distinguished service as a board trustee for the Wappingers Central School District.

ACTING PRESIDENT MARCELLINO: The motion is on the resolution. All in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is passed.

Senator Larkin, can we take up the report of the Rules Committee.

SENATOR LARKIN: Can we now return to reports of standing committees, the Rules report.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

The Secretary will read the report of the Rules Committee.

THE SECRETARY: Senator Bruno, from the Committee on Rules, offers up the following bills:

1401-A, by Senator LaValle, an act to amend the Tax Law;

2092, by Senator Volker, an act to amend the Civil Practice Law and Rules;

2576, by Senator Montgomery, an act authorizing the city of New York;

3438-B, by Senator Alesi, an act to amend the Insurance Law;

3520-A, by Senator Velella, an act to amend the Insurance Law;

3526-A, by Senator Alesi, an act requiring further consumer protections;

4242, by Senator Trunzo, an act to permit members of the retirement system;

4299-A, by Senator Alesi, an act

to amend the General Business Law;

4439, by Senator Skelos, an act to amend the Retirement and Social Security Law;

4662-A, by Senator Trunzo, an act to amend the Retirement and Social Security Law;

4706, by Senator Velella, an act to amend the Insurance Law;

4733-B, by Senator Farley, an act to amend the Banking Law;

4821, by Senator Skelos, an act to amend the Civil Service Law;

4968-A, by Senator Hannon, an act to amend the Public Health Law;

5371-A, by Senator Goodman, an act to amend the Real Property Tax Law;

5395-A, by Senator Bruno, an act to amend the Navigation Law;

5413, by Senator Cook, an act to amend the Public Health Law;

5439, by Senator Markowitz, an act authorizing the city of New York;

5483, by Senator Seward, an act to amend the Public Service Law;

5504, by Senator Cook, an act to authorize payment;

5509, by Senator Spano, an act to amend Chapter 824 of the Laws of 1987; and

5524, by Senator Kuhl, an act to amend the Alcoholic Beverage Control Law.

All bills directly for third reading.

SENATOR LARKIN: Move we accept the report, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Larkin.

The motion is to accept the report of the Rules Committee. All in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The report is accepted.

Senator, can we return to the order of motions and resolutions. We have a motion.

SENATOR LARKIN: Yes. Recognize Senator Rath, please.

ACTING PRESIDENT MARCELLINO: Senator Rath.

SENATOR RATH: Mr. President, I

move that the following bills be discharged from their respective committees and be recommended with instructions to strike the enacting clause: Senate 1504, on behalf of Senator Abate.

ACTING PRESIDENT MARCELLINO: The bill is recommitted and the enacting clause is stricken. Thank you, Senator Rath.

Ladies and gentlemen, we are now looking at the non-controversial reading of Senate Supplemental Calendar Number 59-B which was placed on your desks earlier. So if you have a problem, look at 59-B.

The Secretary will read.

SENATOR LARKIN: The non-controversial calendar, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

THE SECRETARY: Calendar Number 1440, by Senator LaValle, Senate Print 1401-A, an act to amend the Tax Law, in relation to providing exemption.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 5. This

act shall take effect in 180 days.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 1441, by Senator Volker, Senate Print 2092, an act to amend -

ACTING PRESIDENT MARCELLINO: Lay the bill aside.

THE SECRETARY: -- the Civil Practice Law and Rules.

Calendar Number 1442, by Senator Montgomery, Senate Print 2576, an act authorizing the city of New York.

ACTING PRESIDENT MARCELLINO: Ladies and gentlemen, there's no home rule message for this bill, so we'll lay it aside.

THE SECRETARY: Calendar Number 1443, by Senator Alesi, Senate Print 3438-B, an act to amend the Insurance Law.

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

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 1444, by Senator Velella, Senate Print 3520-A, an act to amend the Insurance Law, in relation to including.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect in 120 days.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 1445, by Senator Alesi, Senate Print 3526-A, an act to amend the General Business Law, in

relation to providing.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 1447, by Senator Trunzo, Senate Print 4242, an act to permit members of the retirement system.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number

1448, by Senator Alesi, Senate Print 4299-A, an act to amend the General Business Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 1449, by Senator Skelos, Senate Print 4439, an act to amend the Retirement and Social Security Law.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside.

THE SECRETARY: In relation to Calendar Number 1450, Senator Trunzo moves to discharge from the Committee on Rules Assembly Print 7894-A and substitute it for the identical Senate bill, Third Reading 1450.

ACTING PRESIDENT MARCELLINO:

Read the last section -- the substitution is ordered and lay the bill aside.

THE SECRETARY: 1451, by Senator Velella, Senate Print 4706, an act to amend the Insurance Law, in relation to automobile insurance rates.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 180th day.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 1452, by Senator Farley, Senate Print 4733-B, an act to amend the Banking Law, in relation to creating certain exemptions.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside, please.

THE SECRETARY: Calendar Number 1453, by Senator Skelos, Senate Print 4821, an

act to amend the Civil Service Law, in relation to reimbursement.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 1454, by Senator Hannon, Senate Print 4968-A, an act to amend the Public Health Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 1455, by Senator Goodman, Senate Print 5371-A, an act to amend the Real Property Tax Law, in relation to tax exemption.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT MARCELLINO: Lay Senator Goodman's bill aside, please.

THE SECRETARY: Calendar Number 1456, by Senator Bruno, Senate Print 5395, an act to amend the Navigation Law, in relation to regulating the speed of vessels on Saratoga Lake.

ACTING PRESIDENT MARCELLINO: Read the -- call the roll -- there is a home rule message at the desk. Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 1457, by Senator Cook, Senate Print 5413, an act to amend the Public Health Law, in relation to funding.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date as a chapter of the Laws of 1997.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MARCELLINO: Lay this bill aside.

THE SECRETARY: Calendar Number 1458, by Senator Markowitz -

ACTING PRESIDENT MARCELLINO: Lay this bill aside. There is no home rule message at the desk.

THE SECRETARY: Calendar Number 1459, by Senator Seward, Senate Print 5483, an act to amend the Public Service Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MARCELLINO: Lay

the bill aside.

THE SECRETARY: Calendar Number 1460, by Senator Cook, Senate Print 5504, an act to authorize payment of transportation aid.

ACTING PRESIDENT MARCELLINO: Read the last section and there is a local fiscal impact message at the desk.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 1461, by Senator Spano, Senate Print 5509, an act to amend Chapter 824 of the Laws of 1987.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 1462, by Senator Kuhl, Senate Print 5524, an act to amend the Alcoholic Beverage Control Law, in relation to wineries and farm wineries.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 30th day.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

SENATOR LEICHTER: Lay it aside, please.

ACTING PRESIDENT MARCELLINO: Can we lay this bill aside, please. Thank you.

That completes the reading of the non-controversial calendar, Senator. Shall we go ahead with the controversial reading?

SENATOR LARKIN: Is there any housekeeping at the desk?

ACTING PRESIDENT MARCELLINO: Yes, we do, Senator. We have some.

SENATOR LARKIN: Okay.

ACTING PRESIDENT MARCELLINO: Senator Maziarz, my co-president of our graduating class.

SENATOR MAZIARZ: Thank you, Mr. President.

On page number 43, I offer the following amendments to Calendar Number 495, Senate Print Number 300-B, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MARCELLINO: The amendments are received and accepted. The bill will retain its place on the Third Reading Calendar.

Senator, may we continue with the reading of the controversial calendar.

SENATOR LARKIN: Yes.

ACTING PRESIDENT MARCELLINO: The Secretary will read the controversial calendar of 59-B. The calendar is -- I'm sorry.

SENATOR LARKIN: Would you please call up Calendar 449 by Senator Skelos, please.

ACTING PRESIDENT MARCELLINO: Can we call up -- yes, we can, Senator. Calendar

Number 449, Supplemental 59-B.

THE SECRETARY: Calendar Number 449, by Senator Skelos, Senate Print 4439, an act to amend the Retirement and Social Security Law, in relation to State Police disability retirement allowance.

ACTING PRESIDENT MARCELLINO: Read the last section.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Leichter.

SENATOR LEICHTER: Yeah. Senator Skelos, if you would be good enough to yield.

ACTING PRESIDENT MARCELLINO: Senator Skelos, do you yield to Senator Leichter? He yields, Senator.

SENATOR LEICHTER: Yesterday we had a bill by Senator Meier where we allowed a transfer to the State Police system which cost 180,000 for one individual. The fiscal note, I see that it -- your bill would apply to six retired members and at a total cost of $1.1 million. In addition, there may be additional costs for members and retirees who we have not identified. Can you tell us -

SENATOR SKELOS: Let me explain this bill to you.

SENATOR LEICHTER: Yes.

SENATOR SKELOS: When the Parkway Police on Long Island were merged into the State Police, the people that were brought over to the State Police were Tier I employees. They were brought over as Tier I employees for everything but disability benefits where they are Tier II employees. The money over the years was paid into the system. In fact, the Comptroller has no objection to what we're trying to do, and the State Police are supportive of this since the money has already been paid into the retirement system, for these people now to get the same percentage of disability, which I believe is 75 percent as against 55 percent if they were treated as the Tier I employee.

So this is not a hit on the treasury or anything. It's money that's been paid in in the past.

SENATOR LEICHTER: Let me just see if I fully understand it, if you'll yield to one more question.

ACTING PRESIDENT MARCELLINO:

Senator, do you yield? He yields.

SENATOR LEICHTER: In other words, there's been a transfer of whatever credits these employees have.

SENATOR SKELOS: I believe it happened in 1980 -- in 1980.

SENATOR LEICHTER: Okay. Thank you.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Gold.

SENATOR GOLD: Yeah. I just have one short question for Senator Skelos.

ACTING PRESIDENT MARCELLINO: Senator Skelos, do you yield? He yields, Senator Gold.

SENATOR GOLD: I just want to clarify, Senator, something that maybe some other people are interested in also. This bill, if it costs any amount of money -- I thought we were not permitted to pass legislation that, quotes, makes appropriations or it does expenditures until we pass the budget, and I know that's a very technical area because somehow some bills get out and somehow some

bills don't.

I know there's no prohibition against bringing out a bill to the floor. I know there's no prohibition against passing a bill which sets up a program subject to an appropriation, but it seems to me if this has a fiscal note and it's spending money, I don't know how we do it before the budget.

SENATOR SKELOS: This money has already been paid into the retirement system. It's not new money that has to be paid because when they were making the -

SENATOR GOLD: But it's an - it's an authorization for payment.

SENATOR SKELOS: From the retirement system, disability benefits.

SENATOR GOLD: Well, Senator, I'm certainly not opposed to the bill. It's just a question of timing, and I think that we -- I'm just not sure it's a timely bill. It doesn't mean that we wouldn't support it at any other time, and I'm not going to oppose it at this point, but I really do question whether we should be spending any monies before budget.

ACTING PRESIDENT MARCELLINO:

Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Larkin, return to regular order?

SENATOR LARKIN: Let's go back to Calendar 1450, by Senator Trunzo.

ACTING PRESIDENT MARCELLINO: The Secretary will read Calendar Number 1450, page 2, if anybody's looking, on the supplemental calendar. Read the last -

THE SECRETARY: Calendar Number 1450, substituted earlier today, by the Assembly Committee on Rules, Assembly Print 7894-A, an act to amend the Retirement and Social Security Law.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT MARCELLINO: Did I hear an explanation asked for? Explanation,

Senator Trunzo, has been requested.

SENATOR TRUNZO: Mr. President, what this bill does is, this would create the same disability program for EnCon police and the Park Police as the New York State Police have.

These police officers are state policemen and, therefore, they have statewide jurisdiction in specific areas of law enforcement. So what we're doing is putting the Park Police and the EnCon police with the same disability effects that the State Police have because they are state policemen.

SENATOR LEICHTER: Mr. President, just -

ACTING PRESIDENT MARCELLINO: Senator Trunzo, will you yield to Senator Leichter?

SENATOR TRUNZO: Yeah.

ACTING PRESIDENT MARCELLINO: I believe he yields, Senator.

SENATOR LEICHTER: Senator, I assume presently, as employees of the Department of Environmental Conservation, they're entitled to whatever disability benefits the employees of the Department are entitled to; is that right?

(Senator Trunzo nods head.)

SENATOR LEICHTER: And I assume this bill will give them greater disability benefits.

SENATOR TRUNZO: Greater, and the equity with the other state police.

SENATOR LEICHTER: And is that based on the fact that the functions that they perform as peace officers or police officers present certain risks, and so on?

SENATOR TRUNZO: That's right.

SENATOR LEICHTER: And is the nature of their functions such that they're likely to incur the same sort of disabilities as members of the State Police?

SENATOR TRUNZO: Yes.

SENATOR LEICHTER: In what respect is that?

SENATOR TRUNZO: They have the same jurisdictional work as policeman do, the State Police. They patrol the parks and, you know, those areas and as a result they encounter the same type of problems that any police officer would encounter. They're in uniform. They are cops and the different agency other

than the state troopers but -- so they have the same jurisdictions and the same -

SENATOR LEICHTER: If you would yield just to one more question. I understand the matter of jurisdiction, but I think what we need to look at is the risks that they face.

SENATOR TRUNZO: Well, they face the same safety factors as anyone else, any other policemen.

SENATOR LEICHTER: They're not on the highway -

SENATOR TRUNZO: No.

SENATOR LEICHTER: -- and cars going 80, 90 miles an hour, which I assume is a particular risk to the State Police. I just want to make sure, Senator, that you've looked at this carefully and that these people are really entitled to the more generous disability benefits that they're now going to be entitled to get.

SENATOR TRUNZO: Well, I honestly believe that very strongly because even in their patrolling of the state parks, they can encounter the various problems and things that happen at picnics and other things that may go

on in the state parks.

SENATOR LEICHTER: Run into a bear.

SENATOR TRUNZO: And EnCon.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Larkin, what's your pleasure?

SENATOR LARKIN: Regular order. Senator Farley.

ACTING PRESIDENT MARCELLINO: May we return to -- Senator, that's not the regular order. Senator Farley's bill. Farley's bill, 1452.

The Secretary will please read Senator Farley's bill, 1452.

THE SECRETARY: Calendar Number

1452, by Senator Farley, Senate Print 4733-B, an act to amend the Banking Law.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT MARCELLINO: Senator, an explanation has been requested.

SENATOR FARLEY: Is that my colleague and friend, Senator Leichter, that would like this?

ACTING PRESIDENT MARCELLINO: Who else?

SENATOR FARLEY: The friend of the American banker. Actually, this is not a banking situation, but it would authorize the Superintendent of Banks to increase the maximum percentage that a limited trust company may invest in the obligations of a foreign nation.

This bill is important to New York companies to compete in the global custody business. Franz, this is not a special interest bill. There's 38 of these, not four or five or whatever it might be, 38 of these companies and the global custody business often involves short-term investment of foreign currencies.

The main options are to deposit such assets in a foreign bank or to invest such

assets in foreign government securities or obligations. Both these options are subject to the statutory limits based on the institution's capital stock.

However, the Superintendent of Banks, may, on a case-by-case basis, establish higher limits for deposits in banks and has done so on numerous occasions. In other words, they can go into banks. The Superintendent, in my judgment, in this bill's judgment, and the Banking Department's judgment, should have similar flexibility to establish higher limits for investments in foreign government obligations and repurchase agreements. That's the essence of it.

These investments often have advantages over deposits in foreign banks because there's more security, there's less credit exposures. The yields are generally better and repurchase agreements, in particular, are generally more liquid and also, as an aside, there's no limits at all on investments in the United States and New York State obligations and since trust companies are increasingly managing foreign currencies, it is appropriate that the

law regarding investments in foreign government obligations be revisited and to provide some increased flexibility subject to discretion of the Superintendent.

SENATOR LEICHTER: Mr. President, if Senator Farley will yield for one or two -

ACTING PRESIDENT MARCELLINO: Senator Farley -- excuse me one second.

Ladies and gentlemen, once again, please. Thank you.

Senator, he yields for a question.

SENATOR FARLEY: Thank you, Mr. President.

SENATOR LEICHTER: Senator, I appreciate that these are trust companies that don't take deposits from the public so we're not placing that money at risk but, nevertheless, they could be sister companies of companies that do take monies from the public and certainly if any of these 38 trust companies were to get into a financial difficulty, you would have a great impact on the people of the state of New York.

I just have one question to you, Senator, and I don't mind giving them certain

added authority to invest in foreign securities, but is there going to be a periodic check by the Superintendent? Are there going to be examinations so that we don't find ourselves in a situation where one of these bank companies gets too heavily involved in the obligations of a foreign country?

SENATOR FARLEY: Good question.

SENATOR LEICHTER: Thank you.

SENATOR FARLEY: The Department -- the Banking Department examines these people, reviews these decisions and incidentally, we're talking about government securities which are, generally speaking, more secure and are safer than some of the bank deposits.

SENATOR LEICHTER: Thank you very much, Senator Farley, and when we see that Farley-Leichter bill -

SENATOR FARLEY: I'm ready. I'm working on it.

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

SENATOR GOLD: If I see a Farley-Leichter bill, I'm going to debate it.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Larkin.

SENATOR LARKIN: Senator Seward has a Conference Committee, so we'll take his bill now, 1459, so he can finish it.

ACTING PRESIDENT MARCELLINO: Yes. Will the Secretary please read Calendar Number 1459.

THE SECRETARY: Calendar Number 1459, by Senator Seward, Senate Print 5483, an act to amend the Public Service Law, in relation to cellular telephone services.

ACTING PRESIDENT MARCELLINO: Read the last section.

SENATOR GOLD: Yeah, Mr. President.

ACTING PRESIDENT MARCELLINO: I'm sorry.

SENATOR STAVISKY: Explanation, please.

ACTING PRESIDENT MARCELLINO: Senator Seward, an explanation has been requested.

SENATOR SEWARD: Certainly, Mr. President.

This is a bill which passed unanimously last year. We're presenting it again this year because unlike last year we do have an Assembly sponsor, Assemblyman Vann in the other house, who is intending to pass it over there.

Basically this bill would suspend the regulation by the Public Service Commission of cellular telephone services. However, we make it very clear in the legislation that, in the event the PSC finds that because of customer complaints and other factors that they, after one year -- after the effective date of the legislation, they could reimpose regulations should they determine that that is necessary. So we do make that provision and the other part

of the legislation is that -- that it states very clearly that the tax status of the cellular telephone corporations remains the same. There's no change in that, but basically the reason for the bill is in the cellular business, in terms of telephones, there's so much competition today. It's growing all the time and it seems that if one customer is having a problem, there are plenty of other cellular providers available to take their business. So competition is very evident there and it is taking away really the need for regulation.

Also, the FCC at the federal level, the Federal Communications Commission, has determined that the states have very, very limited authority to exercise regulation. In fact, they've taken away the Commission's right to exercise entry and rate jurisdiction. So there's very -- basically there's very little left that we would regulate anyway.

So for those reasons, I'm presenting the bill, and I'm calling for its passage.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MARCELLINO:

Senator Gold.

SENATOR GOLD: Would the distinguished gentleman from Central New York yield to a question?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT MARCELLINO: Senator Seward, do you yield? He yields.

SENATOR GOLD: Senator, are there more cellular companies doing business in New York than there are banks doing business in New York?

SENATOR SEWARD: Banks, did you say?

SENATOR GOLD: Yeah, banks.

SENATOR SEWARD: I've never -- to be honest with you, Senator, I've never compared.

SENATOR GOLD: You never cared?

SENATOR SEWARD: I've never compared. I've never taken a count.

SENATOR GOLD: Senator, if you'll yield to question. Are there more cellular phone companies doing business in New York than there are insurance companies?

SENATOR SEWARD: I have never

compared the numbers.

SENATOR GOLD: Senator, if you'll yield to one more question.

SENATOR SEWARD: Certainly.

SENATOR GOLD: Senator, I really don't understand the bill at all because to say there's competition and, therefore, we don't have to regulate -- I thought we had competition in the banking field and I don't see Senator Farley -- Professor Farley telling us we shouldn't regulate the banks. I mean, there's all these insurance companies out there competing, the mail that comes in, the phone calls that come in, and I don't hear us being told we shouldn't regulate the insurance industry. It's just a situation where there's a big gap in logic that I see here.

I understand the federal government has certain controls and that that's fine, but from the point of view of protecting consumers, to say that consumers are protected because they can change service, I can make that same argument about a bank, an insurance company or any other industry that we regulate. So I don't see the logic.

It just seems incredible that we would take cellular phones and determine that for some reason we exempt them from these laws. What is the real reason here?

SENATOR SEWARD: I've stated very clearly, Mr. President, the -

ACTING PRESIDENT MARCELLINO: I understood it.

SENATOR SEWARD: Thank you. No, seriously, the fact is that, as I said, the FCC has taken away the state's authority to regulate in some very key areas, such as the entry and the rates, and I see some difference in terms of the examples you've mentioned.

The cellular service is predominantly a non-essential -- it's a discretionary service that's being provided by a very dynamic and rapidly changing market structure. I see that as a difference when compared to some of the other examples that you outlined.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Gold.

SENATOR GOLD: I don't -- I don't

have to ask the Senator any more questions. I'll just make my comments.

ACTING PRESIDENT MARCELLINO: Senator Gold, on the bill.

SENATOR GOLD: Senator Seward, I respect you but this bill, I'm missing something. It doesn't make any sense to me.

For example, we say that the FCC is now regulating some areas. Well, that's an honest man talking, Senator Seward. It doesn't regulate all the areas. So if we drop our regulation, it seems to me there are going to be areas that are unregulated.

Secondly, you say that it is a non-essential service and, Senator, to me, what's an essential service? If you want to say you need a doctor, you need a hospital, that's essential. You have to eat. That's essential. Well, Senator, in the real word today, cellular phones is essential. There are people who believe that.

Now, if you're saying to me every human being in the world doesn't have a cellular phone, you're right, but businesses use them regularly, people not in business use them and

they have dropped in their cost to some extent and to say they're non-essential, I don't think is really an accurate picture unless you want to just determine that the word "essential" means health services and food and things like that, and housing.

I am prepared to support a bill that makes sense if it makes sense but, in all fairness and with no disrespect meant to you, I haven't heard one logical reason why these people should be treated differently from other telephone companies or from banks or from insurance companies or other kinds of businesses like that. The state is now there. They are - they are subject to our laws for the protection of consumers, and I just don't understand based upon what I've heard so far, why we would justify taking them out of the protections of the law.

ACTING PRESIDENT MARCELLINO: Senator Stavisky.

SENATOR STAVISKY: Will the sponsor yield to a couple of questions?

ACTING PRESIDENT MARCELLINO: Senator Seward, do you yield?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR STAVISKY: Senator Seward, are you familiar with a study that was undertaken by Canadian scientists at the University of Toronto and republished widely here in the United States on the relationship between the use of cellular phones and driving? Are you familiar with that study?

SENATOR SEWARD: Senator, I've seen some publicity regarding the issue. I'm not intimately familiar with the study.

SENATOR STAVISKY: Senator Seward, the study found that the use of a cellular phone while driving dramatically increased the danger -- the danger to the driver, passengers in the car and other drivers and pedestrians to the extent that it was comparable to the increase in hazards caused by alcohol consumption. That was the study.

There was a second study at the Rochester Institute of Technology here in New York State which came out with the very same conclusion and, if you have not become familiar

with this issue, I would suggest that you do so before sponsoring this legislation. The research is very recent. It came out in the past year and, if there is a relationship between hazards to other drivers, pedestrians and the use of a cellular phone while driving, I think that you should think of the other aspect of the regulation or non-regulation of this industry.

I know the cellular phone industry is good for the economy. I know that it creates business and job opportunities and I'm not challenging that issue, but it seems to me that if the use of a cellular phone by a person driving a motor vehicle creates a hazard comparable to driving with a .10 alcohol level in the blood, then that should be an important part of any attempt to deal with this industry, and I would urge you to hold this bill until you can become familiar with that aspect of the issue so that you will have before you not only the desire to suspend the regulations but perhaps the desire to put some other teeth into a warning. "Do not drive while operating a cellular phone" and that should be included in a

piece of legislation rather than this attitude we don't have to do anything about it.

Would you be willing to consider holding this bill until the research -- which, by the way, has come out since the 1996 piece of legislation.

SENATOR SEWARD: Well, Mr. President, I understand what Senator Stavisky is saying. However, it does not have a relationship to this particular piece of legislation. Whether or not people use a cellular phone while driving or what the risks are, and so on, that's not a matter that would be addressed by the Public Service Commission. That's a -- would be another -- if this Legislature -- it would require this Legislature to do so -- wish to get involved in that type of regulation, that would require additional statutes, amending other sections of the law. It's not a Public Service Commission issue in terms of whether or not the cellular telephone companies have to file papers at the commission regarding their rates and if they want to provide new services they've got to file that information with the commission. That's what

we're talking about here in terms of regulation. Nothing to do with those -- what I would consider to be health and safety issues which you're outlining.

I would like to proceed with this legislation. I know there's legislation that others have introduced dealing with the issues that you are outlining and -

SENATOR STAVISKY: Chairman Levy has introduced a bill. I have introduced a bill on this subject. I would encourage you -

ACTING PRESIDENT MARCELLINO: Excuse me, gentlemen.

SENATOR STAVISKY: Forgive me for interjecting.

ACTING PRESIDENT MARCELLINO: Back and forth, the questions directed through the Chair, please.

Senator Stavisky, you have further questions?

SENATOR STAVISKY: Yes.

ACTING PRESIDENT MARCELLINO: Senator Seward, do you yield? He yields.

SENATOR STAVISKY: Norman Levy has introduced a bill to begin collecting this

data, and I have introduced legislation to research and also get answers to the question of the relationship between the use of a cellular phone by a driver. I'm not saying that we should stop the use of cellular phones. I'm simply saying that there should be some regulation that would address the issue of safety. A person on a cellular phone cannot -

ACTING PRESIDENT MARCELLINO: Excuse me. Senator Stavisky, are you speaking on the bill?

SENATOR STAVISKY: I'm speaking on the bill.

ACTING PRESIDENT MARCELLINO: Senator Stavisky, on the bill.

SENATOR STAVISKY: A person on a cellular phone cannot -- cannot be aware of what the impact will be on the driver's safety record. As a matter of fact, talking to someone at the other end of a cellular phone poses a greater risk than any other distraction in the car. If there, for example, is a situation where passengers are distracting in the car or where the driver is listening to a radio, there is still not the danger that a cellular phone

use while driving poses because you become so engrossed in the conversation that it becomes a distraction.

I think that we will be sending the wrong message if we are to pass this legislation in the wake of the recent research and the findings that have been widely reported since the last vote on this, and I would hope that the members would be mindful of what I'm suggesting, that there has got to be a willingness to address the safety issue because the mere fact that you're using a cellular phone, whether it's hand held or, in fact, installed in the vehicle itself and is not hand held, poses a problem for other drivers, the passengers and pedestrians alike and if we are discontinuing all regulations as this bill proposes, then we will never address the issue of the safety of the use of a cellular phone.

I'm not suggesting that cellular phone not be used. It could still be used for a limited period of time, a window of opportunity to make a call, to report an emergency, to do any of the things that are necessary in the use of a cellular phone, and I think it would be

untoward to pass such legislation in the wake of the findings.

I would hope that the sponsor would not proceed with this while there are safety features that deserve to be considered and I would hope that the sponsor would be willing. Hold your horses. Don't have a vehicle hurtling forward while a driver is distracted and, if the driver is distracted for whatever reason, calling the boss, calling a girlfriend, speaking on a -- on a phone call aimed at changing the -- changing the arrangements for a meeting later in the day, whatever the reason is, the person at the other end of the phone has no knowledge of what's going on with the traffic conditions and that, I think, should take equal precedent in this legislation as well as the desire to discontinue unnecessary reporting.

I would hope that the sponsor - I would hope that the sponsor would reconsider his position. If he's not able to reconsider his position, I would hope that the members of this body would be willing to vote no in order to give us sufficient time to examine the

ramifications of this legislation and the ramifications of the use of cellular phones by drivers, no one else. A passenger in the vehicle could still make the call. Anyone not driving could still make the call, but I'm saying that the driver should not be able to make the call with an impunity and allow this to be a hazard.

The findings of the study I'm citing indicated that the risk of accident and injury and even death was increased four-fold, 400 percent increased by the use of a cellular phone by the driver and this bill does not address that issue and it moves us in the opposite direction.

I would hope that the sponsor would reconsider his position on this.

ACTING PRESIDENT MARCELLINO: Senator Abate.

SENATOR ABATE: Yes. Would Senator Seward yield to a question.

ACTING PRESIDENT MARCELLINO: Senator, do you yield to Senator Abate?

SENATOR SEWARD: Yes, I do.

ACTING PRESIDENT MARCELLINO: He

yields, Senator.

SENATOR ABATE: It's my understanding that the Public Service Commission has the power to currently regulate customer billing information and practices, billing disputes, customer protection matters such as privacy, false advertising and service quality.

Do you agree, Senator, that consumers still have problems in these areas vis-a-vis cellular phone service?

SENATOR SEWARD: Senator, I have reached out to the Public Service Commission - in fact, this is a -- one of their program bills, and I have been told by the Commission that the complaints in these areas over the last ten years are practically nil and so that is the reason that it is believed that we can move forward to lift the regulation from the cellular telephone companies with the understanding, though, that regulations in the areas that you've outlined could be reinstated if the complaints increase.

SENATOR ABATE: But if, as you say -- and I have not checked that. I certainly trust you, if you reached out to the PSC and

they say it's no longer a problem. If it's no longer a problem and these regulations are not burdensome -- because many complaints are not filed with PSC -- why do we need to deregulate the cellular phone industry if it's not a burden?

SENATOR SEWARD: Well, Senator, I -- through you, Mr. President -- I didn't say that it wasn't a burden for the companies. I'm suggesting that in terms of the complaints coming in to the PSC have been very, very few over the last ten years but still the companies need to -- when they change a procedure, they have to file papers and it seems to be unnecessary paperwork and expense to the company, particularly when we have -- and I think this is the reason why there are so few complaints, because of the fact that we have a variety of providers in the various service markets. We have new types of technology coming on-line very rapidly and, frankly, because of this very competitive atmosphere that's out there, should someone have a problem with their cellular carrier, boy, there's another carrier right there ready to assume your business.

So for that reason, why would we want to continue to regulate and to cause unnecessary paperwork, delay in moving out new products and services because of having to file papers at the PSC?

SENATOR ABATE: Would you continue to -- Mr. President, would Senator Seward continue to yield.

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

SENATOR SEWARD: Certainly.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR ABATE: I'm hearing about the burden to certain companies because of paperwork. There are two separate issues. If an individual regulation is burdensome or how that regulation is implemented in terms of paperwork, shouldn't we be looking at elimin ating a regulation but not just deregulating an entire practice or industry? Isn't there a middle ground? Let's look at those regulations, make some evaluations instead of suspending all of them, taking away from PSC its power and responsibility to ensure consumer protection in

this area?

SENATOR SEWARD: Well, Mr. President, I feel our legislation does strike that so-called middle ground by saying that we will lift these regulations, what few the state can under FCC regulations and rules continue to impose.

We do strike that middle ground because we are suspending the regulations for one year and after that one-year period, the PSC can take a look at the experience of that - over that year period and then if it's determined that regulation is needed, they can reimpose it.

So I feel that we are striking that middle ground and trying this approach and if need be to go back to regulation, we give the PSC the authority to do that.

SENATOR ABATE: Last question, Senator.

ACTING PRESIDENT MARCELLINO: Senator, do you yield for one more question?

SENATOR SEWARD: Yes, I will.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR ABATE: What happens in that year experiment where we suspend the regulations and I am a consumer and I do not have money to hire an attorney or enter into a class action suit and I want relief? I've entered into a long-term contract. I'm receiving poor service. I'm being charged exorbitant rates. False advertising is involved by this company. I want relief from government. I want to still go to PSC and say "I want you to investigate. I need you to review patterns and practices." What are we going to say to those consumers throughout the state because we want to experiment and suspend these rules for a year? What would your answer be?

SENATOR SEWARD: Well, Mr. President -- I think you will like my answer, Senator Abate. I would suggest they call the Attorney General.

SENATOR ABATE: That's one avenue. That's a very expensive avenue.

SENATOR SEWARD: I don't think the Attorney General charges in their Consumer Frauds Unit, and I don't mean to be facetious

here. I'm merely making the point, the Attorney General does have a utility unit that would handle a complaint such as this, as well as the regular Consumer Fraud Unit. The Consumer Protection Board is in place to handle complaints and that would take care of a matter that you're suggesting and, of course, the PSC, both of these agencies also have direct contact on an ongoing basis with the PSC. So if this is a problem, then the regulation would be reinstated but in addition to calling these agencies which we have in place to handle consumer complaints, the customer that you outlined could very easily switch to another provider and if they are experiencing a problem -

SENATOR ABATE: This is after the damage has been rendered and they're seeking relief, though.

SENATOR SEWARD: M-m h-m-m.

SENATOR ABATE: If I could, on the bill very briefly.

ACTING PRESIDENT MARCELLINO: Senator Abate, on the bill.

SENATOR ABATE: In terms of the

Attorney General's office, if you eliminate rules and regulations, the responsibility of the Attorney General is to enforce local and state, federal rules and right now, the PSC has joint jurisdiction with the Attorney General on a whole host of issues in telecommunications.

We saw recently in the NYNEX-Bell Atlantic merger, everyone was concerned that there be -- competition remain in the state, that with this new merger, we were concerned about whether jobs would stay here, what would happen with service quality, the cost to the consumer. If PSC moved out of that arena, as you're suggesting, with a cellular phone system, the consumers would lose.

We're seeing now even with these regulations enormous expansion in the telecommunications market on all levels, whether it's issues of Inter-LATA rates that are going to be looked at and regional rates and long distance, as well as cellular. It is much too early to experiment with total deregulation.

A much more sensible route would be to look at individual regulations that no longer make sense to be amended because they're

burdensome but to take the PSC out of review altogether on cellular phones would put consumers at risk throughout the state.

So I suggest and I hope that you will look to amend this bill, take a middle ground because I believe we need a balanced approach, a balanced approach that protects consumers while allowing a healthy and competitive market in the telecommunications field.

ACTING PRESIDENT MARCELLINO: Any other Senator wishing to be heard?

(There was no response.)

Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Record the negatives and announce the results, please.

SENATOR STAVISKY: To explain my vote.

ACTING PRESIDENT MARCELLINO:

Senator Stavisky, to explain his vote.

SENATOR STAVISKY: I have a feeling that what I suggested here is a problem has not sunk in. What will happen in the course of a year if there are people who are injured, who are dying because of accidents resulting from the improper use of a cellular phone?

I have in my possession in the office an advertisement taken from the cellular phone industry which clearly, clearly shows the dangers. There's a picture of a woman driving a car while using a cellular phone and two children are in the front seat with her where they don't belong, and I think that that exemplifies the wrong direction taken by this legislation which deregulates instead of addressing the problems, the real problem associated with the use of cellular phones.

What will happen over the course of this year if nothing is done? No warning label? No warning label? "Do not drive while operating a motor vehicle and using a cellular phone unless there is an emergency." That could be added to the bill and that could begin to address the problem, but I see no effort being

made in this legislation except to say that we are deregulating and we will continue to deregulate in the public interest.

Now, if a public interest involves the safety and the health of people, I think that is a serious enough consideration. If the research that I've cited is valid -

ACTING PRESIDENT MARCELLINO: Senator, your two minutes to explain your vote has expired.

SENATOR STAVISKY: I will conclude. If the research I've cited is valid, there will be hundreds and thousands of accidents in New York State caused by the distractions emanating from the use of a cellular phone, and I would not wish to be on the side of ignoring this record of safety or lack of safety without an attempt being made to amend this bill.

ACTING PRESIDENT MARCELLINO: Senator, your two minutes is up. Please announce the results.

SENATOR STAVISKY: For this reason I'm going to be recorded in the negative.

ACTING PRESIDENT MARCELLINO:

Senator Stavisky in the negative.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Gold.

SENATOR GOLD: Mr. President, I -

ACTING PRESIDENT MARCELLINO: Are you explaining your vote, Senator?

SENATOR GOLD: Yes. If you don't mind, Mr. President.

ACTING PRESIDENT MARCELLINO: I don't mind.

SENATOR GOLD: Mr. President, I respect the sincerity from my colleague from upstate, but I really think this is a mystifying bill.

Let me say to you, when you say the complaints are minimum, then the costs are minimum and they can keep it, and while I would be very comfortable with the fact that if there was a complaint made to Attorney General Abate, that she would be sympathetic. The fact is that under this bill, you take away the protections in the Public Service Law, so there's nothing the Attorney General can do.

Senator, let me just tell you one very, very quick story. I came home one night a number of years ago, I got my bill, I went upstairs and I said to my wife in front of the children, "Judy, this is the last straw. It's all over. This marriage isn't working." She said, "What are you talking about?" I said, "Take a look at this" and I showed her a cellular bill, which I just called to verify the amount, was $35,000. Now, for a month that might be a little bit much even in your home, Senator Seward. The point is that obviously it was a fraud situation. Under existing law, I called the company. They were very nice. Things get taken care of.

Senator, now with all of the fraud that goes on, they're getting not quite so nice. Now they say, well, I know, we know there's some fraud but why don't you identify this and why don't you identify that.

I'm telling you, Senator, if you take away the protections of the Public Service Law, there's still going to be fraud but now how do you enforce your rights? Now they say, Well, okay, maybe fraud was part of it and now you're

involved in a whole negotiation.

All I'm saying to you is there are problems in this field. The people going into it are decent people. The companies are decent but the concept of taking this mass market and the people involved in it and taking away all controls is going too far too fast and it's wrong.

I vote in the negative.

ACTING PRESIDENT MARCELLINO: Senator, your two minutes is up. Senator Gold in the negative. Would you please announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1459, Senators Abate, Gentile, Gold, Leichter, Onorato, Stavisky and Waldon. Ayes 51, nays 7.

ACTING PRESIDENT MARCELLINO: The bill is passed.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Waldon, why do you rise?

SENATOR WALDON: Mr. President, I was away from the chamber on other Senate business when the house considered Calendar 280

and 1135. I respectfully request unanimous consent to be recorded in the negative on those two bills.

ACTING PRESIDENT MARCELLINO: Without exception, calendar -- Senator Waldon will be recorded in the negative on those two bills.

SENATOR WALDON: Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Larkin, what is your pleasure?

SENATOR LARKIN: Call up Calendar Number 1455, by Senator Goodman.

ACTING PRESIDENT MARCELLINO: The Secretary will please read Calendar Number 1455, by Senator Goodman.

THE SECRETARY: Calendar Number 1455, by Senator Goodman, Senate Print 5371-A, an act to amend the Real Property Tax Law, in relation to tax exemption.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Goodman, an explanation has been requested.

SENATOR GOODMAN: May I ask who

requested it, Mr. President?

ACTING PRESIDENT MARCELLINO: I believe either Senator Leichter -

SENATOR GOODMAN: Senator Leichter, all right.

Mr. President, this bill would extend the terms of the Section 421 (a) of the Real Property Law by one year. This is, I think, familiar legislation to most of us in the City. It was responsible over the past number of years for the building of 111,000 units with the accommodation of approximately one-third of a million people in new housing accommodations.

It is a bill which, as you know, is designed by creating a tax abatement to induce realtors and construction developers to build buildings in the city of New York, which is, of course, a very important part of our city's economy.

In the early years of this legislation, the focal point of this was high rise luxury building, but over time the legislation was altered to make it clear that this was not to be done within the so-called luxury band from 96th Street to 14th Street on

the East Side of Manhattan and that became a geographic exclusion area. So that 421 (a) scope is outside of that area and it will encourage construction in both the outer boroughs and parts of Manhattan that do not focus upon luxury housing.

May I say that, in the event that the housing is constructed under this law, that a provision is made, developers must finance the construction of off-site affordable units equal to 20 percent of the units in the projects in order to obtain a ten-year 421 (a) benefit. In the non-excluded areas, ten-year benefits are available as of right.

SENATOR LEICHTER: Mr. President, if Senator Goodman would yield, please.

SENATOR GOODMAN: Yes, I will.

ACTING PRESIDENT MARCELLINO: The Senator yields to a question.

SENATOR GOODMAN: Incidentally, this is a City program bill.

SENATOR LEICHTER: Senator, you mention the fact that initially this program really just led to the construction of luxury housing. Presently, as I understand it, to be

entitled to take this 421 (a) benefit, the tax abatement exemption, you need to at least provide 20 percent low income housing.

SENATOR GOODMAN: In the excluded zone, that's correct.

SENATOR LEICHTER: Within the excluded zone, but there's nothing in your bill that provides for that. Is that under the city law?

SENATOR GOODMAN: Well, let's see if I can give you a direct response to that. I know it's the law, but I can't tell you where it's codified.

SENATOR LEICHTER: I do believe that that is the provision of the City Administrative Code and it might make a lot of sense to also embody this in the state legislation, but there's another aspect that I'm concerned about. I want to ask you if you'll continue to yield, Senator.

SENATOR GOODMAN: Yes, I will.

ACTING PRESIDENT MARCELLINO: Senator Goodman continues to yield.

SENATOR LEICHTER: While I applaud the fact that we restricted the use of

421 (a), my impression is -- and I don't have the figures; this is an impression -- that we're still seeing a great deal of construction, mainly in Manhattan, parts of your district, parts of my district, where really there is no need to subsidize or to spur on the construction of new housing and that, if you take a look at the construction in the other boroughs, you take a look at the construction in northern Manhattan, Lower East Side, there's relatively little of that going on, and my concern is that this is still, in large part, a program that seems to be directed at the construction of, even the subsidizing of luxury housing.

SENATOR GOODMAN: Senator, as you know, this very problem was what prompted the bill's modification to the 20 percent provision and it's my judgment that this creates a well balanced series of incentives and benefits to the public-at-large when one-fifth of all of the housing constructed within the restricted zone will be devoted to moderate income housing.

It seems to me this is a very constructive total package. It's one which has in a period of housing shortage with which we're

very familiar and which was amply discussed on the night of the rent discussions here in this chamber. This is good legislation because it provides a very muscular incentive in the form of a tax abatement for the purpose of building buildings and incidentally provide stabilization during the period of that abatement, as you know.

So that this is, I think, well proportioned and I guess honest men will differ as to the precise ways in which it might be done, but I think it's in good balance and I would not only encourage this but I think other similar legislation is now called for to try to alleviate the housing shortage.

SENATOR LEICHTER: Mr. President, just very briefly on the bill.

I think Senator Goodman is correct when he says that the program has been improved. I'm not sure it's been improved sufficiently. I'm going to support it because I think it is important for parts of the City, Senator, but I'm concerned, for instance, in my district where a very large, primarily luxury housing development is under way. This is

Donald Trump's Riverside South, is going to have some of the most expensive housing in the world, maybe outside of Hong Kong and maybe even more expensive than Hong Kong, yet that program may very well be entitled to this 421 (a) housing subsidy, and that's really the problem.

Well-intentioned as the program is and carefully crafted as Senator Goodman, city officials have sought to limit the program so that it would be mainly available for the construction of affordable housing, it's still used in large measure to build luxury housing, and I think we've got to ask ourselves whether we're in a position and whether we want to subsidize what is going to be primarily luxury housing.

So I would like to see further restrictions written in the program to direct this money where it's needed, affordable housing, not luxury housing, and I hope that maybe in the City Council we can achieve some of those changes.

Thank you.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Can we call up -

SENATOR LARKIN: 1457.

ACTING PRESIDENT MARCELLINO: - Calendar Number 1457, Senator Cook's bill, please.

THE SECRETARY: Calendar Number 1457, by Senator Cook, Senate Print 5413, an act to amend the Public Health Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date as a chapter of the laws of 1997.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Paterson.

SENATOR PATERSON: Mr. President, with unanimous consent, I'd like to be recorded in the negative on Calendar Number 459 -- 1459. Sorry.

ACTING PRESIDENT MARCELLINO: The record will show Senator Paterson will be recorded in the negative on Calendar Number 1459.

SENATOR SPANO: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Spano, why do you rise?

SENATOR SPANO: Can I be recorded in the negative on Calendar 1457, please.

ACTING PRESIDENT MARCELLINO: Senator Spano will be recorded in the negative on Calendar Number 1457.

Senator Stachowski.

SENATOR STACHOWSKI: Mr. President, can I have unanimous consent to be recorded in the negative on Calendar Number 1459.

ACTING PRESIDENT MARCELLINO:

Senator Stachowski will be recorded in the negative on Calendar Number 1459.

Senator Larkin, what's your pleasure?

SENATOR LARKIN: Calendar 1462, by Senator Kuhl, please.

ACTING PRESIDENT MARCELLINO: The Secretary will read Calendar Number 1462, by Senator Kuhl.

THE SECRETARY: Calendar Number 1462, by Senator Kuhl, Senate Print 5524, an act to amend the Alcoholic Beverage Control Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 5. This act shall take effect in 30 days.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

SENATOR OPPENHEIMER: Mr. President.

ACTING PRESIDENT MARCELLINO:

Senator Oppenheimer, why do you rise?

SENATOR OPPENHEIMER: I would appreciate unanimous consent to be recorded in the negative on 1459.

ACTING PRESIDENT MARCELLINO: Senator Oppenheimer will be recorded in the negative on Calendar Number 1459.

Senator Larkin.

SENATOR LARKIN: Mr. President, could we return to motions and resolutions for one item. I believe you have a privileged resolution at the desk. Please read the title.

ACTING PRESIDENT MARCELLINO: The Secretary will read the title to the privileged resolution.

THE SECRETARY: By Senator Leibell, Legislative Resolution commending Dr. Mark Levy upon the occasion of his 30 distinguished years as an educator with the Mohonk Central School District.

ACTING PRESIDENT MARCELLINO: The motion is on the resolution. All in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is passed.

Senator Larkin.

SENATOR LARKIN: Mr. President, can we now go on Calendar 59-B, page 1, Senator Volker's bill, Calendar Number 1441, Senate Print 2092.

ACTING PRESIDENT MARCELLINO: The Secretary will read Calendar Number 1441, please.

SENATOR ABATE: Explanation.

ACTING PRESIDENT MARCELLINO: Explanation has been asked for, Senator -- I'm sorry. Let the Senator -- let the Secretary read the -

THE SECRETARY: Calendar Number 1441, by Senator Volker, Senate Print 2092, an act to amend the Civil Practice Law and Rules.

ACTING PRESIDENT MARCELLINO: Senator Volker, an explanation has been requested.

SENATOR VOLKER: Mr. President, we go from sexual predators to certificate of merit. Well, at any rate, this is a bill that has passed this house before, by the way, at

least once and possibly twice, which relates to extending the certificate of merit in actions for negligence or malpractice against architects who are professional engineers.

Presently, this doctrine is used in relation to medical, dental and podiatric malpractice suits and what this bill would do would be to extend that concept to architects and professional engineers.

Now, the process would be that, in such an action, the person who made the complaint would have to involve an architect or professional engineer and accompany it with a certificate of merit from an attorney showing that at least one architect or professional engineer has been consulted and the attorney has concluded there is a reasonable basis for the action and, Senator, now that we're here, we can -

SENATOR PATERSON: Now that I'm here, we can debate it.

Mr. President, if Senator Volker would -

ACTING PRESIDENT MARCELLINO: Senator, you have a question of Senator Volker?

SENATOR PATERSON: Would Senator Volker yield for a question?

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

SENATOR PATERSON: Thank you, Senator Volker. Why don't you hang around while I think of one.

Senator, this section 3012 (a) of the Civil Practice Law and Rules was enacted in 1986 really in a special situation involving physicians, podiatrists, medical professionals who very much needed this legislation because of the crisis at that time in the area of medical malpractice.

Do you think that the architects and engineers have any basis to make a -- to be trying to have this Legislature act on a comparable statute when it appears that there isn't really any relevant data at all that they have been the victims of excessive lawsuits?

SENATOR VOLKER: Senator, and you and I, I believe were here in 1986 and it was a crisis. There's no question about it at that time. It was a severe crisis and, Senator, you were here also, but I think there is a crisis in

the area of architects and professional engineers and the crisis is, in fact, pervading through so much of the areas of construction and various areas that, in effect, rely on the fact that insurance premiums are such an integral part of the life blood of these different organizations.

The lawsuits against such organizations as architects and engineers have been escalating dramatically over the years and not that the judgments against these people have necessarily been so much higher because the judgments probably have been lessened except that in certain specific cases these people end up sharing in some of the judges -- judgments, maybe on a questionable basis, but the problem is that the numbers of lawsuits, the exposure of the insurance companies -- because the real problem that I don't think is understood is that a great deal of the problem that we have with costs in our society relates to exposure and that is the fact that you have to purchase extremely high priced insurance that relates to consumer costs. It's a major reason why building costs have gone up dramatically.

So I think what we're trying to do here is develop a better process, frankly, so that we can do construction in a much more cheaper way and a better way. I think there is a crisis, I think, in regards to architects and engineers, and I think we're trying to deal with that here.

SENATOR PATERSON: One other question, if the Senator would yield.

SENATOR VOLKER: Certainly.

ACTING PRESIDENT MARCELLINO: The Senator yields for another question.

SENATOR PATERSON: Senator, just the issue of establishing the information that would be requisite to bringing a suit, it would appear to me that there's a greater encumbrance that would be set upon the counsel for the plaintiff in an action -- counsel really for one who is being -- the plaintiff who is trying to bring an action in a situation such as exists in this bill, as opposed to medical malpractice.

In medical malpractice, it's not very difficult to get the medical records to consult with the other physicians that worked on the case. They all work in hospitals. There's

a regular network of people who work in the health care industry that can be accessed. The medical records are pretty straightforward. They might be difficult for you and I to read but not for people who are actually in the industry, whereas the counsel for the plaintiff in an action where perhaps a building has fallen and has caused someone an injury is going to have a devil of a time trying to compile the evidence for discovery because you have not only the architect but the subcontractors and other companies that may have participated in the structure of the building. You don't know that the architect's plans were followed correctly. There is a lot of interaction between those different elements of the construction of the building that may have gone wrong and it's going to be very hard to pin an action on anyone.

So to pass legislation in this regard where they would be able to have the certificate of merit as is proposed, in my opinion, creates almost a shield that would almost make it impossible for a plaintiff to successfully gain relief.

SENATOR VOLKER: Senator, I don't

agree with that. I think it -- I'm not saying that it might not be a little bit more difficult than it would be in the area of medical malpractice, but that's why -- one of the reasons that we put in Section 2 of this bill, by the way, that the attorney was unable to obtain the consultation required and that, in effect, gives some out to the attorney, but let me point out to you that it's true, I guess, that this would make it a little more difficult.

What it really means is that you have to have some proof and some real solid proof in these cases against these architects and engineers rather than just including them in a suit that may have absolutely nothing to do with them but because they were there and because they had something -- just a peripheral connection, they end up in a situation where they have to defend -- their insurance company has to defend and the attorneys that represent them have to defend and the cost to the people soars.

I think that there are enough architects and engineers around, to tell you the

truth, who can advise in these kinds of situations. So that I think it's much more practical probably than it was even a few years ago when we first started talking about this bill, and I think the ability is there to do it. I would agree with you that it's a little more difficult maybe than it would be in malpractice against doctors, and so forth.

SENATOR PATERSON: Thank you, Mr. President.

On the bill.

ACTING PRESIDENT MARCELLINO: Senator Paterson, on the bill.

SENATOR PATERSON: I'm somewhat satisfied that there probably are engineers and architects that could come in and render a degree with -- a certain degree of professional certitude what -- certainty what the actual result may have been and would be able to give good guidance on who may have been at fault in the case of a collapsed building.

However, it would seem to me, going back to my first question, that a decade ago we came together to put in this new section in the Civil Practice Law and Rules, 3012 (a) in

what was a highly special circumstance, one that was very well known. It was documented. There was a great degree of loss and suffering by physicians and others in the medical professional world and we gave them some relief.

What I think really has occurred here is that you have a second group of professionals who are now seeking the same relief but don't really have the same problem and one wonders where this will end? Will we now have attorneys and perhaps accountants, psychologists, teachers, anybody that feels that their profession has come under great scrutiny will now be running to the umbrella of Section 3012 (a) to try to get protection when, in fact, the plaintiffs are put in these situations, I would much prefer that there be a joint and several liability where the contributors to the erect -- erecting of the building might be held responsible and let them work it out whose fault it is between each other, but where you have an injured party and they seek relief and it's clear that it wasn't caused through any action of the plaintiff, I think the action, in this case, the legislation proposal should be denied

and that we continue to reserve the CPLR section that we put in a decade ago for the cases that are totally clear and very special, such as what we did for physicians and podiatrists and other medical professionals.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Senator DeFrancisco, do you rise to explain your vote?

SENATOR DeFRANCISCO: I do. I vote no on this proposal, for several reasons.

First of all, there is -- we do have it for doctors and podiatrists and dental people and it's really a needless step because if you have a lawsuit that's a legitimate lawsuit, you certainly are going to get a doctor to say it's a legitimate lawsuit. There's doctors out there that will review a file to do

that. The same thing with dentists and podiatrists. It's a needless expense, a needless step in the judicial process.

Secondly, to give a special category to one profession or another profession sets the law on its head. Everyone should be treated the same way if they're negligent no matter what profession or if they're a professional or not.

So for both reasons, I think this bill is ill-advised and I vote no.

ACTING PRESIDENT MARCELLINO: Count the negatives and announce the results, please.

THE SECRETARY: Those recorded in the negative on Calendar Number 1441 are Senators Abate, Connor, DeFrancisco, Gold, Leichter, Paterson and Stavisky. Ayes 51, nays 7.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator LaValle, why do you rise?

SENATOR LAVALLE: Mr. President, may I have unanimous consent to be recorded in

the negative on Calendar Number 1459, please.

ACTING PRESIDENT MARCELLINO: Senator LaValle, you will be counted in the negative on Calendar 1459.

SENATOR LAVALLE: Thank you.

ACTING PRESIDENT MARCELLINO: Senator Larkin, what is your pleasure, sir?

SENATOR LARKIN: Would you now call Calendar 223 on the regular calendar.

ACTING PRESIDENT MARCELLINO: Say it again, Senator. I didn't hear the number.

Calendar Number 223, please read.

THE SECRETARY: Calendar Number 223, by Senator Skelos, Senate Print 476-B, an act to amend the Business Corporation Law, in relation to corporate finance.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section -

SENATOR LEICHTER: Explanation. What calendar number is that again?

ACTING PRESIDENT MARCELLINO: Calendar Number 223. It was on the original schedule. It was not taken up earlier.

SENATOR LEICHTER: Mr. President,

I have been told this bill is coming up, but I don't see it on the calendar.

ACTING PRESIDENT MARCELLINO: It was a bill that was starred previously. The star was removed earlier today.

SENATOR LEICHTER: The bill was -- I thought there was a one-day notice requirement before a star could be removed.

Mr. President, let me raise a point of order whether this bill is properly before us.

ACTING PRESIDENT MARCELLINO: If we can just hold a second, we may have an answer for you.

Can we lay this bill aside temporarily.

SENATOR LARKIN: Lay it aside temporarily.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

Senator Larkin, that -

SENATOR LARKIN: Is there any housekeeping?

ACTING PRESIDENT MARCELLINO: No, Senator. We don't have any housekeeping.

SENATOR LARKIN: Let's stand at ease.

ACTING PRESIDENT MARCELLINO: At ease.

(Whereupon, the Senate stood at ease from 5:25 p.m. until 5:36 p.m.)

ACTING PRESIDENT KUHL: Senate will come to order, please. Members take their places.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 223, by Senator Skelos.

ACTING PRESIDENT KUHL: The Secretary will read the title.

THE SECRETARY: Calendar Number 223, by Senator Skelos, Senate Print 476-B, an act to amend the Business Corporation Law.

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

THE SECRETARY: Section 71. This act shall take effect on the 180th day.

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

SENATOR LEICHTER: Mr. President, I will explain my vote. Is this Calendar 223?

ACTING PRESIDENT KUHL: This is Calendar Number 223.

SENATOR LEICHTER: 223. Mr. President -

ACTING PRESIDENT KUHL: You want to explain you vote, Senator?

SENATOR LEICHTER: I would like to explain my vote.

ACTING PRESIDENT KUHL: Let me get to the roll call first, if you would.

The Secretary will call the roll.

(The Secretary called the roll.)

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

SENATOR LEICHTER: All right. Mr. President, last year we debated a similar bill at quite some time. This bill has some revisions and some of the objectionable features that some of us found in the bill regarding eliminating the liability of directors and shareholders for the wages of corporations, as I understand, has been taken out of the bill.

There were also objections that some of us raised about the authority that was

given directors to make loans to other directors. That power has somehow been circumscribed but there's still a way in which directors can make loans and provide loans to other directors.

It seems to me one of the big issues in corporations is to provide for more openness, for more democratic procedures within the corporation and to cut down on the golden parachutes, the enormous payouts, all of the many ways in which shareholders are being denied their rights.

This bill, I feel, goes in the opposite direction. It does not provide for greater shareholder democracy or greater fiduciary responsibility on the part of directors. I think it allows directors and principal shareholders to deal with a corporation pretty much as if it was exclusively and solely their own rather than a business entity that had responsibility to all of its owners and for that reason, Mr. President, I vote in the negative.

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

Announce the results.

THE SECRETARY: Ayes 57, nays 1, Senator Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, we are at this time printing the emergency appropriation bill to extend the budget for a week and it appears that it's going to take, oh, at least an hour. So since everyone has been working so hard, it would appear to be prudent and make sense for us to stand at ease until 7:00 o'clock and -- 7:00 o'clock sharp, and I know that that limits the opportunity to have an extended dinner but what we're trying to accomplish, Mr. President, is to get what we can get done tonight which would allow us to leave and not be back tomorrow and not be back Monday, hopefully, if we can get the bills done that we have to be dealing with and then come back Tuesday.

So if we're here at 7:00, I would hope that we will have the agenda to complete within the following hour or two, okay? Do you

hear any objections, Mr. President? I don't hear any.

ACTING PRESIDENT KUHL: The Senate will stand at ease until 7:00 p.m. sharp.

(Whereupon, the Senate stood at ease from 5:40 p.m. until 7:15 p.m.)

ACTING PRESIDENT KUHL: The Senate will come to order.

SENATOR BRUNO: Can we at this time take up Calendar Number 507.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 507.

THE SECRETARY: Calendar number 507, by Senator Leibell, Senate Print 3580-A, an act to amend the Private Housing Finance Law.

SENATOR SAMPSON: Explanation.

SENATOR BRUNO: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

Senator Skelos, or excuse me, Senator Bruno.

SENATOR BRUNO: Mr. President, at this time can we take up Calendar Number 899.

ACTING PRESIDENT KUHL: Secretary

will read Calendar Number 899.

THE SECRETARY: Calendar Number 899, by the Committee on Rules, Senate Print 4314-B, an act to amend the Tax Law, in relation to extending -

ACTING PRESIDENT KUHL: There is a home rule -- excuse me, Senator Bruno. The bill is high, but there is a message at the desk. Would you like to move to accept the message?

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity on Calendar Number 899, which is at the desk. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted.

Senator Skelos, an explanation has been requested of Calendar Number 899.

SENATOR SKELOS: Mr. President, this legislation would amend the Tax Law in relation to extending the authority of the county of Nassau to impose additional sales and compensating use taxes, extending the local

government assistance program to towns and cities, further authorize the establishment of a local government assistance program for the villages in the county.

ACTING PRESIDENT KUHL: Senator Sampson. Explanation satisfactory. Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect January 1st, 1998.

SENATOR SAMPSON: Slow roll call.

ACTING PRESIDENT KUHL: Slow roll call has been requested. Are there five Senators in the chamber requesting? Would they stand? I don't see five. Slow roll call is not honored.

Secretary will read the last section, or the roll call.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

Secretary will read Calendar Number -

THE SECRETARY: Ayes 57, nays one, Senator Gentile recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno. Senator Bruno, what's your pleasure?

SENATOR BRUNO: Mr. President, can we at this time take up Senator -- Senate Calendar Number 1425, by Senator Montgomery.

ACTING PRESIDENT KUHL: Secretary will read the title.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 1389, by Senator Levy.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: Calendar Number 1389, by Senator Levy, Senate Print 5566-A, an act to authorize the incorporated village of Freeport.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Is there a message at the desk, Mr. President?

ACTING PRESIDENT KUHL: There is.

SENATOR BRUNO: Move we accept the message.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Number 1389 by Senator Levy. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted.

There is a home rule request at

the desk. The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 752, Senator Padavan's bill sorry, it's 1252.

SENATOR HOFFMANN: What calendar number?

ACTING PRESIDENT KUHL: Calendar 1252, Senator Bruno? It's on the regular calendar, regular calendar of the day, Calendar Number 59, I believe it is. Calendar Number 1252, by Senator Padavan. I'll ask the Secretary to read.

THE SECRETARY: Calendar Number 1252, by Senator Padavan, Senate Print 5359-A, an act to amend the Tax Law and the

Administrative Code of the city of New York.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Is there a message at the desk, Mr. President?

ACTING PRESIDENT KUHL: There is, Senator Bruno.

SENATOR BRUNO: Move we accept the message.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Number 1292 by Senator Padavan -- All those in -- excuse me, 1252 by Senator Padavan. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted. The bill is before the house. An explanation has been requested.

Senator Padavan.

SENATOR PADAVAN: Thank you, Mr. President.

This bill comes to us at the

request of the city of New York and their memo gives a more succinct and direct explanation. I'll read that part of it.

It says: This bill is designed to provide relief from the City real property transfer tax in cases in which a residence subject to a pre-existing mortgage or lien is transferred and the transferee takes subject to or assumes that mortgage or lien.

Now, under the current law, the taxable consideration for the transfer includes the amount of the mortgage or the lien which is really unfair and certainly a penalty to the new buyer, so by passing this bill, it would bring the City transfer tax into conformity with the New York State transfer tax which has an exclusion that's now allowed for continuing liens.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR SAMPSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Please take Calendar Number 792 by Senator -

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 792.

THE SECRETARY: Calendar Number 792, by Senator Trunzo, Senate Print 5237-A, an act to provide for adjustment of stipends.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Is there a message at the desk?

ACTING PRESIDENT KUHL: There is a message of appropriation at the desk on Calendar Number 792.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT KUHL: Motion is to accept the message. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message of appropriation is accepted.

Secretary will read the last section.

THE SECRETARY: Section 8. This bill shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR SAMPSON: Mr. President.

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

SENATOR SAMPSON: I would like unanimous consent to be recorded in the negative on Calendar Number 855.

SENATOR KUHL: Without objection, Senator Sampson will be recorded in the negative on Calendar Number 855 passed earlier today.

Senator Skelos.

SENATOR SKELOS: Could you call up Calendar Number 1442, by Senator Montgomery.

ACTING PRESIDENT KUHL: Secretary will read the title to Calendar Number 1442, by Senator Montgomery.

THE SECRETARY: Calendar Number 1442, by Senator Montgomery, Senate Print 2576, an act authorizing the city of New York to reconvey.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Please call up Calendar Number 495, by Senator Hannon.

ACTING PRESIDENT KUHL: Secretary will read the title to Calendar Number 495.

THE SECRETARY: Calendar Number 495, by Senator Hannon, Senate Print 3000-C, an

act to enact the Cancer Research Improvement Act of 1997.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Is there a message at the desk?

ACTING PRESIDENT KUHL: There is a message of necessity at the desk.

SENATOR SKELOS: Move we accept.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar 495. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted. Secretary will read the last section.

Secretary will read the last section.

SENATOR SKELOS: Mr. President, could you lay that aside temporarily.

ACTING PRESIDENT KUHL: We'll lay aside Calendar Number 5 -- excuse me, 495, by Senator Hannon, temporarily, Senator Skelos.

SENATOR SKELOS: And I'd ask the members to please assemble so that we can complete in an orderly and reasonably early fashion.

Next would you call up Calendar Number 507, by Senator Leibell.

ACTING PRESIDENT KUHL: Secretary will read the title.

THE SECRETARY: Calendar Number 507, by Senator Leibell, Senate Print 3580-A, an act to amend the Private Housing Finance Law.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Is there a message of necessity at the desk?

ACTING PRESIDENT KUHL: There is.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity on Calendar Number 507, by Senator Leibell. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted.

Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

THE SECRETARY: Ayes 57, nays one, Senator Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Seabrook, why do you rise?

SENATOR SEABROOK: Yes, Mr. President. I'd like to have unanimous consent to be recorded in the negative on Calendar Number 855.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Seabrook will be recorded in the negative on Calendar Number 855.

Senator Skelos.

SENATOR SKELOS: Mr. President,

would you call up Calendar Number 1409, by Senator Stachowski.

ACTING PRESIDENT KUHL: Secretary will read the title of Calendar Number 1409, by Senator Stachowski.

THE SECRETARY: Calendar Number 1409, by Senator Stachowski, Senate Print 5297, an act to permit the reopening of the twenty-year retirement plan for Thomas W. Schultz.

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

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR SKELOS: Would you call up Calendar Number 495, by Senator Hannon.

ACTING PRESIDENT KUHL: Secretary will read the title of Calendar Number 495.

THE SECRETARY: Calendar Number 495, by Senator Hannon, Senate Print 3000-C, an act to enact the Cancer Research Improvement Act of 1997.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Is there a message at the desk?

ACTING PRESIDENT KUHL: There is.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity on Calendar Number 495. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted.

Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Please call up Calendar Number 1379.

ACTING PRESIDENT KUHL: Secretary will read the title to Calendar Number 1379.

THE SECRETARY: Calendar Number 1379, by the Committee on Rules, Senate Print 5506, an act in relation to granting Tier I retirement status.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Stafford, an explanation -

SENATOR SKELOS: Lay it aside.

ACTING PRESIDENT KUHL: Bill is laid aside.

SENATOR SKELOS: Mr. President, would you call up Calendar Number 1105.

ACTING PRESIDENT KUHL: Secretary will read the title to Calendar Number 1105.

THE SECRETARY: Calendar Number 1105, by Senator Markowitz, Senate Print 304, an act authorizing the city of New York to

reconvey.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Could we just stand at ease for a moment, Mr. President.

ACTING PRESIDENT KUHL: Senate will stand at ease for a moment.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Would you please call up Calendar Number 1376.

ACTING PRESIDENT KUHL: Secretary will read the title.

THE SECRETARY: Calendar Number

1376, by the Committee on Rules, Senate Print 5490, an act to amend the Tax Law, in relation to extending.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Please call up Calendar Number 1377.

ACTING PRESIDENT KUHL: Secretary will read the title.

THE SECRETARY: Calendar Number 1377, by the Committee on Rules, an act to amend the Tax Law, and Chapter 535 of the Laws of 1987.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 5. This

act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Finance Committee in the Majority Conference Room.

ACTING PRESIDENT KUHL: Immediate meeting of the Finance Committee. Immediate meeting of the Finance Committee in the Majority Conference Room, Room 332. Immediate meeting of the Finance Committee in the Majority Conference Room, Room 332.

SENATOR SKELOS: Mr. President, can we stand at ease.

ACTING PRESIDENT KUHL: The Senate will stand at ease.

(The Senate stood at ease from 7:44 p.m., until 8:03 p.m.)

ACTING PRESIDENT KUHL: Senate will come to order. Ask the members to find their places, staff to find their places.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please recognize Senator Saland first.

ACTING PRESIDENT KUHL: Senator Saland.

SENATOR SALAND: Mr. President, I'd like to request unanimous consent to be recorded in the negative on Calendar Number 1377.

SENATOR GOLD: Without objection.

ACTING PRESIDENT KUHL: Without objection and with Senator Gold's consent, Senator Saland will be recorded in the negative on Calendar Number 1377.

Senator Skelos.

SENATOR SKELOS: Would you call up Calendar Number 517, by Senator Goodman.

ACTING PRESIDENT KUHL: Secretary will read the title of Calendar Number 517.

THE SECRETARY: Calendar Number

517, by member of the Assembly Feldman, Assembly Print 6658-A, an act to amend the Real Property Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Stand at ease, Mr. President.

ACTING PRESIDENT KUHL: Senate will stand at ease, momentarily.

(The Senate stood at ease briefly.)

SENATOR HOFFMANN: Mr. President.

ACTING PRESIDENT KUHL: Senator Hoffmann.

SENATOR HOFFMANN: As a

convenience to the Senators, when you read the calendar number, I wonder if you could also read us the number of the calendar so we'll know where the reference is.

ACTING PRESIDENT KUHL: We'll attempt to do that, Senator Hoffmann. That's a very good point.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Please call up Calendar Number 891, on the original calendar, by Senator Goodman.

ACTING PRESIDENT KUHL: On Calendar Number 59, first calendar of the day, brown/tan cover, we're going to up Calendar Number 891, by Senator Goodman. Secretary will read the title.

THE SECRETARY: Calendar Number 891, by Senator Goodman, Senate Print 4052, an act to amend the Arts and Cultural Affairs Law, in relation to the trust for cultural resources.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

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

ACTING PRESIDENT KUHL: We'll return to the order of reports of standing committees. There is a report of the Finance Committee at the desk. Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following bill: Senate Print 6646, by the Committee on Rules, an act making appropriation for the support of government.

ACTING PRESIDENT KUHL: Senator Skelos. Motion is to accept the report of the Finance Committee. All those in favor

significant by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The report is accepted.

Senator Skelos. Senator Skelos.

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

ACTING PRESIDENT KUHL: Immediate meeting of the Rules Committee. Immediate meeting of the Rules Committee in the Majority Conference Room, Room 332.

Chair recognizes Senator Breslin.

SENATOR BRESLIN: Mr. President, I would like to request with unanimous consent to be in the negative on Calendar Number 855, also would request unanimous consent to be recorded in the affirmative on Calendar Number 280, 2-8-0.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Breslin will be recorded in the negative on Calendar Number 855 and on Calendar Number 280, Senator

Breslin will be recorded in the affirmative.

(The Senate stood at ease.)

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

SENATOR LARKIN: President Kuhl, will you recognize Senator Stachowski, please.

SENATOR STACHOWSKI: Mr. President, may I please have unanimous consent to be recorded in the negative on Calendar Number 855, please.

ACTING PRESIDENT KUHL: Without objection, Senator Stachowski will be recorded in the negative on Calendar Number 855.

Senator Larkin, we have one piece of housekeeping if we could do that.

SENATOR LARKIN: Motions and resolutions.

ACTING PRESIDENT KUHL: Motions and resolutions. Return to that order.

Chair recognizes Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of Senator Holland, on page 9, I offer the following amendments to

Calendar 339, Senate Print -- or excuse me, Assembly Print 453-C, and I ask that that bill retain its place.

ACTING PRESIDENT KUHL: Amendments to Calendar Number 339 are received and adopted; bill will retain its place on the Third Reading Calendar.

Senator Larkin.

SENATOR LARKIN: Mr. President, we have a privileged resolution at the desk, if we could just read the title.

ACTING PRESIDENT KUHL: There is a privileged resolution at the desk. Secretary will read the title.

THE SECRETARY: By Senator Larkin, Legislative Resolution congratulating Mr. and Mrs. L. Robert Scanlon on their 50th wedding anniversary.

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

Senator Larkin.

SENATOR LARKIN: We'll take up now Calendar 1480, Senator.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 1480.

THE SECRETARY: Calendar Number 1480, Senator Stafford moves to discharge from the Committee on Finance, Assembly Bill 8444 and substitute it for the identical Third Reading 1480.

ACTING PRESIDENT KUHL: Substitution is ordered. Secretary will read the title.

THE SECRETARY: Calendar Number 1480, by the Assembly Committee on Rules, Assembly Print 8444, an act making appropriation for the support of government.

ACTING PRESIDENT KUHL: Senator Larkin.

SENATOR LARKIN: Move to accept the message.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity and appropriation which is at the desk on Calendar Number 1480. All those in favor signify by

saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted. The bill is before the house.

Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

THE SECRETARY: Ayes 57, nays one, Senator Dollinger recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Larkin.

SENATOR LARKIN: Mr. President, there's a report of the Rules Committee at the desk. Can we have it read.

ACTING PRESIDENT KUHL: We'll

return to the order of reports of standing committees. There is a report of the Rules Committee at the desk. The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, offers up the following bills:

Senate Print 1347-B, by Senator Kuhl, an act to amend the Public Service Law;

1919, by Senator Libous, an act to amend the General Business Law;

5248, by Senator Smith, an act authorizing the city of New York;

4946, by Senator Breslin, an act to amend the Vehicle and Traffic Law;

3510, by Senator Rath, an act to amend the Tax Law;

4463-A, by Senator Leibell, an act to amend the Real Property Tax Law;

4637, by Senator LaValle, authorizing the creation;

4712-A, by Senator Nozzolio, an act to amend the General Business Law;

4913, by Senator Alesi, an act to amend the General Business Law;

5339-A, by Senator Velella, an

act to amend the Insurance Law;

5510, by Senator Maziarz, an act to amend Chapter 41 of the Laws of 1997;

5568, by Senator Maziarz, an act to amend the Election Law;

5574, by Senator Hannon, an act to amend Chapter 884 of the Laws of 1990;

5578, by Senator Kuhl, an act in relation to the issuance of serial bonds;

5597, by the Committee on Rules, an act to amend the Environmental Conservation Law;

5599, by the Committee on Rules, an act to amend the Civil Service Law;

5605, by Senator DeFrancisco, an act in relation to reapportionment;

5613, by Senator Leibell, an act to amend the Real Property Tax Law.

All bills directly to third reading.

ACTING PRESIDENT KUHL: Senator Larkin.

SENATOR LARKIN: Move to accept the Rules report.

ACTING PRESIDENT KUHL: Motion is

to accept the report of the Rules Committee.
All those in favor signify by saying aye.
(Response of "Aye.")
Opposed nay.
(There was no response.)
The Rules report is accepted.
Bills are ordered directly to third reading.
Senator Larkin.
SENATOR LARKIN: Stand at ease for a few minutes, Mr. President.
ACTING PRESIDENT KUHL: Have some order in the house, please.
Senator Farley, have some order, please. Have to have conversations, take them out of the chamber.
Senator Larkin.
SENATOR LARKIN: Mr. President, we'll now go to Calendar 59-C, non-controversial.
ACTING PRESIDENT KUHL: Secretary will read the non-controversial reading of Senate Supplemental Calendar 59-C which is on all the members' desks, beginning with Calendar Number 1446.
THE SECRETARY: Calendar Number

1446, by Senator Kuhl, Senate Print 1347-B, an act to amend the Public Service Law.

SENATOR FARLEY: Explanation!

ACTING PRESIDENT KUHL: Senator Larkin? Motion is to accept the message of necessity at the desk. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted.

There is a home rule message at the desk. Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Ayes 57, nays one, Senator Leichter recorded in the negative.

ACTING PRESIDENT KUHL: Senator Leichter, you voting in the negative on that

bill? The bill is passed.

Secretary will continue to call the non-controversial calendar.

THE SECRETARY: Senate Print 1463, by Senator Libous, Senate Print 1919, an act to amend the General Business Law.

SENATOR LEICHTER: Senator Libous, did I hear you saying lay aside?

SENATOR LIBOUS: Yes, Mr. President.

ACTING PRESIDENT KUHL: Did I hear you say lay aside the bill?

SENATOR LIBOUS: Is that the opinion of the Chair?

ACTING PRESIDENT KUHL: I was just asking, Senator Libous.

The Secretary will read the last section.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Senator Leichter wishes to lay the bill aside.

SENATOR LIBOUS: Lay that bill aside.

ACTING PRESIDENT KUHL: Bill will be laid aside.

THE SECRETARY: Calendar Number 1464, by Senator Smith, Senate Print 5248, an act authorizing the city of New York.

ACTING PRESIDENT KUHL: There is a home rule message at the desk. Secretary will read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

Secretary will continue to call the non-controversial calendar.

THE SECRETARY: Calendar Number 1465, by Senator Breslin.

SENATOR LACK: Lay aside.

THE SECRETARY: Senate Print 4946, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT KUHL: There is a home rule message at the desk. The bill will be laid aside.

THE SECRETARY: Calendar Number 1466, by Senator Rath, Senate Print 3510, an act to amend the Tax Law.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Bill will be laid aside.

THE SECRETARY: Calendar Number 1467, by Senator Leibell, Senate Print 4463-A, an act to amend the Real Property Tax Law.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1468, by Senator LaValle, Senate Print 4637, an act authorizing the creation of a greenway.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1469, by Senator Nozzolio, Senate Print 4712-A, an act to amend the General Business Law.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: In relation to

Calendar Number 1470, Senator Alesi moves to discharge from the Committee on Rules Assembly Print 2224-B and substitute it for the identical Senate bill, Third Reading 1470.

ACTING PRESIDENT KUHL: Substitution is ordered. Secretary will read.

THE SECRETARY: Calendar Number 1470, by member of the Assembly Lafayette, Assembly Print 2224-A, an act to amend the General Business Law.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1471, by Senator Velella, Senate Print 5339-A, an act to amend the Insurance Law, in relation to investment.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1472, by Senator Maziarz, Senate Print 5510, an act to amend Chapter 41 of the Laws of 1997.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the

bill aside.

THE SECRETARY: Calendar Number 1473, by Senator Maziarz, Senate Print 5568, an act to amend the Election Law.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

Senator Maziarz, why do you rise?

SENATOR MAZIARZ: Yeah, I just have a question. On Calendar 1472, was that laid aside by Senator Libous or by Senator Paterson?

ACTING PRESIDENT KUHL: That was laid aside by Senator Paterson.

SENATOR MAZIARZ: Thank you.

ACTING PRESIDENT KUHL: Secretary will continue to read.

THE SECRETARY: Calendar Number 1474, Senator Hannon moves to discharge from the Committee on Rules, Assembly Bill Number 8110 and substitute it for the identical Senate Bill Third Reading 1474.

ACTING PRESIDENT KUHL: Substitution is ordered. Secretary will read.

THE SECRETARY: Calendar Number

1474, by the Committee on Rules, Assembly Print 8110, an act to amend Chapter 884 of the Laws of 1990.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1475, by Senator Kuhl, Senate Print 5578, an act in relation to the issuance of serial bonds.

ACTING PRESIDENT KUHL: There is a home rule message at the desk.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1476, by the Committee on Rules, Senate Print 5597, an act to amend the Environmental Conservation Law, in relation to use of information.

SENATOR PATERSON: Lay aside, please.

ACTING PRESIDENT KUHL: Senator Larkin, did you wish to move to accept the message of necessity at the desk?

SENATOR LARKIN: Move to accept

the message.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity which is at the desk on Calendar Number 1476. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted.

Senator Paterson, you wish to lay the bill aside?

SENATOR PATERSON: Yes.

ACTING PRESIDENT KUHL: Bill will be laid aside.

Secretary will continue to read.

THE SECRETARY: Calendar Number 1477, by the Committee on Rules, Senate Print 5599, an act to amend the Civil Service Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1478, by Senator DeFrancisco, Senate Print 5605, an act in relation to the apportionment of transportation.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: There is a local fiscal impact note at the desk. Bill will be laid aside.

THE SECRETARY: Calendar Number 1479, by Senator Leibell, Senate Print 5613, an act to amount the Real Property Tax Law.

SENATOR LARKIN: Is there a message?

ACTING PRESIDENT KUHL: There is a message of necessity at the desk on 1479.

SENATOR LARKIN: Move to accept the message it.

ACTING PRESIDENT KUHL: Motion is to accept the message. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted. Bill is before the house.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Bill is laid aside at the request of Senator Paterson.

Senator Larkin.

SENATOR LARKIN: Mr. President, on Calendar 59-C, let's start with 1463 on the controversial.

ACTING PRESIDENT KUHL: Secretary will read the title to Calendar Number 1463.

THE SECRETARY: Calendar Number 1463, by Senator Libous, Senate Print 1919, an act to amend the General Business Law, in relation to store sale and rental of X-rated and NC-17 rated films.

SENATOR PATERSON: Explanation.

SENATOR LIBOUS: Somebody ask for an explanation?

ACTING PRESIDENT KUHL: Which Senator asked for an explanation? I didn't hear it.

SENATOR LEICHTER: Senator Paterson.

ACTING PRESIDENT KUHL: Senator Libous, an explanation of Calendar Number 1463 has been requested by Senator Leichter, please.

SENATOR LIBOUS: Thank you, Mr. President.

Basically the bill would require that the owner/operator of an establishment that sells or rents motion pictures with an X rating to maintain that these films or advertisements for such films be in separate areas from the non-X rated films.

Basically what we're saying is we don't want to walk into Video King or a store - I don't mean to mention that particular store, but any one of these stores -- and we don't want the movie, The Lion King, and Debbie Does Dallas next to each other. There's requirements here, we don't want people walking in to see.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: If Senator Libous would yield, please.

SENATOR LIBOUS: Yes.

SENATOR LEICHTER: Senator, I -

ACTING PRESIDENT KUHL: Senator

Leichter. Senator Leichter, excuse me just a minute. I don't know whether you can hear Senator Libous, but I know I'm having a very difficult time. If we could just have a little order in the house.

SENATOR LEICHTER: Mr. President, always possible to hear Senator Libous. If you would be good enough to yield, Senator Libous.

ACTING PRESIDENT KUHL: Senator Libous, do you yield?

SENATOR LIBOUS: I'd be happy to, Mr. President.

SENATOR LEICHTER: Senator, I -

ACTING PRESIDENT KUHL: Senator yields.

SENATOR LEICHTER: You know, it's with some diffidence that I ask you questions on a bill in an area where obviously you're very expert as we've seen by the way you were able to advise us of certain titles that you didn't want to be shown next to The Lion King, but -

SENATOR LIBOUS: I'm well read, Mr. President, I'm well read.

SENATOR LEICHTER: But in all seriousness, Senator, I think in an ideal world

you certainly probably ought to do what you suggest. I just question whether it's practical.

Let me first point out you're not talking about X rated movies, you're also talking about movies NP-17. There's a lot of movies that don't fall into what would be considered pornographic category. I just wondered, you have thousands of video stores throughout this state. For instance, in the upstate community, Senator Stafford's district, there's a wonderful little store called Everybody That Has Videos.

I just don't know how practical it is to ask each of these stores now to set up a separate area.

SENATOR LIBOUS: Mr. President, actually, most of the stores are beginning to set up on their own that way. It's very simple with a door or curtain. It's really not an awful lot of work. Many of the stores are actually, Senator Leichter, beginning to do this on their own. We just want to ensure that all stores were doing it.

SENATOR LEICHTER: What? Mr.

President, again if Senator Libous would yield.

ACTING PRESIDENT KUHL: Senator Libous do you continue to yield? Senator continues to yield.

SENATOR LEICHTER: Senator, and I'm -- I don't watch any videos, let me quickly say, but while it's possible for some store to do it, I think it is extremely difficult for stores to partition off areas of their store. I just really don't think it's practical, and I think that you're going to very seriously interfere with stores that sell Videos.

This is a big business. You talk about, you know, economic life in New York State. I submit to you, you're going to be hindering that economic life. You're going to be hindering people because the only alternative is not to carry these particular titles or see movies that they want to see.

I just really don't think it's practical.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Yeah, I had some

concern, Senator Leichter, but the truth of the matter is that I mean I still have one young son at home and my kids come home, and we happen to be a family that likes movies, and so we go into these stores and, Senator, if you go in and you do movie rentals, you will find that the -- if you want to find The Sound of Music or things like that, you're crushed into more and more of a corner of the store because apparently they do a big business in this area and most of the stores that I go into, they have already done this, so economically they want to stock the movies that are selling, and apparently these movies sell pretty good, and most of the stores have already set up these booths because otherwise they can't get people to come in, so I think the business world has already done this and I think this bill is only catching up with what the reality is.

ACTING PRESIDENT KUHL: Secretary will read -- Senator Paterson, sorry.

SENATOR PATERSON: Mr. President, would Senator Libous yield for a question?

ACTING PRESIDENT KUHL: Senator Libous, do you yield for a question?

SENATOR LIBOUS: Yes, I would.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Thank you, Senator.

Under the laws of the state of New York, we require that the videos that are sold in the stores display the motion picture industry's labeling of what the content of the movie is; is that correct?

SENATOR LIBOUS: Are you asking me if that's correct?

SENATOR PATERSON: Yes.

SENATOR LIBOUS: I believe it to be correct, but I would have to read the law, check it thoroughly, but would I believe it to be correct.

SENATOR PATERSON: No, I believed it was correct; I wasn't totally sure.

SENATOR LIBOUS: Are you answering your own question, Senator?

SENATOR PATERSON: I wanted to know if you knew as fact what I believed, but my question is why are we leaving to the motion picture industry and not deciding as a state

ourselves what that designation should be?

SENATOR LIBOUS: Senator, that's certainly an option that the state or any member of this chamber can do in the future. Right now I believe there's a need to address this issue and, as has been mentioned by Senator Gold and others, that some of the stores are beginning to address the issue. Certainly any member can put a bill in to do whatever they choose or whatever they deem necessary. I happen to believe that for right now, this is the right way to go.

SENATOR PATERSON: Thank you, Mr. President.

Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Paterson, on the bill.

SENATOR PATERSON: I agree with Senator Libous it is the right way to go. It just struck me when I looked at the bill that here we are as a state actually taking what the motion picture industry designation of what the -- what the movie's rating should be and perhaps even in terms of our separating those movies out in the actual video store, we may not be separating them out as distinctly as we

could be, so I'm in support of Senator Libous' bill and since we're on the subject, I would hope that in the future he might consider perhaps even setting up a task force or some commission so that we can make our own determination, and perhaps Senator Leichter and Gold could sit on the committee and that way they could get to see all the movies without anyone ever really knowing.

ACTING PRESIDENT KUHL: Senator Smith.

SENATOR SMITH: Thank you, Mr. President.

Would the sponsor yield for a question, please?

ACTING PRESIDENT KUHL: Senator Libous, do you yield?

SENATOR LIBOUS: Mr. President, I would be just pleased to yield to Senator Smith.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR SMITH: I believe that I'm in favor of this bill, but I desire a further clarification. I understand The Lion

King, but could you please give me an explanation of Debbie Does Dallas?

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR LIBOUS: No comment.

THE SECRETARY: Section 2. This act shall take effect on the first day of January.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives. Announce the results.

THE SECRETARY: Ayes 57, nays one, Senator Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Larkin.

SENATOR LARKIN: Mr. President, will you now take up Calendar 1472.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: Calendar Number 1472, by Senator Maziarz, Senate Print 5510, an act to amend Chapter 41 of the Laws of 1997.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Maziarz, an explanation of 1472 has been requested by Senator Paterson.

SENATOR MAZIARZ: Thank you, Mr. President.

Mr. President, employees of the public university systems who participate in private annuity-based retirement programs receive as the retirement incentive benefit, not service credit as is the case for participants in the public employees retirement system but rather cash payments based upon years of service and annual salary.

In 1995 and 1996, such payments were subject to federal, state and local income tax. The payments were also treated as current income by the Comptroller and thereby adversely affecting the amount of Social Security benefits such that retirees would receive if they were eligible for such benefits.

The tax treatment discourages the number of persons who might possibly avail themselves of the retirement incentive, thus lessening the savings realized by the university

systems in the state.

I also have a memo, Mr. President and Senator Paterson, from SUNY-Brockport which is in my district, and I think this is the case throughout many of the SUNY units in the state of New York, where they estimate that an additional 33 individuals would probably take advantage of the early retirement incentive retirement package if this bill were passed. We also have a letter of support from John W. Ryan, Chancellor of SUNY.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson, you wish to -

SENATOR PATERSON: Explanation was quite satisfactory, Mr. President. Both Senator Libous and I are satisfied. He actually asked me to lay it aside.

THE SECRETARY: Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Larkin.

SENATOR LARKIN: Would you now take up Calendar 1473.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: Calendar Number 1473, by Senator Maziarz, Senate Print 5568, an act to amend the Election Law, in relation to special federal voters.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Maziarz, an explanation has been requested.

SENATOR MAZIARZ: Thank you very much, Mr. President.

Is Senator Libous in the chamber, Mr. President? Oh, there he is. I thought that since Senator Libous asked that this bill be laid aside, that he'd be interested in the explanation.

Mr. President, there are many U. S. Citizens who have never resided in a state and under current law are not entitled to vote.

They are usually first and second generation citizens who are subject to U.S. income tax and all other requirements for citizenship except for the fact that they have never resided in a state.

They would be eligible to vote in federal elections only, and this bill would allow that in the state of New York. This bill was sent over by the New York State Board of Elections.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: I'm sorry, Mr. President. If Senator Maziarz would yield for a question?

ACTING PRESIDENT KUHL: Senator Maziarz, do you yield?

SENATOR MAZIARZ: Surely.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Thank you, Senator.

These are individuals who never resided in the United States.

SENATOR MAZIARZ: These may be

children of military personnel or people who are U. S. citizens who are employed outside of the country, missionaries.

SENATOR PATERSON: And you're saying that they might participate in elections on the federal level.

SENATOR MAZIARZ: On the federal level only. That's what the Board of Elections is saying, Senator Paterson.

SENATOR PATERSON: I see. What is the explanation for why we wouldn't want them to participate in any other elections; in other words, what public policy would we fulfill by doing this?

SENATOR MAZIARZ: I believe that the answer is, Senator, that by federal legislation they are designated as only special federal voters. That's what the Board of Elections memo said to us.

SENATOR PATERSON: Right, but my question is, they're not allowed to vote in an election that would concern the state, is that correct?

SENATOR MAZIARZ: Correct.

SENATOR PATERSON: And my

question is, even if that's how the federal election law sees them, why would we as a state, since we're legislating here tonight, why would we want to impinge upon their ability to participate in any state election?

SENATOR MAZIARZ: I'm sorry, Senator. Could you repeat that question?

SENATOR PATERSON: I guess I'm just asking why we're restricting them to the - to voting in the federal elections?

SENATOR MAZIARZ: I believe that since they never resided in a state, Senator Paterson, federal law will only allow them to vote in the federal election since they don't reside in any one particular state and never have resided in any one particular state.

SENATOR PATERSON: Thank you, Senator. I think your answers have been quite responsive. I think it's possible I may be missing something about this bill, so I apologize if I have confused you at all.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Would the

gentleman yield to a couple of questions?

SENATOR MAZIARZ: Certainly, Mr. President.

ACTING PRESIDENT KUHL: Senator yield.

SENATOR GOLD: Senator, I hate to go backwards a little bit but I heard the dialogue with Senator Paterson, and to tell you the truth, I am really very stunned and don't understand it. I'm certainly in favor of doing everything possible to allow American citizens to vote. I certainly I am not for that kind of a limit, but I am perplexed as to what we are really talking about here.

The memo says, according to the federal voting assistance program in the Department of Defense there are usually first or second generation citizens who are subject to U. S. income tax and all other requirements of citizenship except for the fact they've never resided in the United States. Is that what this is about?

SENATOR MAZIARZ: Yes.

SENATOR GOLD: Can you tell me what we're talking about in different kinds of

terms? First of all, to vote you have to be a certain age, is that correct?

SENATOR MAZIARZ: Right.

SENATOR GOLD: So these people are now adults.

SENATOR MAZIARZ: Yes.

SENATOR GOLD: Living in a foreign country. Never lived in America, and I don't understand the issue here. If they are living in -- pick a country, I don't care, in Europe, let's say and they're -- they've got their lives involved in that country, they could be married, for all I know; working, for all I know, whatever, where is the exercise of interest so that they would want to vote here?

SENATOR MAZIARZ: Well, that's their choice, Senator. Apparently enough of them have contacted the state Board of Elections with a desire to vote and that's why they forwarded this bill over to the Legislature.

SENATOR GOLD: Now, this says that they in some way are subject to U.S. income tax. Are these people who have done anything affirmative in order to become U. S. citizens, in other words, I assume that if you

have a U. S. citizen who happens to be, let's say in Spain, part of the government, and they are born in Spain of American parents then I believe they are citizens, is that correct?

SENATOR MAZIARZ: That's correct.

SENATOR GOLD: The child is brought up in Spain, lives in Spain his or her whole life, the parents come back to America. Now, the child can be 24, 25 years old and working in Spain, never been in America. Are you saying that they are subject to American income tax?

SENATOR MAZIARZ: I don't know what the answer is on the tax question, Senator. My learned counsel over here, Senator Farley, is telling me that if they visit the U. S. that they are subject to U. S. income tax.

SENATOR GOLD: If they visit. Well, Senator, I'm trying to -- I'm trying to understand the situation. I certainly don't have a problem with U. S. citizens who are out of the country voting by absentee ballot because they happen to be out temporarily or with people

who work for the State Department, who happen to be out of the country and exercising their rights. This one is an unusual class and I think that some of us are just having trouble understanding who really makes up this class. I mean who are they?

SENATOR MAZIARZ: I think it would be primarily children of American citizens who were born overseas but who have never been in the United States.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Yeah. I have - if the gentleman will yield to a question.

ACTING PRESIDENT KUHL: Senator Maziarz, do you yield again?

SENATOR MAZIARZ: Yes, yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR GOLD: Senator, I'm really curious to know, for example, what we're talking about in terms of numbers. It sounds like -- I mean let me put it in the form of a question because I know Senator Rath wants -

SENATOR MAZIARZ: I'm

clairvoyant, Senator. I anticipate what your question is going to be.

SENATOR GOLD: That's because you sit next to Senator Leibell. That'll do it.

SENATOR MAZIARZ: You're right.

SENATOR GOLD: I mean, first of all, I feel sorry for all of these people who never had the opportunity to go to Cuzco on Saturday and Sunday, and Senator Leibell will explain it, but when you put a bill in front of us, and it says that, you know, you want to open the door for U. S. citizens to vote, of course, everybody on this side of the aisle looks at their flag and feel very patriotic, but then I say to myself, what are we talking about, and if -- how many people are out there? What are we talking about? We talking about people who have nothing to do with this country apparently except for the fact that they may have been born from an American U. S. parent, and I say to myself, why would they want to vote? If they want to come back here as citizens, I would say open our arms and certainly I don't want to exclude anybody but it's just the whole thing sounds a little bit bizarre to me.

You got a 35-year-old man or a 35-year-old woman who lives in Australia or Austria or Germany or Italy and they're living their lives and they're working and they do this or they do that, and they've got their family and we're worried about whether they want to vote in the United States election, and I don't understand it.

SENATOR MAZIARZ: Well, Senator Gold, it's really up to them whether they want to vote in a federal election or not.

SENATOR GOLD: Don't you think we have any interest in that?

SENATOR MAZIARZ: Pardon me?

SENATOR GOLD: Don't you think we have any interest in that?

If the Senator would yield to a question.

SENATOR MAZIARZ: Yes.

SENATOR GOLD: Senator, we got bills on this floor which deal with the issue of whether college students should be able to vote, for example, in Ithaca if they're going to Ithaca College or Cornell or whether we should mandate that they vote where their parents live

where their home is, because there could be perhaps an unfair influence on local elections by people who may be transients, so to speak. These are college students actually living some place maybe for four, six, five years, whatever it is, and some of your colleagues have raised the question as to their interest in the locality, whether they should vote.

On the other hand we're being told now that there are some people who have never been in America, who are living in all parts of the world, apparently no interest in coming back here and we're putting in a bill because they want to vote for who's president, vice-president of this country, and I guess Congress -- Congresspeople. That's a federal election. I don't know whether they're included in this bill or not, but they're going to turn out to vote to decide who represents a Congressional district where they don't live, have no apparent desire to come back and are living fruitful, lovely lives in Italy, France, Spain, England or whatever. I'm trying to find the rationale.

SENATOR MAZIARZ: Senator Gold, I

have to say that I'm somewhat shocked that you want to limit an individual's participation in -- in government. I'm stunned, quite frankly.

SENATOR GOLD: I didn't say I did.

SENATOR MAZIARZ: The way I - the way I interpret your statement, I think you did.

SENATOR GOLD: Well, if you will yield to a question. Senator, I'm not saying I want to limit anything. I'm trying to understand the rationale, the difference in philosophy between bills that have been put in by your side of the aisle.

On the one hand you think that college students, where it has been a matter of years, where college students have no interest where they're really living for years, but you're suggesting that people who have never set foot in America should be voting to determine who our Congressmen are and who our Senators are, who our presidents are. I don't understand that particular philosophy.

I'm not saying they shouldn't do it. Maybe you'll convince me. Question mark.

SENATOR MAZIARZ: O.K. The federal government, Board of Elections is encouraging these people have a right to vote, they're paying taxes, and I would do anything to encourage voter participation. Now, you keep referring to a law about college students. I don't recall that law being voted on in the two and a half years I've been here, Senator Gold, but I -- I would not have voted for any legislation that would have curtailed anyone's right to vote in an election.

SENATOR GOLD: Senator -- Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Gold, on the bill.

SENATOR GOLD: First of all - first of all, Mr. President, I'm happy to hear the statement that was made by Senator Maziarz about he would not have voted to stop college students from voting, and in all fairness, I appreciate that. There are people on your side of the aisle who were very concerned about that particular issue.

I don't blame anybody -- anybody in the world for wanting to be a U. S. citizen,

and coming here and having the opportunity to play golf with Mike Tully or just to enjoy our country in general.

VOICE: The Assembly's adjourned, I want you to know.

SENATOR GOLD: They're out? O.K.

I can't blame anybody for wanting to be a citizen, so, Senator Maziarz, there are people who come here illegally. There are people who use all kinds of ruses in order to get into our shores, just to live here and there are people involved in immigration fraud. It's a wonderful thing to be a U. S. citizen. So if you've got somebody who in fact is technically and in the most technical sense is a U. S. citizen, because of birth, the accident of birth, I don't blame them at all for cherishing that citizenship and for wanting to take full advantage of all of the rights of the citizens. I don't blame them at all.

I do, however, find it strange - well, let me go back one before that. I'd really like to know the circumstances under which they pay U. S. taxes. I don't pretend to be an expert in that field, but the -- but I

guess under federal tax laws, you only have to pay taxes on what you earn in America and then you probably get some kind of exemption if you earn the money outside of America, so when you say pay taxes, it maybe the most minimal of taxes. If somebody wants to give us any money, I guess just to keep the door open to being a U. S. citizen, I guess that's very admirable and I don't want to discourage them; but I do find it a little ironic that we are passing legislation and opening up the ballot boxes in things like national elections, and again I didn't ask you the question directly but from your lack of response I gather I was correct when I included Congressional races and U.S. Senate races because it says federal elections.

Of course, I don't know -- I don't know how you work the ballot. I guess they get sent a special ballot which would only have the federal candidates on it and, for example, it wouldn't have as distinguished as Senator Gentile is, I guess his name wouldn't be on a ballot coming from that district, but it just seems to me strange that people who are, by choice at this point, because we're talking

about adults choosing to live in various countries all over the world and not set foot in America, want to be that much involved with our political system.

I know that it would be strange if having come over here, and all of us at some point came from some place else, if we all of a sudden started to petition Poland or Hungary or Russia for the right to -- to vote because at one point in time some people in our family had an interest.

So I say to myself, you know, hurray for the federal government for a bill which sets up a process, and I know that the states of Georgia and Iowa and Tennessee and Oregon have passed similar legislation. I think it would be fascinating, Senator, to know how many people actually have registered whose parents, for example, were in Tennessee and went across to Europe -- and I got about another 17 more points, but I see Senator Paterson is standing.

Do you want me to yield, Senator?

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT KUHL: Senator

Paterson, why do you rise?

SENATOR PATERSON: Would Senator Gold yield for a question?

SENATOR GOLD: Yes, sir.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Senator, we seem to have a different point of view about this bill as I was expressing to Senator Maziarz.

If individuals are connected with this country, they may not live in this country but they're connected with this country, and they have voiced an opportunity, they have voiced an interest in voting in state and local elections here, I can only surmise, and perhaps we'd have to ask Senator Maziarz, as to the reason why, in other words, I don't know if there's been any survey or any information that would tell us why they want to be voting in these particular elections.

I don't think there are enough of them so this could be an organized effort to try to swing or sway any campaign, but if they had this interest, I would think that since they are

really technically citizens of this country, that we would want to encourage them. Perhaps they're thinking of moving to the States when they complete their service overseas or something like that, and so my question to you is, why would we not want to encourage them? The participation might eventually lead to their relocating in that particular area. There's some reason that they want to have that interest and I was wondering if you would comment on that or -

SENATOR GOLD: I'll be glad to. Senator Paterson, first of all, I understand your point, and I think there is a lot of logic to your point. If somebody is going to be registered in the state and why would they not care about the state elections as much as federal elections.

But what I -- you made one comment, Senator Paterson, and you make an assumption which may or may not be true. You say when they finish with their term, Senator. The bill talks about people who are citizens and they never have been here, and what I'm suggesting to you is, that for the most part

this could be children of people who work in the foreign service and who stayed over there and who are not in the foreign service at all, but maybe their parents were in the foreign service, they were born, they're technically American citizens. They've gone to Italian schools. They -- as many of us who have been to Italy fall in love with the country and they decide to stay there and visit the museums and live their lives in some of the beautiful cities and now have made a choice.

ACTING PRESIDENT KUHL: Senator Gold, Senator Gold. Could I interrupt you just for a minute.

SENATOR GOLD: Of course, sir.

ACTING PRESIDENT KUHL: The monologie that you seem to be going through now is so illuminating that we want to make sure it's captured on the transcript and the stenographer has sent a message to me indicating that she is having a very difficult time hearing you as you're turning around and turning your back to the microphone, so if you could just for the ease of the stenographer if nobody else, talk into the microphone, I would appreciate it

and I know she would.

SENATOR GOLD: Mr. President, I have always had the greatest admiration and respect for our stenographer. The fact that she now wants to hear what I'm saying has lowered her a little bit in my estimation.

ACTING PRESIDENT KUHL: Senator Gold, I didn't say that.

SENATOR GOLD: Yes, Mr. President, I'd be glad to be cooperative.

What I was saying, Senator Paterson, and I hope you'll excuse my back, is that these are not people as I see it who have been here and who are away on diplomatic missions and coming back, but people as defined by the bill itself who have never been in America, and since they are adults and of voting age, I can only make the assumption that they have chosen to live in another country, and while I am very, very chauvinistic about America and I tell you that I wouldn't want to live any place else in the world, I would be untruthful if I didn't tell you that on the number of occasions I have been to Italy, I love it, I'm comfortable there. The people are wonderful and

I can understand why somebody lives in Italy and enjoys Italy, and -- but if they're there and they're doing that and they are comfortable, I say to myself, I'm not saying close the door on their voting here, but I say what is behind this bill. Why would they want to vote in elections for a country that they have never ever been in?

Now, I have ancestors. My ancestry come from Hungary and from Poland and every once in a while I may or may not like something that happens in those areas of the world and I say, Wouldn't it be interesting if I could vote in those elections and turn around some of the things in their government, and most people here would say that's kind of ludicrous, and I'm just wondering therefore, you know, really, what gets behind this bill?

Where is this mass of people that the federal government passed this legislation, this enabling legislation, and why states are getting all excited about it?

So, Senator Paterson, I think you are probably right on target, if we're going to do this, I don't know why we wouldn't say, well, if they're that interested in America, and they

feel American that strongly that they want to vote, why not go all of the way, you know, why not, not only let them vote in the -- for the president and the vice-president and for the United States Senate -- I think, Mr. President, that my distinguished friend from Syracuse is trying to get your attention, Mr. President. I know I've lulled you a little but I think he's trying to -

ACTING PRESIDENT KUHL: Senator DeFrancisco, why do you rise?

SENATOR DeFRANCISCO: I wonder if Senator Gold would yield to a question.

ACTING PRESIDENT KUHL: Senator Gold?

SENATOR GOLD: Yes, I could use the rest.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DeFRANCISCO: Knowing that you're a very intelligent man, and that you always do things for a purpose.

SENATOR GOLD: I wish you wouldn't go any further than that.

SENATOR DeFRANCISCO: And it's

obvious that the purpose of your dialogue or monologue here is not to illuminate anybody on anything, I would request if you would please be honest enough to tell everybody here assembled at 9:35 what the true motive of this nonsense is.

SENATOR GOLD: Well, Senator, since I'm not the one responsible for the nonsense, I can't tell you the motive behind it.

SSENATOR DeFRANCISCO: Well, if you -

SENATOR GOLD: And let me finish my answer saying this, Senator. We all have our pluses, our minuses. We all have our personalities and one -- one of my -- we all have press clippings. You can't be in politics without having press clippings. But the proudest -- one of my proudest press clippings, Senator, goes back to college and they wrote up one of my boxing matches and the guy was smart enough to realize that I was more of a counter puncher than anything and the other guy would take the first punch and then I was very fortunate in college; I managed to get enough in so that I never lost a fight, but I had to get

hit first.

So I react, Senator, and if there is nonsense going on here, believe me, it is not me with the first punch. Me on this side, Senator Gold and others, we're counter punchers and so, if there's nonsense here, there's a way of ending it, but unfortunately you have to talk to the people who started it.

SENATOR DeFRANCISCO: Would you yield? Would Senator Gold yield to another question?

SENATOR GOLD: To you, of course.

ACTING PRESIDENT KUHL: Senator Gold yields.

SENATOR DeFRANCISCO: Would you answer my question as to whether or not the reason for your monologue is that the Senate Majority had the audacity of laying some bills aside of the Senate Minority?

SENATOR GOLD: I hadn't noticed. Did they do that?

SENATOR DeFRANCISCO: I'm asking you, could you honestly answer that question?

SENATOR GOLD: Well, I think

that, Senator, I think that the level of honesty in this chamber is something which is very important, and I think that again as someone who reacts, it is up to the Majority to set that level of honesty and I tell you I will not go below that level of honesty, but I'm not going to go too much the other way either, and if you're telling me, Senator, and I'm shocked to hear it, shocked to hear it, that the Majority has laid aside some bills of the Minority members in this house, I say to myself what possibly could be the motivation for such a vile act?

But I -- you're telling me something, I haven't really been following the calendar. I just feel that there is a Senator in this house by the name of Maziarz who I like a lot and I figure, if he puts a bill on this floor that it's something that is deserving of serious consideration, and you can't respect - God bless you; somebody sneezed on the truth - and Senator, the only way you can show respect is by showing respect. You don't talk about it. You show it and, therefore, the respect I have for the Senator is such that I wanted to

show my respect by paying full attention to this bill and making sure that I understood it properly before I cast a vote.

SENATOR DeFRANCISCO: And that's your honest answer.

SENATOR GOLD: That's a tough question. That's a tough one, but that is my answer.

SENATOR DeFRANCISCO: May I ask Senator Gold one other question?

ACTING PRESIDENT KUHL: Senator Gold, do you continue to yield?

SENATOR GOLD: Pleasure to yield.

SENATOR DeFRANCISCO: Senator Gold, do you think it's appropriate -- a proper course of action for someone to lay a bill aside in the event that they had a question about a bill?

SENATOR GOLD: Senator, I -- to give you an easy answer, yes. I wish you'd please tell that to Senator Skelos. He seems to resent it more than most.

SENATOR DeFRANCISCO: Well, apparently others do tonight as well.

My question is, if someone had a legitimate question, would it be all right to ask a Minority member whose bill has been laid aside?

SENATOR GOLD: I would be disappointed if you didn't.

SENATOR DeFRANCISCO: Well, with that clarification and that show of sincere honesty by Senator Gold, I have nothing further to ask him.

SENATOR GOLD: Will the Senator yield to a question?

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, I want to know if Senator DeFrancisco would yield to a question?

SENATOR DeFRANCISCO: Absolutely.

SENATOR GOLD: Why do you ask him to yield to a question?

SENATOR PATERSON: My money is as good as yours.

ACTING PRESIDENT KUHL: Senator Paterson, Senator DeFrancisco has indicated that he would yield to a question.

SENATOR PATERSON: Senator, if there was a question about a bill that was introduced by a member of the Minority, perhaps you and I might be able to settle this whole issue right here.

I would suggest that we ask Senator Maziarz if he would lay his bill aside, that we call up that bill by the member of the Minority and that right now we would be more than willing to listen to the questions.

SENATOR DeFRANCISCO: So what is the question?

SENATOR PATERSON: The question is what do you think?

SENATOR DeFRANCISCO: I think it's immaterial. We have many bills to go, and I would think that once the bills were called on the Minority members, questions would be asked and you would have your answer, but to -- we'll probably have another Rules meeting. If you want to hold bills up, you can do that but to go on a monologue of -- well, to go on a monologue

like the monologue we have been hearing is not productive.

SENATOR PATERSON: Mr. President.

SENATOR DeFRANCISCO: Yes -- oh, excuse me. I'm not Mr. President.

SENATOR PATERSON: Mr. President, I think that Senator DeFrancisco has done us a huge favor, and I think that perhaps his entering the discussion may truncate this whole process considerably because he's raised an issue relating to what might be the validity of this discussion and while I was particularly interested -- and I had a few more questions for Senator Gold, but maybe we'll take our conversation out of the chamber -- the reality is that this is not an isolated incident. This is a pattern of occasions where we feel that we were assured that there was legislation coming before the floor. It went through the Rules Committee and somewhere between the Rules Committee and the floor it didn't seem to materialize, and so if the question is should we go in order and wait for the bill to come up, we don't know the point at which whatever vital legislation that the Majority felt needed to

come on the floor tonight would actually have been fulfilled and then at that point I understand this is a last day, we might recommit all the bills and we'll be back here in January starting the process all over again. Now -

ACTING PRESIDENT KUHL: Senator Paterson, may I just interrupt for a minute. I think we're trying to be or at least the Chair is trying to be very accommodating this evening.

SENATOR PATERSON: Thank you, Mr. President.

ACTING PRESIDENT KUHL: And we are really stretching the question of germaneness to the bill that's before us. I think you're addressing more the issue -

SENATOR PATERSON: You know, Mr. President, I thought the germaneness should have come up about ten minutes ago. I'm surprised it came up when I had the floor, but I'll conclude.

ACTING PRESIDENT KUHL: Senator Paterson, I think you had one win this session and I don't want to extend it any farther, and that's not a mean-spirited statement. I just want to try to keep some decorum and we really are rambling far beyond the topic that Senator

Maziarz' bill addresses. I never have an idea as to who's going to ask what type of question up here, but it's obvious from the pattern of the dialogue that's gone back and forth between Senator DeFrancisco, Senator Gold and now yourself, that this discussion really is not germane to the topic before the house.

So I would hope that you would conclude your statements. If you have some questions relative to Mr. -- or Senator Maziarz' bill, I certainly would entertain them.

SENATOR PATERSON: You are right, Mr. President. I am going to conclude. I thought it had to do with citizenship and I thought it had to do with democracy and I thought it had to do with what this state's Constitution stands for, an equal representation.

42 percent of the members of this house happen to be in the Minority party. I would like to take the number of bills passed by the Minority, divide them by the whole and I'll bet we come out with something less than three percent.

So that really is vital to what

Senator Maziarz is talking about. He's talking about inclusion. He's talking about people who aren't even in this country who we're going to give the opportunity to vote in the state elections. I'm talking about individuals who are right here in this chamber and don't seem to have the opportunity to participate in the business of the Senate right here in this chamber, but you are right, Mr. President. If you don't feel it's germane, I'll conclude just by saying this.

I think what we might do at this point is to ask the Majority to lay this bill aside. We'll take up the issue since we understand this bill is coming before the floor and we can debate it right now and then go back to regular order and then everyone's interest would be satisfied. It would just be a matter of moving one bill. It should take whatever time it takes to ask and answer those questions and I suggest, as I conclude, that that would end this process. We would be well on our way to conclusion this evening.

ACTING PRESIDENT KUHL: Senator Waldon, why do you rise?

SENATOR WALDON: I was trying to ask the learned gentleman from the village of Harlem a question or two but was not recognized in a timely fashion.

Would he permit me to ask a question or two? I was out of the chamber when we began the discussion on 5568.

ACTING PRESIDENT KUHL: Senator Waldon, what's your request again?

SENATOR WALDON: I would like to ask Senator Paterson a question or two. I asked would the gentleman from the village of Harlem yield.

ACTING PRESIDENT KUHL: Senator Paterson, do you yield to a question from Senator Waldon?

SENATOR PATERSON: Mr. President, with just the proviso that it does relate to Senator Maziarz' bill, I would be happy to answer the question. So long as I feel it's germane, Senator Waldon.

ACTING PRESIDENT KUHL: Thank you, Senator Paterson.

The gentleman yields.

SENATOR WALDON: Thank you, Mr.

President.

I would sincerely hope that within what I say, you will find something which is germane.

Senator Paterson, do you recall that on this floor we've dealt recently with some bills proposed by Senator Padavan which spoke to the issue -- he's not here -- which spoke to the issue of people who are foreign born attending colleges and having other benefits which normally just the citizens of this country are allowed to receive, according to his thought process in his bill.

Is there any possibility from your awareness of this bill that the people excluded by what Senator Padavan would like to propose could ever vote on what Senator Maziarz has just proposed?

SENATOR PATERSON: Thank you, Mr. President.

Senator Waldon, apparently we have different classifications of citizenship. We have individuals that may not have ever been present on our soil, may not have really participated in our government and may not

actually have any interest in what goes on here, as Senator Gold pointed out quite thoroughly, and yet they are preferred in some respects to individuals who may have actually lived here, may have actually in many ways contributed large amounts of their government -- large amounts of their salaries and large amounts of their personal resources to sustain our government and are basically heavily scrutinized right here in our land, but I would imagine that the answer that Senator Maziarz would have given or what he's putting forth in his bill is that since there's no dispute over the classification of their citizenship, that they, therefore, would be entitled not only to vote in federal elections but with the enabling federal statute that's been passed, would grant us in the state and local governments the opportunity to vote in the local elections.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: Would the gentleman yield to one or two more questions, Mr. President?

ACTING PRESIDENT KUHL: Senator

Paterson, do you continue to yield?

SENATOR PATERSON: I'd be delighted.

SENATOR WALDON: Senator Paterson, the people who Senator Padavan was targeting his legislation towards, to my understanding, as a group are not very active in terms of holding public office. If you know better than that, correct me, but would the people covered by Senator Maziarz' bill be allowed to hold public office in this country?

SENATOR PATERSON: I would imagine, Senator Waldon, that in spite of the citizenship, they would be barred from holding public office and if Senator Maziarz has further information, I'd be certainly willing to have him join us in this part of the discussion, that they would not conform to our residency requirements since they do not actually live anywhere in the jurisdiction of any of the 50 states and, therefore, I would -- I would imagine in that respect that they would be barred from running for public office.

However, just by simply moving into the jurisdictions within a year of any

election, that would give them that opportunity even though, as compared to those who seem to be the targets of Senator Padavan's legislation, they actually would have only that period of time to learn our government, to learn our ways, to learn our culture and yet would be far more eligible than those who may have resided here for long periods of time, including legal permanent residents who are not allowed to vote in any of the states and are restricted in New York State to only voting in school board elections where, in fact, we have only a five to seven percent turnout in these elections.

So at a point when we have under 50 percent of the people voting in our presidential elections, nearly one-fifth of our population voting in primaries -- in our New York State primaries for the Governor and the United States Senate in 1994 and so few people voting in elections and we're constantly talking about trying to -- to encourage people to vote, why we would not want to extend that courtesy to individuals -- 11 of them who were legal permanent residents in New York State died in the conflict in Desert Storm -- is really an

anathema to me, and I think it's a point well taken, very germane to the legislation but very apt for the topic when we start comparing human beings and what burdens we put on them based on what really are some technical classifications.

SENATOR WALDON: Last question, if I may, Mr. President, if the learned gentleman will continue to yield.

ACTING PRESIDENT KUHL: Senator Paterson, do you continue to yield? The Senator continues to yield.

SENATOR PATERSON: Yes, I do, Mr. President.

SENATOR WALDON: Thank you very much, Mr. President, for your patience and yours as well, Senator Paterson.

Senator Paterson, the people covered by Senator Maziarz' bill, to your knowledge, are they dual citizens if this works in terms of allowing them to vote in the federal elections, or are they dual citizens because they have a parent who is an American? Is there a distinction between this group of people characterized by this proposal versus those characterized by the proposals of Senator

Padavan in terms of the legislation that he has proposed which restricts benefits for school, et cetera, et cetera, et cetera? And that's my last question, Senator Paterson.

SENATOR PATERSON: Mr. President, my response to Senator Waldon's comment is that I think that it's actually the residing country that would make the decision in that regard since the United States does not have a dual citizenship policy, to my knowledge, and, therefore, if the individual, for instance, lived in the United States as what has happened to a number of citizens in this country who hail from the Dominican Republic, they were granted dual citizenship by their new president Lionel Fernandez and, therefore, as of last August when he was sworn into office, they were allowed to vote in the United States and retain their Dominican citizenship and that's the reason that so many of them voted and the first Dominican was elected to statewide office in New York State, Assemblyman Espaillat, who resides in my Senatorial District.

At the same time, we, in terms of those individuals who are outside the country

who are part of Senator Maziarz' bill, would have to make the choice since the United States does not allow for the dual citizenship status.

SENATOR WALDON: Thank you very much, Senator Paterson.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the bill?

(There was no response.)

The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Larkin.

SENATOR LARKIN: Mr. President, can we now take up 1474, by Senator Hannon.

ACTING PRESIDENT KUHL: The Secretary will read the title to Calendar Number 1474.

THE SECRETARY: Calendar Number 1474, substituted earlier today, by the Assembly Committee on Rules, Assembly Print 8110, an act to amend Chapter 884 of the Laws of 1990.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT KUHL: Senator Hannon, an explanation of Calendar Number 1474 has been requested.

SENATOR HANNON: This is an extender of the current law that allows there be paid to diagnostic and treatment centers and certified home health agencies money from the bad debt and charity care pools.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you very much.

Would Senator Hannon yield for a question?

SENATOR HANNON: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator Hannon, do you yield? The Senator yields.

SENATOR PATERSON: Senator, the

extender that we're acting upon tonight is an extension of what would be awarded from the bad debt and charity pool emanating from legislation that commenced when?

SENATOR HANNON: Commenced when?

SENATOR PATERSON: In other words, when was the period that we first passed this? We're granting a one-year extender, and so often it's the case that we extend things so much around here, we don't know when they started, and so that's just my question. When did we first start doing this?

SENATOR HANNON: January 1, 1997.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Do you have any information that you can share with me as to whether or not we've granted this authority from the bad debt and charity pool prior to this year?

SENATOR HANNON: The predecessor pools which existed under the predecessor financing system had monies that paid money into the -- these entities, but those -- those pools no longer exist because on January 1 of this

year we have new pools.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: I guess my question to Senator Hannon was how were the original pools enacted? What's the variance between what we've had for the last six months and what existed up until January 1st, 1997?

SENATOR HANNON: We had a regulated system and that was a whole different thing and last year we passed the reform act and it kicked in in the beginning of this year. I'm not going to go through the whole thing because it's, frankly, not germane to this. It had been in existence in this state for 20 years.

What we're dealing with is the current system and this allows these entities which are diagnostic and treatment centers and which are certified home health agencies, which serve many people in your district and need these payments in order to pay for those individuals who don't have the money and who would otherwise -- there would be no payment from Medicaid for them and in order to provide those vital services to them, we need to

continue these payments.

I had hoped that this would have been done in a budget but for reasons beyond my control, it's not. So we have to extend this ability which otherwise expires in the next couple of days.

SENATOR PATERSON: Senator, you bring me to really the point, and I don't want to belabor asking you to define what the actual pools were or -- but it's just that we went through an entire reform of this whole process last year and, as you pointed out yourself, we have been doing this for 20 years.

So I guess you wouldn't find it to be too obtuse or in any way not germane for me to ask you if we created this reform and we're now extending it for one year, was the six-month period to see whether or not it worked or if the six-month period was, why are we just extending it for just one year? In other words, we just went through without going into detail a complete reform of the system and just to give an example of why I'm asking this question, suppose we extend this granting authority for one year. We come back this time next year. We

haven't passed a budget and exactly what is frustrating you perhaps this evening and me as well -- because, as you pointed out, so many individuals that are in my district and in other districts that have similar problems have this need and we want to do this, but having had it intertwined in the budget process as much as possible, why would we want to extend it one year when we can run right into this situation where the inability of our state to resolve a budget negotiation obfuscates the opportunity to bring these needed services to areas all over the state as we seem to have gotten ourselves into this situation tonight?

SENATOR HANNON: Yes!

SENATOR PATERSON: Marv Albert has joined us.

Senator Hannon, if you would continue to yield.

SENATOR HANNON: Yes.

SENATOR PATERSON: Can you give me a reason why we would not create a structure in which this process would not last for more than one year?

SENATOR HANNON: No, I don't have

an answer.

SENATOR PATERSON: Thank you.

That was a much more detailed answer than I got from the last question.

My -- if the Senator would continue to yield.

SENATOR HANNON: Yes.

SENATOR PATERSON: I get as much information from when he yields as when I actually ask the question but, Senator, very seriously, we're in a budget negotiating process in which we aren't sure when we think it should end. It would be certainly fine with myself and -- well, it was fine with Senator Gold, but I see he's walking away now but he's coming back -- that there's a need for us not to lose this vital opportunity based on the fact that we're unable to complete this actual process, and what I'm just trying to put forth is what is a - what is a service that's very important and goes to different parts of the state and is certainly needed.

My question is, what is the priority of determination that enables us to know which of the -- which of -- in what

diagnostic sense and to which agencies the funds from the bad debt and charity pool will be distributed?

SENATOR HANNON: The entire pool had, before we changed the finance system around, a number of incentives for the institutions that received the money to add a lot of overhead into the costs of the pool and it was generally acknowledged that there was - it was not being -- the monies were not being directed as wisely as we would have hoped. In the HCRA 1996 Act, Health Care Reform Act -

SENATOR PATERSON: Excuse me, Mr. President. Senator Hannon, the 1996 -

SENATOR HANNON: Health Care Reform Act, HCRA -- we changed the methodology by which a bad debt is determined. I don't have all that detail at hand but basically we just made sure that bad debt was more closely to what everybody would acknowledge is the inability of the individual treated to pay and so we're -- we were not able to extend that on a long-term basis.

How it's actually working, it's too soon to know, but I can tell you on a

historic basis that 50 percent -- or over 50 percent of this money goes to agencies of the city of New York. So where it's going, that's where it's going. How it will flow in the future, we don't know but it is all designed to go for care for those people who cannot afford to pay for it.

SENATOR PATERSON: Thank you, Senator.

Mr. President, if the Senator would continue to yield.

ACTING PRESIDENT MARCELLINO: Senator Hannon, do you continue to yield?

SENATOR HANNON: Yes.

ACTING PRESIDENT MARCELLINO: He does, sir.

SENATOR PATERSON: Senator, at the point that we passed the legislation last year, was it believed at the time -- and I know of the involvement that you dedicated to it - that there would be a better assessment of how the program is working at the point that we would be considering granting an extension at this time?

SENATOR HANNON: I was hopeful

but did I know predicting what would happen when? Absolutely not.

SENATOR PATERSON: The -- Mr. President, if the Senator would continue to yield.

ACTING PRESIDENT MARCELLINO: Senator Hannon continues to yield.

SENATOR HANNON: Yes.

SENATOR PATERSON: Senator, I don't know if you can answer this question or not but I'll certainly accept it if you feel that this calls for too much of an opinion, but my question at this point would be, at what point does -- do health care professionals or analysts such as yourself feel that we would get an idea whether or not we've actually corrected some of the discrepancies that we may have had in the system, in the mechanism up to when we tried to pass the reform act? How long will it take before we start to get any indication as to where the money is going and whether or not it's reflecting need or prioritization?

SENATOR HANNON: I think it's always a changing scene, just as you try to attempt to address the problems that were before

us as of 1996, you get a number of other factors that enter the picture that were the not there then.

Entering the picture now, we have the further penetration into insurance coverage of health maintenance organizations which continue to up the share of insurance coverage for all concerned.

In addition to that, we have the effect of the welfare enactments by Congress last year which cut off eligibility for certain individuals all without our participation.

We know now that pending in the house, in the Senate in Washington there is a potential for cuts in Medicare or Medicaid of $130 billion over the next five years. So - and everything keeps changing.

One of the major statistics that came out of the United Hospital Association just recently was a note that in the two-year period last noted that hospital visits in the city of New York for the first six months of the year - and it was comparing 1993 to 1995 -- had decreased by one million patient days over the comparable six-month period. All of those folks

didn't get better all of a sudden. Still probably had pretty much the same amount of illness and ailments. Where did they go? They probably went to these very same institutions that we are directing this money to, the diagnostic and treatment centers and if they didn't get to the clinics, then to being taken care of by the home health care agency.

So it's a changing dynamic. You put amendments in to try to meet the needs as you best perceive them and you adjust it accordingly when the situation changes.

SENATOR PATERSON: Thank you, Senator.

Before I comment on the bill, I think that from your answers I now have a very good idea of why you would want to put a one-year extender on this. Apparently the relative information is not clear and in spite of the fact that preliminary indications would seem to be that this is going to be very effective, you wouldn't want to lock the state into any kind of a process for any long period of time absent any evidence to give us any kind of indication as to how well the program is

going. Is that correct?

SENATOR HANNON: I think that's an appropriate summation, Senator.

SENATOR PATERSON: Thank you.

Thank you very much for your answers, Senator Hannon.

Mr. President, on the bill.

ACTING PRESIDENT MARCELLINO: Senator Paterson on the bill.

SENATOR PATERSON: It does seem that the visits to hospitals are decreasing and the whole evolution of the hospital systems seems to be changing right before our eyes as we move more to clinics and diagnostic centers as Senator Hannon certainly demonstrated.

You would understand that I am representing a district that has lost eight major hospitals in the last 25 years, hospitals like Arthur Logan, Knickerbocker Hospital, Flower Hospital, Fifth Avenue Hospital, Mother Cabrini Hospital, the Joint Center of Diseases, Francis Dellafield Hospital and, of course, the major controversy in 1983-1984 when Siedman Hospital was closed, there was a feeling in our area that these closures were really reducing

the amount of service to our particular area and we are not totally satisfied that that has not been the case but certainly recent information certainly demonstrates that there has been a greater movement in just the whole system based on the presence of HMOs and certainly the different types of health care maintenance that actually exists. We're now finding that the types of centers that Senator Hannon is referring to have been very effective and in many ways reduce costs and increase the ability to have care.

So for that reason, there's certainly a concern and if Senator Hannon is right -- and I know that he is right -- but I'm just pointing out that at this point we are very pleased to know that so many people are being serviced and in more cost-effective way, that much of it is being funded by the information that Senator Hannon gave us and by the legislation that's going to continue this program for another year and having understood that, I support it and urge all my colleagues to vote for it.

Thank you.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MARCELLINO: Oh, I was going to read the last section.

Senator Gold.

SENATOR GOLD: Mr. President, I'm not going to stop you from reading the last section. It's just a question of when, I guess.

Would Senator Hannon yield to a question?

SENATOR HANNON: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: I think Senator Hannon is yielding, sir.

SENATOR GOLD: Senator Hannon, I was in the room for most of the question and answers with Senator Paterson, but I did have to step out for a minute and if -- I don't want to impose upon you for maybe 35, 40 seconds, but if you could -- I didn't understand why we're talking in terms of just the one-year extender and in looking at the bill history, I see back in 1990, '93, '96. So I gather that it is like some seven, eight years, but can you just explain to me -- and I'll take 30 seconds of it. I don't want to drag it out -- why we're

just doing the one-year?

SENATOR HANNON: New health care act, January 1, 1996 redid bad debt and charity care. This group of clinics and agencies may have extra costs and different costs and different ways and impositions and, therefore, it's most appropriate and given the facts out there, it would only be done for a year.

SENATOR GOLD: You did it 30 seconds. Would the Senator now yield to one other question?

ACTING PRESIDENT MARCELLINO: Senator Hannon, do you yield for one more question?

SENATOR GOLD: Senator, I understand what you've said, but isn't it possible to do a bill that sets up a situation where depending upon certain variables, we -- we can make these adjustments without us doing it legislatively each year?

SENATOR HANNON: Yes.

SENATOR GOLD: Do we have such a bill in?

SENATOR HANNON: No.

SENATOR GOLD: Well, if the

Senator would yield to one more question.

ACTING PRESIDENT MARCELLINO: Senator, do you yield to one more question for the third time?

SENATOR HANNON: One more question.

SENATOR GOLD: Yeah. Senator, is there a reason why perhaps you have not done that and rather than just say yes or no, can you explain to me what the reason might be?

SENATOR HANNON: I thought this was the most appropriate bill to put in because it gives -- continues to give the Legislature oversight. Any type of mechanism gets you into a bureaucratic morass and the one year is appropriate in my judgment.

SENATOR GOLD: Thank you.

Mr. President, first of all, I know Senator Hannon's -- Senator Hannon pretty well and -

ACTING PRESIDENT MARCELLINO: Senator Gold, are you speaking on the bill?

SENATOR GOLD: Yes. May I.

ACTING PRESIDENT MARCELLINO: Senator Gold, on the bill.

SENATOR GOLD: Thank you.

ACTING PRESIDENT MARCELLINO: Before you do, Senator, can we just ask -- this is insightful discussion. Can we have it a little quiet?

Thank you.

SENATOR GOLD: I know we all get to know pretty well the different personalities, and I know certain members have more tolerance for certain things than other members and with that in mind, let me preface my remarks saying, Senator Hannon, you have been around all day. We have been here about 12 hours except for our dinner break and up until about an hour ago, I think the record will indicate, I don't think I spent more than a total of two or three minutes total on anything in this session and certainly I don't think you as a fair gentleman would criticize me for any actions prior to about an hour ago, but things change and I ask you as somebody I respect to understand that it is not me that makes these changes single-handedly. So with that in mind, I ask your indulgence.

Mr. President, I find it difficult in certain areas to constantly be

arguing, debating, voting on bills year after year because the Legislature doesn't do something more creative that terminates some of these issues, and I understand that with regard to some issues. Some people have the feeling that if we hang certain groups out there and make them come back every year or two, that that's good politics. It's probably not the situation in this bill and I'm not certainly accusing this particular sponsor, who I happen to believe is an honorable man and I don't say that in anything but in a sincere way, but there are situations when we get bills that -- it's a good bill.

I'll vote for it.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed finally.

Senator Larkin.

SENATOR LARKIN: Please call up 1475, Senator Kuhl's Senate Bill 5578.

ACTING PRESIDENT MARCELLINO: The Secretary will please read.

THE SECRETARY: Calendar Number 1475, by Senator Kuhl, Senate Print 5578, an act in relation to the issuance of serial bonds by the village of Penn Yan, Yates County.

ACTING PRESIDENT MARCELLINO: There is a home rule message at the desk. Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Larkin.

SENATOR LARKIN: 1476, sir.

ACTING PRESIDENT MARCELLINO: The Secretary will read 1476.

THE SECRETARY: Calendar Number

1476 -

ACTING PRESIDENT MARCELLINO: Excuse me one second.

Senator Waldon, why do you rise?

SENATOR WALDON: Thank you very much.

I was out of the chamber when the chamber considered 1441. I respectfully request unanimous consent to be recorded in the negative.

ACTING PRESIDENT MARCELLINO: It shall be done, sir.

SENATOR WALDON: Thank you, sir.

ACTING PRESIDENT MARCELLINO: The Secretary will read -- I'm sorry.

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

Could I also have unanimous consent to be recorded in the negative on Calendars Number 899 and 1377, Mr. President.

ACTING PRESIDENT MARCELLINO: Without objection, that shall be done.

SENATOR DOLLINGER: Thank you.

ACTING PRESIDENT MARCELLINO: The

Secretary will read.

THE SECRETARY: Calendar Number 1476, by the Committee on Rules, Senate Print 5597, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Larkin.

SENATOR LARKIN: Continue, 1477.

THE SECRETARY: Calendar Number 1477, by the Committee on Rules, Senate Print 5599, an act to amend the Civil Service Law, in relation to proceedings.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 3. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

SENATOR LARKIN: 1478.

THE SECRETARY: Calendar Number 1478, by Senator DeFrancisco, Senate Print 5605, an act in relation to the apportionment of transportation aid.

ACTING PRESIDENT MARCELLINO: There is a local fiscal impact statement on the bill. Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 1479, by Senator Leibell, Senate Print 5613, an act to amend the Real Property Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

SENATOR LARKIN: Mr. President, call up 1466, by Senator Rath.

ACTING PRESIDENT MARCELLINO: The secretary please read 1476, Senator?

SENATOR LARKIN: '66.

ACTING PRESIDENT MARCELLINO: '66.

THE SECRETARY: Calendar Number 1466, by Senator Rath, Senate Print 3510, an act to amend the Tax Law, in relation to excluding.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 6. This act -

ACTING PRESIDENT MARCELLINO:

Excuse me? An explanation has been called for.

Senator Rath.

SENATOR RATH: Mr. President, is that Senator Leichter who's asking for an explanation?

Senator Leichter, I would say I'm pleased to be sponsoring this bill with Senator Nanula, Senator Maziarz, Senator Present, Senator Stachowski and Senator Volker.

The bill has a great impact on Western New York which is an emerging call center area and what this bill will do will be to take companies who decide to come into Western New York and in this case there has been as many as 3,000 new jobs in the last couple of years. This call center industry is a very new kind of industry and instead of taxing a business twice for the state that they reside in, if they come to New York to locate the call center because we have the space, we have the kind of work force, et cetera, we don't want to tax them a second time and discourage them from coming to New York. So that's what this bill provides for.

SENATOR LEICHTER: Senator, if

you would yield for a question.

ACTING PRESIDENT MARCELLINO: Senator Leichter -- excuse me, Senator.

Senator Rath, do you yield?

SENATOR RATH: Surely.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR LEICHTER: Excuse me, Senator. We're having difficulty locating the bill. Senator -

ACTING PRESIDENT MARCELLINO: Senator Leichter, the Senator has yielded already.

SENATOR LEICHTER: Senator Rath, I understand the point you're making of the importance of this for the northwestern New York, but I take it the bill has a statewide application, is that correct?

SENATOR RATH: It does.

SENATOR LEICHTER: And what is the fiscal implication for the state if we enact this bill?

SENATOR RATH: It's a clarification, Senator Leichter, of the Tax Law. There is no fiscal implication except to

the businesses that would be discouraged from coming to New York State. I might point out that in Buffalo, a number of the new jobs -- of the 3,000 new jobs are in the city; very, very important to have jobs in the city.

SENATOR LEICHTER: So the point you're making is that the firms that would be coming into the state that would be taking advantage of this would more than make up the loss of any revenue that we would have?

SENATOR RATH: "Western New York emerges to take a prominent role in call center industry." The second press release, "Toronto company plans to bring at least 300 jobs to the area."

No, there is no revenue implication, Senator. It has to do with not taxing companies twice. If they think about coming to New York State in order to locate call center industries, the bill will define what the call center industry does and not tax them a second time if they decide to put those jobs in New York State.

SENATOR LEICHTER: I understand it now, and I thank you.

SENATOR RATH: Thank you.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

THE SECRETARY: Section 6. This act shall take effect September 1st, 1997.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 1467, by Senator Leibell, Senate Print 4463-A, an act to amend the Real Property Tax Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number

1468, by Senator LaValle, Senate Print 4637, an act authorizing the creation of a Greenway Riverside Park.

ACTING PRESIDENT MARCELLINO: We have a home rule message at the desk. Read the last section.

THE SECRETARY: Section 3. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 1469, by Senator Nozzolio, Senate Print 4712-A, an act to amend the General Business Law, in relation to improvements.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 3. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 1470, by member of the Assembly Lafayette, Assembly Print 2224-A, an act to amend the General Business Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 1471, by Senator Velella, Senate Print 5339-a, an act to amend the Insurance Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO:

Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Larkin, we finished the controversial calendar.

SENATOR LARKIN: Any housekeeping?

ACTING PRESIDENT MARCELLINO: No housekeeping, Senator.

SENATOR LARKIN: Let's stand at ease for a few minutes.

ACTING PRESIDENT MARCELLINO: The Senate will stand at ease for a few minutes.

(Whereupon, the Senate stood at ease.)

ACTING PRESIDENT MARCELLINO: Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Rules Committee in the Majority Conference Room, Rules Committee, Majority Conference Room immediately. The Senate will stand at ease.

(Whereupon, the Senate stood at

ease from 10:30 p.m. until 11:00 p.m.).

SENATOR BRUNO: Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Bruno.

SENATOR BRUNO: Can we ask for an immediate conference of the Majority in Room 332.

ACTING PRESIDENT MAZIARZ: There will be an immediate conference of the Majority in Room 332.

Senator Paterson.

SENATOR PATERSON: Mr. President, we would like to announce a meeting of the integrity -- I mean the Minority in Room 314.

ACTING PRESIDENT MAZIARZ: There will be an immediate meeting of the Minority Conference in Room 314.

(Whereupon, the Senate stood at ease from 11:01 p.m. until 11:31 p.m.)

ACTING PRESIDENT KUHL: The Senate will come to order.

The Chair recognizes Senator Bruno.

SENATOR BRUNO: Good evening, Mr. President. I would like to ask for an immediate

meeting of the Rules Committee in Room 332.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Rules Committee, immediate meeting of the Rules Committee in the Majority Conference Room, Room 332.

SENATOR BRUNO: Mr. President.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Mr. President, can we return to the reports of standing committees, and I believe there is a report from the Rules Committee, and I would recommend that we accept that report at this time.

ACTING PRESIDENT KUHL: I'll ask the Secretary to read the report of the Rules Committee.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bills:

1937, by Senator DeFrancisco, an act to amend the State Finance Law;

2615-A, by Senator Padavan, an act to amend the Administrative Code of the city of New York;

3683, by Senator Wright, an act to amend the Economic Development Law;

4395-A, by Senator Maltese, an act to amend the Administrative Code of the city of New York;

4514-A, by Senator Farley, an act to amend the Banking Law;

4933, by Senator Spano, an act to amend the Workers' Compensation Law;

4974, by Senator Hannon, an act to enact the Health Care Ambassador Match Act;

5016-A, by Senator Volker, an act to amend the Tax Law;

5025-A, by Senator Farley, an act to amend the Parks, Recreation and Historic Preservation Law;

5071-C, by Senator Marcellino, an act to amend the Labor Law;

5414, by Senator Montgomery, an act to amend the Education Law;

5604, by the Committee on Rules, an act to amend the Racing, Pari-mutuel Wagering and Breeding Law.

All bills directly for third reading.

ACTING PRESIDENT KUHL: The motion is to accept the report of the Rules Committee. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

SENATOR DOLLINGER: Could I have an explanation as to why we should accept the Rules Committee report.

ACTING PRESIDENT KUHL: Senator Dollinger, just a minute.

SENATOR DOLLINGER: That's fine, Mr. President.

SENATOR BRUNO: Mr. President, an explanation was requested on what we're doing here in accepting the Rules Committee.

ACTING PRESIDENT KUHL: I believe that's the question, Senator.

SENATOR BRUNO: I believe the rules of the Senate are such that when Rules meet, they debate bills and those bills that are deemed appropriate by the Majority of the members of the Rules Committee recommend that that be put on an agenda and that agenda appears at the front desk and we then, before we can

take it up, vote on accepting the Rules Committee report and by that vote, we are in a position to debate each and every bill and then you can say what you please up or down, sideways, inside, out as relates to the issue and after we have had that exhaustive deliberation, the bills will pass.

SENATOR DOLLINGER: Again through you, Mr. President. It's my understanding that the acceptance of the Rules Committee report is to further the business of the Senate, to get the business of the Senate done. It's now 25 minutes to 12:00 on the last day of session and there is a Rules Committee report before us.

What I understand that signifies, Mr. President, is that there are some important bills that the Rules Committee has determined need to be acted upon by this body tonight.

My question to the President of the Senate is, if there are other bills currently on the calendar that also should be acted on tonight and why we haven't done those bills before we go on to a new agenda of putting new bills from the Rules Committee -- there are Rules Committee reports that are before this

body right now and we could act on right now before we accept this committee report and that we should act on right now because they need to be done tonight too.

My question is why should we accept more work when we haven't finished the work we've already started?

ACTING PRESIDENT KUHL: Senator Dollinger, you're directing that question you said to the President of the Senate, which I believe is the title that I'm currently acting in.

Are you directing that to me, or are you directing that to some other member?

SENATOR DOLLINGER: I'm directing it to the Temporary President, Mr. President, to the Majority Leader, whichever title - whichever hat he's wearing at the current time.

ACTING PRESIDENT KUHL: So Majority Leader, you're asking him. Now, you should understand there's a question as to whether or not that question is relevant. The question before us as to whether or not we should accept the report of the Rules Committee, that is a motion properly before this house, as

you know, and if you consulted the rules, which I'm sure you have at this point, you know that you're entitled to a half hour debate as the Minority on this issue.

So at this point the debate is about four minutes on your side and you have about 26 minutes left, if that's what you wish to do.

Now, if you wish to exhaust that time in debate by asking the Majority Leader of this house questions and he wishes to respond, then certainly that is your prerogative.

Now, is that your desire?

SENATOR DOLLINGER: That is my desire, Mr. President. Once again you have - even at this late hour at this late day you have both articulated the rule and I think evenhandedly applied it.

So I appreciate that, Mr. President.

ACTING PRESIDENT KUHL: Senator Bruno, would you like to respond?

SENATOR BRUNO: Thank you, Mr. President.

Mr. President, may I suggest that

we lay this motion aside?

ACTING PRESIDENT KUHL: The motion is laid aside.

SENATOR BRUNO: Laid aside. That's a good move, isn't it? And, Mr. President, I would recommend that we return to standing committees, and I believe the Rules Committee has met and they now have a report that is at the desk. I would ask that that report be read and move for its acceptance.

ACTING PRESIDENT KUHL: There is another report of the Rules Committee at the desk.

I'll ask the Secretary to read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bill:

5651, by the Committee on Rules, an act to amend the Insurance Law.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Move to accept the report, Mr. President.

ACTING PRESIDENT KUHL: The motion is to accept the report of the Rules

Committee. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The Rules report is accepted.

Senator Bruno -- the bill is ordered directly to third reading.

Senator Bruno.

SENATOR BRUNO: Read the last section, Mr. President.

ACTING PRESIDENT KUHL: The Secretary will read the title.

THE SECRETARY: Calendar Number 1504, by the Committee on Rules, Senate Print 5651, an act to amend the Insurance Law, in relation to medical malpractice insurance.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 8. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

SENATOR BRUNO: Mr. President.

ACTING PRESIDENT KUHL: Senator

Bruno.

SENATOR BRUNO: Was there a message at the desk?

ACTING PRESIDENT KUHL: Yes, there is, Senator Bruno.

SENATOR BRUNO: I move we accept the message.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Number 1504. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The message is accepted. The bill is before the house.

The Secretary will read the last section.

THE SECRETARY: Section 8. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: The bill

is passed.

SENATOR BRUNO: Mr. President, there being no further business to come before the Senate, I would move that we stand adjourned until Tuesday, at 11:00 a.m.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until Tuesday, at 11:00 a.m., intervening days to be legislative days.

SENATOR BRUNO: Mr. President, intervening days to be legislative days.

(Whereupon, at 11:41 p.m., the Senate adjourned.)