ALBANY, NEW YORK

August 4, 1997

12:28 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

ACTING PRESIDENT KUHL: The Senate will come to order.

SENATOR BRUNO: Can we convene the Senate on Monday at 12:28 a.m.

ACTING PRESIDENT KUHL: The Senate is in order.

Ask the members to please rise and join me in saying the Pledge of Allegiance to the Flag.

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

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

(A moment of silence was observed.)

Reading of the Journal.

THE SECRETARY: In Senate, Sunday, August 3rd. The Senate met pursuant to adjournment. The Journal of Saturday, August 2nd, 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.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we 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.

A VOICE: But do we need it?

ACTING PRESIDENT KUHL: Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

(Long pause)

SENATOR BRUNO: Can the Senate presently stand at ease awaiting a report from the Rules Committee and then I would recommend an immediate conference of the Majority in Room

332, and I believe that the Minority plans on conferencing at the same time, is that correct?

SENATOR PATERSON: That's correct, Mr. President. That's correct, Mr. Majority Leader.

ACTING PRESIDENT KUHL: The Senate will stand at ease awaiting a report of the Rules Committee. Upon receipt of the Rules Committee, there will be an immediate Minority Conference in the Minority Conference Room. There will be an immediate Majority Conference in the Majority Conference Room.

Senate stands at ease.

(The Senate stood at ease from 12:36 a.m., until 12:53 a.m.)

The Senate will come to order. Senator Larkin.

SENATOR LARKIN: Can we return to reports of standing committees. We have a report from the Rules Committee.

ACTING PRESIDENT KUHL: We'll return to the order of reports of standing committees. There is a Rules report at the desk. I'll ask the Secretary to read.

THE SECRETARY: Senator Bruno,

from the Committee on Rules, offers up the following bills directly for third reading:

3512-A, by Senator Spano, an act to amend the Civil Practice Law and Rules;

5644-A, by Senator Volker, an act to amend the Public Authorities Law;

5759, by the Committee on Rules, an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law;

5787, by Senator Holland, an act to amend Chapter 462 of the Laws of 1996.

All bills directly for third reading.

ACTING PRESIDENT KUHL: Senator Larkin.

SENATOR LARKIN: Move to accept the report, Mr. President.

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. The bills are ordered directly to third

reading.

Senator Larkin.

SENATOR LARKIN: Mr. President, can we now stand at ease until the conferences of the respective caucuses have been completed.

ACTING PRESIDENT KUHL: O.K. There are -- there's a conference of the Minority immediately. There's a conference of the Majority in their respective conference rooms, and the Senate will stand at ease.

Senator Paterson, did you wish to be recognized?

SENATOR PATERSON: I wanted to verify the current date, Mr. President.

ACTING PRESIDENT KUHL: Last I knew, it was August 4th.

SENATOR PATERSON: Thank you, Mr. President.

(The Senate stood at ease from 12:55 until 1:52 a.m.)

ACTING PRESIDENT KUHL: The Senate will come to order. Members please take their chairs, staff their spots.

Senator Holland.

SENATOR HOLLAND: Mr. President,

can we go to Senate Calendar Number 66 of Monday, August the 4th, and do Calendar Number 1645, please.

ACTING PRESIDENT KUHL: For the benefit of the members, we'll be taking up the new calendar on your desk. It's Calendar Number 66 for Monday, August the 4th, and you should know that the bills that are listed are a composite of the bills that have not passed on various calendars of the last two days. With that, on page 6 of the new calendar, Secretary will read Calendar Number 1645.

THE SECRETARY: Calendar Number 1645, by the Committee on Rules, Senate Print 5759, an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 25. 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 1645 are Senators Dollinger, Leichter, Spano, Tully and Velella. Ayes 52, also Senator Stavisky, Senator Oppenheimer. Ayes 50, nays 7.

(Senator Oppenheimer indicated an affirmative vote.)

ACTING PRESIDENT KUHL: Announce the results. Read the negatives again, please.

THE SECRETARY: Senators Dollinger, Leichter, Spano, Stavisky, Tully and Velella. Also Senator -

(Senator Oppenheimer indicated a negative vote.)

ACTING PRESIDENT KUHL: Senator Oppenheimer, you only get a chance to vote once. Now, we have to make up our mind whether it's in the affirmative or in the negative.

SENATOR OPPENHEIMER: (Inaudible comment-laughter) In the negative.

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

SENATOR GOLD: Close the roll quick.

THE SECRETARY: Ayes 50, nays 7.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Holland.

SENATOR HOLLAND: Mr. President, we're waiting for some messages of necessity. We'll have to stand at ease until we get some of those unless there are some.

ACTING PRESIDENT KUHL: We have some housekeeping, Senator Holland.

SENATOR HOLLAND: Please.

ACTING PRESIDENT KUHL: If we could return to the order of motions and resolutions, I'd like to recognize Senator Marcellino for the purpose of motions.

Senator Marcellino.

SENATOR MARCELLINO: Simulcast, did you tell -- excuse me.

Mr. President, I wish to call up Senator Saland's bill, Print Number 5,356 recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: By Senator Saland, Senate Print 5356, an act to amend the

Penal Law.

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 57.

ACTING PRESIDENT KUHL: Bill is before the house. Senator Marcellino.

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

ACTING PRESIDENT KUHL: Amendments are received and adopted.

SENATOR MARCELLINO: Thank you.

The Senate will stand at ease awaiting -

SENATOR PADAVAN: Mr. President.

ACTING PRESIDENT KUHL: Senator Padavan.

SENATOR PADAVAN: I'd like to be

recorded in the negative on Calendar Number 1645.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Padavan will be recorded in the negative on Calendar Number 1645.

(The Senate stood at ease from 1:56 to 2:07 a.m.)

ACTING PRESIDENT KUHL: Senate will come to order.

SENATOR STAVISKY: Mr. President.

ACTING PRESIDENT KUHL: Senator Stavisky.

SENATOR STAVISKY: Mr. President, has Calendar Number 1586 been passed? On page 5.

ACTING PRESIDENT KUHL: No, no, that's on the calendar. It has not passed.

SENATOR STAVISKY: Thank you.

ACTING PRESIDENT KUHL: Senator Holland.

SENATOR HOLLAND: You ready? Mr. President, can we take up Calendar Number 1643, please.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 1633 on the calendar on your desk, Calendar Number 66.

THE SECRETARY: Calendar Number 1643, by Senator Spano, Senate Print Number 3512-A, an act to amend the Civil Practice Law and Rules.

SENATOR HOLLAND: Is there a message at the desk, Mr. President?

ACTING PRESIDENT KUHL: There is.

SENATOR HOLLAND: Move we accept the message.

ACTING PRESIDENT KUHL: Motion is to accept the message on Calendar Number 1643. 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.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Holland.

SENATOR HOLLAND: Yeah. Why don't we do Calendar Number 1646, please.

ACTING PRESIDENT KUHL: Secretary will read the title to Calendar Number 1646.

THE SECRETARY: Calendar Number 1646, by Senator Holland, Senate Print 5787, an act to amend Chapter 462 of the Laws of 1996.

ACTING PRESIDENT KUHL: Senator Holland.

SENATOR HOLLAND: Is there a message?

ACTING PRESIDENT KUHL: There is.

SENATOR HOLLAND: Move we accept the message.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity on Calendar Number 1646. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted. 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.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Holland.

SENATOR HOLLAND: Can we do 1644, please.

ACTING PRESIDENT KUHL: Secretary will read the title to Calendar Number 1644.

THE SECRETARY: Calendar Number 1644, by Senator Volker, Senate Print 5644-A, an act to amend the Public Authorities Law.

ACTING PRESIDENT KUHL: Senator Holland.

SENATOR HOLLAND: Is there a

message of necessity at the desk?

ACTING PRESIDENT KUHL: There is.

SENATOR HOLLAND: Move we accept the message.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Number 1644. All those 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 DOLLINGER: Explanation.

ACTING PRESIDENT KUHL: Senator Volker, an explanation has been requested by Senator Dollinger.

SENATOR VOLKER: Mr. President, let me first of all say that this bill represents an agreement between the both houses of the Legislature and the Governor and with the help, frankly, of all leaders here, I'd like to first certainly thank the Governor for his help in this, the Majority Leader, the Speaker, and

I'd also like to say, and I'll say it to start with that this bill which, as I think you can see, has all the members of our delegation on it, frankly, on both sides, is a bill that represents an answer to a problem for one of the major hospitals in this country, the Roswell Park Cancer Institute.

It was worked on, let me say, by the way, very ably and I'm going to read these because I think it's important, by a number of staff people here who did an excellent job, Mary Louise Mallick, and Abe Lackman, of course, Mary Louise who works for Abe, Kathy Bryan, from Senate staff, Jane Preston from Senator Hannon's office and Senator Hannon was very important to us, and Donna Montalto and Jeff Buley from Senator Bruno's staff, as well as a number of people certainly in the Governor's office.

The reason this is important because to us in Western New York we have had a number of difficult issues over the last several years. One of these has been the declining financial structure of Roswell Park. What this bill represents is a plan to restructure the Roswell Park hospital, to make sure that it is

viable, by setting up a public benefit corporation.

The budget provides additional funding for Roswell Park to give it what could be called bridge funding, I suppose, as it moves off into the future. One of the biggest problems with many of the public hospitals, and we have already seen legislation in this house and in both houses, on public hospitals, is governance and what this bill does is it changes the governance, the ability of this hospital to manage itself. We have -- Roswell is hiring one of the top people in the country, in Dr. Hoehn from one of the major hospitals in the country from Texas, so we are very, very hopeful that what this bill will do is to set up a process that would put Roswell back in a financially strong position and allow it to become totally viable.

It's a very important part of the Western New York fabric. It's not been easy. In all honesty, we've had our problems back in Buffalo recently, as more frankly with negative ness in the community. The business community is extremely negative, and the media has been

pretty negative on this issue.

There were many who said, Well, what you just do with this hospital is privatize it. The problem is that some people don't realize that privatization is not always the answer, and what we're trying to do here is develop a rational process for making sure that this hospital succeeds and also that people's jobs are protected wherever possible.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I've had an opportunity to speak with Senator Volker briefly about this bill before it came to the floor, and I want to commend him for his leadership, and the Buffalo delegation. I'm pleased to see that this is an obviously important bill for my colleagues from Buffalo; and how do I know it's very important? I, frankly, not only see all the members of the Republican delegation from the Buffalo community, but I see the Democratic

members as well.

Senator Volker, while voting for this, I just have one caveat which I think is important to my community 90 miles down the road from Buffalo, and that is that, as we devise a health care system that is based on a free market series of principles, government intervention in that market place, whether it's either changing assessments for certain groups or providing public funds for certain entities, has the net impact of occasionally skewering that free market and we end up with a displacement which no longer represents a true free market, but ends up in a market that is tinkered with in certain areas.

I know I've heard from lots of people at CSEA about the importance of Roswell Park, and I know and I agree with you, Senator, that it's an important part of the Western New York fabric, but as we model that fabric, in a free market notion, and as we create competition between our health care providers in an effort to drive down costs, I just think we have to pay attention to the fact that government intervention in that free marketplace can have

the effect of skewering the free market and ending up in a situation where it's no longer free market principles that control but instead government is dictating the future course.

When the advertisements for Roswell Park show up in Rochester, New York, to the disadvantage to Strong Memorial Hospital, Rochester General Hospital, and our private sector not-for-profit hospitals, then there's a danger that that kind of skewing can occur.

So, Senator, I'm going to vote for this. I understand how important this is to the Buffalo delegation. I can see it on the face of this bill, but I just think it's one of these things that we have to monitor carefully to make sure, if we're going to go down the road to a free market system, we're fully aware of how we preserve that system and if we do any tinkering of it, we do it for the public benefit.

I understand it's being done for that reason, and for that reason alone I'm going to support it.

ACTING PRESIDENT KUHL: Senator Nanula.

SENATOR NANULA: Thank you, Mr. President. Very briefly, on the bill.

I want to start by firstly thanking you, Senator Volker, for ensuring that this effort was, in fact, a bipartisan effort in regard to the listing of both Democrats and Republicans on this bill, and Roswell Park Cancer Institute is just that. It's an institute, the first of its kind in the nation, devoted to researching a cure for cancer and my esteemed colleague from Monroe, Rick Dollinger, and, of course, I understand the importance of Strong to the Rochester community, but we have to understand as New Yorkers that Roswell Park Cancer Institute is a New York State institution and, in fact, is a national institution, and we also should remind ourselves that as a state we put significant dollars, to the tune of almost $300 million, into Roswell Park several years ago, a construction process that is just now coming to fruition, and with this legislation and the great effort behind it to ensure that this institution can be one that's empowered to move itself into the 21st Century, to work with the private sector, the HMOs, and the merged

hospital networks that are coming together in Western New York, it can be in fact a dynamic vibrant entity not only for Western New York and not only for New York State, but for this country and really again put itself on the forefront of cancer research, and hopefully in the forefront of finding cures to cancer.

So with that again, I want to thank Senator Volker on behalf of his bipartisan initiative here, and for that matter all those on both sides of the aisle that were involved in bringing this legislation forward.

Thank you, Mr. President.

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

THE SECRETARY: Section 25. 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.

Senator Holland.

SENATOR HOLLAND: Stand at ease please, Mr. President.

ACTING PRESIDENT KUHL: The Senate will stand at ease.

(The Senate stood at ease from 2:20 a.m. to 3:47 a.m.)

ACTING PRESIDENT NOZZOLIO: Senator Skelos.

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

ACTING PRESIDENT NOZZOLIO: Immediate meeting of the Rules Committee in the Majority Conference Room.

(The Senate stood at ease from 3:53 a.m. until 4:20 a.m.)

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, on Senate Calendar Number 66, would you please call up Calendar 1155.

ACTING PRESIDENT MEIER: Secretary will read.

THE SECRETARY: Calendar Number

1155, by Senator Stafford, Senate Print 5349-C, an act to amend the Lien Law.

SENATOR SKELOS: Mr. President, is there a message of necessity at the desk?

ACTING PRESIDENT MEIER: There is a message at the desk.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT MEIER: Motion 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 of necessity is accepted. Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MEIER: The bill is passed.

SENATOR SKELOS: Would you -- on

the same calendar, would you call up Calendar Number 1385.

ACTING PRESIDENT MEIER: Secretary will read.

THE SECRETARY: Calendar Number 1385, by Senator Rath, Senate Print 5535-A, an act authorizing the town of Amherst.

SENATOR SKELOS: Is there a message at the desk?

ACTING PRESIDENT MEIER: There is a message at the desk.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT MEIER: 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 of necessity is accepted. Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you call up Calendar Number 1502.

ACTING PRESIDENT MEIER: Secretary will read.

THE SECRETARY: Calendar Number 1302 -

SENATOR SKELOS: It was recalled and restored today, to the calendar today.

THE SECRETARY: Calendar Number 1302, by Senator Saland, Senate Print 5356-A, an act to amend the Penal Law.

SENATOR SKELOS: Is there a message at the desk?

ACTING PRESIDENT MEIER: There is a message at the desk.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT MEIER: 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. Read the last section.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT MEIER: Oh, sorry. Senator Leichter.

SENATOR LEICHTER: Which calendar is that, 1302?

ACTING PRESIDENT MEIER: It's Calendar 1302, Senator Leichter.

SENATOR SKELOS: That was restored to the calendar today, but it's not in the calendar.

ACTING PRESIDENT MEIER: The bill is on the desk.

SENATOR LEICHTER: Yeah.

Maybe Senator Saland could quickly tell us what changes were made in this bill.

ACTING PRESIDENT MEIER: Senator Saland, an explanation of changes has been requested by Senator Leichter.

SENATOR SALAND: Senator Leichter, I believe what the changes are, and

I'd need the marked up copy of the preceding bill, but I believe that they may primarily deal with the stepped up "E" felony penalty where there is a predicate for having been convicted previously within the past five years of non-support of a child which was the underlying "A" misdemeanor, but if you would like I certainly can take a -- take a look at the prior print and tell you with greater specificity.

SENATOR LEICHTER: We'll forget it. Last section.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MEIER: The bill is passed.

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 MEIER: Secretary will read.

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

Senate Print 2543, by Senator Spano, an act to amend the Retirement and Social Security Law;

3738, by Senator Breslin, an act to amend the Tax Law;

4139, by Senator Spano, an act to amend the Workers' Compensation Law;

4409-C, by Senator Rath, an act to authorize the trustees of the State University;

4598, by Senator Velella, an act to amend the Administrative Code of the city of New York;

4749-B, by Senator Skelos, an act to amend the Agriculture and Markets Law;

4842, by Senator Goodman, an act to amend the Real Property Tax Law;

5024-A by Senator Farley, an act

to amend the Retirement and Social Security Law;

5119-B, by Senator Alesi, an act to amend the Education Law;

5391, by Senator Seward, an act to amend the Public Service Law;

5501-C, by Senator Rath, an act to amend the Education Law;

5577-A, by Senator Present, an act to amend the Indian Law;

5631-A, an act -- by Senator Spano, an act to amend the Public Service Law;

5738, by Senator Trunzo, an act to amend the Retirement and Social Security Law;

5740, by Senator Farley, an act to legalize, validate acts by the Fonda Fultonville Central School;

5748, by the Committee on Rules, an act to amend the Tax Law;

5749, by the Committee on Rules, an act to amend the Tax Law;

5751, by Senator Goodman, an act to amend the Real Property Law;

5755, by Senator Spano, an act creating a temporary state commission;

5768, by Senator Velella, act to

amend the General Business Law;

5776, by Senator Maltese, an act to amend the Retirement and Social Security Law;

5786, by the Committee on Rules, an act to amend the Public Authorities Law;

5789, by Senator Volker, an act to amend the Criminal Procedure Law; and

5790, by Senator Maziarz, an act to amend the facility schools to expedite.

All bills directly for third reading.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Move to accept the report of the Rules Committee.

ACTING PRESIDENT MEIER: 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 of the Rules Committee is accepted. All bills are referred to third reading.

SENATOR SKELOS: Mr. President,

at this time if we could take up Senate Supplemental Calendar 66-A, non-controversial.

ACTING PRESIDENT MEIER: Secretary will read.

THE SECRETARY: Calendar Number 1647, by Senator Spano, Senate Print 2543, an act to amend the Retirement and Social Security Law.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1648, in relation to Calendar Number 1648, Senator Breslin moves to discharge from the Committee on Rules Assembly Bill Number 6118, and substitute it for the identical Senate bill, Third Reading 1648.

ACTING PRESIDENT MEIER: Substitution ordered. Secretary will read.

THE SECRETARY: Calendar Number 1648, by member of the Assembly McEneny, Assembly Print 6118, an act to amend the Tax Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1649, in relation to Calendar Number 1649, Senator Spano moves to discharge from the Committee on Labor Assembly Print 6543 and substitute it for the identical Senate bill, Third Reading 1649.

ACTING PRESIDENT MEIER: Substitution ordered. Secretary will read.

THE SECRETARY: Calendar Number 1649, by member of the Assembly Nolan, Assembly Print 6543, an act to amend the Workers' Compensation Law.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 3. -

SENATOR LEICHTER: Lay aside.

ACTING PRESIDENT MEIER: Lay the

bill aside.

THE SECRETARY: Calendar Number 1650, by Senator Rath, Senate Print 4409-C, an act to authorize the trustees of the State University.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1651, by Senator Velella, Senate Print 4598, an act to amend the Administrative Code of the city of New York.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1652, by Senator Skelos, Senate Print 4749-B, an act to amend the Agriculture and Markets Law.

SENATOR SKELOS: Is there a message of necessity at the desk?

ACTING PRESIDENT MEIER: There is a message at the desk.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT MEIER: 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.)

Message of necessity is accepted. Secretary will read.

I'm sorry. Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1653, in relation to Calendar Number 1653, Senator Goodman moves to discharge from the Committee on Rules Assembly Print 8345 and substitute it for the identical Senate bill, Third Reading 1653.

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

THE SECRETARY: Calendar Number 1653, by the Committee on Rules, Assembly Print 8345, an act to amend the Real Property Tax Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1654, by Senator Farley, Senate Print 5024-A, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT MEIER: Read the last -

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: 1656, by Senator Seward, Senate Print 5391, an act to amend the Public Service Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1657, by Senator Rath, Senate Print 5501-C, an act to amend the Education Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1658, by Senator Present, Senate Print 5577-A, an act to amend the Indian Law.

ACTING PRESIDENT MEIER: Read the last section.

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

SENATOR LEICHTER: Lay aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1659, by Senator Spano, an act to amend the

Public Service Law.

SENATOR SKELOS: Mr. President, is there a message of necessity at the desk?

ACTING PRESIDENT MEIER: There is.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT MEIER: 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 of necessity is accepted. Secretary will read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1660, by Senator Trunzo, Senate Print 5738, an

act to amend the Retirement and Social Security Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

SENATOR PADAVAN: Mr. President, I'd like to explain my vote.

ACTING PRESIDENT MEIER: Senator Padavan, to explain his vote.

SENATOR PADAVAN: I've read this bill and I must confess that it is rather complex in terms of understanding the fiscal impacts, although there is a notation at the very end indicating that it is fiscally neutral in terms of any cost to the city of New York in terms of an early retirement program for our teachers.

But I do find something else which I do find rather troubling. This early retirement program would be effective

immediately. I'm sure many of you have noted some articles in the media just recently indicating a severe shortage of teachers within the City system. It has reached really a very, very troubling level, not only in terms of not enough teachers but also teachers who are certified. A significant percentage of our pedagogical staff in the city of New York are uncertified in their various categories.

Now, this takes effect immediately. That means that in September, the school year just beginning, the Board of Education of the city of New York might find itself in a position of having significantly fewer teachers than it planned on having, with absolutely no reasonable amount of time to replace them and, as I'm sure you're also aware, in recent years and this year will be no different, the number of pupils entering in the system will increase by 20- to 25,000.

Now, with all of those factors, I think, to be considered, it would seem to me that it's imprudent to make this law effective immediately. It would have been more appropriate, I think, to allow the City, the

Board of Education, some time to at least recruit and adjust for what obviously will be very significant shortfalls and so, for that reason, Mr. President, I will have to vote no.

ACTING PRESIDENT MEIER: Senator Padavan will be recorded in the negative. Announce the results.

THE SECRETARY: Ayes 56, nays -

ACTING PRESIDENT MEIER: The bill is passed.

Oh, I'm sorry.

THE SECRETARY: Ayes 55, nays 2, Senators Padavan and Leichter recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1661, by Senator Farley, Senate Print 5740, an act to legalize and validate acts by the Fonda Fultonville Central School.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1662, by the Committee on Rules, Senate Print 5740-A, an act to amend the Tax Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1663, by the Committee on Rules, Senate Print 5749, an act to amend the Tax Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1664, by Senator Goodman, Senate Print 5751, an act to amend the Real Property Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1665, by Senator Spano, Senate Print 5755, an act creating a temporary state commission.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 10. This

act shall take effect immediately.

SENATOR LEICHTER: Lay aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: 1668, by Senator Velella, an act to amend the General Business Law.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date as such chapter of the laws of 1997.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1669, by the Committee on Rules, Senate Print 5786, an act to amend the Public Authorities Law.

SENATOR SKELOS: Is there a message at the desk?

ACTING PRESIDENT MEIER: There is

a message at the desk.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT MEIER: 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. Secretary will read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1670, by Senator Volker, Senate Print 5789, an act to amend the Criminal Procedure Law.

SENATOR SKELOS: Is there a message of necessity at the desk?

ACTING PRESIDENT MEIER: There's

a message of necessity at the desk.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT MEIER: 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.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MEIER: Secretary will read the last section. Lay the bill aside.

Senator Skelos, that concludes the reading of the calendar.

SENATOR SKELOS: If we could have the controversial reading of that calendar.

ACTING PRESIDENT MEIER: Secretary will read the controversial calendar.

THE SECRETARY: Calendar Number 1647, by Senator Spano, Senate Print 2543, an act to amend the Retirement and Social Security Law.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT MEIER: Senator

Spano, an explanation has been requested of Calendar Number 1647.

SENATOR SPANO: Yes, Mr. President. This is a bill that allows for the Supreme Court Clerks to apply for three-quarter disability -- disability retirement.

Last year we passed a bill to offer Supreme Court Officers to -- to have this same option. It was signed into law by the Governor. The Supreme Court Clerks do much of the same work as the Supreme Court Officers and have the same exposure as do those other officers and this bill gives them that option.

SENATOR LEICHTER: If you -- if you'd yield, please, Senator Spano.

SENATOR SPANO: Sure.

ACTING PRESIDENT MEIER: Senator yields.

SENATOR LEICHTER: You know, I have no problem, as I said before, if there's a real risk related to somebody's employment. I think we ought to compensate them if they're injured in the course of performance, but what risk do these court officers take?

SENATOR SPANO: They're under

extreme risk in the courts.

SENATOR LEICHTER: Like what? They drop their pencil?

SENATOR SPANO: The bail... the Supreme -- the court officers are the -- are an officer of the court obviously, and they have a great deal of exposure in terms of the prisoners that are brought before the judge, so the - there are a lot of -- we're seeing increasing weapons that have been confiscated in -- in our courtrooms.

The courtroom crime has been increasing. The court clerks have been gaining in their responsibilities, in their duties, and they are exposed to hazards in their job.

SENATOR LEICHTER: Mr. President. Mr. President, Senator Spano, you know, I go to court occasionally; I used to go more often and litigate. I must say I've never found the courtroom a particularly dangerous or risky place, but you tell us, you know, that the incidents have increased, and so on. Do you have any figures or any statistics that show that there's been, in fact, an increase to these accidents to these court officers related to

them having to deal with violence in the courtroom? I mean are we dealing with a serious problem, Senator, that we ought to address and rectify?

SENATOR SPANO: We do -- we do not have any -- any specific statistics that I can share with you, Senator, but I'll tell you that if it is not a problem, then they would not be applying for an accidental -- accidental disability, so for them, if an injury does occur, we're giving them that option.

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

SENATOR SPANO: Sure.

SENATOR LEICHTER: Senator, your theory is, well, just in case an accident occurs, would you be in favor of across the board throughout the pension system to apply the rule that anybody should be entitled to retire on three-quarters disability if they have any accident at all in the course of their employment?

SENATOR SPANO: No, I don't think that we would -- I certainly would not support that type of measure across the board. We're

talking about peace officers; we're talking about individuals in a state or -- who are in high risk jobs and who deal on a daily basis in the hazards of the court system.

SENATOR LEICHTER: Well, Senator, Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Leichter, on the bill.

SENATOR LEICHTER: Thank you, Senator Spano. I mean in all fairness, you've been unable to identify any hazards or any particular problems for these people who, as I understand it, are not uniformed court officers but who we've given the status of peace officers.

We've given the status of peace officers to so many people, I don't know if there's ten people left in New York state who aren't peace officers. It just seems -- Senator Skelos would like a bill making him a peace officer, but in all seriousness, I mean we ought to be certainly fair to all of the public employees. We appreciate their work, but I think we -- if we're going to give them a benefit, I think it's got to be based on some

rational basis.

I've heard nothing that Senator Spano says which justifies this increased expense to the pension system. We are talking about public monies. It seems to me that we have a responsibility to see that these public monies, after all these are charges on the employers, that if there's a justification for it, fine. If there's not, we shouldn't do it. I've heard no justification. I think, frankly, this is a gift that Senator Spano is making to certain court officers, and I don't think it's justified.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56, nays one, Senator Leichter recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number

1649, by member of the Assembly Nolan, Assembly Print 6543, an act to amend the Workers' Compensation Law.

SENATOR SKELOS: Last section.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 180th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1654, by Senator Farley, Senate Print 5024-A, an act to amend the Retirement and Social Security Law.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT MEIER: Senator Farley, an explanation has been requested of Calendar Number 1654.

SENATOR FARLEY: I'm delighted to explain it at this hour. Senator Leichter, you want this explanation?

SENATOR LEICHTER: Please.

SENATOR FARLEY: This is a bill that affects one of the most popular state workers that we have, the forest rangers. It would allow DEC's forest rangers to transfer from the state employees' retirement system to the state and local police and firemen retirement system. Therefore, like other officers, forest rangers could elect either the 25-year retirement plan or retirement at age 60.

This bill recognizes that DEC's forest rangers both have police and fire responsibilities. They are the only state employees with significant firefighting responsibilities, including fire suppression, supervision of local units and prevention activities. They are also designated peace officers who enforce a variety of environmental law. They're also required to complete mandatory basic and annual police training. They direct and participate in emergency rescue operations.

Because of these dual police and fire responsibilities, forest rangers should be

eligible for membership in the state and local police retirement systems, in my judgment.

SENATOR SKELOS: Last section.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MEIER: The bill is passed.

SENATOR OPPENHEIMER: Mr. President.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: I'd like unanimous consent to be recorded in the negative on, it's S. 5749, which is -

ACTING PRESIDENT MEIER: Calendar 1663, Senator. Without objection, Senator Oppenheimer will be recorded in the negative on Calendar Number 1663.

SENATOR OPPENHEIMER: Thank you.

ACTING PRESIDENT MEIER: Secretary will read.

THE SECRETARY: Calendar Number 1658, by Senator Present, Senate Print 5577-A, an act to amend the Indian Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1665, by Senator Spano, Senate Print 5755, an act creating a temporary commission on employment classifications.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR LEICHTER: I have a question.

ACTING PRESIDENT MEIER: Senator Leichter.

SENATOR LEICHTER: Yes, if Senator Spano would yield, please.

ACTING PRESIDENT MEIER: Senator Spano, Senator Leichter asks if you would yield for a question.

SENATOR SPANO: Yes.

SENATOR LEICHTER: Senator, I notice in setting up this commission, that while you give two appointments to the Speaker and to the Majority Leader, you give no appointments to the Minority. That's always troubled us on this side of the aisle.

SENATOR SPANO: Well, that always troubled me when I was in the Assembly also.

SENATOR LEICHTER: Well, and therefore, did you learn from that, Senator?

SENATOR SPANO: No, no -- or some say yes.

A VOICE: Enjoying the joke.

SENATOR SPANO: That's why I switched.

SENATOR LEICHTER: Well, Senator, -- apparently you did learn, Senator, but maybe the wrong lesson. Let me -- let me just ask you another question. Really, what is -- what is

the need for this commission, Senator? We have a Civil Service Commission. Can't they do this work?

SENATOR SPANO: They haven't been able to do this. There has been an enormous amount of confusion for the last number of years on the designation of what -- who, in fact, is an independent contractor. We have a number of bills that have been presented to the Labor Committee, whether it be taxicab drivers or models, and we probably have a dozen different classifications that have been sent to us, where we're trying to come to terms with the entire issue of just who is an independent contractor. One way for us to come with some clear, concise bill that will be able to pull everybody in will be to get the -- the departments involved, the Department of Labor and Taxation and Finance, the Workers' Comp' Board, which are agencies which deal with each of those issues as well as representatives from the Legislature, so that we can reach out to the affected groups and come in with an all-encompassing bill to finally deal with this issue once and for all.

SENATOR LEICHTER: Mr. President,

if Senator Spano will continue to yield. I still haven't heard why the Civil Service Commission can't do it or, for that matter, why the standing committees of the Senate and Assembly can't draft a bill and deal with all of these classifications.

SENATOR SPANO: Mr. President, there are a lot of conflicting interests in not only in the Labor Law, the Workers' Compensation Law, the Department of Taxation and Finance, each of these agencies all attack this issue in a different direction, and what we're asking for in this legislation that is being supported by the AFL-CIO as well as The Business Council is for us to get everyone at the same table working in the same direction to develop a comprehensive solution to a problem.

SENATOR LEICHTER: Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Leichter, on the bill.

SENATOR LEICHTER: Maybe it's because of the lateness of the hour and I don't appreciate fully what Senator Spano said, but I'm no more convinced on this bill, Senator

Spano, than I was on your previous bill and I just point out that I just think it's a wrong way to go that when you set up a commission of this sort, you exclude the Minority. You should have more regard for your Republican colleagues in the Assembly, and you should have more regard for your Democratic colleagues in the Senate.

I think if we -- if a commission is to be set up, and I'm not convinced that you need it, I think you should provide for Minority appointments. In view of that, I think that's reason enough not to vote for it, but I fail to see the real need for this commission.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

SENATOR CONNOR: Party vote in the negative.

SENATOR SKELOS: Party vote in the affirmative.

ACTING PRESIDENT MEIER: Party vote. Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 34, nays 23, party vote.

ACTING PRESIDENT MEIER: The bill is passed.

Secretary will read.

THE SECRETARY: Calendar Number 1670, by Senator Volker, Senate Print -

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: On Calendar Number 1663, Senate Bill 5749, I'd like unanimous consent to be recorded in the negative. I believe it's an extender of the commuter tax.

ACTING PRESIDENT MEIER: Without objection, Senator Skelos will be recorded in the negative on Calendar Number 1663.

SENATOR SPANO: Mr. President.

ACTING PRESIDENT MEIER: Senator Spano.

SENATOR SPANO: Can I also be recorded in the negative on Calendar 1663.

ACTING PRESIDENT MEIER: Without

objection. Will you hold just one second.

All right. Would anyone else desire -- we're going to have to recognize you one at a time because we've completed that roll call.

Senator LaValle.

SENATOR LAVALLE: Mr. President, may I be recorded in the negative on Calendar Number 1663, please.

ACTING PRESIDENT MEIER: Without objection, Senator LaValle will be recorded in the negative on Calendar 1363.

Senator Lack.

SENATOR LACK: Thank you, Mr. President.

Without objection, I too would like to be recorded in the negative on Calendar 1663.

ACTING PRESIDENT MEIER: Without objection, so ordered.

Senator Trunzo.

SENATOR TRUNZO: Without objection, I'd like to be recorded in the negative on Calendar 1663.

ACTING PRESIDENT MEIER: Without

objection, Senator Trunzo in the negative.

Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

I, too, would like unanimous consent to be recorded in the negative on 1663.

ACTING PRESIDENT MEIER: Without objection.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President. I, too, would like to be recorded in the negative on Calendar Number 1663.

ACTING PRESIDENT MEIER: Without objection.

Senator Larkin.

SENATOR LARKIN: I'd like to be recorded in the negative on Calendar 1663.

ACTING PRESIDENT MEIER: Without objection.

Senator Tully.

SENATOR TULLY: Mr. President, please record me in the negative on Calendar Number 1663.

ACTING PRESIDENT MEIER: Without

objection.

Senator Hannon.

SENATOR HANNON: Mr. President, I'd like to be recorded in the negative on Calendar Number 1663.

ACTING PRESIDENT MEIER: Without objection.

Is there any other Senator who wishes to change his -- Senator Johnson.

SENATOR JOHNSON: No. Is that right?

ACTING PRESIDENT MEIER: Without objection, Senator Johnson wishes to be recorded in the negative on Calendar Number 1663.

Does any other Senator wish to change his vote with regard to Calendar Number 1663?

(There was no response.)

Secretary will read.

THE SECRETARY: Calendar Number 1670, by Senator Volker, Senate Print 6789, an act to amend the Criminal Procedure Law.

SENATOR WALDON: Explanation.

ACTING PRESIDENT MEIER: Senator Volker, an explanation has been requested of

Calendar Number 1670.

SENATOR VOLKER: Mr. President, this is a Governor's program bill relating to actually three separate cases, Court of Appeals cases, which in all honesty passed this house, that is, what these cases represent, the changes in these passed this house earlier this year in a very large bill, called the Police and Public Protection Act, if I'm not mistaken.

What this bill represents is, from what I'm told by the Governor's office - Mr. President. I hate to do this, but -

ACTING PRESIDENT MEIER: Senator Waldon, your point is well taken. Can we have some order in the house so Senator Volker can be heard.

Senator Volker, please proceed.

SENATOR VOLKER: At any rate, I've been asked to do this because the Governor's office, I'm told, has been discussing this with the Assembly in an attempt specifically to deal with these three areas.

The first area relates with the change in the People versus -- People vs. Holman case which states that the indicia of the

requirements of probable cause and reasonable suspicion, a police officer must have an objective, credible reason, not necessarily criminality before they may approach a suspect and ask non-threatening questions. In other words, the police officer does not have to - does not have to know that there was a crime committed or suspect that a crime has been committed but must have an objective, credible reason to approach a person in a public place.

Secondly, the People vs. Doaks case, which was another rather famous case which stated that a person -- a case was thrown out or a number of convictions were thrown out simply because the defendant was not present at some portion of the trial. In one case the defense attorney, in fact, not only didn't object but consented, but because the person wasn't there when a remark was made that could be prejudicial to him, the -- the judge on the appeal threw out the case.

That relates, by the way, to another case also that says that although there may have been a mistake made or prejudice in the case, if it turns out that the -- it could be

considered to be harmless error on appeal, then the alleged violations are to be disregarded. That case -- the harmless error case -- of course, pertained to a series of cases that have been decided primarily before the Court of Appeals, or in some cases the Appellate Division.

So there's three separate areas, the harmless error area, the stopping a person with objective, credible evidence and the issue of whether the defendant has to be present despite a waiver at any area of the trial.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT MEIER: Senator Waldon.

SENATOR WALDON: Would you ask the learned gentleman from the northwest of the state if he would yield to a question.

SENATOR VOLKER: Sure.

ACTING PRESIDENT MEIER: Senator yields.

SENATOR WALDON: Senator Volker, I appreciate your yielding. I was reading the language of the bill and came to sentence 13 which says, "*** when he has an objective -

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

SENATOR WALDON: -- comma, -

SENATOR VOLKER: Right.

SENATOR WALDON: -- credible reason -

SENATOR VOLKER: Right.

SENATOR WALDON: -- not necessarily indicative of criminality ***". Can you give me and our colleagues an example of an objective, credible reason not necessarily indicative of criminality as covered by this proposal?

SENATOR VOLKER: As we -- I think the last time we discussed this, I discussed the -- the incidents that related to the health and safety, for instance, of someone who was questioned in the street where a police officer stopped a person and thought that the possibility that that person may be ill or in some case may have been part of an incident that may not necessarily be a criminal -- be a criminal act, and that that person would then be allowed to question.

There have been several cases, by the way, where a person was stopped, it was

thought, to make certain that the person for some reason was in some sort of trouble and was found to have committed a criminal act and the case was thrown out because the court said no, that the police officer had no reason to stop that person because he didn't believe there was a crime, but under this provision, the person could be stopped because the officer would have an objective, credible reason not necessarily indicative of criminality.

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT MEIER: Senator continues to yield.

SENATOR WALDON: Senator Volker, let's accept your hypothetical for discussion sake, for dialogue's sake and for edification purposes, and let's assume that the person was sick, so the officer stopped the person, asked some questions, determined that the person was sick, would the proper and appropriate response to that apparent illness be to find medical attention for the person or to arrest and search the person's body and/or car?

SENATOR VOLKER: I think the problem is that whether -- if the proper treatment, the proper action may have been intended to be to treat that person, but if some sort of weapon or something was found on that person, then arrest may follow.

The problem is that what the courts have done in certain cases is said, even though the -- there may have been some reason, if that reason was other than criminality, then weapons have been thrown out, and all sorts of cases have been thrown out on the basis of the fact that the police officer really didn't question that person believing that there had been a crime committed or was about to be committed.

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT MEIER: Senator continues to yield.

SENATOR WALDON: Thanks, Mr. President. Thanks, Senator Volker.

Let's assume that there was no weapon found, that the hypothetical I have

presented to you which obviously wasn't clear in my presentation to you, I did not mention a weapon or other criminal purpose that would allow the officer to search and seize, but let's take a hypothetical that's very clean.

There's no weapon, there's no criminality. In your opinion, as a member of the bar and a distinguished member of this Legislature, as someone who understands better than perhaps anyone in the state our criminal law from a legislative perspective, would there be a reason for the officer to search the person or his or her car?

SENATOR VOLKER: Probably not.

SENATOR WALDON: I looked also, Senator Volker, if I may continue, if the gentleman continues to yield.

ACTING PRESIDENT MEIER: Senator continues to yield.

SENATOR VOLKER: Sure.

SENATOR WALDON: I looked further at your proposal, and I turn to the back of the proposal on page 2, and it speaks to your concern mentioned earlier in the explanation about why cases are thrown out, that the

defendant wasn't there or someone uttered a remark that was conceived as prejudicial and it was thrown out, and all of that.

Do you think that the founding fathers were mistaken when they gave certain constitutional guarantees to the people of this great nation in regard to the limits, perameters, placed upon not just the police officers, but even our court system in regard to the freedom of people in this nation?

SENATOR VOLKER: Senator, I know you asked that question of me in very good faith, but that was the wrong question. If the founding fathers ever knew what some of the courts of this state have done with the Constitution, they would be so horrified I'm sure they'd find a way in that Constitution to make sure that some of these judges would be in caapable of making the decisions they've made.

Senator, the decisions of some of the -- in the Court of Appeals of this state, not recently so much in the Supreme Court, have been so hypertechnical and so out of control with the founding fathers' original intent in the Constitution, I don't think there's any

question that those founding fathers would have been absolutely horrified and would probably have been much more explicit in making sure that it was understood that if there's real criminal activity, fine, then -- by enforcement people, or mistakes being made that had something to do with the innocence or guilt of that person, but where there is no indication that it had any real impact on the innocence or guilt of those persons, I don't think there's any question that the founding fathers of this state would have been horrified.

SENATOR WALDON: Thank you very much, Senator Volker.

If I may, Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Waldon, on the bill.

SENATOR WALDON: I am wont to disagree with you, Senator Volker, because you are truly one of the well informed persons in our legislative body, but in this instance I must absolutely disagree with you.

I believe that our founding fathers would be incensed by the fact that what

the Governor is proposing so skews the letter and intent of our constitutional guarantees. I don't think the founding fathers ever intended for the police, without reason, without provocation, to just stop people in the street because they fit a so-called, if I may, in quotes, "profile", a "hunch".

You were once a police officer; so was I, and I'm sure that you had a feeling as I did in many instances, I could smell, I could feel, I could sense that something was going on but I just couldn't stop people and throw them on the wall and search them and, if I happened to come up with something, could arrest them. It wasn't permitted then, and it shouldn't be permitted now.

Let me share something with you that I may have shared in other venues, either in committee or when I happened to be visiting with you in your office.

I witnessed personally three instances where police officers stopped young black men who happened to be driving nice cars. They searched the person of the young men, all of whom were college students, happened to be

home on holiday, searched their cars.

I jumped out of my car and interceded. Once the officers realized who I was, they sped away. I asked the young men, after I gave them my card, to let me be your advocate. This is wrong. Let me be the one who prevails upon the police department and the mayor of the city of New York to stop this foolishness. They were frightened. These are college students, the best that my community has to offer. Their parents can afford in St. Albans and Addison Park, Laurelton and Springfield Gardens, Cambria Heights and Rosedale and Queens Village, to buy these cars for these children. I know, I bought one for my son and I occasionally now have to ask him, May I borrow the best car in the house?

The police are stopping young black men in southeast Queens with abandon, searching them and searching their cars without provocation. In each of the three instances they found no "reefers", no liquor, no lights out, no rationale for stopping them. They just happened to be two young black men in each of the instances in a car, minding their own

business. It was my view at that moment in each of the instances that the only thing they had done was be black. The only thing that they had done was to be black.

As a result of that, with the cooperation of a very distinguished trainer in this nation, highly regarded at Quantico at the FBI Academy and across the nation, I with $10,000 of my discretionary funds put on a seminar and training series for young blacks so that if they were stopped by the police their actions would not exacerbate the stop into something that could result in their being arrested, because some young blacks have an attitude. They don't like to be stopped when they haven't done something that's wrong. But I recognize that they lose, that it's a lose-lose situation for them.

We did the seminar, and we gave the training, but the stops continued, so I'm now in the process of preparing a pamphlet. We're waiting for one picture for the pamphlet and the addition of one organization to show fairness in terms of the police department. This pamphlet will explain to people when you

can be stopped, what are the reasons you can be stopped, what you must do -- not resist, not give the police a hard time, for several reasons. One, you don't want to exacerbate it and, two, it is the right of the police after a certain series of actions to follow through with what they're doing.

So my concern is that why should our children have to go through such an experience? Why should they be stopped and searched and their cars searched without reason? You know as well as I, Senator Volker, that this nation stood up from a moral perspective to fight the past laws of South Africa. We as a nation felt that that kind of arbitrary and punitive action on behalf of a government against its minorities was wrong.

Lord Acton, the great British philosopher said many, many years ago, You determine the liberty of a nation by the freedom of its minorities. We have a situation here where, I think, the police in some instances, not every cop, not every department, not every city, but in some instances and at this moment in New York City where the police have become

most repressive under the current mayor, are creating what is in effect a pass law requirement, meaning if you're black and you happen to be in a nice car in a nice community where your parents can afford to take care of business, you're still being stopped and treated as if you are a skel', someone who's prone to criminal behavior.

It is my belief, Senator Volker, with all due respect to your analysis, that the founding fathers of this nation would turn over in their graves if they knew what was happening with regard to the constitutional guarantees and I would urge my colleagues to recognize that this is a problem and to make the statement, a moral statement on this legislation 1670 and vote negative.

I thank you, Mr. President. I certainly thank you, Senator Volker.

ACTING PRESIDENT MEIER: Read the last section.

Senator Volker.

SENATOR VOLKER: Mr. President, if I might just respond.

ACTING PRESIDENT MEIER: Senator

Volker.

SENATOR VOLKER: Senator, I think you are right if that is happening. However, this bill doesn't apply to that. This bill applies to other stops; this doesn't apply to car stops. This applies to stops in public places. The issue of car stops is an entirely different thing.

I would only warn you about something though. As somebody who several times was accused of various things because of car stops, I remember one time I was accused of stopping two young black fellows in a white neighborhood and, in fact, a complaint was made against me. One thing that the people didn't know that made the complaint, however, was that a car very similar to that car had been stolen very shortly before, and we were trying to verify that the vehicle involved was actually stolen. We actually knew pretty well that the vehicle was the vehicle that was stolen and what we did was to stop the car and hold it temporarily. The two young black fellows in the car, of course, accused us of stopping them strictly because they were black and about ten

minutes later, after we received several threats from various people, we verified the car was stolen, and that the two young people in the car were the car thieves.

The only reason I mention that is that certainly that is the possibility, and if it happens, by the way, and it happened as you said, it's wrong. There's nothing in this bill that would make that right or would change that from being wrong.

What this bill talks about is the fact that there are a great many injustices it seems to me that are occurring on the street where killings and serious crimes and serious criminals are being allowed to escape because we are over-techno'lizing our system.

For instance, one of the things about stopping cars is, you can search a car and if you find minor things in that car, it appears, in other words implements for a burglary or something comparably minor that's fine, but in the (unintelligible) case, you find a body it's too much and, therefore, you're not going to be able to have a conviction upheld for manslaughter or murder.

So I've been told that some of the -- these cases represent restrictions on police officers that no other state in this nation sanctions, so I think maybe these sanctions are not quite as severe as they might appear.

SENATOR WALDON: Explain my vote.

SENATOR LEICHTER: Would you -

ACTING PRESIDENT MEIER: Read the last section. Oh, I'm sorry.

SENATOR LEICHTER: I'm sorry. I wanted to speak.

ACTING PRESIDENT MEIER: Senator Leichter, on the bill.

SENATOR LEICHTER: Senator Volker, I apologize because I didn't hear everything that you and Senator Waldon discussed but I -- I think one of the real problems that I see with this bill is in line 16 where you say the officer may not only ask questions but take such other action as the officer deems appropriate.

If you discussed it with Senator Waldon, I withdraw the question, but if you

didn't, it just seems to me that's an enormous loophole, it's such vagueness. What does it mean, such other action as the officer deems appropriate?

SENATOR VOLKER: Senator, probably (unintelligible) that section out because it means that the officer has to act reasonably. I think that language is in there because it's trying to indicate that through courts who maybe -- maybe the courts have not followed logic, that an officer can take such actions as may be reasonable under the circumstances.

Incidentally, Senator, when I trained young police officers who have said to me, How am I supposed to be able to operate in this society? You almost have to be a lawyer to be out there in the street. I said, I'll tell you how you do it. You act reasonably under the circumstances, and 99 percent of the time, you'll be all right.

SENATOR LEICHTER: Mr. President, just this one final point to Senator Volker. Senator, if the bill said that he acts reasonably under the circumstances that may be

acceptable, but acting reasonably under the circumstances is totally different than what is written here. It says, as the officer deems appropriate, doesn't even impose any standard, makes it a subjective standard, as the officer deems appropriate, so if he deems it appropriate even if it's unreasonable, as you've written it, now maybe the courts will impose the standard of reasonableness, but you would be much better off if it were to be drafted as you sought to interpret the bill; that should have been the language.

I understand it wasn't drafted by you; it was drafted on the second floor. Maybe they should have checked with you. Just very briefly on the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Leichter, on the bill.

SENATOR LEICHTER: I know the hour is late, and people look, Oh, my God, why is he debating this thing, but we're dealing with a terribly important issue. Senator Waldon and I didn't ask you to bring this bill up at 5:15 in the morning, and I'm sorry but if you do bring up such a bill, then it's certainly the

responsibility and particularly on something that deals with such fundamental constitutional issues and basic rights, but I think to say not only may a police officer stop people and ask questions, and I think Senator Waldon properly pointed out some of the difficulties and problems with that, but then to go on and say that he may take any action that he deems appropriate, that's just not right.

I don't think that's consistent with our basic fundamental beliefs of what liberty is and the rights that we have. I mean I was born in a society and I was chased out of a society, you know, where they could stop you for any reason and grab you and hold you and do these things. One of the things that makes the country so special is that we do impose pretty severe restrictions on law enforcement officials because we believe basic liberties are so important.

This bill impinges on those liberties, and I would urge you to vote against it.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Waldon, to explain his vote.

SENATOR WALDON: Thanks very much, Mr. President.

I apologize, Senator Volker, in trying to make my point, I used three instances I had personally viewed. I assure you when I spoke at Rochedale Village with Senator -- I mean Comptroller McCall there, that there were a great number of parents who came up to me and told me of their children, teenagers and adolescents being stopped, searched and harassed and hassled by the police when they had done nothing wrong.

I assure you that my office is inundated with calls for this same reason, in a very middle class area. The homes in Addison Park, two blocks from my house, cost 500,000 or more dollars. The homes in the little neighborhood where I live run a deuce, a deuce

and a quarter, and the people who live there are hard working, law abiding citizens and their children should not be subjected to this simply because they're black.

Now, I'm not railing against the process simply to be heard. We have a problem in New York. We have a problem in this nation, and we may wish to bury our heads in the sand and not face up to the problem, but the problem is real. In the country from which Senator Leichter and his family fled, America stood by silently. The church of which I am a member, the Catholic Church, stood by silently and the result was millions and millions and millions of people lost their lives.

I hope that we will be a bit more judicious in our approach. I am telling you, I am telling you with all the sincerity I have in my body and mind and spirit, that we have a problem of racism and absolute discrimination by the police in the city of New York. I can't speak for other places, and we as a legislative body, the conscience of this state should be mindful of that and should attempt to do something, not make the process more punitive

but open up the process that young black kids who all they want to do is to have a shot at life shouldn't be hassled by the police.

I thank you very much, Mr. President.

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

THE SECRETGARY: Those recorded in the negative on Calendar 1670 are Senators Abate, Connor, Leichter, Paterson, Sampson, Smith, and Waldon. Ayes 50, nays 7.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Leibell.

SENATOR LEIBELL: Mr. President, I'd like to ask to have unanimous consent to vote in the negative on 1663.

ACTING PRESIDENT MEIER: Without objection, Senator Leibell will be recorded in the negative on Calendar 1663.

Senator Holland.

SENATOR HOLLAND: I would also like to be recorded in the negative on 1663, please.

ACTING PRESIDENT MEIER: Without

objection, Senator Holland will be recorded in the negative on 1663.

Senator Skelos, that -- Senator Stafford?

SENATOR STAFFORD: Mr. President, I believe that we would like to call a Finance meeting in Room 332. Room 332, Finance meeting.

ACTING PRESIDENT MEIER: The Finance Committee will meet in Room 332 immediately.

Senator Skelos.

SENATOR SKELOS: We'll stand at ease pending the report of the Finance Committee.

ACTING PRESIDENT MEIER: Senate will stand at ease pending the report of the Finance Committee.

I'm sorry. Senator Paterson.

SENATOR PATERSON: Mr. President, at the conclusion of the Finance Committee there will be a Minority Conference in the Minority Conference Room.

ACTING PRESIDENT MEIER: At the conclusion of the Finance Committee, there will

be a meeting of the Minority Conference in the Minority Conference Room.

The Senate will stand at ease pending the report of the Finance Committee. Thank you.

(The Senate stood at ease from 5:22 a.m. until 6:41 a.m.)

ACTING PRESIDENT NOZZOLIO: 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 NOZZOLIO: Report of Finance Committee. Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, offers up the following bills:

Senate Print 700-A, Budget Bill, an act making appropriation for the support of government;

5788, by the Committee on Rules, an act to amend the Education Law.

Both bills directly for third

reading.

SENATOR SKELOS: Move to accept the report of the Finance Committee.

I believe there's a substitution to be made.

ACTING PRESIDENT NOZZOLIO: Secretary will read the substitution.

THE SECRETARY: Senator Larkin moves to discharge from the Committee on Rules Assembly Print 8448-A and substitute it for the identical Third Reading, Senate bill 827.

ACTING PRESIDENT NOZZOLIO: Substitution ordered.

SENATOR SKELOS: Read the last section.

ACTING PRESIDENT NOZZOLIO: Secretary will read the bill.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Just a point of order, Mr. President. Could you tell us which bill this is?

SENATOR SKELOS: The original

Calendar Number 66, Senate Number 8452-B, Calendar Number 827.

ACTING PRESIDENT NOZZOLIO: Secretary will read the bill.

THE SECRETARY: Calendar Number 827, by the Assembly Committee on Rules, Assembly Print 8448-A, an act to amend the General Municipal Law.

ACTING PRESIDENT NOZZOLIO: Last section.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT NOZZOLIO: Explanation is asked for.

SENATOR LARKIN: Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Larkin.

SENATOR LARKIN: This bill will amend the General Municipal Law with regard to the Industrial Development Agencies to provide expanded opportunities for IDAs to finance not for-profit medical facilities, facilities for the aging and dormitories for educational institutions.

We have capped these projects at $15 million. In addition, there's been major

reforms instituted herein. Several have been included in this legislation to ensure that IDAs' responsibility for accounting are tightened up and specifically we will be requiring them to re-adopt their uniform tax exemption policy before April the 1st, 1999 and will be required to hold a public hearing before any deviation is made from that policy.

This bill represents what we consider an excellent balance of the enhanced accountability and increased business opportunity combined.

ACTING PRESIDENT NOZZOLIO: Senator Leichter.

SENATOR LEICHTER: Mr. President, would Senator Larkin yield to a question?

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

SENATOR LEICHTER: Senator Larkin, one of the additional powers it seems that you give to the IDA in this bill is to do some construction for the United Nations.

SENATOR LARKIN: That's been stricken.

SENATOR LEICHTER: Is it? Because

it's in your memo. I see your memo is on the eighth ranking.

SENATOR LARKIN: Computers are working overtime on other things, Senator, and we're catching up on the other items.

SENATOR LEICHTER: Senator Larkin, if you continue to yield. One of the problems we've had with IDA is that they've not always been responsive to local governments. They also affect local tax base. Now, who's going to make the decision as to constructing these so-called civic facilities? Is that going to be up to the IDA? Are they going to exercise that authority separate and apart from authorization from local governments?

SENATOR LARKIN: Well, the IDA still has the -- they have to come to the IDA and through the local government and asking for the utilization of an IDA to construct a certain project. Then you have two forces there. You have the local government, want to be a participant, and the IDA, and they both must have an agreement.

SENATOR LEICHTER: Senator Larkin, if you would be so good as to continue

to yield.

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator continues to yield.

SENATOR LEICHTER: Suppose a specific facility goes to an IDA and says we'd like a new facility, can the IDA construct that facility without going to local government and getting the authorization of local government?

SENATOR LARKIN: Two things. First of all, local government have asked for their IDA, Senator. For an IDA to be active in building a facility, it comes under the umbrella of local government. What happens is that they can build it because they have the authorization.

SENATOR LEICHTER: Senator, if you continue to yield.

SENATOR LARKIN: Yes.

SENATOR LEICHTER: IDAs may not be set up without the participation of local government. Now, we're dealing down the road some years with a a civic facility comes to an IDA and says, Build us something. Does that IDA

have to get the consent and the approval of local government before it can do that?

SENATOR LARKIN: I think, Senator, if you'll look at the detail there, you'll find out that what we have not added any great extra amount of work on here. All we've given them is the expanded power to do some work, but when you look at their accountability and what they're required to do, we're tightening it up.

More important, under what we're doing, you're going to find more input from local government.

SENATOR LEICHTER: Thank you very much, Mr. -- Senator Larkin. Mr. President, just briefly on the bill.

ACTING PRESIDENT NOZZOLIO: Senator Leichter, on the bill.

SENATOR LEICHTER: We've created IDAs really as an economic development vehicle. We've had a lot of problems with IDAs because the economic development that they've engaged in very often has been at the expense of local communities. They've competed with each other. They've built the sort of facilities that really

don't create jobs and, of course, they affect the tax base of the local communities.

Now, to give them the authority and the power to get involved in civic facilities, which is totally outside what the goal and the aim we had in mind when we established the whole IDA system, but secondly, to further have them act on matters that really so intimately affect a municipality without first getting the permission or the authority by the municipality which is just not provided as I see it in Senator Larkin's bill and that's also going affect the tax liability of other people in the community, because you're going to take property off the tax rolls.

I really see no justification for it. I think it's an unwise bill, not only at 7:00 a.m., in the morning, but even at a more normal hour.

ACTING PRESIDENT NOZZOLIO: Read the last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT NOZZOLIO:

Senator Maziarz.

SENATOR MAZIARZ: To explain my vote.

ACTING PRESIDENT NOZZOLIO:

Senator Maziarz, to explain his vote.

SENATOR MAZIARZ: Mr. President, just very, very briefly, I want to commend Senator Larkin and his staff and the staff of the Majority Leader for crafting an IDA bill that even I could vote for, because I tend to agree with Senator Leichter when it comes to Industrial Development Agencies, but this bill, although it does expand somewhat the ability of Industrial Development Agencies, I think that it also very correctly reinstitutes the 1993 IDA reforms, and it further restricts Industrial Development Agencies, but most importantly it gives local governments, local taxing authorities more information about Industrial Development Agencies that are approved within their district.

So, Mr. President, I will be voting in the affirmative. Thank you.

ACTING PRESIDENT NOZZOLIO: Senator Maziarz in the affirmative.

THE SECRETARY: Ayes 56, nays one, Senator Leichter recorded in the negative.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you call up Calendar Number 1672.

ACTING PRESIDENT NOZZOLIO: Calendar Number 1672.

THE SECRETARY: Calendar Number 1672, by the Committee on Rules, Senate Print 5788, an act to amend the Education Law.

SENATOR SKELOS: Is there a message of necessity and appropriation at the desk?

ACTING PRESIDENT NOZZOLIO: Message is at the desk.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT NOZZOLIO: Motion is to accept the message of necessity. All in favor say aye.

(Response of "Aye.")

All opposed, nay.

(There was no response.)

The ayes have it. The message is accepted. Read the last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT NOZZOLIO: Announce the results.

THE SECRETARY: Ayes 55, nays 2, Senators Dollinger and Leichter recorded in the negative.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

SENATOR SKELOS: Stand at ease.

ACTING PRESIDENT NOZZOLIO: House will stand at ease.

SENATOR MONTGOMERY: Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Yes, Mr. President. I would like to have unanimous consent to be recorded in the negative on

Calendars 1660 and 1670.

ACTING PRESIDENT NOZZOLIO: With unanimous consent, Senator Montgomery will be recorded in the negative -- Senator Montgomery, the clerk has had a hard time hearing you and would you mind repeating those numbers?

SENATOR MONTGOMERY: Calendars 1660 and 1670.

ACTING PRESIDENT NOZZOLIO: So ordered.

SENATOR MONTGOMERY: Thank you.

(The Senate stood at ease from 6:56 to 7:48 a.m.)

ACTING PRESIDENT NOZZOLIO: Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return now to messages from the Assembly.

ACTING PRESIDENT NOZZOLIO: The Chair hands down a message from the Assembly. Secretary will read.

THE SECRETARY: The Assembly sent for concurrence Assembly Print 8653, by the Assembly Committee on Rules, an act to amend the State Law.

ACTING PRESIDENT NOZZOLIO: Senator Skelos.

SENATOR SKELOS: Third reading.

ACTING PRESIDENT NOZZOLIO: Third reading. Secretary will read.

THE SECRETARY: Calendar Number 1684, by the Assembly Committee on Rules, Assembly Print 8653, an act to amend the State Law.

ACTING PRESIDENT NOZZOLIO: Last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT NOZZOLIO: Announce the results.

THE SECRETARY: Ayes 54, nays 3, those recorded -

SENATOR GOLD: Hold it.

ACTING PRESIDENT NOZZOLIO: Senator Kruger, to explain his vote.

SENATOR KRUGER: Yes, Mr. President, to explain my vote. Today we are

given a set of boundaries that basically represent planning in a vacuum. It represents a lack of opportunity for community input. It represents a lack of opportunity for digestion of what is otherwise a reckless disregard for what reapportionment is supposed to do.

Reapportionment, in its true sense of the word, is supposed to define lines that protect natural boundaries, that respect political divisions, that concern themselves with the history of communities, that are compact and, most importantly, are respective of the neighborhoods that these lines are supposed to serve, and the lines that each legislator has.

Interestingly enough, if I can just go back for a second. This bill, as it presently is constituted is an effort to correct a corridor to make what we call the Bullwinkle district, the district that is currently represented by Congresswoman Nydia Velazquez, in compliance with current law. In an effort to do that, the leadership of both the Assembly and the Senate has attempted to develop a set of lines that basically destroys neighborhoods.

If we're to look at particular districts, we see today that lines have been drawn in two districts in particular. One district that is represented by Congressman Edward Towns takes neighborhoods such as Canarsie -- Edolphus Towns, Ed Towns -- takes neighborhoods such as Canarsie, Mill Basin, Bergen Beach, Georgetown, Futurama, Marine Park and Flatbush, and bifurcates them from what was normally a district that was compact, that was contiguous, that was represented by current Congressman Chuck Schumer, and more particularly was an effort when it was originally constituted to protect communities.

We resent it. We object to it. There is a legislative commission that was formed, the Legislative Commission on Demographic Reapportionment, of which I am a member, that never met to consider this legislation. For so many years, when other bills were proposed, there was at least the charade, there was an effort made to go into communities, to get input, to speak to constituents, to develop a set of lines that made sense.

Well, in this particular eleventh hour move, a move of desperation, we are faced with what I view to be a set of lines that ultimately will be declared void by the courts. We face the possibility of a master being appointed to come in and draw lines that truly reflect the values that we speak about and, more particularly, once again the Majority of this house in consonance with the Majority in the Assembly, disregarding the legislative process and disregarding every member of this house, decided on a set of lines that truly destroys and is not representative of what we should represent and what we should say a Congressional District would be.

I urge my colleagues to vote against these lines. I urge those that are in a position to look at them to bring the matter before the courts and hopefully they will be declared void.

Thank you.

ACTING PRESIDENT NOZZOLIO: Senator, how do you vote?

SENATOR KRUGER: No.

ACTING PRESIDENT NOZZOLIO:

Senator Dollinger?

SENATOR DOLLINGER: Yield to Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

Mr. President, the court, as we all know, the federal court ruled it unconstitutional, the existing Congressional lines. At that time and several times subsequently in discussions with the Speaker, the conclusion was that the way to proceed perhaps would be to have the members of the Congressional delegation who are affected -- in this case we are affecting five Congressional District lines -- to meet and develop a consensus plan that would meet legal and constitutional requirements.

In those early stages, I was involved in some of discussions that arrived at that principle. Subsequently the members of the delegation had many different meetings and indeed I would get called up until last week, somebody had a map here, somebody had a map there, all which they had drafted and they were passing around among themselves.

I learned very late on Friday that the final conclusion was, if not exactly what we have before us, quite similar. There are good points in this obviously. The good points are, I believe legal requirements are met. I believe, for the benefit of the continuity represented -- of representation of most of the constituents involved, that the - we have preserved that continuity of representation which some people would call incumbency protection.

That's good for a variety of reasons. I believe we'll keep the kind of diversity in the Congressional delegation from Brooklyn, Queens and Manhattan that's appropriate, that's been the tradition in New York with that, basing it on really, really race-based drawing considerations but rather on relatively compact contiguous districts.

The one thing about which I am chagrinned and indeed have been by certain constituents in the last few days accused of engineering, which is not true, indeed I didn't see it until the bill was in print and on the desks, and that is the fact that the boundary

lines between the 10th and 12th Congressional Districts divide significant portions of my district, indeed what I would characterize as my political base, Carroll Gardens, Cobble Hill and Brooklyn Heights. It divides the Brooklyn Heights community, New York's first landmark district, Cobble Hill, another landmark historic district, Carroll Gardens, dividing them by going up Henry Street, taking a right-hand turn on Pierpont Street. Indeed, I live on Pierpont Street and I'm now one of those people who wonder why those people across the street have a different member of Congress than I, and I am not -- I'm not happy about that. Indeed, I'm quite upset.

More importantly, those neighborhoods I represent are the kind of neighborhoods that clearly understand that it is not better to be represented by two representatives in Congress because you're an insignificant part of the constituency in both rather than being a substantial part of the constituency in one district.

I can't help but be wondering, and I won't go into it, that certain current

political events in Brooklyn may have motivated one of the incumbents to select the boundaries since indeed in my neighborhood I am now out of the Congressional District I've been in. My Assemblywoman is out of the Assembly District that we've been in, and indeed our City Council man is out of the Congressional District that he has been in, thus every political official in our neighborhood.

With respect to that, a fate similar to that we've heard from Senator Kruger's area, so while legally -- legally neighborhoods are not sacrosanct and indeed the Congressional redistricting in the Constitution and the decisions pursuant to it mandate absolute numerical equality between districts, indeed they can deviate only by one person, and, therefore, in the blind pursuit of this -- and there's not much we can do about that since it's federal law -- we do ignore somewhere or other traditional neighborhoods.

I think as a matter of policy, if it's a matter of policy, it would have been better had this plan respected these important neighborhoods in Brooklyn. It didn't. I wrote

to the Speaker and asked him to correct this. He responded, of course, that he had proceeded on the basis of the members of Congress affected in drawing the lines and agreeing to them subject to legal requirements which they met and it was indeed clear who the architect of this is.

But, Mr. President, on behalf of the people I represent and I've represented these past 20 years, I want to make it very plain. I think it's outrageous these neighborhoods have been divided, and I am voting no.

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

THE SECRETARY: Those recorded in the negative on Calendar Number 1684 are Senators Connor, Dollinger, Kruger, Sampson and Smith. Ayes 52, nays 5.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

SENATOR SKELOS: Mr. President, on Calendar -- Supplemental Calendar 66-A, would you call up Senator Alesi's bill, Calendar 1655.

ACTING PRESIDENT NOZZOLIO: Calendar 1655. Clerk will read.

THE SECRETARY: Calendar Number 1655, in relation to Calendar Number 1655 Senator Alesi moves to discharge from the Committee on Rules Assembly Print 8003-B and substitute it for the identical Senate bill, Third Reading 1655. The Senate bill is high, the Assembly bill is not.

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

THE SECRETARY: Calendar Number 1655, by the Assembly Committee on Rules, Assembly Print 8003-B, an act to amend the Education Law.

ACTING PRESIDENT NOZZOLIO: Read the last section.

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

ACTING PRESIDENT NOZZOLIO: Call the results. Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57..

SENATOR GOLD: Mr. President.

ACTING PRESIDENT NOZZOLIO: The

bill is passed.

ACTING PRESIDENT NOZZOLIO: Senator Gold.

SENATOR GOLD: Yes, Mr. President. May I have unanimous consent to be recorded in the negative on Calendar Number 1670.

ACTING PRESIDENT NOZZOLIO: 1670, without objection.

SENATOR GOLD: Thank you.

SENATOR SKELOS: Mr. President, we'll stand at ease, stand or sit at ease.

ACTING PRESIDENT NOZZOLIO: The house will be at ease.

(The Senate stood at ease from 8:03 to 8:29 a.m.)

SENATOR SKELOS: Mr. President, at this time if you'd call up Calendar Number 1667.

ACTING PRESIDENT NOZZOLIO: Calendar 1667. Clerk will read.

THE SECRETARY: Calendar Number 1667, Budget Bill, Senate 700-A, Legislature and Judiciary Budget.

SENATOR SKELOS: Mr. President,

is there a message of necessity and appropriation at the desk?

ACTING PRESIDENT NOZZOLIO: Messages are appropriately at the desk.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT NOZZOLIO: Motion is to accept the message. All in favor say aye.

(Response of "Aye.")

All opposed, nay.

(There was no response.) The message is accepted. Last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT NOZZOLIO: Bill is reported. The bill is lost. The bill is passed.

SENATOR LEICHTER: Mr. President, would you recall the bill.

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

SENATOR LEICHTER: Mr. President, may we reconsider the vote on the bill that just passed?

ACTING PRESIDENT NOZZOLIO: Re consider? Call the vote on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

SENATOR LEICHTER: All right. Thank you, Mr. President.

ACTING PRESIDENT NOZZOLIIO: Senator Leichter.

SENATOR LEICHTER: Is that bill before us now, Mr. President?

ACTING PRESIDENT NOZZOLIO: Yes.

SENATOR LEICHTER: Is there an amendment at the desk, please?

ACTING PRESIDENT NOZZOLIO: The amendment is at the desk.

SENATOR LEICHTER: Mr. President, I waive the reading of the amendment and ask an opportunity to explain it.

ACTING PRESIDENT NOZZOLIO: Senator Leichter, I believe that -- on the amendment.

SENATOR LEICHTER: Thank you, Mr. President.

My colleagues, just because it's 8:30 a.m., and we've been in session for about 20 straight hours, and we're staggering to conclusion like punch-drunk fighters.

ACTING PRESIDENT NOZZOLIO: Senator Skelos.

SENATOR SKELOS: Point of order.

ACTING PRESIDENT NOZZOLIO: Point of order.

SENATOR SKELOS: I've reviewed the amendment, and I believe under the Bankers decision, it would be out of order to change the language of a budget bill, so, therefore, I'd ask that you rule that Senator Leichter's amendment is out of order.

ACTING PRESIDENT NOZZOLIO: The Chair has reviewed the amendment with the parliamentarian, concur with your result and the amendment is out of order.

SENATOR LEICHTER: Mr. President, if I may be heard on it before you hastily rule on it, even though my learned friend -

ACTING PRESIDENT NOZZOLIO:

Senator Leichter, are you appealing the ruling of the Chair?

SENATOR LEICHTER: No, I'm asking before you make your ruling that you have the courtesy and the fairness to listen to both sides of the argument. You've heard from Senator Skelos. You ought to hear from me.

This amendment doesn't change any language. It changes -- what it changes essentially is some of the numbers, Senator Skelos, and -

SENATOR SKELOS: Looking at the amendment, Senator Leichter, it says strike out all after "enact" and insert, so I would say that you reasonably could say that you change the entire language of the budget bill. So, therefore, Mr. President, I would ask as I asked once before, that Senator Leichter's amendment be ruled out of order and if he wishes to appeal the ruling of the Chair, of course, he has that right.

ACTING PRESIDENT NOZZOLIO: Senator Leichter, the ruling of the Chair is that the amendment adds language. By doing so, it violates the rules of this house and,

therefore, the Chair rules respectfully that the amendment is out of order.

SENATOR LEICHTER: Well, Mr. President, I mean at this hour we can, fine, we can just, you know, take a half an hour on the appeal and then we can always discuss the bill for two hours. After all, we've had a lot of dead time and maybe that will fill some more dead time. I mean I -- I'm feeling great, so I was looking forward and didn't know what I would do the next two hours.

I'm not going to do that because I don't think it makes sense at this hour and I was, frankly, going to take a very short time on the amendment. I think the ruling is incorrect, but I think at this hour we'll let it go. I don't really intend to take much time with it. I didn't want to deny any of you the treat of having an opportunity to vote on the real itemized legislative budget. I thought that after the 20 gruelling hours we had, we should have had something that would really give us pleasure and delight, but Senator Skelos, unfortunately, has interfered with that.

You know, we've been through this

every year and every year I've gotten up and I've said that what we have before us is not an itemized budget. Obviously it is not. The budget we have now has the very same format as the budget that we've had in all these years and we still continue to have the Legislature abrogate to itself a privileged position. We're immune from having the public know -

ACTING PRESIDENT NOZZOLIO: Senator Leichter, are you appealing the ruling of the Chair?

SENATOR LEICHTER: No, but if you want me to, Mr. President, if you'd like an appeal, I'll appeal it.

ACTING PRESIDENT NOZZOLIO: Senator -

SENATOR LEICHTER: I'm speaking on the bill.

ACTING PRESIDENT NOZZOLIO: Senator, that's the point of inquiry of the Chair. Respectfully, we are asking whether you have withdrawn your amendment and are now speaking on the bill. As you responded, you have withdrawn the amendment, and Senator Leichter, on the bill.

SENATOR LEICHTER: Thank you. Mr. President, I've not withdrawn the amendment. I think you've incorrectly ruled it out of order, and I made it clear that I wasn't going to appeal the ruling, although I could. I would just speak on the bill. That's what I was in the process of doing.

Mr. President, and my colleagues, I just think it's unfortunate that we just insist on thumbing our nose at the public in saying we can have a budget that is really not a budget, that's a fraud, that's a hoax, that doesn't describe in detail how we spend public money.

Two years ago, Senator Bruno, in a dialogue that he and I had on this floor, said that we will have an itemized budget. I specifically asked him. I said, is it going to show how much is going to be spent for personnel for each member's office, and so on. He said, Yes. He said, You're going to be very happy with it.

We've had absolutely no change whatsoever. This is the same format that goes back for years and years and years, and instead

of revealing how we spend public money, it shrouds that from public information and knowledge.

What my amendment would have done and what it did in other years, is it showed what an itemized budgeted is like. It also reduces the expenditure for the Legislature, because I believe our expenditures are high. Our budget tends to be bloated. We can certainly reduce expenditures. This year, I don't know by what percentage, the legislative budget goes up, maybe three or four percent. I just wish that we would finally come to grips with a decent budget that we would have the responsibility of letting the public in.

This is not a private club. This is a public institution. We're dealing with public monies. This budget should not be enacted in this form.

ACTING PRESIDENT NOZZOLIO: Read the last section.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Mr. President, I in the past have supported Senator Leichter's amendment and echoed his sentiments about the need for greater accountability in this institution, as we seek to achieve greater accountability throughout the rest of the state.

I simply rise because I do not concur with the ruling of the Chair which would have been made in this amendment had it not been withdrawn, that the Bankers decision as I heard it aired by Senator Skelos, that the Bankers decision would foreclose this amendment. Frankly, that was a new wrinkle that I had not heard in this amendment previous times when we've been under the dictates of the Bankers decision. The amendment has never been ruled out of order on that basis.

I'm simply reserving to another day, Mr. President, I would be interested in seeing from the Counsel to the Senate the logic and law that seems to drives the notion that an amendment such as that proposed by Senator Leichter would be inconsistent with dictates of the the Bankers decision.

I agree with the substance of it. I disagree with the articulation of the basis for purportedly ruling it out of order and I simply wanted to make that known at this time.

ACTING PRESIDENT NOZZOLIO: Senator Stafford.

SENATOR STAFFORD: Well, Senator, you know, I'm the last one who will continue or will make the debate last any longer than we would want it to. As I say, usually I'm criticized for not speaking enough, but that's sort of going, because I've said that a little too much lately.

Please let me share this with you, however. I have here in my hand the third publication of the New York State Senate Expenditure Report. This one is October 1st, 1996-March 31, 1997. I, a number of times, have complimented Senator Bruno and the administration of this Majority upon the job that they are doing and at the risk of being redundant, let me please compliment them again.

If anyone wants to see exactly how money is spent to the penny in this

Legislature, I suggest that they -- it's not funny. I suggest that they read this very serious document because, when you open it, you can go to the person and see exactly how the money is spent to the penny, p-e-n-n... is it i-e or -y -

VOICE: -y.

SENATOR STAFFORD: -y.

SENATOR SKELOS: Mr. President, while Senator Stafford is pausing -

ACTING PRESIDENT NOZZOLIO: Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Rules Committee in the Majority Conference Room.

ACTING PRESIDENT NOZZOLIO: Immediate meeting of the Rules Committee.

Senator Stafford.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT NOZZOLIO: Pardon me, Senator Leichter. Get some order.

Senator Leichter.

SENATOR LEICHTER: Mr. President, I just need to correct my good friend from the

North Country. What you're bringing up is something that tells me how you spent the money. A budget tells you how you're going to spend money, so there's really no relationship. We should know before we vote money for the Legislature how it is to be spent. That's my point.

The fact that we have this book that says how we spent money six months ago may be helpful; it certainly satisfies a public need and a public right, but it's not the same thing as a detailed budget, and I'm sure you weren't intimating that it was.

SENATOR STAFFORD: Well, again -

ACTING PRESIDENT NOZZOLIO: Senator Stafford.

SENATOR STAFFORD: I yield, and was that a question?

SENATOR LEICHTER: No, it was a correction.

SENATOR STAFFORD: Oh.

ACTING PRESIDENT NOZZOLIO: Read the last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT NOZZOLIO: Announce the results.

THE SECRETARY: Ayes 55, nays two, Senator Dollinger and Leichter recorded in the negative.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

Senator Maziarz.

SENATOR MAZIARZ: Mr. President, would the Senate stand at ease awaiting a report of the Rules Committee.

ACTING PRESIDENT NOZZOLIO: Senate will stand at ease.

(The Senate stood at ease from 8:43 to 9:05 a.m.)

ACTING PRESIDENT KUHL: Senator will come to order. Members will take their place, staffs find their place.

Senator Skelos.

SENATOR SKELOS: Mr. President, on behalf of Senator Stafford, 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.

Senator Skelos.

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

ACTING PRESIDENT KUHL: Return to the order of reports of standing committees. There is a report of the Rules Committee at the desk. Secretary will read.

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

2788, by Senator Trunzo, an act to amend the Retirement and Social Security Law;

3272-A, by Senator Trunzo, an act to amend the General Municipal Law;

4237, by Senator Alesi an act to authorize and direct;

5101-A, by Senator Trunzo, an act

to amend the Social Security Law;

5638, by Senator Connor, an act to amend the Real Property Tax Law;

5791, by Senator Saland, an act to amend the Criminal Procedure Law;

5794, by Senator Velella, an act to amend the Insurance Law;

Assembly Print 8639, by the Committee on Rules, an act to amend the Real Property Tax Law;

Assembly Print 8670, by the Committee on Rules, an act to amend the Education Law; and

Senate Print 5796, by Senator Lack, an act to amend the Court of Claims Act.

All bills directly for third reading.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Move to accept the report.

ACTING PRESIDENT KUHL: Motion is to accept the report. All in favor say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The report is accepted. The bills are ordered directly to third reading.

Senator Skelos.

SENATOR SKELOS: At this time if we could take up Senate Supplemental Calendar Number 66-C, non-controversial.

ACTING PRESIDENT KUHL: Calendar Number 66-C, Supplemental, is on the members' desks. Ask the Secretary to read the non-controversial reading.

THE SECRETARY: Calendar Number 1676. In relation to Calendar Number 1676, Senator Trunzo moves to discharge the Committee on Rules from Assembly Print 7273 and substitute it for the identical Senate Bill, Third Reading Number 1676.

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

THE SECRETARY: Calendar Number 1676, by member of the Assembly Vitaliano, Assembly Print 3473, an act to amend the Retirement and Social Security 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 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1677. In relation to Calendar Number 1677, Senator Trunzo moves to discharge from the Committee on Rules Assembly Print 5864-A and substitute it for the identical Senate Third Reading 1677.

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

THE SECRETARY: Calendar Number 1677, by member of the Assembly Vitaliano, Assembly Print 5864-A, an act to amend the General Municipal Law.

ACTING PRESIDENT KUHL: There is a home rule message at the desk. Senator Paterson, you want that laid aside?

SENATOR PATERSON: No, I don't, but Senator Leichter would.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1678. In relation to Calendar Number 1678 Senator Alesi moves to discharge from the Committee on Rules Assembly Print 4572 and substitute it for the identical Senate Third Reading 1678.

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

THE SECRETARY: Calendar Number 1678, by member of the Assembly Koon, Assembly Print 4572, an act to authorize and direct the Workers' Compensation Board.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR PATERSON: Lay aside.

THE SECRETARY: Section 3. This act shall take effect on the 30th day.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number

1679, by Senator Trunzo, Senate Print Number 5105-A, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 3.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1680, by Senator Connor, Senate Print 5630-A, an act to amend the Real Property Tax Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 27. 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 1681, by Senator Saland, Senate Print 5791, an act to amend the Criminal Procedure 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 1681. 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.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1682, by Senator Velella, Senate Print 5794, an act to amend the Insurance Law.

SENATOR SKELOS: Mr. President, 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 1682. 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 9. 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 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1683, by the Assembly Committee on Rules, Assembly Print 8639, 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.

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 1685, by the Assembly Committee on Rules, Assembly Print 8670, an act to amend the Education 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 1685. All those in favor signify by

saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted. Bill is before the house. Secretary will read the last section. Lay the bill aside.

SENATOR SKELOS: Call up Calendar Number 1685 at this time.

ACTING PRESIDENT KUHL: Secretary will read the title of Calendar Number 1685.

THE SECRETARY: Calendar Number 1685, by the Assembly Committee on Rules, Assembly Print 8670, an act to amend the Education Law.

ACTING PRESIDENT KUHL: Explanation has been asked for, Senator Skelos. Who's going to handle the explanation?

SENATOR LARKIN: Who asked?

ACTING PRESIDENT KUHL: Senator Larkin, an explanation has been requested on Calendar Number 1685 by Senator Dollinger.

SENATOR LARKIN: Yes, Mr. President. This legislation by Mr. Lentol repeals an existing law that we had on a special

school district in Orange County in the village of Kyrias Joel and creates a new atmosphere of establishing a school district based on the guidelines of the federal court.

This new law allows two specific purposes: One, by the superintendent of BOCES to declare a school district, the other to establish a vote by the members of the existing school district of Monroe-Woodbury exclusive of the residents of Kyrias Joel, and the third one would be by the superintendent of the BOCES of Orange County.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Through you, Mr. President, will Senator Larkin yield to a couple questions?

SENATOR LARKIN: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: Is this a bill of general application across the state, Senator Larkin?

SENATOR LARKIN: Yes, it is. I apologize, Senator Dollinger, but this bill

could be applicable in any town or city. Its boundaries are such that if it's within the existing municipality or an existing part of an existing school district, for example, within the Monroe-Woodbury School District that encompasses three parts, parts of three municipalities, a whole municipality. It could encompass Monroe County. As long as it has a population of students of 2,000 students, then it has the ingredients of, one, the vote of the BOCES superintendent or the vote of the public within the school district exclusive of that segment that wants to declare their own school district.

The third part, and I apologize, is that if there is any existing debt that was paid by the school district as a whole in Monroe County and Niagara county, Nassau, Suffolk, it would have to be repaid by the created school district.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Larkin would continue to yield.

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

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: Is there any school district that you can identify in New York State, any community in New York State that the terms of this bill would apply to other than Kyrias Joel?

SENATOR LARKIN: May I read you a sentence, please? It just says any municipality situated only within one central or union free school district, but whose boundaries are not co-terminous with the boundaries of such school district may organize pursuant to the provision of this subdivision.

That means a town, a village, city can establish within its own right as long as it's within that district.

SENATOR DOLLINGER: Again through you, Mr. President if Senator Larkin would continue to yield.

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

SENATOR LARKIN: Yes, Mr.

President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: Senator Larkin, portions of the bill that we're repealing today contained language that appeared to have general application according to the New York Court of Appeals -- appeared to have language applicable to many communities but, in fact, the bill we drafted last time and went to the Court of Appeals was designed -- expressly designed by this Legislature for one purpose, solely to create a school district for the community of Kyrias Joel.

My question is, is there anything about this supposed general description that would suggest to the Court of Appeals or any other court that we are doing something that doesn't apply to a specific school district for this specific group which twice, the highest court in this nation, the highest court in this state, have said is unconstitutional to create?

SENATOR LARKIN: My legal adviser. Senator Dollinger, when you read the last part as pertains to a BOCES superintendent,

the language is expressly taken from Section 1504 of the state Education Law which authorizes the superintendent of a BOCES to create this specific type of a district.

Also if you're looking at what has been talked about in the charter schools this would be the same language we would talk about of a charter school, so it could be in any place in the state using the guidelines you have here.

SENATOR DOLLINGER: But again through you, Mr. President, if Senator Larkin would continue to yield, and I understand, Senator, that this may or may not be your bill, you're doing this on behalf of the Rules Committee, but could you tell me of any other community in the state other than Kyrias Joel which would utilize the provisions of this statute which we have before us today to create a school district?

SENATOR LARKIN: Yes, they could.

SENATOR DOLLINGER: The bill doesn't say that.

SENATOR LARKIN: This doesn't say

anything about any specific school district. It gives you the general guidelines. It's a generic as to how a school district would be created, as long as it meets the criteria, minimum of 2,000, that is within it; it can either be by the superintendent of BOCES or if the superintendent of BOCES says, "I don't want to do it," it then goes back to the school district which could be Monroe, it could be Greece, it could be the Bronx, it could be -- if there's a basic generic of how a school district gets created.

If you remember your days back in the county legislature when you saw towns and village creating villages, creating themselves out of a town, the same generic.

SENATOR DOLLINGER: Thank you, Mr. President. Just on the bill.

Senator Larkin, I appreciate your candor in describing the action of this bill, but quite frankly, we in Monroe County never created any more villages. Why? Because one of the things we were trying to do was to consolidate levels of government, not create new levels of government. One of the things we've

talked about in this Legislature is we've got too many school districts. We should consolidate them instead of opening new school districts and, in fact, I would just counsel everyone in this chamber, everyone in this chamber, take a very, very careful look at this bill because in my personal opinion having been told by the United States Supreme Court that we couldn't do this, having been told by the Court of Appeals that we can't do this because it violates one of the most important protections in both our state Constitution and our federal Constitution, if I were on the Court of Appeals and I determined that what the Legislature was doing was trying to get around my decision, if I were on the Court of Appeals or the United States Supreme Court, I would hold this Legislature, this state, in contempt for attempting to do it, because what I think you have here is a situation where we, for some reason, are attempting to create a school district which we've been told by all of our courts violates the First Amendment.

I cannot do it. I voted against it last time. I would suggest that all of us

think about voting for this bill very carefully have, because once again, we are attempting to evade the highest law in this land, the highest law in this state, if this bill runs into the same problem that the last attempt did, we could be held in contempt and that could be very costly to the people of this state.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Mr. President, everybody really understands what we're doing here. There's a very unique situation, and the members of the Legislature, and I think at least two governors have recognized that it's a unique situation and we ought to do something about it and we're trying to do something about it.

Senator Dollinger, as you were speaking, I was reminded of a news broadcast that I heard within the last 48 hours and they were talking about some federal tax legislation and how people should talk to their accountants right away. And what did it all mean? It meant that two Americans, two hard working Americans who make the same money, the same kind of lives, one is going to pay more taxes than the other

unless that one goes to an accountant, to a lawyer, to figure out how you get around the tax law.

Now, Senator Dollinger, I think it's absurd. I think it's absurd that you should have to know the tricks in order to protect income from taxes, et cetera, and if you know the tricks then you get around it. But in America, we have said that you are allowed to try to get around laws for as long as you do it legally.

All this Legislature is trying to do, Senator Dollinger, is exactly what you said. The courts have given us decisions we don't like. We see a situation which needs us and we are trying to find a way around it and, if the courts don't like this one, well, maybe Senator Larkin and I and others will be back with another solution because there is a unique situation which needs a remedy, and I use the tax situation as an example because that's exactly what we do in 89,000 other things in America. We come out with a rule and then we have rules that get around the rules in order to take care of other situations, and if we can do

it for rich people, we can do it for this school district that really needs the help.

I'm going to vote for this 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: Ayes 56, nays one, Senator Dollinger recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you call up Calendar Number 1686. The bill is on the desk. It doesn't show on the calendar, by Senator Lack, Senate 5796.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 1686.

THE SECRETARY: Calendar Number

1686, by Senator Lack, Senate Print 5796, an act to amend the Court of Claims Act.

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 1686. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted. Bill is before the house. An explanation has been requested by Senator Dollinger.

Senator Lack.

SENATOR LACK: Thank you, Mr. President.

5796 which is -- has just been put on your desk, was until approximately 45 minutes ago in a three-way agreed-upon addition to the judicial system. It is at this point in time not agreed upon. The Assembly has not agreed to the provisions of 5796, but for our

edification, why don't I go through what's contained in the bill.

The bill would create 14 judge ships, all of which are certified and approved as necessary by the Office of Court Administration: Four Court of Claims "A" judge ships. They are the traditional Court of Claims judgeship, two paragraph (d) Court of Claims judgeships which are the so-called criminal Court of Claims judgeships, a county court judge in the county of Rensselaer, one of the county court judgeships certified as in desperate need by the Office of Court Administration now for over -- way over a year and Supreme -- an additional Family Court judge in the county of Oneida. You might recall that we passed a bill, the Assembly passed and the Governor vetoed a bill creating that desperately needed Family Court judgeship earlier in this session. The main reason the Governor vetoed that bill was that it needed budgetary language and the budget had not been enacted.

This bill, of course, which is introduced at the request of the Governor has at the request of the Governor, re... put back in

that Oneida County court family, Oneida County Family Court judge which is so desperately needed in Oneida court, and then a number of Supreme Court additions in Kings County one, in Queens County one, in the Ninth District which is the county of Westchester and the four northern counties north of Westchester two, and in the Tenth Judicial District, the counties of Nassau and Suffolk two.

I'll make a general comment if I could. For those who are saying, Well, why is there only one Supreme Court justice in the county of Queens and one in the county of Kings when more is necessary, I totally agree that more is necessary. Unfortunately, according to the Constitution, there can only be one judge, one justice of the Supreme Court for every 50,000 residents of this state. Queens and Kings County only have, under the constitutional cap, room for one more Supreme Court justice.

Enactment of this statute by both houses and signing by the Governor will mean that all five boroughs, all five counties of the city of New York will have reached their constitutional cap for the appointment -- for

the election, sorry, of Supreme Court justices. I would respectfully point out to the members of the body that the Chief Judge of the state of New York, Judith Kaye, has earlier this year proposed constitutional amendments some of which track what we have unanimously passed in the Senate, a reorganization of the court system into a two-tiered court structure as well as the provision which would do away with the constitutional limitation, the constitutional cap on the creation of Supreme Court justices.

Over a month ago I sent a letter to the Assembly inviting the members of the Assembly to join in with me with the members of the Senate Judiciary Committee to hold joint hearings on the Chief Judge's proposal including doing away with the constitutional cap. The Assembly has not responded to that letter. Accordingly, the Senate has gone alone and has scheduled hearings beginning September 15th at the Association of the Bar in the city of New York in Manhattan, thereafter in Hauppauge, Albany and Buffalo, in which we're inviting anybody and everybody to please come and comment on the Chief Judge's proposal, with the sincere

hope that in 1998 we can begin a very earnest process to reform the court system in this state, especially to do away with the constitutional cap.

In any event, this is a very well thought out proposal from the Governor which I'm happy to advance on the floor this morning to create these 14 judgeships at this point in time.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Will you yield to a question?

ACTING PRESIDENT KUHL: Senator Lack, will you yield to a question?

SENATOR LACK: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: Through you, Mr. President, was consideration given - consideration given in this package to including a Family Court judge in Monroe County?

SENATOR LACK: Not to my knowledge.

SENATOR DOLLINGER: Was it

discussed -- again through you, Mr. President, was it discussed in the negotiations between the two houses?

SENATOR LACK: I do not know what was discussed other than the negotiations that I had, Senator Dollinger, and at that point in time I had no discussions with respect to creating a Family Court judgeship in Monroe County, but in general, Senator, I should reply to you that there is a much larger package for the creation of judgeships which conceivably could include the creation of more Family Court judges throughout the state of New York for which months ago I sent requests to the Assembly and asked them to enter into a discussion on. That has not taken place.

This is in response to a need that exists really, of a desperate need that exists through the state, the creation of this particular package. I would hope that as part of the reorganization of the current seven-tiered judicial system in the state to a two-tiered system as proposed by the Chief Judge, that that would also include the creation of additional judgeships throughout the state as

would be needed to support what would hopefully be the newly created two-tiered system.

SENATOR DOLLINGER: Just one other question, through you, Mr. President.

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

SENATOR DOLLINGER: I won't take up a lot of time with this, and I would suggest, Senator Lack, you may even need some advice to answer this question from Senator Meier. Do you know how many people there are in Oneida County?

SENATOR LACK: Excuse me?

SENATOR DOLLINGER: Do you know how many people there are in Oneida County?

SENATOR LACK: Senator Meier.

SENATOR MEIER: There are presently about 244,000 people in Oneida County who among them manage to generate the highest per judge case load in the entire state of New York, including the five boroughs of the city.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: On the bill, Mr. President.

I appreciate the candor of

Senator Lack. I know that he has, in our discussions, considered the issue of a Family Court judge in Monroe County. I know it's been considered by the Office of Court Administration.

I appreciate his pushing for a complete package to try to resolve the issue of sparse judicial resources across this state. Whether that's achieved through the addition of judges in particular communities or through a courtwide reorganization which probably is three or four or five years away, given the Constitutional Amendment process that would probably be required to do that.

It is an interesting question that we perhaps should debate, and I would be interested in seeing what his hearings produce but I stand here again to ask that this issue of a Family Court judge for Monroe County be a part of the final package.

Senator Meier, I appreciate that for 244,000 people, you're going to have three judges. We have 700,000 people and we have five. We need at least twice as many as you do if not more. I've asked to add six. It seems

to me it would make good sense. I'm concerned because we give the Family Court judges more and more responsibility all the time. We ask them to protect children from neglect, we ask them to collect child support. We ask them to achieve real justice in our juvenile justice system. We ask that they intervene earlier in child's lives so that we discourage them from a life of crime and cut down on the need for future judicial resources. It seems that at a time when we should be doing more for children, we're going to actually end up doing less in Monroe County.

I'm disappointed that the Monroe County judge is not in this package. I would hope that in discussions with the Assembly that when it is an agreed package it would be made a final part of and that no obstacle would stand in the way of improving our Family Court in my home community and in other parts of the state.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos, we have a cross now that we'd like to take care of. He'd like to do that.

We'll return to Calendar Number 1680 which previously passed on the non-controversial reading of the Calendar Number 66-C, and the motion is to reconsider the vote by which Calendar 1680 passed the house. I'll ask the clerk -- the Secretary to call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is before the house. Secretary will read the substitution.

THE SECRETARY: Senator Connor moves to discharge from the Committee on Rules Assembly Print 8416-A and substitute it for the identical Senate bill, Third Reading 1680.

ACTING PRESIDENT KUHL:

Substitution is ordered. Secretary will read the title.

THE SECRETARY: Calendar Number 1680, by the Assembly Committee on Rules, Assembly Print 8416-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.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR DOLLINGER: Mr. President.

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

SENATOR DOLLINGER: If I could, Mr. President, on calendar -- or on Senator Lack's bill, and I don't have the calendar number, but Senate Number is 5796.

ACTING PRESIDENT KUHL: Calendar

1686.

SENATOR DOLLINGER: I would ask to be recorded in the negative on Calendar Number 1686. I apologize.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Dollinger will be recorded in the negative on Calendar Number 1686.

Senator Velella.

SENATOR VELELLA: Mr. President, can we go to Senator Saland's bill, Calendar Number 1681.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 1681.

THE SECRETARY: Calendar Number 1681, by Senator Saland, Senate Print 5791, an act to amend the Criminal Procedure Law.

SENATOR GOLD: Explanation.

ACTING PRESIDENT KUHL: Senator Saland, an explanation of Calendar Number 1681 has been requested.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, this bill is what's been commonly termed the "primary

aggressor" bill. It is a bill which is somewhat limited in scope in that, while it amends the Mandatory Arrest Law that we passed in 1994, the Family Protection and Domestic Violence and Prevention Act of 1994, there have been some concerns expressed in some quarters that partic ularly with respect to misdemeanors, there has been some situations in which law enforcement officers would arrive at the scene of a domestic violence incident and find both parties charging each other with what, in essence, was some type of a family offense misdemeanor, and the police officer would then, under the strict interpretation of the law, be compelled to arrest both.

What we're doing here, and I take great pains to point out that by way of this bill and there's a three-way agreement on this bill, this does not apply to felonies. It would be a virtually impossible task to ask a police officer to distinguish among competing felonious misconduct as to whom the primary aggressor would be, and also I do believe that there's not a state in the Union that has, in effect, merged mandatory arrest and primary aggressor.

This bill, as I said, is narrow in its scope. It attempts to deal with those misdemeanor cases and tries to establish a series of criteria that are to be taken into consideration when a law enforcement official has to make that determination as to whether or not, in fact, there is a readily discernible primary aggressor.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Will the gentleman yield to a question?

ACTING PRESIDENT KUHL: Senator Saland do you yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR GOLD: Senator, first of all, I appreciate your comments, and I get the feeling from your comments and you don't have to really deal with this, but I get the feeling that of all the legislation you've passed in your life much of it very significant you've

come to the floor on other occasions a little bit more excited than with this bill.

But at any rate, we have a bill before us and the bottom line is this terrible word "arrest" and I say terrible word because if somebody gets arrested and it's for a misdemeanor or if it's for a felony, there are police procedure, as we all know, and that means cuffing, it means a lot of things and arrest is a serious situation.

My question to you is the following: If a police officer is called to a lobby of a bank and the guard has grabbed somebody, he has reasonable cause from independent witnesses to get an idea of who committed a crime, but aren't we placing an extraordinary burden on a police officer if in a misdemeanor situation where again we're talking about injuries which I assume are much less than they would be in a felony situation, we're asking a police officer to look at two people, both pointing fingers at each other, and all of a sudden, without a trial, be the judge and the jury and cause an arrest. He has to, as I read this, he must or she must take somebody into

custody and make an arrest. Isn't that a kind of a huge burden especially in a misdemeanor situation?

SENATOR SALAND: Senator Gold, primary aggressor has been used in a number of jurisdictions. I said in my earlier comments, I'm not aware of a jurisdiction that has merged both mandatory arrest and primary aggressor. I think your point is well taken. I think it will be a perhaps difficult decision for an officer to make, but our purpose here with some of the language that we've provided in some of the sub categories is to try and provide some definition that might make that very difficult decision somewhat more objectively arrived at.

SENATOR GOLD: Will the Senator yield to another question, Mr. President?

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR GOLD: Senator, the first criterion is the comparative extent of any

injuries conflicted by and between the parties. It seems to me, Senator, that there are many, many, many cases which have led us to understand that very often the primary aggressor in a fight winds up getting the worst of it. As a matter of fact our whole law -- body of law dealing with the issue of self-defense has parts of it which talk about defending yourself but then not going too far, et cetera, et cetera, that kind of stuff, so it is very often that the person with the worst injuries may have been the primary -- is that the word? -- the primary aggressor.

So how does one look at the injuries and using that criteria determine if it's only the two parties in the domestic violence situation, which one was the primary aggressor?

SENATOR SALAND: Senator Gold, the categories or sub-categories that are listed on lines 15 through 21 represent, in effect, a series which, taken in their totality, are appropriately to be considered by an officer who is contemplating making this decision as to whether there is someone who is clearly the

primary aggressor.

SENATOR GOLD: Will the Senator yield to another question?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR GOLD: Senator, you have gone out of your way, and I appreciate that, to make it clear that this does not involve felony situations. You're talking about physical aggression, but it's physical aggression at the misdemeanor level, am I correct?

SENATOR SALAND: Yes, you are, Senator Gold.

SENATOR GOLD: So if I can follow up with that, isn't it a fact that a misdemeanor at the -- physical damage at the misdemeanor level does not have to be really serious physical injury. It could be injury or could be an assault but not of a serious injury?

SENATOR SALAND: Without my Penal Law, I can not say with absolute certainty but I do believe you're correct.

SENATOR GOLD: Well, O.K. I don't

have mine either, but your shooting from the hip is usually more accurate than most people with a law library. But, Senator, my point really is in a situation where you've got felonies being committed and you've got witnesses and you've got other things, I can understand putting certain burdens upon a police officer, but when you don't have physical damage that brings it to a felony level, you're not out on the front lawn where all of the neighbors saw what happened. You're in a home and the police officer gets called there, and all he's got is two people, minor injuries if at all, maybe scratches, they each scratched each other, and they're both pointing to each other. I think it's an impossible job for a police officer, and we are mandating by law that he arrest somebody and take somebody who may never have been arrested in his or her life and subject them to criminal incarceration with people who obviously may be worse criminal types.

I say, Senator, that you have my admiration for what you've done in this field in many other ways, but I just think that we're taking that last stretch which goes beyond logic

and to do it after an all-night session and I know that Senator Bruno has outlawed them and I assume this is an extraordinary situation or he wouldn't violate his own rule, but I mean at this point in time to be dealing with this, I would really urge upon you to make some reconsideration.

The concept that this is a three way deal gets me wondering about the three who made the deal, but I think that, with all due sensitivity to the women's groups and for the fact that domestic violence is a very serious situation, I think this stretches it beyond logic.

ACTING PRESIDENT KUHL: Secretary will read -- Senator Dollinger.

SENATOR DOLLINGER: Will the sponsor yield to a question?

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

SENATOR SALAND: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: Senator, I want to follow up on a question that Senator

Gold asked, and ask whether this is really a mandatory arrest policy of the primary physical aggressor; is that what it's intended to be?

SENATOR SALAND: This -- the section of the law that's being amended is part of the 1994 Family Protection and Domestic Violence Intervention Act. If you recall, that section required mandatory arrest in misdemeanor and felony situations. It also went on to say that in the misdemeanor situation unlike the felony situation, the complainant would have the ability to withdraw his or her, in the vast overwhelming majority of cases, the complainant would be a woman complainant. However, the - the law enforcement officer who is investigating could not advise that person, the victim, of her or his right to withdraw.

What we're doing in this section is now amending that to say that in that misdemeanor situation, the law enforcement officer will have to make a determination, if one can be made, as to whether there's a primary aggressor and then if, in fact, there is a primary aggressor, that primary aggressor, where both people are alleging that the other has

committed a family offense, that primary aggressor would be the person to be arrested so as to avoid incidents in which one person initiates a domestic violence incident and then claims that the other person was culpable either causing it or in some manner or way creating the incident.

SENATOR DOLLINGER: Through you, Mr. President, Senator Saland, I remember that portion of the bill very well because you and I had an extended colloquy about the question of mandatory arrest and the circumstances in domestic violence in which exactly these kinds of issues would arise; but my question really deals with the language of the bill that was highlighted by Senator Gold.

Look at line 14 and 15. It says shall attempt to identify and arrest. Does that mean they are attempting to arrest or attempting to identify and thereafter shall arrest, or that they only have to engage in an attempt to arrest?

SENATOR SALAND: I believe what that's intended to do, Senator Dollinger, is to accept the reality that in these types of

situation, one may not be able to determine in every instance and perhaps in many or most instances that there is, in fact, a clearly primary aggressor.

What is being said here is that the investigating officer shall attempt to identify. If, in fact, that identification can't be made and yet there has been the commission of a family offense misdemeanor or misdemeanors, then the officer, I believe, would be dutybound to act accordingly.

SENATOR DOLLINGER: And not make an arrest.

SENATOR SALAND: Oh, make an arrest, certainly have to arrest.

SENATOR DOLLINGER: Again through you, Mr. President, if he cannot figure out who the physical aggressor is, he would be obligated then not to make an arrest; isn't that correct?

SENATOR SALAND: No, I think the officer would be confronted with two choices. If both people had committed what would appear to be a family offense misdemeanor and neither person -- neither or both people chose to withdraw their complaint without being advised

that they could do so by the officer, the officer would be required to do that which he or she would have had to have done if they came upon you and I fighting or doing damage to each other physically in some setting, whether it was in a ball park, in a parking lot, in a bar room, and I think under those circumstances the officer would in all likelihood have arrested the two of us.

SENATOR DOLLINGER: Arrest both parties.

SENATOR SALAND: Yes.

SENATOR DOLLINGER: Just through you, one other question, Mr. President.

ACTING PRESIDENT KUHL: Senator Saland, you continue to yield? You continue to yield?

SENATOR SALAND: I'm sorry, yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: Thank you, Mr. President.

What happens -- what happens, Senator, if there is an arrest of the primary physical aggressor and in the pre-trial motions

against the misdemeanor complaint there's a hearing held and it's determined by the court that he wasn't the primary physical aggressor based on a hearing. Is the arrest then voided even if it's an arrest for a simple assault?

SENATOR SALAND: Well, the purpose of this legislation is to try and avoid dual arrest situations. My assumption in the - in the scenario that you've mentioned is that that particular charge, whatever it might be, assault whatever, would be dismissed.

SENATOR DOLLINGER: O.K. Mr. President, on the bill very briefly.

I understand the goal that Senator Saland is getting to, and I support the concept of arresting the primary physical aggressor. I think it's unfortunate, as Senator Gold said, that it's quarter of ten in the morning on the morning after that we're doing this. This is a very significant piece of legislation. Perhaps it should have been talked about either in the Children and Families Committee or in the penal -- the Codes Committee, because I assume this affects the Criminal Procedure Law and should be a part of

that as well.

I'm going to vote in favor of it, but I share the concerns of Senator Gold, and I'm not so sure that we're giving quite as much guidance to our police officers as we think we are. Much as I said in 1994 when we did the mandatory arrest bill, I would simply suggest that this thing -- this whole concept needs to be looked at in greater detail.

ACTING PRESIDENT KUHL: Senator Rath.

SENATOR RATH: Mr. President, to clear the record, there were -- there was a comment made about how women's groups and the domestic violence groups feel about this particular bill, and I find myself doing a lot of work on that issue in my district, in fact, a lot of very creative work with the groups. It was their number one choice this year, was this bill.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR GOLD: Mr. President.

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

SENATOR GOLD: Well, I wasn't sure whether Senator Rath was implying that I didn't say that. I think I recognized the fact that there are women's groups, I think, that are supporting it. I think they're wrong, and you know, as with so many other situations, groups take positions and then we have to make a determination and vote.

With all due respect to the wonderful work these groups have done and the fact that people like you and Senator Saland and many people on this side of the aisle have sensitized society to some extent towards the issues involved in domestic violence, I think this is a long stretch, and I'm going to vote no.

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.)

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

THE SECRETARY: Ayes 56, nays 1, Senator Gold recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Would you call up Senator Trunzo's bill 1677.

ACTING PRESIDENT KUHL: Secretary will read the title of Number 1677.

THE SECRETARY: Calendar Number 1677, by member of the Assembly Vitaliano, Assembly Print 6864-A, an act to amend the General Municipal Law.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Let me ask Senator Trunzo to yield. Rather than ask for an explanation, let me cut to the quick.

ACTING PRESIDENT KUHL: Senator Trunzo, do you yield?

SENATOR TRUNZO: I will, Senator.

ACTING PRESIDENT KUHL: Senator

yields.

SENATOR LEICHTER: I also would relate to another bill you -- are we on 1677?

SENATOR TRUNZO: We're on 1677 right now, and also I have 1676.

SENATOR LEICHTER: O.K. You provide special disability retirement for certain employees, correction officers another bill dealt with the State Police who've developed HIV positive or hepatitis. Do we have any statistics, any indication whatsoever that would show a higher incidence to those diseases by these particular employees?

SENATOR TRUNZO: I personally don't have any records at this point myself, but I can assure you, Senator, that the presumption of the HIV or the other diseases doesn't mean solely just that they have it. They're going to have to show evidence that the incident that occurred in the prison or in association with the criminals that they may be working with, that they have to indicate that and prove the fact that this particular incident caused them to have the HIV. It isn't just strictly a presumption.

SENATOR LEICHTER: All right. Senator, just to clarify that, because I don't know if the bill is that clear as to the legislative intent. As we know, most of the time, to contact HIV, it's that you practice unsafe sex or you may be a drug user and you use needles, but I can well understand that these people may come into contact with both -- with more persons who are HIV positive. They are guards they work in the prisons; there's a high incidence of HIV and TB and hepatitis.

What you're telling us that when they apply for the disability pension that they would have to show that they were in contact with somebody. They can't just come and say, "I'm HIV positive" and the presumption applies; you're telling us that they have to show contact.

SENATOR TRUNZO: Absolutely, show the fact that they were contacted.

SENATOR LEICHTER: All right.

ACTING PRESIDENT KUHL: Secretary will read the last section. 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 57.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Please call up Calendar Number 1678, by Senator Alesi.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: Calendar Number 1678, by member of the Assembly Koon, Assembly Print 4572, an act to authorize and direct the Workers' Compensation Board.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR GOLD: Hold it. Hold on.

ACTING PRESIDENT KUHL: Senator Alesi, would you like to explain Calendar Number 1678 for Senator Leichter.

SENATOR ALESI: I'd be happy to.

Mr. President, this bill simply directs the Workers' Compensation Board to increase the Workers' Compensation benefits for an injured firefighter.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Yeah. Mr. President, I'll speak on the bill.

ACTING PRESIDENT KUHL: Senator Gold, on the bill.

SENATOR GOLD: This is a bill which legislatively makes absolutely no sense in the world. There's an individual who is receiving benefits. There is a process by which the disability was determined and the Legislature is going to change that award and, if we do it, we are crazy, which doesn't mean we don't do it. Matter of fact, that may explain why we may do it; but the point is in the Committee meeting, someone pointed out that there have been changes in benefits and that people coming down the line later might get different benefits and, Senator Alesi, I certainly would consider a bill that set up a process whereby anybody who is on disability

could make application if things changed, but the concept of picking a person coming to the Legislature and the Legislature determining what disability benefits should be makes no sense.

I don't know this person. I don't know whether you do or don't. I assume, and just for the record, Senator Alesi, I'm assuming -- I'm assuming based upon my knowledge of you, that this bill is put in in good faith, so please don't take anything I say as being anything other than that -- but we are being asked to judge a disability case without any evidence, without any knowledge of the individual, without any search of a record, and it's just absurd.

Now, in similar situations where people have claimed that their pension benefits through no fault of their own, we wind up with that silly language, they want to change, finally after years we got the Trunzo bill. We allowed that to lapse, which made no sense. There are ways the Legislature can set up procedures, but to flood ourselves with people who will find out that we would override administrative determinations and put money in

their pocket, is something we don't need.

Now, we could argue from now 'til the end of the year, and on and on and on about a full-time Legislature. If we want to make a full-time Legislature and we're looking for new bills to make it look like we're busy, well, this is one, I guess, that will give us a new way to look busy and justify to the people, but it's just silliness.

There are things which are proper legislative concerns, and there are things which we shouldn't touch with a ten-foot pole, and I don't know the merits of this one individual any more than I know the merits of 500 other individuals in this state who don't know Senator Alesi and don't know Senator Tully and don't know Senator Dollinger or Leichter or Gold or anybody else, and whose benefits are going to stay the same.

One last thing, I mean let's talk about the open secret we all know about. How many times I've walked out of that Rules Committee or other committees and had members of the other side say to me, You know, you're right, you know, it's really terrible, but you

don't have, unfortunately -- and I'm not mentioning names obviously -- don't have the guts on the floor to say we're right and to vote with us. Makes no sense at all.

So just on a personal basis, I can't speak for Senator Leichter who has the same experience, you know, don't tell us walking out of the room we're right. If you think we're right, vote with us. If you don't, at least don't pour salt in it that you're going to vote for a bad bill just because that's what the party tells you to do.

This is a bad process. This bill rather is a bad precedent, and I think it's one we should keep away from and I'm going to vote in the negative.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 30th day.

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 two, Senators Gold and Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you call up Calendar Number 1679, by Senator Trunzo.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: Calendar Number 1679, by Senator Trunzo, Senate Print 5101-A, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Senator Trunzo, the answer that you gave me when I discussed your previous bill, 1676, also applies to this bill?

SENATOR TRUNZO: It also applies to this legislation.

SENATOR LEICHTER: Right, that you would have to show that the person who is

applying for the disability pension, that he came into contact with somebody which could have caused him to -

SENATOR TRUNZO: Correct.

SENATOR LEICHTER: -- to develop that disease.

SENATOR TRUNZO: Correct, yes.

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 57.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Mr. President, on the original calendar of today, Calendar Number 66, would you call up Senator Marcellino's bill 5628, Calendar 1522.

ACTING PRESIDENT KUHL: On the regular calendar, the brown calendar, Calendar Number 66, first calendar of the day, Secretary will read Calendar Number 1522, by Senator

Marcellino.

THE SECRETARY: Calendar Number 1522. In relation to Calendar Number 1522. Senator Marcellino moves to discharge from the Committee on Rules Assembly Print 8477-A and substitute it for the identical Senate bill, Third Reading 1522.

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

THE SECRETARY: Calendar Number 1522, by the Assembly Committee on Rules, Assembly Print 8477-A, an act authorizing the county of Suffolk.

ACTING PRESIDENT KUHL: 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 57.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

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

ACTING PRESIDENT KUHL: Return to the order of reports of standing committees, ask the Secretary to read the report of the Finance Committee which is at the desk.

THE SECRETARY: Senate Stafford, from the Committee on Finance, offers up the following bills:

Senate Print 6705-B, Budget Bill, Education, Labor and Social Services Budget Bill;

By Senator DeFrancisco, Senate Print 5757, an act to amend the Insurance Law;

5792, by the Committee on Rules, an act in relation to appropriations made by the chapters of the laws of 1997; and

Senate 814-A, Budget Bill, an act making appropriations for the support of government.

All bills directly for third

reading.

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The report is accepted. The bills are reported directly to third reading.

Senator Skelos.

SENATOR SKELOS: Mr. President, will you call up Calendar Number 1673.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 1573, Bill Number 705-B.

THE SECRETARY: Calendar Number 1673, Budget Bill, 705-B, Education, Labor and Social Services budget.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Mr. President, Is there a motion -- message of necessity and appropriation at the desk?

ACTING PRESIDENT KUHL: There is.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity that is at the desk. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The messages are adopted. Bill is before the house. Secretary will read the last section.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

SENATOR LEICHTER: Yes. Mr. President, I'm going to vote against this bill. I voted against all the budget bills, but I just

specifically want to point out that in this bill that the educational aid disparity to the city of New York is barely narrowed. I think it's narrowed by one-tenth of one percentage point.

The fact is that the city of New York has been short-changed over the years in education aid. We have a growing school population, yet we don't receive the amount of state aid that we should.

But let me also say, Mr. President, maybe it's a fitting end to this session that we have this sort of chaotic and sloppy ending and that here we are after some 21, 22 hours, trying to pass budget bills that we barely understand and have barely seen. It just underscores again the need that we have to reform our procedures.

Certainly I think the people of the state of New York would like us to be somewhat awake and aware when we pass these budget bills. We clearly are not. These are bills negotiated by the leaders against a deadline. Then they come out at the very last minute before we vote on them. It's just not a way to act on a 66- or $68 billion budget.

Mr. President, I vote in the negative.

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

Announce the results.

THE SECRETARY: Ayes 55, nays 2, Senator Dollinger and Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Call up 1674.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 1674.

THE SECRETARY: Calendar Number 1674, by the Committee on Rules, 5792, an act in relation to making appropriations.

SENATOR SKELOS: Mr. President, is there a message of necessity and appropriation 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 1674. All

those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The messages are adopted. The bill is before the house. Secretary will read the last section.

THE SECRETARY: Section 96. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56 -

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

THE SECRETARY: Ayes 55, nays 2, Senators Dollinger and Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Stand at ease temporarily.

SENATOR KUHL: Senate will stand at ease for a few moments.

(The Senate stood at ease from 10:10 to 10:51 a.m.)

SENATOR BRUNO: Mr. President.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Can we at this time take up Calendar Number 1675.

THE SECRETARY: Calendar Number 1675, Budget Bill, an act making appropriations for the support of government.

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: Motion is to accept the message of necessity at the desk on Calendar Number 1675. 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 4. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

THE SECRETARY: Ayes 55, nays 2, Senators Leichter and Dollinger recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno.

(The Senate was at ease until 11:00 a.m.)

ACTING PRESIDENT KUHL: Senate will come to order. Have some order in the house. Senator Velella. Members take their chairs. Staff take their places.

Chair recognizes Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 1687.

ACTING PRESIDENT KUHL: Secretary

will read the title to Calendar Number 1687.

THE SECRETARY: Calendar Number 1687, by Senator DeFrancisco, Senate Print 5757, an act to amend the Insurance Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 5. This act shall take effect in 120 days.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

(The Senate stood at ease from 11:01 to 11:18 a.m.)

ACTING PRESIDENT KUHL: Senate will come to order. Members find their places, staff their places.

Chair recognizes Senator Bruno.

SENATOR BRUNO: Thank you, Mr. President. My apologies to my colleagues and others in the chamber for this delay.

We are going to conclude this session, and some people have said this session

is too long, has been too long, and they're right; and some people are thinking that the past 24 hours or so have been too long, and they're right; and some people will say that the latest budget in the history of this state is unfortunate, and they're right.

But nobody can say that what we have done over these past months while we have been in session and, yes, this latest budget ever, that we have not saved the people of this state in an exceptional way, and we have done that together.

What we have done is extraordinary. Third year in a row biggest tax cuts in the history of this state, more than any other state in the United States for the third year, and you know the things that we've done. People will read, and they will learn very specifically about what has happened during this past session and in this budget, so I don't have to, today, recite that. I don't have to go on at great length, thank the good Lord, and I will set an example for my learned colleague in the Minority, Senator Connor, and be very brief, and just say thank you, thank all of you for your

cooperation, for your assistance, for your commitment to doing what is right for the people of this state.

Want to thank Senator Stafford who has chaired Finance, does all the many extraordinary kinds of things that he does to make everything work, and Senator Skelos, the Deputy Majority Leader, who sits here hour after hour, helping this function in an orderly way, and Senator Randy Kuhl, who has presided hour after hour after hour and day after day, and I thank you for that; and all the rest of you that are here, chairs, the leaders, playing a role and making the good things happen on behalf of the people of this state.

I also want to say a special word of thank you, and that's really the most meaningful thing that I can do is to say thank you to Abe Lackman, who is known throughout this state and the United States as one of the most able and capable who just makes things happen, sometimes in a timely way but -- couldn't resist that, Abe -- but there is no one that can do it better and knows it better than Abe. And he is assisted by Mary Louise Mallick, who is here,

and Lee Van Riper and his Finance staff, many of them that are here. He has spent hours and hours and hours and hours, more than any of us want to recount, in helping us get where we are today.

The counsels, Dave Dudley and Ken Riddett and all the others that work with them, literally to the point of exhaustion, and I apologize for that, where people have had to be bodily removed, having collapsed, and that's unfortunate in the process that exists here in this state, but I thank you for that. And Steve Boggess, my chief of staff, who has been with me for an awful lot of years, and Pat Stackrow, my executive assistant, and Marcia White, who is my person -- I don't quite know what her title is but I think she is a press secretary. Yes, she is a press secretary, and when I say things that are inappropriate she helps make them more appropriate, such as right now.

And my director of communications, John McArdle, and his whole press office, that tries to make us all look good and usually succeeds, and I know Steve Sloan, who is here as the Secretary of the

Senate, and the Sergeant-at-Arms that are on duty, and so many other people at the front desk, Billy and Tommy and all the rest who make this place work for all of us, and when it works for us, it works for all of the people of this state.

So again, I apologize for having to recess, having the delays, having to work through the night. I won't take the time to relate some of what needs to be corrected and will be corrected as we get into next year, and that I can promise you.

But we're here and we're concluding and, as I conclude my remarks, we are not going to adjourn to a particular time to be called. Mr. President, I'm going to ask that we recess and there will be enough members here because we have one piece of business that we will be acting on, and that is a bill that should be acted on before we leave. It's a bill that's already been debated in this house. It is going to be amended and recalled and acted on, and that is the "Wild Card" bill that was debated at length and will not be debated again, but a very simple amendment will take place that

is more technical and that has been part of the the delay for the last 20 minutes to see whether or not we would get that technical language here. It is not here. We're not going to stay any longer because many of us have responsibil ities to our constituency, and we must -- and to ourselves and to our families, and so it's time to recess until it's time for us to get back together.

So I wish you all well for the rest of the summer and fall, until we put a call to get back together at some time in the future.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Chair recognizes Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

Mr. President, it has been quite a session. I'll tell a little anecdote, because Senator Leichter always reminds me that some years ago when my kids were a little younger - they're still young -- I decided, gee, I had fond memories of the seashore in New Jersey, so I rented a place and we had a great week at the

seashore, so I did it the next year and lo and behold, my wife went and I was up here; we were in session right up to July 4th. So I moved it back a week for the next year, and lo and behold, same thing happened. I missed it and my family went. After about three years of this, Senator Leichter said, Jeez, he started to come up to me and say, When's that week you're going to the Jersey shore, because I know we won't get out until after that.

I'm really afraid, Mr. President. I moved it back again this year and here we are. So I don't -- I don't quite know what to do. I'm afraid to put it off until the middle of August or sure enough, things will happen and we'll be here.

Mr. President, it has been a - in some respects a contentious session. Senator Bruno has outlined some of the accomplishments, reference to some of the bills this house has passed and we share in some of them. We in the Minority have a peculiar perspective though, we share in some of the ones that didn't pass on time, a different perspective, but it has been a session that as pointed out also, as Senator

Bruno said, some of the things we ought to address for the future about perhaps better ways we can mend this process to make it work better for the people and maybe make it work better for us as well.

That said, I do want to be brief. I know we have a 12:00 o'clock rule, and we're approaching 12:00 o'clock. I should have read that rule more closely, but I want to thank certainly, thank Senator Bruno, our Majority Leader, for always being gracious, always being sincere and forthright. He is refreshingly candid. You don't, at least by reputation you don't look for candor, the public doesn't look for candor among elected officials, and Senator Bruno is one elected official who says it like he sees it and means what he says and that is indeed refreshing, and he has always been courteous to me. He has always been a fine gentleman and a principled leader, and indeed principled even when we disagree.

Mr. President, a lot goes into even the Minority Conference's efforts. A lot of that certainly, a good deal of that is due to colleagues on this side of the aisle and their

support that they give and the efforts that they make, the committee work and fostering ideas and task forces, and so on, and, of course, the job of being leader needs the most able right arm one can find. I am indeed fortunate that I have a Deputy such as David Paterson who day in and day out graces this chair, leads us in debate, does it with, I think, always an incredible wit, insight and intellect, and can disagree really time in and time out in a way that is not disagreeable but is, in fact, sometimes rather enjoyable, and Senator Bill Stachowski, Assistant Minority Leader, who fills in in this Chair, does our work in the Rules Committee and otherwise is an outstanding leader of this Conference, is a colleague I think we've all over these years grown to love and respect. He has some pretension of athletic knowledge and ability, but we tolerate in return for his phenomenal sense of humor. Sincerely though, Senator Stachowski is someone who I respect and rely on.

Senator Manny Gold, our ranking Minority member on Finance, lifts those with the benefit of the incredible intellect, the

incredible debating skills and his many, many years of experience, and I certainly thank him. I do rely on his friendship and suport and advice.

Conference is indeed a privilege to be shared by someone who has experience and wisdom and who is indeed kind and concerned to all the members of this house on both sides of the aisle, and that is our dear Senator Olga Mendez. Thank you, Senator. The rest of the leadership and members of this Conference, I say thank you; thank you for your support; thank you for your efforts. Keep up the good work.

Staff, I don't know, what we ask of staff in both our Conferences is truly incredible, truly incredible in terms of the time, the time they put in. Just think if they all investment bankers or whatever and put in those most kind of hours, or lawyers who bill $350 an hour, they would have bankrupted the state this week with the hours in the past week that they put in, and that's true of staff I know in both Conferences. Seven days a week, 20 -- must be 25 or '-6 hours a day at least, we have been blessed with their services.

And to my counsel, Michael Boxley, to his deputy, Ed Wassermann, and to all the capable lawyers and support staff in our counsel's office, I say thank you. To John Ewashko, the Secretary to Senate Minority Finance, who has toiled unstintingly these past weeks, whose acuity and insight have been in valuable. His efforts are monumental; the ideas he puts forth both refreshing and often shockingly insightful, sometimes even to arouse the compliments of the Majority, as I'm unaware and the serious study of those ideas by all the conferences here, and the Governor.

Thank you, John; thank you Lynn, Lynn Kopka, his able Assistant Secretary and all the staff of the Senate Minority Finance, I hope they were not foolish enough to stay away for this speech since we didn't need their services as of a half hour or so ago, and I certainly wish them a well earned rest for the rest of the summer.

To Chris Andrucci, our secretary, Amy Solomon, my chief of staff, to Mona DeMay, our deputy secretary, to Mercy Magrino, Eileen Hickey, Janet Kennedy in Communications, Peter

Slocum, our press secretary and he has a double title of senior policy adviser and that's because he is a policy wonk in the finest sense of the word, and is a real idea person who is always thinking and always looking for new ways that government can serve the people, and I know I'm going to forget somebody, to Mark Lining, our director of programs, all the many members of the program staff who labored these past weeks as well on the issues and the substantive issue side of both the budget and the bills before us. I say thank you to -- I'm looking around, because I got to -- to Joe and Jeff and the other members of our senior staff, I say thank you to all of you. Enjoy the rest of the summer, what's left of it. Take a few hours off and let's get back to work.

To all of my colleagues on both sides of the aisle, I thank you especially for your courtesy, for your good companionship and for your collegiality. Please everyone enjoy the rest of the summer. Take pride in those things you've accomplished and look forward in the future to rectifying some of the things where perhaps we collectively as an institution

fell short.

Thank you very much, Mr. President.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Thank you, Mr. President. Thank you, Senator Connor, for the very fine words and it is also a pleasure most of the time to work with you and your colleagues.

Having said that with almost a straight face, we do things together and we know that, and the debate does help us all. Sometimes it's stimulating but gets us where we have to be. So sincerely, thank you.

And Mr. President, at this time, I would move that we stand in recess, and thank you very much, and God bless.

ACTING PRESIDENT KUHL: The Senate stands in recess.

(Whereupon at 11:36 a.m., the Senate recessed until 11:40 a.m.)

ACTING PRESIDENT MAZIARZ: Senator Farley.

SENATOR FARLEY: Thank you, Mr.

President.

Mr. President, I wish to call up my bill, Senate Print 5717-A which was recalled from the Assembly which is now at the desk.

ACTING PRESIDENT MAZIARZ: Secretary will read.

THE SECRETARY: By Senator Farley, Senate Print 5717-A, an act to amend the Banking Law.

SENATOR FARLEY: I now move to reconsider the vote by which this bill passed.

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

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

ACTING PRESIDENT MAZIARZ: Amendments received.

(Whereupon the Senate was in recess.)

SENATOR FARLEY: Mr. President, would you please call up my bill, Calendar

Number 1637.

ACTING PRESIDENT MAZIARZ: Secretary will read.

THE SECRETARY: Calendar Number 1637, by Senator Farley, Senate Print 5717-B, an act to amend the Banking Law.

SENATOR FARLEY: Is there a message of necessity at the desk?

ACTING PRESIDENT MAZIARZ: There is a message at the desk, Senator Farley.

SENATOR FARLEY: I move that we accept the message.

ACTING PRESIDENT MAZIARZ: All those in favor of accepting the message of necessity, signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted. Senator Farley.

Secretary will read, I'm sorry. Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: AYES 57.

ACTING PRESIDENT MAZIARZ: The bill is passed.

Senator Farley.

SENATOR FARLEY: The bill is passed.

I move now to recommit all the bills that are on the calendar to the Rules Committee.

ACTING PRESIDENT MAZIARZ: All bills are recommitted.

SENATOR FARLEY: Now, Mr. President, I move that the Senate stand adjourned subject to the call of the Majority Leader.

ACTING PRESIDENT MAZIARZ: The Senate stands adjourned subject to the call of the Majority Leader.

Thank you, and have an enjoyable summer.

(Whereupon at 11:59 a.m., the Senate adjourned.)