ALBANY, NEW YORK

February 9, 1998

3:05 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order. Would everyone please rise and join with me in the Pledge of Allegiance.

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

THE PRESIDENT: The invocation today will be given by Rabbi Israel Rubin from the Chabad Center in Albany.

Rabbi Rubin.

RABBI ISRAEL RUBIN: We begin with a note of sadness, a feeling of loss at the passing of Senator Norman Levy. Among his many accomplishments are those of pressing and initiating a humanitarian seat belt law. It should be noted that his tradition says one who saves one life at risk saves the whole world, and certainly this can be said for all lives in the state and credit to this fine Senator.

This week is Tu B'Shvat, a holiday which is the Jewish New Year for trees on Wednesday. It carries the universal message of concern for trees and the environment and all growing things, especially

their relationship to man, as the Bible states in Deuteronomy, "For man is as a tree of the field." Indeed when God first placed Adam and Eve in Paradise in the Garden of Eden, they were commanded in the seven laws and charged with the divine mandate to work the garden and to serve on it.

O God, grant the legislators in this Assembly division the foresight to plan for our human growth, while also taking into account the growth of the world around us. Amen.

THE PRESIDENT: Amen.

The reading of the Journal, please.

THE SECRETARY: In Senate, Sunday, February 8th. The Senate met pursuant to adjournment. The Journal of Saturday, February 7th, was read and approved. On motion, Senate adjourned.

THE PRESIDENT: Without objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Secretary will read.

THE SECRETARY: Senator Rath, from the Committee on Local Government, reports the following bills:

Senate Print 616, by Senator Cook, an act to amend the County Law;

1944, by Senator Seward, an act to amend the Town Law;

3267, by Senator Seward, an act to amend the Town Law;

3890, by Senator Wright, an act to amend the County Law;

4647, by Senator Cook, an act to amend the Town Law;

4992-A, by Senator Spano, an act to amend the Real Property Tax Law; and

6001, by Senator Larkin, an act to amend the Town Law.

Senator Volker, from the Committee on Codes, reports the following bills:

Senate Print 222, by Senator

Volker, an act to amend the Penal Law and the Criminal Procedure Law;

424, by Senator Goodman, an act to amend the Penal Law;

454, by Senator Holland, an act to amend the Penal Law;

502, by Senator Johnson, an act to amend the Penal Law;

522, by Senator Volker, an act to amend the Penal Law;

1135, by Senator Marcellino, an act to amend the Penal Law;

1290, by Senator Saland, an act to amend the Penal Law;

1957, by Senator Holland, an act to amend the Penal Law;

1977, by Senator Kuhl, an act to amend the Penal Law;

2016, by Senator Saland, an act to amend the Penal Law;

2522-A, by Senator Johnson, an act to amend the Penal Law;

5525, by Senator Volker, an act to amend the Criminal Procedure Law and others, and

5950, by Senator Balboni, an act to amend the Penal Law.

Senator Cook, from the Committee on Education, reports:

Senate Print 5739, with amendments, by Senator Cook, an act to amend the Education Law.

Senator Holland, from the Committee on Social Services, reports:

Senate Print 231, by Senator Holland, an act to amend the Social Services Law; and

6170, by Senator Hannon, an act to amend the Social Services Law.

All bills ordered directly for third reading.

ACTING PRESIDENT MEIER: All bills directly to third reading.

We'll continue on with reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Marcellino.

SENATOR MARCELLINO: Thank you,

Mr. President.

On behalf of Senator Libous, please remove the sponsor's star from Calendar Numbers 2 and 5.

ACTING PRESIDENT MEIER: So ordered.

SENATOR MARCELLINO: Thank you, sir.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of myself, on page 12, I offer the following amendments to Calendar Number 171, Senate Print 2216, and I ask that that bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MEIER: Amendments are received.

Senator Johnson. No?

Sorry, Senator Holland.

SENATOR HOLLAND: Well, Mr. President, I wish to call up Senator Larkin's bill, Print Number 2369, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MEIER:

Secretary will read.

THE SECRETARY: Calendar Number 77, by Senator Larkin, Senate Print 2369, an act to amend the Navigation Law.

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

ACTING PRESIDENT MEIER: Secretary will call the rolling on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 45.

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

ACTING PRESIDENT MEIER: The amendments have been received at the desk.

SENATOR JOHNSON: Mr. President.

ACTING PRESIDENT MEIER: Senator Johnson.

SENATOR JOHNSON: Mr. President, on page 13, I offer the following amendments to Calendar Number 187, Senate Print Number 4834-B, and ask that said bill

retain its place on the Third Reading Calendar.

ACTING PRESIDENT MEIER: The amendments are received.

Senator Skelos, we have a substitution.

SENATOR SKELOS: Is there any housekeeping? Any substitutions to be made? Would you please make the substitutions.

ACTING PRESIDENT MEIER: Secretary will read.

THE SECRETARY: On page 13, Senator LaValle moves to discharge from the committee on Corporations, Authorities and Commissions Assembly Bill Number 8879-A, and substitute it for the identical Third Reading Calendar 190.

ACTING PRESIDENT MEIER: Substitution ordered.

Senator Skelos, we have another substitution.

SENATOR SKELOS: Please make the substitution, Mr. President.

ACTING PRESIDENT MEIER: Secretary will read.

THE SECRETARY: Senator Skelos moves to discharge from the committee on Corporations, Authorities and Commissions Assembly Bill Number 8994 and substitute it for the identical Third Reading Calendar 191.

ACTING PRESIDENT MEIER: Substitution ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, there will be an immediate meeting of the Rules Committee in the Majority Conference Room, and if you could take up the non-controversial calendar.

ACTING PRESIDENT MEIER: Senator Skelos, we have one more motion.

SENATOR SKELOS: One more motion.

ACTING PRESIDENT MEIER: Yes. Senator Farley.

SENATOR FARLEY: Thank you, Senator Skelos and others.

Mr. President, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause.

These are Senator Libous' bills, 2700-A, 2740 A and 4813.

ACTING PRESIDENT MEIER: So ordered.

Secretary will read the non-controversial calendar.

THE SECRETARY: Calendar Number 17, by Senator Volker, Senate Print 889-A, an act to amend the Criminal Procedure Law, the Public Health Law and the Family Court Act, in relation to the authorized destruction of dangerous drugs.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number

91, by Senator Cook, Senate Print 1422, an act to amend the Criminal Procedure Law, in relation to denial of recognizance or bail.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 92, by Senator DeFrancisco, Senate Print 1537, an act to amend the Criminal Procedure Law, in relation to applications for recognizance or bail.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49, nays one, Senator Sampson recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 93, by Senator DeFrancisco, Senate Print 1538, an act to amend the Criminal Procedure Law, in relation to compliance with orders fixing bail.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 104, by Senator Saland.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 106, by Senator Marchi, Senate Print 3597, an

act to amend the Not-for-Profit Corporation Law, in relation to the organization of university faculty practice corporations.

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 50.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 119, by Senator Levy, Senate Print 102-A, an act in relation to requiring the Commissioners of Motor Vehicles, Transportation and Education to develop a uniform definition of the terms "school" and "school bus".

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 50.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 120, by Senator Stafford, Senate Print 119, an act to amend the Vehicle and Traffic Law, in relation to the operation of school buses.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 153, by Senator Goodman, Senate Print 5559, an act to amend the charter of the city of New

York, in relation to the power of the Department of Finance.

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 50.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 155, by Senator Trunzo, Senate Print 1523-B, an act to amend the Eminent Domain Procedure Law, in relation to acquisition of land by the state.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect in 30 days.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the

roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 174, by Senator Hannon, Senate Print 4433, an act to amend the Civil Service Law.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 185, Senate Print 548, an act to amend the Agriculture and Markets Law, in relation to duties of the Commissioner of Agriculture and Markets.

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: Those recorded in the negative on Calendar Number 185 are

Senators Goodman, Leibell and Leichter. Ayes 49, nays 3.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 186, by Senator Padavan, Senate Print 3084, an act to amend the Agriculture and Markets Law, in relation to spectators at exhibitions of animal fighting.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 190, substituted earlier today, by member of the Assembly Sweeney, Assembly Print 5991-A, an act to amend the Public Authorities Law, in

relation to the special powers of the New York State Environmental Facilities Corporation.

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 54.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 191, substituted earlier today, by member of the Assembly Vann, Assembly Print 8994, an act to amend the Business Corporation Law, in relation to corporate finance proxies, powers of directors, and mergers.

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 53, nays one, Senator Leichter recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 202, by Senator Present, Senate Print 5919, an act to amend the Vehicle and Traffic Law, in relation to the maximum speed limit on a portion of Route 17.

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 54.

SENATOR LAVALLE: Mr. President.

ACTING PRESIDENT MEIER: Senator LaValle.

SENATOR LAVALLE: Mr.

President, may I have unanimous consent to be recorded in the negative on Calendar Number 185.

ACTING PRESIDENT MEIER: Without objection, Senator LaValle will be recorded in the negative on Calendar Number 185. (Pause)

For the purposes of the record, Calendar Number 202 is passed.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, there will be an immediate meeting of the Finance Committee in Room 332.

ACTING PRESIDENT MEIER: Immediate meeting of the Finance Committee in Room 332.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, can we take up the controversial calendar right now.

ACTING PRESIDENT MEIER: Secretary will read the controversial calendar.

THE SECRETARY: Calendar Number 91, by Senator Cook, Senate Print Number 1422,

an act to amend the Criminal Procedure Law, in relation to denial of recognizance or bail in certain cases.

ACTING PRESIDENT MAZIARZ: Senator Cook, an explanation of Calendar Number 91 has been requested by Senator Paterson.

SENATOR PATERSON: Mr. President, interestingly enough that 20 years ago when this bill was first introduced it was quite radical. In the context of many of the other things that people are talking today, it's a very conservative bill in that it only establishes a presumption in the case where an individual appears for an arraignment and they ask for bail to be set. It creates a presumption that, if they've previously been convicted of one of the enumerated violent crimes or if they're currently under indictment on another violent -- charge of a violent crime, that they are presumed to be an endangerment to the society and that the judge has to then have a hearing at which that may be refuted by the defendant, but that the judge must deny bail unless there is some

showing on the part of the defendant that, in fact, they do not create an endangerment to the public.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Cook would yield.

ACTING PRESIDENT MAZIARZ: Senator Cook, would you yield for a question from Senator Paterson?

Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

Are there any statistics currently involved in the revocation of bail by judges that would give us an example, give us an idea of how many people would be affected by the passage of this type of legislation?

SENATOR COOK: Mr. President, I have no statistics because I don't know that we've -- that anybody keeps those kind of statistics. You have individual cases, of course, which come before courts and the

problem is that in New York State courts, at least in one -- at least in one judicial district and I think probably statewide, the presumption at this point has to be that the only reason to deny bail would be a showing that there was some reason to expect that the individual might not appear for trial, and it's then -- the burden of proof then is on the district attorney in that case to show that the individual may actually flee the state rather than appearing for trial.

The -- the court then does not have the ability to make the decision on the other question, which is the endangerment of society, and that's really what this bill does is changes that presumption and because you're changing the presumption you really -- you can't count one kind of statistics as indicative of what may happen in a different type of case.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Cook would continue

to yield.

ACTING PRESIDENT MAZIARZ: Senator Cook?

SENATOR COOK: Yes.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: Senator Cook, I think it's probably my fault. I don't think I'm stating it clearly enough. Perhaps there are no statistics. I wasn't thinking in terms of cases where there was -- where the situation already existed where someone is currently out on bail for another charge or where there was a previous conviction.

I was thinking of those cases where a person is allowed out on bail and then the bail was revoked showing that there's some necessity for this legislation that people who are currently out on bail or are in some way awaiting trial or in recognizance are committing a large number of crimes. The reason I'm seeking the answer is because I want to know what kind of crime reduction that we could expect from the passage of this legislation.

SENATOR COOK: Well, first, let me answer you that I'm not -- I'm not aware that revocation of bail at this point is - would be dependent upon any subsequent action of the defendant. This is not like probation where an individual on probation, first by violating probation, immediately has the probation suspended, or parole where they break parole and, therefore, go back to jail, because the -- the bail, of course, is set on a specific incident relating to a specific time of appearance in court; so I don't know that you have this same kind of continuity, but that is really, of course, the question that -- not the question you really are trying to ask.

You're trying to say, do we have any showing that, in fact, this particular bill is going to cut back dramatically on street crime. I have no statistics again, because we don't -- we don't have a way to measure, but I can tell you that at least two incidents that I am aware of, one case where an individual was -- had a previous conviction for rape and was, in fact, awaiting

trial on a second -- a second charge, in fact, murdered someone and that's really where this bill started.

I also have testimony that I received in Buffalo some years ago from a police chief out there indicating that one particular individual had 11 charges pending against them at the time that they took an antenna off an automobile and stabbed somebody in the -- in the stomach, and they ultimately died from that, but that, in fact, the person had been released on bail repeatedly for a whole variety of different crimes in which it was clear that this is an individual who has a propensity for committing violent acts, so the anec... that is admittedly anecdotal evidence but it seems to indicate to me that there is at least a need for the judge to be able to make a decision based upon the individual's past performance as to whether they constitute an endangerment to society.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

What Senator Cook is proposing really makes a lot of sense when you listen to the examples that he gave. I think we would all feel a sense of responsibility or certainly a sense of chagrin at finding out that an individual who had previously been convicted of a violent felony and then at some point arrested for a second similar situation would at the time of awaiting trial commit yet a third offense because we as a society did not realize that this person was so dangerous that it really was injurious to us as a community to have this person out on the street, and this was the reason why I'm trying to elicit any information that would demonstrate whether the situation that Senator Cook describes occurs with enough frequency so that the cost to localities to institutionalize these individuals or even the impingement upon constitutional rights would be justified, that there would be a finding that this has become such an awesome circumstance in the face of predicate felons that we have to try to take some action to try to stop them.

I'm not satisfied of this point and cannot vote for the bill as yet because I think that there isn't enough information that demonstrates that we need to do this. There are always going to be some exceptions and some instances where this kind of thing occurs. It is going to be quite tragic for us to learn when it actually affects another human being where someone who has had a continuing disregard for our laws acts out in some fashion that makes us wish that we had incarcerated them longer for a previous offense or detained them when they were arrested for a second offense.

But the purpose of bail, Mr. President, is really not to allow for any punishment but is a -- a protection that ensures the defendant's appearance at trial and it is one that is held very highly in our bill of rights and one does not speak to the innocence or guilt of the individual. I think that passage of this legislation comes very close to turning the presumption of innocence on its head. Unfortunately, we probably often can recognize who criminals are just by their

prior offenses or by a proclivity to an offense itself, but when we get to the point where we codify it as part of our legislation and we're now saying that, if you're arrested for one felony, and during the period that you're out on bail waiting for another trial, you're arrested for a second, it really challenges the presumption of innocence to then incarcerate that individual for any period of time, and in light of enough evidence that this is occurring so often that it's a significant threat to public safety, I would favor the value of our constitutional protections over our fears and anxieties that come from people whom we know are probably at higher risk than the average citizen being out on bail.

ACTING PRESIDENT MAZIARZ: Read the last section.

Senator Cook.

SENATOR COOK: Senator Paterson has correctly stated the law and the judicial precedent as it exists in New York State, which is that the courts may only consider whether the individual will, in their opinion,

reappear for trial, and that is exactly the problem. That the courts under the present judicial precedent that exists are not even permitted to consider the question of whether this person is an endangerment to society.

I would point out on the constitutional issue that in federal court as well as in the courts of most of the other states in the Union, this is a consideration that's acceptable, and I think that last year when we voted on this, there were seven negative votes. There may be some changes in mind one way or another, but it appeared that last year most people agreed that we ought to have that power in the hands of the courts in New York State and voted for the bill.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MAZIARZ:

While the Secretary is recording the votes, we'd like to welcome Mr. Steven Forbes to the Senate Chamber. Mr. Forbes?

SENATOR COOK: Mr. President.

ACTING PRESIDENT MAZIARZ:

Senator Cook.

Senator Cook, to explain his vote.

SENATOR COOK: Mr. President, I think it's interesting that in a report released on February 13, 1978, which admittedly is a while ago, by the Democratic Minority Leader of the New York State Senate, it's noted that at least 80 percent of all persons convicted of robbery have at least one prior felony arrest, and that more than 2,000 people arrested in New York City in 1976 -- and there's been raising of the old numbers -- for new crimes were already wanted under bench warrants issued for absconding from recognizance or bail granted on a prior felony charge, which may give you some of the statistics that you were looking for, Senator.

ACTING PRESIDENT MAZIARZ: Senator Cook will be recorded in the affirmative.

Senator Paterson.

SENATOR PATERSON: Mr. President, I already voted in the negative.

ACTING PRESIDENT MAZIARZ: And you already explained also, so -

SENATOR PATERSON: Maybe if Senator Cook had gotten that information over here, I have an open mind. It is likely to come back next year.

ACTING PRESIDENT MAZIARZ: Did you want to change your vote, Senator Paterson?

SENATOR PATERSON: I don't think so.

ACTING PRESIDENT MAZIARZ: I thought not.

Results, please.

THE SECRETARY: Those recorded in the negative on an Calendar Number 91 are Senators Abate, Breslin, Connor, Kruger, Markowitz, Montgomery, Sampson, Santiago and Smith. Ayes 47, nays 9.

ACTING PRESIDENT MAZIARZ: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, can we now take up Senate Calendar Number 174.

ACTING PRESIDENT MAZIARZ: Secretary will read.

THE SECRETARY: Calendar Number 174, by Senator Hannon, Senate Print Number 4433, an act to amend the Civil Service Law, in relation to authorizing the defense and indemnification of the state for actions against persons.

SENATOR MARCELLINO: Mr. President, can we just lay this bill aside temporarily. We have a question for a member who is sitting in Finance right now and the next bill to be talked about is also in Finance, so if we could just be at ease for a few moments until the respective Senators return from the Finance meeting, we would appreciate it.

ACTING PRESIDENT MEIER: The bill will be laid aside. The Senate will

stand at ease pending the completion of the Finance meeting.

Senator Marcellino.

SENATOR MARCELLINO: All right. Could we return to reports of standing committees for the Rules Committee report.

ACTING PRESIDENT MEIER: Return to the order of business, reports of standing committees.

Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bill direct to third reading:

Senate Print 6183, by Senator Stafford, an act authorizing the extension of time for the collection of taxes, fines and payment of other monies.

ACTING PRESIDENT MEIER: Senator Marcellino.

SENATOR MARCELLINO: Stand at ease, sir. I'm sorry. Mr. President, before we stand at ease can we move to accept the report of the Rules Committee, please.

ACTING PRESIDENT MEIER: Motion is to accept the report of the Rules

Committee. Those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The report of the Rules Committee is accepted.

Senator Marcellino, there are other committee reports at the desk.

SENATOR MARCELLINO: Can we take up the other committee reports at this time. Bless you!

ACTING PRESIDENT MEIER: Yes.

THE SECRETARY: Senator Leibell, from the Committee on Housing Construction and Community Development, reports:

Senate Print 2351, by Senator Leibell, an act to amend the Administrative Code of the city of New York;

3930, by Senator Leibell, an act to amend the Private Housing Finance Law;

6007, by Senator Marchi, an act to amend the Real Property Tax Law;

6042, by Senator Leibell, an

act to amend Chapter 84 of the Laws of 1993;

6043, by Senator Leibell, an act to amend Chapter 449 of the Laws of 1986; and

6044, by Senator Leibell, an act to amend Chapter 777 of the Laws of 1986.

All bills ordered direct for third reading.

ACTING PRESIDENT MEIER: Without objection, all bills directly to third reading.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, can we return to the calendar at this time and take up Senate Print Number 6170, previously reported from the Committee on Social Services.

ACTING PRESIDENT MEIER: Senator Marcellino, before we do that, the Secretary would like to read the report that's at the desk from the Committee on Social Services.

SENATOR MARCELLINO: O.K.

ACTING PRESIDENT MEIER: Secretary will read.

THE SECRETARY: Senator Holland, from the Committee on Social Services, reports the following bill direct to third reading:

6170, by Senator Hannon, an act to amend the Social Services Law.

ACTING PRESIDENT MEIER: Without objection, third reading.

SENATOR MARCELLINO: May we now return to regular order.

ACTING PRESIDENT MEIER: We'll now return to the regular order of business.

Secretary will read.

THE SECRETARY: Calendar Number 236, by Senator Hannon, Senate Print 6170, an act to amend the Social Services Law, in relation to limiting the method of payment.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 4. This act shall take effect in 120 days.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.
ACTING PRESIDENT MEIER: The bill is passed.
Senator Marcellino.
SENATOR MARCELLINO: Is there any other housekeeping?
ACTING PRESIDENT MEIER: There's no housekeeping at the desk at this time.
SENATOR MARCELLINO: Then shall -- let the house stand at ease for a while.
ACTING PRESIDENT MEIER: Senate will stand at ease.
(The Senate stood at ease from 3:41 p.m., until 3:50 p.m.)
ACTING PRESIDENT MEIER: Senator Skelos.
SENATOR SKELOS: Mr. President, would you please call up -
ACTING PRESIDENT MEIER: Excuse me a second, Senator Skelos. Could we have order in the chamber, people cease their conversations, please.
Senator Skelos.
SENATOR SKELOS: Mr. President,

at this time would you call up Calendar Number 104, Senate Number 999, by Senator Saland.

ACTING PRESIDENT MEIER: Secretary will read.

THE SECRETARY: Calendar Number 104, by Senator Saland, Senate Print Number 999, an act to amend the Not-for-Profit Corporation Law, in relation to eliminating limitations.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Senator Paterson, are you asking to be recognized?

SENATOR PATERSON: I think Senator Smith has a question.

ACTING PRESIDENT MEIER: Senator Smith.

SENATOR SMITH: Thank you, Mr. President.

Would the sponsor yield for a couple of questions?

SENATOR SALAND: Yes, Mr.

President.

ACTING PRESIDENT MEIER: Sponsor yields.

SENATOR SMITH: Could you tell me briefly why this bill is necessary at this point in time?

SENATOR SALAND: It would require a somewhat brief explanation of the history of this section.

The section goes back about 150 years and, when initially instituted, the idea of not-for-profits or whatever they called it back in 1848 was somewhat novel -- new -- and what they determined at that point is that they're going to permit the accumulation of property and the accumulation of income that should be limited, and if I remember this correctly -- and perhaps it's in the memo -- I think initially they talk in terms of $125,000 worth of accumulation of property, some $10,000 in income.

Periodically, over the last century and a half, what we have done is from time to time up those limits to now where it talks in terms of accumulation of 50 million

in property and 6 million in income.

What this bill proposes to do is to say there's no reason to have these limits for not-for-profits any longer, particularly when the language contained in section 202 is not necessarily jurisdictional. What you can do in your certificate of incorporation, and many of the more contemporary not-for-profits do this, they notwithstand the language of 202, at least insofar as it pertains to their accumulation of property or the amount of income that they're permitted to generate and by notwithstanding it, they have no limitation, effectively what we would like to do, and it's not changing any of the governance for not-for-profits but merely to say that this particular proscription which is only in part applicable and doesn't -- and can be, in effect, voluntarily done away with by your own certificate of incorporation, should no longer really be applicable and let those not-for-profits who do, Lord only knows how many good things in their respective districts, have the responsibility to do as

they please in property accumulation and income.

SENATOR SMITH: Thank you. I believe it was 1984 that we last changed the amount.

SENATOR SALAND: Correct, yes.

SENATOR SMITH: Are there any current limitations of -- that would inhibit not-for-profits from carrying out their functions?

SENATOR SALAND: I believe that there are some not-for-profits who are under older certificates of incorporation who find themselves restrained, whereas more -- those that have been formed more recently have been able, if they chose to do so, to do away with this particular what I'll call requirement, but again it's not a requirement in the strictest sense because you're, by your own certificate of incorporation able to eliminate it.

SENATOR SMITH: Excuse me. Mr. President: Was there any one particular not-for-profit that requested this legislation?

SENATOR SALAND: As far as I can determine, no. We've gone back through our files to see if we -- when we originally introduced this bill which I think may have been three years ago, if we had a request from anybody in particular. We've been unable to determine. I'm not aware of anybody in particular who asked for this for their corporation.

SENATOR SMITH: One last question: Have there been cases, to your knowledge, of for-profits that have established not-for-profit corporations to be able to circumvent the fiscal entity?

SENATOR SALAND: Ask you to rephrase that, Senator. I'm not quite sure - would you just ask that question again.

SENATOR SMITH: Have there been for-profit corporations that have established not-for-profits so that they would be able to transfer or to buy property under the not-for-profit or under a foundation sort of spin-off?

SENATOR SALAND: I'm not aware of that being a problem. If you are aware of

it, it's news to me, and, in effect, there is the ability if you want to form a -- as I understand the law, if you wanted to form a new not-for-profit, you could do that with relative abandon and not be concerned about this section.

SENATOR SMITH: And I'm sorry, I did say it was one last question but there's one last -- provokes one more thought. What is to prevent a not-for-profit from buying up everything imaginable and at what point do they become a for-profit, because they have all of this property which brings in income or is valued at some point? How do you establish the cut-off point?

SENATOR SALAND: Not -- well, there are not-for-profits that, as I said before, are not bound by these provisions and they've chosen not to be bound, have effectively constructed their corporate - their not-for-profit corporate existence, in a way not to contend with this. There are, I'm sure, any number of not-for-profits that probably have values or have assets not in the hundreds of millions, perhaps in the billions.

Certainly there are foundations which may not necessarily be not-for-profits which have billions of dollars worth of assets, but it's the purpose of the corporation, and while it may pay money to employees, they may have people who administer -- they may have people who do clerical work. The purpose of the not-for-profits are generally some -- in the direction of some of societal good as distinguished from having a return that's going to be maximized for the benefit of their shareholders.

SENATOR SMITH: Thank you very much.

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 Skelos.

SENATOR SKELOS: Mr. President, would you please call up Senate Number 6183 that was before you before the Rules Committee.

ACTING PRESIDENT MEIER: Secretary will read.

THE SECRETARY: Calendar Number 237, by Senator Stafford, Senate Print 6183, an act to authorize the extension of time for the collection of taxes, fines and payment of other monies.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 4. 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 Gold.

SENATOR GOLD: Mr. President, I

was at a Finance meeting. May I have unanimous consent to be recorded in the negative on Calendar Number 91, Senator Cook's bill, 1422.

ACTING PRESIDENT MEIER: Without objection, Senator Gold will be recorded in the negative on Calendar Number 91.

Senator Mendez.

SENATOR MENDEZ: Mr. President, I would like to have unanimous consent to be recorded in the negative on that same bill, Calendar Number 91.

ACTING PRESIDENT MEIER: Without objection.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Higher Education Committee in the Majority Conference Room and if you could call up Calendar Number 174, by Senator Hannon.

ACTING PRESIDENT MEIER:

Secretary will read.

THE SECRETARY: Calendar Number 174, by Senator Hannon, Senate Print 4433, an act to amend the Civil Service Law, in relation to authorizing the defense and indemnification by the state.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Hannon, an explanation has been asked.

SENATOR HANNON: Yes. This bill extends the defense indemnification provisions of the current Public Officers Law to health care providers who serve as consultants or expert witnesses for the Civil Service Department or Civil Service Commission. It passed previously and was introduced at the request of the Department of Civil Service.

ACTING PRESIDENT MEIER: Senator Stachowski.

SENATOR STACHOWSKI: On the bill. I know that previously there was no opposition to this bill and we supported it

and, however, this year there is a slight change in that the AFL-CIO opposes this bill now, and they have some concerns about identifying these witnesses and feel that it could lead to possibly more privatization and so, for that reason, I'm going to vote against the bill.

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: Those recorded in the negative on Calendar Number 174 are Senators Gold, Leichter, Mendez, Nanula, Onorato, Paterson, Smith and Stachowski. Ayes 49, nays 8.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos, that completes the reading of the controversial calendar.

SENATOR LEICHTER: Mr.

President.

ACTING PRESIDENT MEIER:

Senator Leichter.

SENATOR LEICHTER: Mr. President, would you please, with unanimous consent, mark me in the negative on Calendar 91.

ACTING PRESIDENT MEIER:

Without objection.

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. I would ask that the two bills reported be read first. We'll take them up and then we'll go to confirmations.

ACTING PRESIDENT MEIER:

Reports of standing committees. The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following bills direct to third reading:

Senate Print 6187, by the

Senate Committee on Rules, an act to amend Chapters 53, 54, 55 and 56 of the Laws of 1997; and

Senate Print 6188, by the Senate Committee on Rules, an act to amend Chapter 434 of the Laws of 1997.

All bills ordered direct to third reading.

ACTING PRESIDENT MEIER: Without objection, all bills to third reading.

SENATOR SKELOS: Mr. President, would you take up Calendar Number 238, Senate 6187 that was reported by the Finance Committee.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 238, by the Senate Committee on Rules, Senate Print 6187, an act to amend Chapters 53, 54, 55 and 56 of the Laws of 1997.

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

ACTING PRESIDENT MEIER: There

is a message at the desk.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT MEIER: The motion is to accept the message of necessity and appropriation. 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.

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, at this time would you call up Calendar Number 239, Senate 6188 that was reported from the

Finance Committee.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 239, by the Senate Committee on Rules, Senate Print 6188, an act to amend Chapter 434 of the Laws of 1997.

ACTING PRESIDENT MEIER: Senator Skelos.

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: The 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.

THE SECRETARY: Section 9. 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, if we could return to motions and resolutions, I move that we adopt the Resolution Calendar in its entirety.

ACTING PRESIDENT MEIER: The motion is to adopt the Resolution Calendar. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees, could we complete the report of the Finance Committee at this time.

ACTING PRESIDENT MEIER:

Reports of standing committees. The Secretary will read.

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

Commissioner of Labor: James J. McGowan, of Yorktown Heights.

ACTING PRESIDENT MEIER:

Senator Stafford.

SENATOR STAFFORD: Move the confirmation.

ACTING PRESIDENT MEIER:

Senator Spano.

SENATOR SPANO: Mr. President, it's my pleasure to second the nomination of Jim McGowan as the Commissioner of the Department of Labor.

I'll say that due to the unfortunate circumstances of Senator Levy's death, this confirmation had to be moved up a day, but even in moving it up a day, there's still many friends of Jim McGowan who are in the gallery and if it were going to be tomorrow, I'm sure the gallery would have been

filled with not only representatives from organized labor but family and friends of a person like Jim McGowan who has touched so many people over the years, starting back from 1963 when he was first appointed as a firefighter in New York City, where he rose up the ranks and became a lieutenant in 1974 and then went on and became the president of the New York State Professional Firefighters in '88 and became well known in the halls of the Legislature in Albany all those years.

The Governor appointed Jim as the chairman of the Hazard Abatement Board and in his role there, continued his tradition, which has been to work for his members and look out for the working men and women across New York State.

There are a lot of stories, Jim, that I could try to tell, but as we think and even as I talk to some of my colleagues, when we talk about Jim McGowan stories, we forget that we're here to help you. So we're here to help you. We will not tell many of the stories about Jim McGowan here today.

One of my colleagues came up to

me last week and he said, This guy, Jim McGowan, he says, that's your buddy, right? I said, Yeah. He's a Westchester guy. He lives in Yorktown. He said, Yeah. That's the short Irish guy that speaks Italian. I said, Yep, that's it. That's him.

Your reputation is well known. Your wit is well known. The fact that you work hard to represent your people as a very strong advocate is certainly well known and the Governor should be commended. The Governor should be commended for reaching into the house of labor to put someone in a very critical position to be his advocate in the cabinet as the Commissioner of Labor who will continue to make sure that the best interests of the working men and women across the state are protected.

So, Jim, it is my pleasure, it's an honor here as chairman of the Labor Committee to be the person to second your nomination and to say that we are all proud of the job that you've done. We are all proud of the job that you will continue to do in what will be a very challenging part of your

career.

It's well deserved and we congratulate you, Jim McGowan, and thank the Governor for selecting someone with your credentials to head this agency.

ACTING PRESIDENT MEIER: Senator Leibell.

SENATOR LEIBELL: Thank you, Mr. President.

I'm very pleased to rise today to also second the nomination of a great New Yorker, a good friend, Jim McGowan and, Jim, you should know that it was me that Nikki was talking to when we were trying to figure out what we can say and what we shouldn't say, and the reason for that is we have spent some very good times together, all of us, over the course of many years and whether serving in this house or serving in the other chamber for all those years, Jim McGowan was one of the first friends I had when I came to Albany. He was a person who instructed me in many different areas but taught me the importance of the working man, the working woman to New York State.

As we look back over Jim's very distinguished record over the course of many years, we see the deep commitment that he has made to all our hard workers throughout this great state.

Jim also comes from a wonderful family. Fran and Helen and Jim and I have spent many good times together. He has wonderful children. He understands the importance of our families to all of us.

We are very fortunate as we sit here today, my colleagues, that the Governor has sent us this name because this is clearly the right man in the right job at the right time. This is a person who will take labor into the next century. He will make sure that all of our working people in this state are protected.

I am deeply honored that I have had the chance to rise today to also second this nomination of such a fine New Yorker and such a good friend.

Best of luck, Jim.

ACTING PRESIDENT MEIER:

Senator Maltese.

SENATOR MALTESE: I can only echo the words that Senator Spano and Senator Leibell stated as far as Jimmy McGowan. In some 20 years of service to his members, there is no one who has represented them with more dedication and who can point back with more - to more achievements.

I think the Governor has indicated again with this fine distinguished appointment that he can go out of any rigid or fixed mold and reach to someone who can represent the interests not only of labor but of all New Yorkers and when we look back at Jimmy the man, we see by his very distinguished career as a firefighter, as a professional firefighter, as a building construction supervisor and foreman, some of the things that he's accomplished and some of the things he's done.

When I first knew Jim some many years ago and started to work with him as a Senator when he became ten years ago the president of the Professional Firefighters Association, all I heard was praise of Jimmy the man, a stand-up man, a gentleman, a person

who you knew where he was at and where he was coming from, no shilly-shallying, no meandering around but telling you directly and right up front what he felt and yet at the same time not somebody that you couldn't sit down and talk to and perhaps have a cup of coffee with and have a meal and perhaps hope that you changed his mind and ending up with him changing your mind.

So, again, I want to commend the Governor and am very proud to second the nomination of a working man in the true sense of the word, a true American, a dedicated patriotic veteran, someone who will well represent the Governor and labor and management and the people of New York State as our commissioner.

Congratulations to him and his family.

ACTING PRESIDENT MEIER: Senator Smith.

SENATOR SMITH: Thank you, Mr. President.

I too am proud to rise to second the nomination of Jim McGowan. Ten

years ago was very important to the firefighters when Jim McGowan became their president. It was also important to me because some firefighters helped put me in the Senate because two of the firefighters that I'm friendly with were the chairmen of my election committee.

They told me a lot about Jim McGowan and, when I arrived in Albany, I had the pleasure of making his acquaintance and it has been a fun time ever since.

He has always been up front. He has always been there to give advice and he is always knowledgeable about issues pertaining to labor.

I would like to commend the Governor for making this appointment because he's truly doing something that will benefit all of the people of the state of New York, and it's my pleasure to say, Jim, I know that you will do a good job because in everything that you've done in the past, it has been superior.

ACTING PRESIDENT MEIER: Senator Trunzo.

SENATOR TRUNZO: Mr. President, as chairman of the Civil Service and Pension Committee, I have had the pleasure -- I think it's a pleasure anyway -- of working with Jim McGowan over the past ten years.

He has been an outstanding individual not only as the president of the Professional Firefighters fighting and bringing bills to me to try to introduce for pension and Civil Service stuff but also the fact that he's also president -- or was president of the Public Employees Conference, which is made up of all the municipal employees of the state of New York, and as a result we have had a very close working relationship.

The only thing I asked him when I first heard about Jim becoming -- running to become the Labor Commissioner, I said to him, You know, Jim, you have such a nice life now as president of the union. You're enjoying life. You come and go as you please. Why the hell do you want to go back to work? Be that as it may, I do commend the Governor for picking Jim as the Labor Commissioner and I

know he will do an outstanding job in that position.

Congratulations, Jim. I look forward to working with you.

Thank you.

ACTING PRESIDENT MEIER: Senator Maziarz.

SENATOR MAZIARZ: Thank you, Mr. President.

I too want to rise and join my colleagues in seconding the nomination of Jim McGowan. Soon we'll have to call you commissioner now. You will have a big title.

I have only been in the Senate now for four years but -- well, starting my fourth year, but I know that in talking to labor advocates in Western New York, the name of Jim McGowan was always well known and was always synonymous with fairness, and I certainly look forward, Commissioner, to working with you, particularly in the Western New York area.

I commend the Governor. This is a great appointment. It -- the Governor has reached into labor for the Commissioner of

Labor, and I think it's going to be great for this state. I think you are going to do a good job, Jim, and I want to join in commending Governor Pataki as Senator Smith did, and that's really a great day around here when Senator Smith commends Governor Pataki, I'll tell you, Jim. So you are the one person that brought those two together. Congratulations.

Thank you.

ACTING PRESIDENT MEIER: Senator Onorato.

SENATOR ONORATO: Thank you, Mr. President.

I rise to congratulate the Governor on a wonderful, wonderful appointment. It's not too often that almost everyone in the chamber -- in both chambers know the individual being nominated by the Governor, and I know that from his labor background, he has a fair and open mind about the problems in safety of the workers throughout this state, and I look forward to working with him and especially on an environmental tour of the greeneries. I know

he's very concerned about the pesticides that are being used around some of these areas, making sure that no one gets sick, but I sometimes question his ability to measure distance, but I'm going to challenge him a little bit more often on environmental excursions when we get out there, and I look forward to breaking bread with you again.

Again to you and your family, I wish you nothing but the best of health and success.

ACTING PRESIDENT MEIER: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President.

I rise to echo my colleagues in support of this fine appointment to the Commissioner of Labor.

Jim McGowan has been a pillar of strength for the working man, on behalf of the working man and working woman in this state.

I was honored to know Jim when I served in the state Assembly and carried on that knowledge and friendship into this

capacity, but I just thank Governor Pataki for his wisdom in putting together such a fine appointment before us and that I know Jim McGowan is as said here, and I don't believe can be overstated, is truly a representative of working men and working women in this state.

Jim, my hat's off to you. Congratulations. I know you'll be an excellent Commissioner of Labor.

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Thank you, Mr. President and to be Commissioner McGowan, wife Fran.

I am honored to be here and be able to acknowledge the Governor having forwarded such a capable and outstanding person to be Commissioner of Labor for all of the people of New York State, and I heard some of the comments that were made and I'm not going to repeat them, but Jim has made a lot of friends throughout this state and for good reason because he has served the public, especially in the area of labor's rights,

knowing what it is to be out there doing your thing in the very best way that you can and he brought credit to the firefighters of New York State, decorated himself many times and, George, I heard you talk about being out there checking the environment, and I can tell you for those of you that have not been out on the golf course with Jim, there is a favorite expression that is used, but I won't repeat it because it has something to do with sandbagger and for those of you that aren't golfers, that means that a person has this tremendous capability and when you're on the first tee, he talks differently and then you see him out there and he does it to perfection. Well, I had that lesson and I look forward to another lesson or two and hopefully we can do that in the season that's going to be before us.

But, Jim, I really am saying to you that I'm glad you're here and I appreciate your wife letting you be this involved on behalf of the people of this state because the work that you have to do is so important to everyone and the Governor has done a lot of good things in these last several years but

this is one of the best.

So my congratulations to him and to Jim, to his family and to all of the people of this state.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

Mr. President, Senator Stafford is very kind and gives the members of the Finance Committee resumes and they're very useful because I wasn't sure about this nominee until I noticed that he is the past president of the Mahopac Touchdown Club and that did it for me.

Also in the resume it's very pleasing to me that the Governor -- and God bless him for this one; it's a wonderful nomination -- picks a working man and I see this, a firefighter from '63 to '74, lieutenant from '74 to '88 and in that time, it just shows you what education will do. In 1984, he attended something at Cornell University and right away he knew he had to

get out of there and into the lobbying business, I guess, and so we met him and, again, all of you can thank Cornell University for that, I guess.

The most significant part of all of this, as far as I'm concerned, is that in his comments before the Committee, he spoke about the opportunity to work with business and to worry about jobs for this state and that's the kind of talk that we always like to hear from someone who is going to be the Commissioner of Labor, but the reassuring part is that we have a commissioner who knows what it is to work, who knows what it is to not only get his hands dirty but get his hands dirty in some of the most dangerous work that any citizen of this state could participate in and when you're at that conference table and you're trying to create jobs and you're trying to make labor and business get along, there's just a good feeling that every citizen ought to have that the guy sitting there working for us is a working man who knows what it is to work.

This is a wonderful

nomination. This is one of the Governor's best, and I wish you Godspeed and the best of luck, Jim. You'll do a terrific job.

ACTING PRESIDENT MEIER: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

At the risk of repeating what I know has already been said by my colleagues, I rise to support the confirmation of this nomination.

Jim has been a friend for many years and in his work with the Legislature on behalf of the fire officers and then on behalf of the public employees, all the public employees of New York State, I have had an opportunity to see that he -- what he can do, that he truly cares about the issues. He truly cares about the working men and women in New York State and he understands the role of government in protecting the important rights which over the decades in this fine state have accrued to working men and women in New York, and he understands as well the proper role that the state has in advancing the needs for

ever increasing opportunities for employment and in so advancing that, assuring also that working conditions and the type of dignity that ought to belong and that is guaranteed to working people is maintained.

I've also had opportunity to notice in his past role that he really isn't as good a golfer as he thinks he is, but hopefully when he gets older, because he's quite a young man, he will improve his game.

I think the Governor -- I have not always agreed with the Governor's appointments, but on this one, not only do I vote to confirm, thus according the respect ordinarily due to the Executive in his appointments, but I enthusiastically endorse this appointment as one that's good for all of the people of the state of New York.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Abate.

SENATOR ABATE: Yes. I'm proud to stand in support of the nomination of Jimmy McGowan.

Like many of my colleagues, I

do not support him because of his golf prowess. One thing that's clear, I'm told by many people, there's need for improvement, but there's very little need for improvement in terms of his readiness, his preparedness, his skills and his ability to take on the job at hand.

As a labor leader, he was so accessible to so many of us in the Legislature. He was available. He was ready to educate us around issues that affected working men and women throughout the state, and I believe the same accessibility and fair-mindedness will carry over when he becomes Commissioner of the Department of Labor.

I believe that Jimmy McGowan will not only be strong but will be fair. He will vigorously enforce fair labor and wage protection for workers, but moreover he understands if we're going to improve the working condition for working men and women, it requires a working partnership, cooperation between business, government and labor and workers themselves and it takes that kind of

sensitivity, that commitment, the long work that he's had in this movement to bring what I call an even -- or a balance, a sense of common sense to this office. He will do that. I think he will make New York State proud, and I'm very happy to support him today.

ACTING PRESIDENT MEIER: Senator Stachowski.

SENATOR STACHOWSKI: Mr. President, I too would like to rise to second the nomination. I think the Governor made an excellent choice. I think that Jim's background as a labor leader and then representing all of the paid firefighters will serve him well in representing all of the working men and women in the state and at the same time in his comments, his awareness of the fact that we have to be careful how we deal with business so that we maintain the jobs we have and create more for the people of New York, I think will give an even balance and add a lot to the Department of Labor at a time when we -- they play such an active role in creating jobs, protecting jobs and making

sure that the people that are not working now are going back to work because of the various changes in programs and government.

So I wish him well and congratulate the Governor on the appointment.

ACTING PRESIDENT MEIER: Senator Alesi.

SENATOR ALESI: Thank you, Mr. President.

I would like to join my colleagues in supporting the Governor's nomination and pleased that he has chosen such a wonderful person for the position of Commissioner of Labor, not only because I serve on that committee but also because I am fully aware of Jimmy McGowan's having climbed the ladder to gain his knowledge through experience, and I fully support Jimmy in that capacity, in his new capacity.

One of the reasons that I'm so happy to see that we have Jimmy McGowan rising to the commissioner's position is because I know he has an exceptional capacity for innovation. I know this because we share the same hotel and for many years I was able to

have a secret parking spot and only after sharing that with Jimmy, I found out that he now shares my innovation because he also shares my secret parking spot and not too long ago we were talking about -- at breakfast, in fact, Jim's experience and some of the things that he will do and has done for labor and in the course of that conversation, I mentioned that I have a license plate that says "Jimmy", J-I-M-M-Y, and I could see the wheels of this new commissioner turning already.

Well, in congratulating Jimmy McGowan, let me just say that you may continue to share my parking spot, but I will never give up my license plate.

ACTING PRESIDENT MEIER: Senator Lack.

SENATOR LACK: Thank you, Mr. President.

A lot has been said about Jim McGowan here this afternoon and probably all of it is true. I just want to stand and congratulate him and wish him good luck on a job that is going to be very difficult but he certainly is the person who could do it.

If you have been reading lately about the state of labor in the country and where it is, a good expert hand with real knowledge of what's going on in the labor movement and how to adjust to that is needed at the helm of this state's Labor Department and, Jim, I congratulate you for taking this chore on and particularly since you come from the -- from the public employee part of labor, shoring up the relationship internally between the public employees and between the craft unions is going to be, I know, the hallmark of your administration in the Department.

I wish you Godspeed and anything I can do as a former chair of the Labor Committee to help you in your endeavors, please call on me and I'll only be too happy to give you all of the assistance I can.

Congratulations.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: I think what we haven't said yet and what I think we should say on behalf of Jimmy McGowan is that, yes, he does have the experience and he has

long years in this field and he does have a tough job dealing with disparate elements that are involved in business, labor, government, but what I think we may not have said is that this is a man that has a certain warmth and ability to deal with a variety of people in a non-confrontational and a very productive mode.

He is a warm and caring person who demonstrates that in his relationships, and I think that is the key. It is not only intelligence and background and experience but it is also a certain type of personality that is capable of bringing people together, and I think that's what Jimmy has, and I certainly wish you the very, very best of luck.

ACTING PRESIDENT MEIER: Senator Volker.

SENATOR VOLKER: Mr. President, very quickly, I just want to say as an old friend of Jim's, I guess I would just dispute one thing that Senator Oppenheimer said that just dawned on me -- right -- let me just say that coming from where Jim McGowan came from, from the old firefighters union, I know a

little bit about that in having been involved a little bit, I think that it wasn't exactly non-confrontational in years past. I think you'll probably find this job more of a piece of cake than anything.

I think -- one of the things I think we don't realize is that we are in a different era in many ways in this place. In fact, I was telling somebody the other day that we seem to be the boring place in this country right now given what's happening in Washington, but I think that there's no question that the Governor made an excellent choice and those of us that have known Jim as long as I have know that you couldn't find anybody better, I think to do this job and my very best to you, Jim, and to your family. Good luck.

ACTING PRESIDENT MEIER: All Senators wishing to speak on the nomination having been heard, the Chair recognizes Senator Stafford to close.

SENATOR STAFFORD: Thank you, Mr. President.

In moving the confirmation, I

certainly second everything that's been said for a very fine nominee of the Governor who I'm sure will do a very fine job. Jim.

ACTING PRESIDENT MEIER: The question is on the confirmation of James J. McGowan as Commissioner of Labor of the state of New York. All in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nomination is confirmed.

Commissioner McGowan is with us here today as well as he's accompanied by his wife Frances. Commissioner.

(Applause)

Commissioner, we wish you well with your important duties. Godspeed.

The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination: Member of the Adirondack Park Agency: Frank L. Mezzano, of Speculator.

ACTING PRESIDENT MEIER:

Senator Stafford.

SENATOR STAFFORD: Thank you, Mr. President.

It's also a pleasure for me to move the confirmation for this nominee, Frank Mezzano.

I will be relatively brief as I always am, but I have some serious things to say here, and I want you all to know that I try to keep a sense of humor. Sometimes it is difficult for me like it is all of you to point out the seriousness and how important this nomination is.

I would like to tell you about a joke last year -- and I don't by any means want to criticize those who made this joke. We have to take it in good humor, and I know there was no ill will or there was no intent other than to have a light evening, and I attend this function and enjoy it, but during the course of the program, it was pointed out during the function that Stafford was going to ask that the Adirondack Park residents be included in rent control and there was going to be a consideration first if there had been

a domestic violence complaint in a residence during the past six months. That was going to be a consideration. It would enhance the situation and also if people used in the residence a petroleum drum for a stove, and that was going to be a consideration and everyone laughed. Again, no ill will, but I mention that to you to emphasize the importance of this nomination for the people of New York State.

Colleagues, this nominee is interested in the environment of the Adirondack Park and his record has proven this. Also he's interested in a balance in consideration for the people who live there, in consideration of the people who live there. I think you get my point.

The nominee is a business person, a successful store owner and he's been involved in his community and we're very proud to move his nomination.

ACTING PRESIDENT MEIER: Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

I rise to second this nomination. Frank was my constituent, I think for 16 years when I served Hamilton County.

Senator Stafford is so right. This is a man that is respected in his community and as somebody that has lived and represented Hamilton County for a lot of years. I don't know anybody that was more articulate and respected in that community than the nominee, and let me just say this: At the Finance Committee, I think at least two of the opposite side of the aisle said to me his answers were superb, or words to that effect. He did answer the questions candidly, honestly and in my judgment took away any concern that anybody might have.

He'll be an outstanding commissioner. Everybody's commending the Governor for his nomination of the previous nominee. I commend him on this nomination. This is a person from within the park, a person that is articulate, informed, moderate and somebody that will do a terrific job with the Park Agency.

I am pleased to second your

nomination, and I think he'll be an outstanding commissioner of that Park Agency.

Thank you.

ACTING PRESIDENT MEIER: The question is on the confirmation of Frank Mezzano as a member of the Adirondack -- I'm sorry.

Senator Oppenheimer.

SENATOR OPPENHEIMER: I recognize I'm not very big -- tall. This is somewhat difficult because I have met with Frank Mezzano and he does seem like a very fine gentleman and I can see that he certainly has the support of the communities where he has been elected as the supervisor and he is a noted resident of the Adirondack area.

My concern, and I have expressed this to him and said that it is not anything personal. I'm sure, you know, he - as I mentioned, he certainly has the concern of his constituents at heart.

I will be opposing Mr. Mezzano because his concept of the land of -- the land use of the Adirondacks is rather contrary to those of us who believe in conservation of the

environment.

I can understand that he wishes to have economic development to provide more jobs for the people who live within the Adirondacks. However, I feel very strongly that the acquisition of land by the state is a primary concern of mine as well as many other environmentalists because we have this unique public/private park, which is the largest park in 48 states and the balance must not go to private. In our opinion, it must go to public.

We strongly support the acquisition of the Whitney property, that portion of the Whitney property and because this is a very serious philosophic conflict, I feel it will not be possible for me to support this nomination.

ACTING PRESIDENT MEIER: Senator Marcellino.

SENATOR MARCELLINO: Yes, Mr. President.

Mr. Mezzano's record was cleared through the Senate Environmental Conservation Committee which, as you know, I

chair. His views, I believe, do represent a point of view strongly held in the Adirondacks area, is strongly held by the people whom he represents as an elected official. Clearly the agency is in need of people who have strong views, are not afraid to speak out and diversity is a value and a virtue when a decision has to be made.

The Governor has chosen well and has chosen a person who represents that area and is represented -- and will represent the area well, and I am pleased to second that nomination.

ACTING PRESIDENT MEIER: The question is on the confirmation of Frank Mezzano as a member of the Adirondack Park Agency. All in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(Senator Oppenheimer raises hand.)

Frank Mezzano is confirmed as a member of the Adirondack Park Agency. Congratulations, Mr. Mezzano.

(Applause)

The Secretary will read.

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

Member of the Niagara Frontier Transportation Authority: William N. Hudson, Jr., of Williamsville.

SENATOR STAFFORD: Move the confirmation.

ACTING PRESIDENT MEIER: Senator Stachowski.

SENATOR STACHOWSKI: On this nomination, Mr. President, I just rise because I'm going to have to vote against this nomination not -- I have absolutely nothing against the individual. I think he's a fine man. I think he would be a great appointment. However, traditionally, the NFTA had always had one seat for labor to be represented on the board. That seat that Mr. Hudson is getting is the traditional labor seat. He's replacing George Wessell, who was the labor leader in the area. The labor community had spoken out that they wanted to get a representative on the board. Most of

the other representatives are business people. This is just another business person and, as I said, if it was any other seat, I would be probably up and seconding the nomination for Mr. Hudson, but in this case, I'm going to vote no on the appointment not against the individual but against the fact that they're putting someone other than a labor person into a traditionally labor seat.

I would like to be recorded in the negative.

ACTING PRESIDENT MEIER: The record will reflect your remarks.

Senator Rath.

SENATOR RATH: Mr. Chairman, I would like to speak on behalf of the appointment of William N. Hudson as a member of the Niagara Frontier Transportation Authority.

I have known Mr. Hudson for some 25 years. He is an expert and has been in the world of municipal finance in very high level positions with Marine Midland both in Buffalo and in New York City and now back in the Buffalo area again. He will be an

excellent member. He's a leader in the community, and I would like to congratulate the Governor on his appointment.

ACTING PRESIDENT MEIER: Senator Nanula.

SENATOR NANULA: Thank you, Mr. President.

Also on the nomination of William Hudson and in relation to Senator Stachowski's comments, I too rise in opposition of this nomination pretty much, quite frankly, for the same reasons, and although Mr. Hudson has a very impressive career record certainly in regards to the resume that was included in our packet today at the Finance Committee, nowhere in his resume is there any kind of organized labor experience, and as Senator Stachowski commented, this has traditionally been a seat reserved for organized labor.

George Wessell was not simply a union leader. He was a leader amongst leaders. He was the regional president of the AFL-CIO. He was instrumental in the project labor agreement that was -- or that became a

reality for the construction of the Buffalo Airport and as well -- again, as Senator Stachowski mentioned, several labor leaders from Western New York are very much opposed to this based on that principle. Dan Booty with the building trades union who is a leader in Western New York amongst labor leaders was suggested. That name was floated around these hallowed halls, was suggested to the Governor. That name is not here today, and again, this is in no way anything personal against Mr. Hudson.

As stated, he's a very qualified man in terms of his field, but again to state what I believe to be important in regards to this nomination, he doesn't have organized labor experience.

And to close, I think it's quite ironic that here we are all in a bipartisan fashion standing up and lauding a man who deserves lauding because he has a labor background unlike the first appointment the Governor made to the Commissioner of Labor post and here in the same session just two nominations later we're not at all being

sensitive to that issue.

I think that's wrong, and I urge my colleagues based on that principle to vote against this nomination as it comes to the floor.

Thank you.

ACTING PRESIDENT MEIER: The question is on the confirmation of the nomination. All in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(Response of "Nay".)

The nomination is confirmed.

The Secretary will read.

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

Member of the Small Business Advisory Board: Anthony J. Baynes, of Williamsville.

ACTING PRESIDENT MEIER: The question is on the confirmation of the -- I'm sorry.

Senator Rath.

SENATOR RATH: Yes, Mr. Chairman. I rise to second the nomination of Anthony J. Baynes of Williamsville, member of the Small Business Advisory Board.

Mr. Baynes is a young man and has assumed a position of major leadership throughout the community and is in his own right a very successful businessman having started three or four small companies and is growing them and uniting with other companies. I believe his experience, his background and his enthusiasm will be a great advantage to this board, and I want to congratulate the Governor on his appointment.

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nomination is confirmed.

The Secretary will read.

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

Member of the Board of Directors of the Great Lakes Protection Fund: Gerald F. Mikol, of Orchard Park.

SENATOR SKELOS: Move the nomination.

ACTING PRESIDENT MEIER: The question is on the confirmation. All in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nomination is confirmed.

The Secretary will read.

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

Member of the Board of Directors of the New York State Science and Technology Foundation: Van C. Campbell, of Corning.

SENATOR SKELOS: Move the nomination.

ACTING PRESIDENT MEIER: The question is on the confirmation of the nomination. All those in favor signify by

saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nomination is confirmed.

The Secretary will read.

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

Members of the Board of Trustees of the State University of New York College of Environmental Science and Forestry: Heidi J. Busa, of Skaneateles and Gregory Harden, of McConnellsville.

SENATOR SKELOS: Move the nomination.

ACTING PRESIDENT MEIER: The question is on the confirmation of the nominations. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nomination are confirmed.

The Secretary will read.

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

Members of the Lake George Park Commission: James B. Neal, of Silver Bay and Joan Ahr Robertson, of Cleverdale.

SENATOR SKELOS: Move the nomination.

ACTING PRESIDENT MEIER: The question is on the confirmation of the nominations. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominations are confirmed.

The Secretary will read.

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

Members of the Stewart Airport Commission: Francis S. Reese, of Hughsonville and James C. Wright, of New Windsor.

SENATOR SKELOS: Move the nomination.

ACTING PRESIDENT MEIER: The question is on the confirmation of the nominations. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominations are confirmed.

The Secretary will read.

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

Member of the Veterans Affairs Commission: Richard Samuel Zummo, Esq., of East Setauket.

SENATOR SKELOS: Move the nomination.

ACTING PRESIDENT MEIER: The question is on the confirmation of the nomination. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nomination is confirmed.

The Secretary will read.

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

Members of the Minority Health Council: Robin Nefirteria Hunter Buskey, of Mount Vernon and Thakor Rana, M.D., of Hastings-on-Hudson.

SENATOR SKELOS: Move the nomination.

ACTING PRESIDENT MEIER: The question is on the confirmation of the nominations. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominations are confirmed.

The Secretary will read.

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

Members of the Board of Visitors of the Agricultural and Industrial School of Industry.

SENATOR STAFFORD: Move the confirmation.

THE SECRETARY: Daniel J. Doyle, Esq., of Irondequoit and Frank Piraino, of Avon.

SENATOR STAFFORD: Move the confirmation.

ACTING PRESIDENT MEIER: The question is on the confirmation of the nominations. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nominations are confirmed.

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

Member of the Board of Visitors of the New York State Home for Veterans and Their Dependents at Batavia: Cathleen F. Macinnes, of Walworth.

SENATOR STAFFORD: Move the nomination.

ACTING PRESIDENT MEIER: The

motion is on the confirmation of the nomination. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The nomination is confirmed.

The Secretary will read.

SENATOR BRUNO: Mr. President, is there any housekeeping at the desk? Can we take that up now?

ACTING PRESIDENT MEIER: Yes, there is, Senator Bruno.

The Secretary will read - Senator Lack.

SENATOR LACK: Yes, Mr. President. I wish to call up Senator Spano's bill, Print Number 882, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 140, by Senator Spano, Senate Print 882, an act to amend the Penal Law.

SENATOR LACK: Mr. President, I

now move to reconsider the vote by which the bill was passed.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

SENATOR LACK: Mr. President, I offer the following amendments.

ACTING PRESIDENT MEIER: The amendments are received.

Senator Bruno, that completes the housekeeping at the desk.

SENATOR BRUNO: Mr. President, just as a reminder, we have cancelled the normal schedule tomorrow pertaining to session and committee meetings out of deference and in memory of our good friend and colleague who departed, Senator Levy. So tomorrow there will be no normal schedule and there are many people who will be traveling to the service there in Nassau and in memory of Senator Levy, there being no further business to come before the Senate, I would move that we stand adjourned until 3:00 p.m., February 23rd,

intervening days to be legislative days.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned in memory of Senator Norman J. Levy until Monday, February 23rd, 3:00 p.m., intervening days being legislative days.

(Whereupon, at 4:54 p.m., the Senate adjourned.)