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ALBANY, NEW YORK

May 4, 1998

3:00 p.m.

REGULAR SESSION

SENATOR CARL L. MARCELLINO, Acting President

STEVEN M. BOGGESS, Secretary

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

2 ACTING PRESIDENT MARCELLINO:

3 The Senate will come to order.

4 I'd ask everyone present to
5 please rise, including in the balconies, and
6 repeat the Pledge of Allegiance.

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

9 We thank you in the balcony for
10 the help.

11 The invocation today will be
12 given by the Reverend John A. Nelson, of the
13 First Congregational United Church of Christ
14 in Gloversville. Reverend?

15 REVEREND JOHN A. NELSON: Thank
16 you, Senator.

17 Ladies and gentlemen, please
18 join me in a spirit of prayer.

19 God of our fathers and mothers,
20 since the beginning of memory, You call us
21 together to remember and to praise You and
22 since the beginning of time You gather us
23 together to build ways of living together that
24 may honor You and Your vision of a better
25 world. You hold up images of Your will for

1 righteousness, a human community where all
2 have food and shelter, a city where every
3 woman, man and child knows their own dignity,
4 a nation at peace.

5 The vision is so great, and it
6 is an audacious thing we do in this chamber to
7 turn to You in prayer. It is audacious
8 because we are more accustomed to finding ways
9 to use our own power than to seek Yours, but
10 for a moment, we pray, come to us. Set aside
11 our agendas and give us Yours.

12 Loving and creating God, the
13 women and men who assemble in this hall are
14 charged with an awesome task. Give them
15 wisdom and strength that they may become Your
16 hands. Give them wisdom to see where
17 suffering and brokenness have become the
18 people's food, and give them grace to
19 respond. Give them strength to treasure the
20 lives and dreams of the many citizens whom
21 they represent. In the thick of competing
22 interests, we pray for the courage to discern
23 better ways of building your realm. Empower
24 every one of us with Your spirit, a spirit of
25 deep and true compassion that knows our

1 deepest struggles and yet persistently offers
2 us a vision of Shalom, Your world, a world
3 within our reach, when love and justice rule
4 our lives. Calling Your name in our hearts,
5 we pray. Amen.

6 ACTING PRESIDENT MARCELLINO:
7 Thank you. Thank you very much.

8 We'll have the reading of the
9 Journal.

10 THE SECRETARY: In Senate,
11 Sunday, May 3rd. The Senate met pursuant to
12 adjournment, Senator Farley in the Chair upon
13 designation of the Temporary President. The
14 Journal of Saturday, May 2nd, was read and
15 approved. On motion, Senate adjourned.

16 ACTING PRESIDENT MARCELLINO:
17 Without objection, the Journal stands approved
18 as read.

19 We have the presentation of
20 petitions.

21 Messages from the Assembly.

22 Messages from the Governor.

23 Reports of standing committees.

24 Reports of select committees.

25 Communications and reports from

1 state officers.

2 Motions and resolutions. The
3 Chair recognizes Senator Meier.

4 SENATOR MEIER: Mr. President,
5 I move that the following bills be discharged
6 from their respective committees and be
7 recommitted with instructions to strike the
8 enacting clause: Senate 7026.

9 ACTING PRESIDENT MARCELLINO:
10 So ordered.

11 SENATOR MEIER: Mr. President,
12 on page number 14, I offer the following
13 amendments to Calendar Number 6, Senate Print
14 Number 459, and ask that said bill retain its
15 place on the Third Reading Calendar.

16 ACTING PRESIDENT MARCELLINO:
17 Amendments are received and so ordered.

18 SENATOR MEIER: Mr. President,
19 on page number -

20 ACTING PRESIDENT MARCELLINO:
21 Excuse me, Senator. Gentlemen, we can't hear
22 the numbers for accuracy, please, and ladies.

23 Thank you.

24 SENATOR MEIER: Mr. President,
25 on page 14, I offer the following amendments

1 to Calendar Number 40, Senate Print Number
2 5942-A, and ask that said bill retain its
3 place on the Third Reading Calendar.

4 ACTING PRESIDENT MARCELLINO:
5 Amendments are received and so ordered.

6 SENATOR MEIER: On page number
7 28, I offer the following amendments to
8 Calendar Number 500, Senate Print Number 6332,
9 and ask that said bill retain its place on the
10 Third Reading Calendar.

11 ACTING PRESIDENT MARCELLINO:
12 Amendments received and so ordered.

13 SENATOR MEIER: Mr. President,
14 I wish to call up Senator Saland's bill, Print
15 Number 4519-A, recalled from the Assembly
16 which is now at the desk.

17 ACTING PRESIDENT MARCELLINO:
18 The Secretary will read.

19 THE SECRETARY: Calendar Number
20 413, by Senator Saland, Senate Print 4519-A,
21 an act to amend the Domestic Relations Law.

22 SENATOR MEIER: Mr. President,
23 I now move to reconsider the vote by which
24 this bill was passed.

25 ACTING PRESIDENT MARCELLINO:

1 Secretary will call the roll.

2 (The Secretary called the roll
3 on reconsideration.)

4 THE SECRETARY: Ayes 47.

5 SENATOR MEIER: Mr. President,
6 I now offer the following amendments.

7 ACTING PRESIDENT MARCELLINO:
8 Amendments are received.

9 Senator Padavan.

10 SENATOR PADAVAN: Thank you,
11 Mr. President.

12 Would you please remove the
13 sponsor's star from, on page 36, Calendar
14 Numbers 273, 319, 459 and 461, at the request
15 of Senator Paterson as well.

16 ACTING PRESIDENT MARCELLINO:
17 So ordered, Senator.

18 SENATOR PADAVAN: And, Mr.
19 President, on today's calendar, would you
20 place a sponsor's star on Calendar Number 551,
21 Senate Print Number 3080.

22 ACTING PRESIDENT MARCELLINO:
23 That shall be done, Senator.

24 SENATOR JOHNSON: At this time
25 may we please have the reading of the

1 non-controversial calendar.

2 ACTING PRESIDENT MARCELLINO:
3 Before we do that, Senator Johnson, may we do
4 some substitutions.

5 SENATOR JOHNSON: Sure.

6 ACTING PRESIDENT MARCELLINO:
7 Thank you. Secretary will please read.

8 THE SECRETARY: On page 5,
9 Senator Lack moves to discharge from the
10 Committee on Judiciary Assembly Bill 9763 and
11 substitute it for the identical First Report
12 Calendar 701.

13 On page 5, Senator Lack moves
14 to discharge from the Committee on Judiciary
15 Assembly Bill Number 9762 and substitute it
16 for the identical First Report Calendar
17 702.

18 On page 6, Senator Holland
19 moves to discharge from the Committee on
20 Housing, Construction and Community
21 Development Assembly Bill Number 1337 and
22 substitute it for the identical First Report
23 Calendar 708.

24 And on page 35, Senator Velella
25 moves to discharge from the Committee on

1 Insurance Assembly Bill Number 10723 and
2 substitute it for the identical Third Reading
3 Calendar 617.

4 ACTING PRESIDENT MARCELLINO:
5 Substitutions received and accepted.

6 Senator Johnson, do you want us
7 to read now the non-controversial calendar?

8 SENATOR JOHNSON: Yes, Mr.
9 President, please go ahead with the
10 non-controversial.

11 ACTING PRESIDENT MARCELLINO:
12 May we have a reading of the non-controversial
13 calendar, please.

14 THE SECRETARY: Calendar Number
15 241, by Senator Leibell, Senate Print 2351, an
16 act to amend the Administrative Code of the
17 city of New York.

18 SENATOR PATERSON: Lay aside.

19 ACTING PRESIDENT MARCELLINO:
20 Lay the bill aside.

21 THE SECRETARY: Calendar Number
22 307, by Senator Johnson, Senate Print 2720-A,
23 an act to amend the Environmental Conservation
24 Law, in relation to establishing a state and
25 municipal scrap off-the-road.

1 ACTING PRESIDENT MARCELLINO:

2 Read the last section.

3 THE SECRETARY: Section 2.

4 This act shall take effect April 1.

5 ACTING PRESIDENT MARCELLINO:

6 Call the roll.

7 (The Secretary called the
8 roll.)

9 THE SECRETARY: Ayes 50.

10 ACTING PRESIDENT MARCELLINO:

11 The bill is passed.

12 THE SECRETARY: Calendar Number
13 423, by Senator Saland, Senate Print 5563, an
14 act to authorize the Commissioner of General
15 Services to sell and convey.

16 ACTING PRESIDENT MARCELLINO:

17 Read the last section.

18 THE SECRETARY: Section 5.

19 This act shall take effect immediately.

20 ACTING PRESIDENT MARCELLINO:

21 Call the roll.

22 (The Secretary called the
23 roll.)

24 THE SECRETARY: Ayes 50.

25 ACTING PRESIDENT MARCELLINO:

1 The bill is passed.

2 THE SECRETARY: Calendar Number
3 431, by Senator LaValle, Senate Print 4741, an
4 act to amend Chapter 554 of the Laws of 1996.

5 SENATOR JOHNSON: Lay it
6 aside.

7 ACTING PRESIDENT MARCELLINO:
8 Lay the bill aside.

9 THE SECRETARY: Calendar Number
10 465, by Senator Saland, Senate Print 4595-A,
11 an act to amend the Criminal Procedure Law,
12 the Education Law and the Personal Property
13 Law.

14 SENATOR PATERSON: Lay aside.

15 ACTING PRESIDENT MARCELLINO:
16 Lay the bill aside, please.

17 THE SECRETARY: Calendar Number
18 479, by Senator Hannon, Senate Print 6263-A,
19 an act in relation to permitting the Church of
20 the New Life, Incorporated to file an
21 application.

22 SENATOR DOLLINGER: Lay it
23 aside.

24 ACTING PRESIDENT MARCELLINO:
25 Lay the bill aside, please.

1 THE SECRETARY: Calendar Number
2 517, by Senator Kuhl, Senate Print 6206, an
3 act to authorize the village of Horseheads,
4 county of Chemung, to offer an optional
5 20-year retirement.

6 ACTING PRESIDENT MARCELLINO:
7 We have a home rule message at the desk. Read
8 the last section.

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

11 ACTING PRESIDENT MARCELLINO:
12 Call the roll.

13 (The Secretary called the
14 roll.)

15 THE SECRETARY: Ayes 51.

16 ACTING PRESIDENT MARCELLINO:
17 The bill is passed.

18 THE SECRETARY: Calendar Number
19 521, by Senator Velella, Senate Print 6255-B,
20 an act to amend the Insurance Law, in relation
21 to authorizing insurers to offer.

22 ACTING PRESIDENT MARCELLINO:
23 Read the last section.

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

1 ACTING PRESIDENT MARCELLINO:

2 Call the roll.

3 (The Secretary called the
4 roll.)

5 THE SECRETARY: Ayes 51.

6 ACTING PRESIDENT MARCELLINO:

7 The bill is passed.

8 THE SECRETARY: Calendar Number
9 534, by member of the Assembly DiNapoli,
10 Assembly Print 9663, an act to amend the
11 Public Health Law, in relation to date by
12 which the annual water supply statement shall
13 be mailed.

14 ACTING PRESIDENT MARCELLINO:

15 Read the last section.

16 SENATOR GOLD: No, hold on.

17 Last section.

18 ACTING PRESIDENT MARCELLINO:

19 Thank you for that permission, sir. Read the
20 last section.

21 THE SECRETARY: Section 2.

22 This act shall take effect immediately.

23 ACTING PRESIDENT MARCELLINO:

24 Call the roll.

25 (The Secretary called the

1 roll.)

2 THE SECRETARY: Ayes 51.

3 ACTING PRESIDENT MARCELLINO:

4 Are you sure about that number? O.K. The bill
5 is passed.

6 THE SECRETARY: Calendar Number
7 545, by Senator Farley, Senate Print 1955, an
8 act to amend the Real Property Tax Law and the
9 Social Services Law, in relation to
10 withholding.

11 SENATOR PATERSON: Lay aside.

12 ACTING PRESIDENT MARCELLINO:

13 Lay the bill aside, please.

14 THE SECRETARY: Calendar Number
15 550, by Senator DeFrancisco, Senate Print
16 Number 3005-A, an act to amend the County Law,
17 in relation to the autopsy of an inmate of a
18 correctional facility.

19 ACTING PRESIDENT MARCELLINO:

20 Read the last section.

21 THE SECRETARY: Section 2.

22 This act shall take effect immediately.

23 ACTING PRESIDENT MARCELLINO:

24 Call the roll.

25 (The Secretary called the

1 roll.)

2 THE SECRETARY: Ayes 51.

3 ACTING PRESIDENT MARCELLINO:

4 The bill is passed.

5 THE SECRETARY: Calendar Number
6 552, by Senator LaValle, Senate Print Number
7 3135, an act to amend the General Municipal
8 Law, in relation to point systems for service
9 award programs.

10 ACTING PRESIDENT MARCELLINO:

11 Read the last section, please.

12 THE SECRETARY: Section 2.

13 This act shall take effect immediately.

14 ACTING PRESIDENT MARCELLINO:

15 Call the roll.

16 (The Secretary called the
17 roll.)

18 THE SECRETARY: Ayes 51.

19 ACTING PRESIDENT MARCELLINO:

20 The bill is passed.

21 THE SECRETARY: Calendar Number
22 617, substituted earlier today, by the
23 Assembly Committee on Rules, Assembly Print
24 10723, an act to amend the Insurance Law, in
25 relation to homeowners insurance.

1 ACTING PRESIDENT MARCELLINO:

2 Read the last -- oh, Senator Paterson.

3 SENATOR PATERSON: Lay aside,
4 please.

5 ACTING PRESIDENT MARCELLINO:

6 Lay the bill aside, please.

7 Senator Cook, why do you rise?

8 SENATOR COOK: May I be
9 negative on 479, please?

10 ACTING PRESIDENT MARCELLINO:

11 Senator Cook will be recorded in the negative,
12 without objection, on 479. Senator, that was
13 laid aside.

14 SENATOR COOK: Was it?

15 ACTING PRESIDENT MARCELLINO:

16 It was laid aside, I'm sorry.

17 You want to do the last one?

18 Senator Johnson.

19 SENATOR JOHNSON: Mr.

20 President, may we please return to motions and
21 resolutions.

22 ACTING PRESIDENT MARCELLINO:

23 Can we return to motions and resolutions,
24 please. We have a resolution at the desk.

25 SENATOR JOHNSON: Mr.

1 President, I believe there are two privileged
2 resolutions at the desk, by Senator
3 DeFrancisco. May we please have the titles
4 read and move for their immediate adoption.

5 ACTING PRESIDENT MARCELLINO:
6 Secretary will read.

7 THE SECRETARY: By Senator
8 DeFrancisco, Legislative Resolution 3287,
9 honoring the students of the Fourth Grade
10 Inclusive Class at Ramsdell Elementary School,
11 Jordan, New York, for their participation in
12 the 49th Senate District "Good News! Good
13 Kids!" Youth Responsibility Program.

14 ACTING PRESIDENT MARCELLINO:
15 Senator DeFrancisco.

16 SENATOR DeFRANCISCO: Thank
17 you, Mr. President.

18 I'm pleased to have students
19 from the Ramsdell Elementary School in the
20 gallery today, and they are the winners of the
21 elementary section of the "Good News! Good
22 Kids!" Program, and this is a real interesting
23 program that they did that I'm sure everybody
24 is going to listen to carefully, including
25 Senator Lack and Senator Libous.

1 SENATOR LIBOUS: Yes, sir.

2 SENATOR DeFRANCISCO: Basically
3 every year we honor a high school class, an
4 elementary class and a middle school class and
5 a school that puts in a project that shows
6 that good kids are out there doing good things
7 as opposed to the negative news we all too
8 often hear about. This is an interesting
9 thing that happened in Ramsdell Elementary
10 School. It's off the Erie Canal, and they did
11 some clean-up projects, but more importantly
12 in their studies they learned that there was a
13 cannonball in a tree that marked the spot
14 where Lincoln came through Jordan during one
15 of his -- one of the tours through this fine
16 state. That's Abraham Lincoln, and they did
17 some more research on that and study on that
18 and ended up finding the exact location where
19 that historic event took place and, when they
20 found that location, they had Abraham Lincoln
21 himself come to the school area and help plant
22 the tree, and it really was Abraham Lincoln.
23 I saw him; I talked to him. He's from
24 Illinois. By the way, he told me something
25 and it's a little side bar that I thought

1 everyone should hear, because I was really
2 talking to Abraham Lincoln, the man who's been
3 portraying him for 20 years. He's from
4 Illinois; he came to Syracuse, and he said,
5 "It's a little chilly here." He said, "I
6 hear it's usually quite cold in these parts of
7 the country." I said, "Yes, it is." He said,
8 "I understand politicians keep their hands in
9 their own pockets in this particular area
10 because it's so cold." I said, "It was like
11 that back in your day, too, wasn't it, Mr.
12 President?" He said, "Absolutely, absolutely,"
13 but a man who looked exactly like him, and
14 sounded like him and I think it was him.

15 So he was there for the
16 celebration. So by this clean-up effort, by
17 planting the tree on the exact spot where this
18 historic event took place, they're not only
19 learning things he did, but they're doing good
20 things for their community. So I salute all
21 the children and the teachers and parents from
22 Ramsdell Elementary School who share the day
23 with me, and congratulate them on their
24 winning the "Good News! Good kids!" project
25 for the elementary students.

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ACTING PRESIDENT MARCELLINO:

All those in favor of accepting the resolution signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is passed. We congratulate the students of Ramsdell Elementary School. Your project is a worthy one. Anyone who appreciates the environment certainly deserves this very much.

The Secretary will read.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution 3288, honoring Fourth Grade students of Enrichment Teacher Mary Stanton at Ramsdell Elementary School, Jordan, for their participation in the 49th Senate District "Good News! Good Kids!" Youth Responsibility Program.

ACTING PRESIDENT MARCELLINO:

All in favor of this resolution, signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

1 The ayes have it. The
2 resolution is passed.

3 We have one more resolution,
4 Senator Johnson. By -- one more? One more
5 resolution. Secretary will read.

6 THE SECRETARY: By Senator
7 Mendez, Legislative Resolution 3324, honoring
8 Metropolitan Hospital Center as they celebrate
9 National Nurses Recognition Week in New York
10 State.

11 ACTING PRESIDENT MARCELLINO:
12 On the resolution, all those those in favor
13 signify by saying aye.

14 (Response of "Aye.")

15 Opposed nay.

16 (There was no response.)

17 The resolution is passed.

18 SENATOR JOHNSON: Mr.
19 President, may we now go to the controversial
20 calendar and first call up Calendar Number
21 617.

22 ACTING PRESIDENT MARCELLINO:
23 The Secretary will read.

24 THE SECRETARY: Calendar Number
25 617, substituted earlier today, by member -

1 by the Assembly Committee on Rules, Assembly
2 Print 10723, an act to amend the Insurance
3 Law, in relation to homeowners insurance.

4 ACTING PRESIDENT MARCELLINO:
5 Read the last section.

6 THE SECRETARY: Section 2. This
7 act -

8 ACTING PRESIDENT MARCELLINO:
9 I'm sorry. Senator Smith.

10 SENATOR SMITH: Thank you, Mr.
11 President.

12 Would the sponsor please yield
13 to one question?

14 ACTING PRESIDENT MARCELLINO:
15 Senator Velella, do you yield to a question?

16 SENATOR VELELLA: Yes.

17 ACTING PRESIDENT MARCELLINO:
18 Senator yields, Senator.

19 SENATOR SMITH: Thank you.
20 Under normal circumstances, when a board is
21 increased, the Minority and the Majority have
22 had the opportunity to make appointments. In
23 this particular instance, only the Majorities
24 will be making additional appointments. Could
25 you tell me if there's a reason why?

1 SENATOR VELELLA: Well, there
2 are four Minority, and I mean by "minority" I
3 mean political minority. There are four
4 political minority appointees, two Senate
5 Minority appointees and two Assembly Minority
6 appointees. You will now have two appointees
7 and we will have five. I think that's a good
8 ratio.

9 SENATOR SMITH: So actually
10 there will be ten to four.

11 SENATOR VELELLA: What?

12 SENATOR SMITH: There'll be ten
13 to four.

14 SENATOR VELELLA: Well, if you
15 add us together with the Assembly Majority,
16 yes, ten-four.

17 SENATOR SMITH: Well, we were
18 doing Majority versus Minority. We won't even
19 get into the other Minority.

20 SENATOR VELELLA: Remember
21 Avis? Harder. I say remember Avis? Try
22 harder.

23 SENATOR SMITH: I'll leave the
24 reply to that one until later.

25 ACTING PRESIDENT MARCELLINO:

1 Thank you very much.

2 Senator Dollinger.

3 SENATOR DOLLINGER: Would the
4 Senator yield to just two questions? I was
5 only going to ask him one.

6 ACTING PRESIDENT MARCELLINO:
7 Will you yield to two questions?

8 SENATOR VELELLA: Oh, no, I'll
9 yield one at a time.

10 ACTING PRESIDENT MARCELLINO:
11 I'm sure he will.

12 SENATOR DOLLINGER: Through
13 you, Mr. President, was the five to two ratio
14 a good ratio when you were in the Assembly?

15 SENATOR VELELLA: We didn't
16 even get the distinction of having that. We
17 were told we didn't get any.

18 SENATOR DOLLINGER: But you
19 would -- would now presumably.

20 My second question which
21 perhaps deals with a more substantive one, one
22 that you and I have talked about before and
23 that's the question that affects my neck of
24 the woods with respect to wind-blown wave
25 damage.

1 I note that there is a
2 requirement in here that talks about wind
3 storm insurance notices, presumably to require
4 the Commissioner to give greater specificity
5 in the policies that are sold about the
6 effects of wind -- wind storm damages. I
7 think you and I have talked about this before,
8 my concern about wind-blown wave damage in the
9 Great Lakes. It's not a flood. The water
10 doesn't rise to flood level, but yet when the
11 waves come up on Lake Ontario they pound the
12 south shore, raise the water, and it has the
13 effect of acting like a flood even though the
14 water level isn't up.

15 Does this, in part, address
16 that?

17 SENATOR VELELLA: Well, I don't
18 know that this, in part, addresses the flood
19 action that you're talking about, the wave
20 action, but our research and our staff has
21 told us, and I don't know if you have a
22 different message from the fed's, that the
23 federal flood insurance does cover wave action
24 and has been changed apparently since our last
25 discussion to include wave action, so that

1 that would be covered in flood insurance and
2 that they are doing some very aggressive
3 programs, as I understand, in your community
4 to try and encourage people to sign up for the
5 federal insurance that's available to them.

6 The notices that we talked
7 about in this bill deal with some things that
8 I have a little bit of a problem with and that
9 probably most home owners in the state don't
10 realize, and that is that some of the
11 companies have slipped in deductibles that
12 weren't there before, and that when you have a
13 policy and you have this hurricane damage,
14 there are some -- and wind storm damages,
15 there are some deductibles that didn't apply
16 before and the policy terms have been changed,
17 so we are asking that when those terms are
18 altered that notice be given to the
19 policyholders.

20 SENATOR DOLLINGER: O.K. O.K.
21 So this, again through you, Mr. President,
22 this will -

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

25 SENATOR VELELLA: Yes.

1 ACTING PRESIDENT MARCELLINO:

2 He yields.

3 SENATOR DOLLINGER: This
4 requires greater -- requires the Commissioner
5 to come up with a notice that will give home
6 owners greater specificity and better language
7 that describes exactly what is covered in a
8 wind storm and whether there's a deductible,
9 if so how much it is and what it applies to,
10 whether just the wind storm value or the
11 overall value of the house.

12 SENATOR VELELLA: Exactly.

13 SENATOR DOLLINGER: Is that
14 correct?

15 Thank you, Mr. President.

16 ACTING PRESIDENT MARCELLINO:

17 Read the last section.

18 THE SECRETARY: Section 8.

19 This act shall take effect immediately.

20 ACTING PRESIDENT MARCELLINO:

21 Call the roll.

22 (The Secretary called the
23 roll.)

24 THE SECRETARY: Ayes 53.

25 ACTING PRESIDENT MARCELLINO:

1 The bill is passed.

2 May we continue reading the
3 controversial calendar in the regular order,
4 please.

5 THE SECRETARY: Calendar Number
6 241, by Senator Leibell, Senate Print 2351, an
7 act to amend the Administrative Code of the
8 city of New York and the Emergency Tenant
9 Protection Act of 1974.

10 SENATOR PATERSON:
11 Explanation.

12 ACTING PRESIDENT MARCELLINO:
13 Senator Leibell, an explanation has been
14 asked.

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

17 This bill would amend the
18 Emergency Tenant Protection Act to provide
19 that a tenant's failure to file a New York
20 State and New York City Resident Income Tax
21 return from the tenant's rent-regulated
22 apartment shall result in a legal
23 determination that such tenant does not
24 occupy the unit as his or her primary
25 residence. This bill would also add a new

1 section to the Tax Law to provide for
2 verification of the resident's filing
3 address.

4 There is little question that
5 the protections afforded under New York
6 State's rent regulation statutes are intended
7 for the benefits of New York residents who
8 live in their rent-regulated apartments as
9 their primary residence. No one can
10 rationally assert that the benefits that are
11 granted under our state's rent regulation
12 laws, intended to ease the burden on New
13 York's families to find affordable housing
14 within New York, should be extended to persons
15 who do not live in the rent-regulated
16 jurisdiction. This concept has been a part of
17 the law of rent regulation as long as there
18 has been rent regulation.

19 That is why the Emergency
20 Tenant Protection Act requires that a rent
21 regulated unit be maintained as a tenant's
22 primary residence in order for the unit to be
23 eligible for rent regulation. However,
24 despite this clear intent of the law,
25 enforcement has been almost non-existent, and

1 no law is effective or will be obeyed unless
2 it is enforced.

3 This legislation would provide
4 for such enforcement of the primary residence
5 law, by permitting the verification of the
6 tenant's primary residence address through a
7 review of his filing address on the tenant's
8 city and state income tax returns. Pursuant
9 to -- to this bill, the failure to file such
10 returns with the address of the rent-regulated
11 apartment shall result in a finding that the
12 unit is not used as a tenant's primary
13 residence.

14 It should be noted that case
15 law presently allows for the inspection of tax
16 returns in determining whether the unit should
17 be eligible for coverage under the applicable
18 rent protection regulations. This legislation
19 would codify this case law and expressly
20 provide for this verification information to
21 be applied to the eligibility sections of the
22 ETPA.

23 One additional comment that
24 needs to be made is the fact that the very
25 integrity of the rent regulation system

1 depends upon the fact that it is helping our
2 citizens. The very purpose of rent regulation
3 is to help citizens of a community find
4 affordable housing in that community.

5 ACTING PRESIDENT MARCELLINO:
6 Read the... Senator Paterson, why do you rise?

7 SENATOR PATERSON: Mr.
8 President, if Senator -- if Senator Leibell
9 would yield for a question.

10 ACTING PRESIDENT MARCELLINO:
11 Senator, do you yield?

12 SENATOR LEIBELL: Yes.

13 ACTING PRESIDENT MARCELLINO:
14 Senator yields, and might I ask that we have
15 some order in the chamber, please.

16 Senator.

17 SENATOR PATERSON: Thank you,
18 Mr. President.

19 Senator, the court of competent
20 jurisdiction, as it is designated under the
21 law, is right now the arbiter of whether or
22 not a tenant is actually acting as the primary
23 resident. Is there anything in the law as it
24 stands right now, the Emergency Tenant
25 Protection Act, that restricts the court of

1 competent jurisdiction from examining the
2 income tax returns to determine whether or
3 not, by failure to pay state or city income
4 taxes, that the individual is not a primary
5 resident?

6 SENATOR LEIBELL: No, it's my
7 understanding there is not, Senator.

8 SENATOR PATERSON: Thank you,
9 Senator.

10 Mr. President, if the Senator
11 would yield for another question.

12 SENATOR LEIBELL: Yes.

13 ACTING PRESIDENT MARCELLINO:
14 Senator yields.

15 SENATOR PATERSON: Well, then,
16 that is the case, Senator, and especially
17 considering that it appears in this
18 legislation that a finding that the tenant did
19 pay state and city income tax that that will
20 not automatically qualify the tenant as a
21 primary resident; that's how it's described in
22 the legislation, then I submit to you,
23 Senator, that wouldn't it then be best that
24 among the other variables that the court of
25 competent jurisdiction is considering that we

1 just leave the law the way it is right now and
2 let the court decide?

3 SENATOR LEIBELL: I don't think
4 so, for this reason: I think that this is such
5 a significant issue that's before us and, as
6 you know, we have that rent regulatory statute
7 because it is perceived by many that there is
8 a housing crisis within the city of New York.
9 If that is the case, we wish to make
10 absolutely certain, leave no stone unturned,
11 to make certain that those people who are
12 occupying those units that are, in fact, to be
13 regulated by our regulatory machinery would,
14 in fact, be residents and that, in fact, that
15 they are not living in another jurisdiction
16 possibly outside of the state of New York
17 where that would be their primary residence.

18 The purpose of this legislation
19 is to make sure that that is, in fact, the
20 case, that there would be no question, that if
21 it should be -- go before any court, there
22 would be no question as to the intent of this
23 legislative body.

24 SENATOR PATERSON: Thank you,
25 Senator.

1 Mr. President, if the Senator
2 would continue to yield.

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

5 SENATOR LEIBELL: Certainly.

6 ACTING PRESIDENT MARCELLINO:
7 He continues to yield, sir.

8 SENATOR PATERSON: Senator,
9 what I don't understand is that had you made
10 this issue a threshold issue by allowing the
11 filing of a state and city income tax form to
12 have been the determining factor as to what
13 would establish the primary residency, then I
14 can honestly tell you I think I would have to
15 vote for the bill because now -- or even if I
16 didn't vote for the bill, I would understand
17 it better, because now you have defined
18 exactly what would be the terms in which a
19 person would establish residency; but what
20 you've done is you've created a qualifier that
21 eliminates one that does not pay state and
22 city income tax, and yet the actual
23 fulfillment of the requirement doesn't entitle
24 the tenant to any more protection than in the
25 first place; so then we'd have to go back to

1 the court of competent jurisdiction anyway and
2 examine telephone bills, utility bills and
3 other variable factors.

4 So what I'm just asking is, why
5 did you not, if you -- if you were trying in
6 the legislation -- and I can understand what
7 you're trying to accomplish and certainly I
8 have some -- some feeling that the primary
9 residency was the real protection that the
10 Emergency Tenant Protection Act was designed
11 to -- to assist, but at the same time my
12 question to you is, why have you left part of
13 the -- why have you left part of the
14 determination open at the same time you've
15 created in a sense a nullifier through the
16 income tax process?

17 SENATOR LEIBELL: If I may,
18 Senator, there are many factors I'm certain
19 that could be considered, especially utility
20 bills, driver's licenses, these factors can be
21 considered but, as you know, there are many
22 ways to get around those, for instance, a
23 driver's license which is not as easy to do
24 when you're talking in terms of a tax return.
25 A tax return is really quite specific. It's

1 not easily gone around. It's not easily
2 subverted.

3 In order to guarantee that this
4 housing stock is open to those who are, in
5 fact, residents, this certainly, I believe,
6 would have to be the safest way to proceed.

7 SENATOR PATERSON: O.K. Thank
8 you very much, Senator.

9 Mr. President, on the bill.

10 ACTING PRESIDENT MARCELLINO:
11 Senator Paterson, on the bill.

12 SENATOR PATERSON: Mr.
13 President, sometimes this kind of an argument
14 is made in an almost cynical or satirical way,
15 but I mean this in all sincerity. Senator
16 Leibell, in many respects, outlined what would
17 really be the thrust of my argument even
18 though he disagrees with me. His noting on
19 the record that the specifics of the income
20 tax return, and certainly in our society, the
21 -- the attention to detail as we are reading
22 about in the newspapers, perhaps too much
23 attention to detail at times, demonstrates
24 that this would be a very hard roadblock to
25 get around for someone who is trying to

1 establish their primary residence.

2 So, therefore, I would
3 certainly understand it if the thrust of the
4 legislation enured to the benefit of the
5 tenant as much as to the detriment, whereby if
6 the person could establish that they have paid
7 their personal income tax on the city or state
8 level from that residence, that that's the
9 primary residency, but I think to have
10 legislation that is at best confusing by the
11 fact that it -- it can eliminate or nullify
12 the primary tenancy on one hand but doesn't
13 have any access to verifying it, is a piece of
14 legislation that we suggest needs to be
15 reworked.

16 We certainly understand Senator
17 Leibell's honest concern about individuals who
18 are probably taking the places of others who
19 would be qualifying and deserving to be
20 tenants in New York City and primary
21 residents, but at the same time to have a
22 system that has no reward and at the same time
23 great penalty, and that the reason for it is
24 because of the specificity of the way income
25 taxes are applied in our country, in our

1 opinion, creates in a sense an imbalanced
2 scale and, for that reason, 19 Senators in
3 1996 voted against this piece of legislation,
4 and this is the same legislation that we voted
5 on at that time, and we recommend its defeat
6 today.

7 ACTING PRESIDENT MARCELLINO:

8 Read the last -- Senator Gold.

9 SENATOR GOLD: Yeah, Mr.

10 President, I've gotten a lot of civics lessons
11 over the years in this chamber, and I have
12 also been the beneficiary, if you want to use
13 that word, of many lectures from my colleagues
14 on the other side about representative
15 government, and I've been told that -- as a
16 matter of fact, almost an Edmund Burke
17 philosophy coming from that side on the -- and
18 the anti-Edmund Burke questioning whether it's
19 your industry alone as well as your intellect
20 that you're supposed to give constituents, and
21 what do they want back home, and during that
22 time I think it's really classic because -- I
23 don't want to offend anyone on the other side,
24 but I don't recall any member of the
25 Republican Party in this house being the

1 chairman of the Housing Committee who ever
2 represented a district in the city of New York
3 and, of course, that sets up the classic good
4 guy/bad guy case, as we all know, and if we
5 are going to talk about representative
6 government, everybody in this chamber knows
7 that the reason that there's so much
8 opposition here is because those who represent
9 these tenants, such as Senator Paterson, can't
10 possibly support this legislation, and it's
11 not a question of not supporting it because we
12 are anti-landlord or anti-this and we're
13 afraid of a tenants' group here and there. I
14 think some of the people on this side of the
15 aisle have, over the years, stood up and been
16 very courageous. But the bottom line here is
17 that the reason that this bill has such a long
18 legislative history is because, as most of us
19 understand, it will have an even longer
20 legislative history because it ain't goin'
21 nowhere, and the problem is that it is a one
22 sided law, and most of the things we do here,
23 you know people talk about partisan politics
24 and very few people realize that this
25 distinguished body votes 18-, 1900 times a

1 year very often, and if you take a look at
2 those roll calls the vast majority of them are
3 unanimous because both sides of the aisle are
4 trying to do the right thing, and most of the
5 things we do benefit the people in a very fair
6 way.

7 I think, having said that, I
8 will vote with my distinguished leader,
9 Senator Paterson, because this doesn't handle
10 it in an even way. It's an invitation by one
11 side of the aisle to gain favor with one part
12 of the constituency that's involved with this
13 issue, and to create a rift right down the
14 middle with this side of the aisle, and that
15 constituency. But it's O.K., because you do
16 the same thing for your people.

17 Be interesting to see how your
18 New York City members vote on this, and I
19 always find it interesting that in those
20 situations where the majority party in this
21 house offers legislation which opposes
22 interests in New York City, every once in a
23 while we pick up a New York City vote on your
24 side, and I wonder why in conference you don't
25 listen to those votes.

1 But I -- having said that I
2 adopt the philosophy of my leader, Senator
3 Paterson, and I will vote in the negative.

4 SENATOR LEICHTER: Mr.
5 President.

6 ACTING PRESIDENT MARCELLINO:
7 Senator Leichter.

8 SENATOR LEICHTER: Mr.
9 President. Senator Leibell, I could support
10 this bill -

11 ACTING PRESIDENT MARCELLINO:
12 Excuse me, Senator. Are you speaking on the
13 bill?

14 SENATOR LEICHTER: Yes.

15 ACTING PRESIDENT MARCELLINO:
16 O.K. Senator Leichter, on the bill.

17 SENATOR LEICHTER: Senator
18 Leibell, I could support this bill if it did
19 what I think you intended to do, but I think
20 the bill suffers from a drafting -- or I won't
21 say "error", but incompleteness, and maybe for
22 that purpose, if you'd be so kind and yield to
23 a question.

24 SENATOR LEIBELL: Certainly.

25 SENATOR LEICHTER: Senator, as I

1 read -

2 ACTING PRESIDENT MARCELLINO: I
3 thought you were on the bill, Senator.

4 SENATOR LEICHTER: I was on the
5 bill, but now I'm asking him a question.

6 ACTING PRESIDENT MARCELLINO:
7 You're getting off the bill; is that what
8 you're telling me?

9 Senator Leibell, do you yield
10 for a question?

11 SENATOR LEIBELL: Certainly.

12 ACTING PRESIDENT MARCELLINO:
13 He yields, Senator Leichter.

14 SENATOR LEICHTER: Thank you,
15 Mr. President. Thank you, my good friend,
16 Senator Leibell.

17 Senator, what happens if
18 somebody files a tax return two days late -
19 no question under my example, this is somebody
20 lives in New York, every night he sleeps in
21 his rent-controlled or rent-stabilized
22 apartment, but he files his return two days
23 late? As I read that bill, he would lose his
24 right to remain as a rent-stabilized or as a
25 rent-controlled tenant.

1 SENATOR LEIBELL: To respond to
2 that, Senator, if he had filed for an
3 extension?

4 SENATOR LEICHTER: He didn't
5 file for an extension. He did what,
6 unfortunately, some people do. He filed
7 late. People do that, he's two days late.
8 He's committed an offense. He's probably
9 going to have to pay interest and a penalty
10 but, as I read this bill, he loses his
11 apartment.

12 SENATOR LEIBELL: That would
13 not be correct. Commissioner of Taxation and
14 Finance would have the ability to look into
15 that, to examine that and make a
16 determination, and I would suggest to you that
17 it's not a question of two days that we're
18 talking about.

19 Senator, if I thought there was
20 some way that I could improve this bill to
21 your liking, I'd be happy to talk about it
22 without gutting it, but I think the issue is
23 not really a question of two days. We're not
24 looking for something de minimus even though,
25 in fact, that may have been something wrong.

1 That's not our purpose.

2 Our purpose is to find those
3 people out there actually defrauding the
4 system, and we would wish to turn that housing
5 over to your constituents who might need it.

6 SENATOR LEICHTER: Senator
7 Leibell, we agree on the purpose. The purpose
8 is fine, but you and I, as we vote on this
9 bill, have to consider specific language, and
10 the Commissioner of Taxation doesn't have
11 super power of the Legislature. He can't say,
12 Well, they didn't mean that.

13 Let me just read exactly what
14 you've written and again ask you whether, in
15 fact, my example doesn't mean that this long
16 time New York City resident would lose his
17 apartment or at least would lose his right to
18 be a rent-controlled or rent-stabilized
19 apartment.

20 It says, For determining
21 primary residence... finding that the tenant
22 has not occupied the unit... his or her
23 residence -- I'm sorry, here it is. It's on
24 line 8, "*** purposes of determining primary
25 residence using this chapter, the failure to

1 file a New York City resident income tax
2 return by an individual required by law to
3 file such a return***" then the only exception
4 is that if you have an extension, so if you
5 don't have an extension, you have not filed a
6 return. You've not made a timely filing of
7 the return.

8 There's nothing in the law
9 which says that the Commissioner of Taxation
10 can waive it. Suppose he's a week late;
11 suppose he's a month late. Suppose he's two
12 months late. Senator, I think with all due
13 respect, I mean I think my point is well
14 taken, if I have to say so myself, but -

15 SENATOR LEIBELL: Got it,
16 Senator, if you did.

17 SENATOR LEICHTER: But in all
18 fairness, Senator, if this bill said that if
19 somebody filed a state or, for that matter,
20 even a federal income tax return and he states
21 his address to be other than where he or she
22 occupies an apartment that is under rent
23 control or rent stabilization, I will vote for
24 that bill, but that's -- I think that's what
25 you intend to say, but I think that the way

1 you've set it up, I think you've really left
2 a -- a loophole, if you will, or at least
3 worse than a loophole, you've caught people in
4 the mesh of your bill that really, you don't
5 intend to get. You're trying to get the
6 people who have a rent-controlled apartment
7 but they're off in Connecticut or Florida and
8 they're paying taxes there. They shouldn't be
9 getting the benefits of the rent control law.
10 I agree with you, but I think that your bill
11 as it's written is going to apply to people
12 who clearly are New York residents who have
13 committed the mistake or the error of having
14 filed late, and who now will lose their rent
15 controlled apartment.

16 SENATOR LEIBELL: Well,
17 Senator, it's not -- first, I'd be interested
18 to see if you're going to be submitting a bill
19 espousing what you've just said.

20 SENATOR LEICHTER: Senator, may
21 I just interrupt and ask you a question?

22 SENATOR LEIBELL: Will that be
23 forthcoming, Senator, your bill?

24 SENATOR LEICHTER: Yes. Let me
25 answer it this way, Senator.

1 SENATOR LEIBELL: Yes. You
2 have -

3 SENATOR LEICHTER: You've been
4 here a number of years. How many Leichter
5 bills have you seen on the calendar? I have
6 to -- I don't think -- I can't remember one,
7 the last three, four years, so my putting in a
8 bill, Senator, if it's a good idea, you do it
9 and I'm not going to waste my time or anybody
10 else's time -

11 SENATOR LEIBELL: Well, Senator,
12 as chairman of Housing, I'd be very interested
13 in seeing that bill, I can assure you, but in
14 answer to your question, you are correct, I
15 have not been on the Leichter watch, I have
16 not been looking for your legislation, you are
17 correct, but I would be more than happy to
18 entertain that bill if it came through. It
19 would be shocking, but I'd be happy to
20 entertain it.

21 SENATOR LEICHTER: Senator, I'm
22 telling you right -

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

25 SENATOR LEIBELL: Yes, I do.

1 ACTING PRESIDENT MARCELLINO:

2 Senator Leibell continues to yield.

3 SENATOR LEICHTER: Senator, I
4 can assure you, you put in a bill that says if
5 somebody files a tax return listing his
6 primary residence other than New York -- New
7 York State, that he or she then can
8 conclusively presume not to have their New
9 York -- that New York apartment as their
10 primary residence, I'll vote for it. You
11 don't need me to put the bill in, because my
12 bill isn't going to go anywhere. Even though
13 you -- even though you'll put the bill out,
14 there'll be some gnome on the third floor
15 who's going to say, Leichter, Democrat, no.
16 This bill can't go, so let's not waste our
17 time.

18 I'm just suggesting change your
19 bill that way, and probably most of those 19
20 votes against it will become in favor, and
21 I'll certainly be one in favor. All I'm
22 suggesting is correct what I think is an
23 oversight in your bill, or I think a wording
24 of the bill that may lead to an injustice, and
25 you could very simply have the bill accomplish

1 your purpose by stating what I just said, say
2 any filing of a tax return which lists a
3 primary residence other than the person's
4 claimed rent-controlled or rent-stabilized
5 apartment proves that the person is -- that
6 New York is not his primary residence, and you
7 got it.

8 SENATOR LEIBELL: I think that
9 this is a strawman that we're dealing with
10 here, and begs the real issue. This is a, I
11 think a bill that is quite fair and it
12 certainly in no means intends to entrap anyone
13 who is on a two-day delay. In fact, a
14 certification, I believe, that would come from
15 the Commissioner would -- would address that
16 and I'd be shocked if they had opened any tax
17 returns that fast, but I don't -- I think this
18 legislation is well crafted.

19 I certainly, as I say, would be
20 happy to entertain any additional concerns you
21 may have legislatively, but I think this is a
22 good bill. This bill has been before us
23 before. It's been passed in this house
24 before, and I am certainly satisfied that it
25 would go a long way towards helping us with

1 some of our problems in the city.

2 Thank you.

3 ACTING PRESIDENT MARCELLINO:

4 Read the last section.

5 THE SECRETARY: Section 5.

6 This act shall take effect immediately.

7 ACTING PRESIDENT MARCELLINO:

8 Call the roll.

9 (The Secretary called the
10 roll.)

11 ACTING PRESIDENT MARCELLINO:

12 Calculate and announce the negatives, please,
13 and the results.

14 Announce the results, please.

15 THE SECRETARY: Those recorded
16 in the negative on Calendar Number 241 are
17 Senators Abate, Connor, Gentile, Gold,
18 Goodman, Kruger, Lachman, Leichter, Marchi,
19 Markowitz, Nanula, Onorato, Rosado and
20 Santiago. Ayes 42, nays 14.

21 ACTING PRESIDENT MARCELLINO:

22 The bill is passed.

23 Senator Johnson, Bill
24 Number -- Calendar Number 441 has been laid
25 aside for the day at the request of the

1 sponsor. Can we move on to Calendar Number
2 465.

3 Senator Onorato, why do you
4 rise?

5 SENATOR ONORATO: Mr.
6 President, on Thursday I was out of the
7 chamber when the vote was taken on Calendar
8 Number 539, Senate Number 647. If I had been
9 in here for the vote, I would like the record
10 to indicate that I would have voted "no" on
11 the bill.

12 ACTING PRESIDENT MARCELLINO:
13 The record will so indicate.

14 Secretary will read.

15 THE SECRETARY: Calendar Number
16 465, by Senator Saland, Senate Print 4595-A,
17 an act to amend the Criminal Procedure Law,
18 the Education Law and the Personal Property
19 Law.

20 SENATOR STACHOWSKI:
21 Explanation.

22 ACTING PRESIDENT MARCELLINO:
23 Senator Saland, an explanation has been
24 requested.

25 SENATOR SALAND: Thank you, Mr.

1 President.

2 Mr. President, what this bill
3 would do would be to convert the current
4 status of security personnel on SUNY campuses,
5 generally known as public safety officers, to
6 police officers, and this year's version of
7 the bill is somewhat different than last
8 year's, and I'd like to take a minute or two
9 to explain what those differences are, perhaps
10 with the idea of abbreviating the debate.

11 As many will recall, there was
12 an effort to try and define the geographical
13 area of the police officers who would be
14 appointed by the State University, and to
15 narrow somewhat the language which last year
16 talked in terms of their jurisdiction
17 including a public highway which crossed or
18 abuts the SUNY campus property.

19 We have described that language
20 somewhat differently, talking in terms of -
21 and I'm looking at subsection (d) of Section 1
22 on the third page of the bill which makes
23 reference to any portion of a public highway
24 which crosses or abuts such property, and
25 then, interestingly enough, there were

1 conflicting concerns as is the case around
2 here from time to time, with regard to the
3 status of the relationship between a SUNY
4 campus and the municipality within which it is
5 located, some concerns being expressed that
6 there was in some instances a desire for some
7 type of mutual or reciprocal agreement whereby
8 the SUNY police would be authorized to offer
9 assistance to local police and the converse
10 being true, the great concern in some quarters
11 that there be no unauthorized involvement by
12 SUNY police in matters which would otherwise
13 be within the realm off campus of the work of
14 municipal police, and to that end I would call
15 everybody's attention to page 8, lines 40
16 through 45, which basically talks in terms of
17 subject to the approval of the chancellor,
18 each -- the president of each campus would
19 have the ability to enter into agreements with
20 adjoining law enforcement agencies
21 establishing protocols which would basically
22 define the interaction of campus police within
23 a municipality and in conjunction with local
24 police where desired, and I probably have
25 somewhere in the area of in excess of five

1 dozen supportive letters from various and
2 sundry sheriffs' departments, police
3 agencies. A number of those agencies are
4 agencies in which they do have SUNY campuses
5 and there seems to be, at least in those that
6 I have seen, a ringing endorsement of the idea
7 of making the SUNY police in those communities
8 the SUNY -- I'm sorry, security personnel in
9 those communities police officers as well.

10 With that, I'll be more than
11 happy to yield to any questions that anybody
12 might have.

13 ACTING PRESIDENT MARCELLINO:
14 Senator Hoffmann, please.

15 SENATOR HOFFMANN: I wonder if
16 Senator Saland would yield for a question,
17 please.

18 ACTING PRESIDENT MARCELLINO:
19 Senator, do you yield?

20 SENATOR SALAND: Yes, Mr.
21 President.

22 ACTING PRESIDENT MARCELLINO:
23 He yields.

24 SENATOR HOFFMANN: Thank you.
25 Has -- to your knowledge, Senator Saland, has

1 the New York State Sheriffs Association
2 withdrawn its opposition to this?

3 SENATOR SALAND: I have not
4 seen a memo in opposition from the sheriffs
5 this year; that's not to say that they're
6 not. I have seen a memo in opposition from
7 the Police Conference.

8 SENATOR HOFFMANN: Thank you.
9 Thank you, Senator Saland.

10 Mr. President, on the bill.

11 ACTING PRESIDENT MARCELLINO:
12 Senator Hoffmann, on the bill.

13 SENATOR HOFFMANN: It is my
14 understanding that the Sheriffs Association
15 and the Police Conference continues its
16 objection to this bill. There are a number of
17 reasons that they have cited in the
18 memorandums last year which they apparently
19 are standing by this year.

20 Just in the very briefest
21 fashion, if I could encapsule it in part by
22 saying that in every campus there is already a
23 sheriff's department or a local law
24 enforcement entity prepared to work in
25 conjunction with the campus police officers.

1 They point out the disparity in the training
2 between campus security officers and municipal
3 or county police officials, and they also
4 make, I think, a rather telling argument about
5 accountability which I would just read to my
6 colleagues, from the 1997 police memo and if
7 this -- excuse me, Sheriffs Association memo
8 and, if this is out of date, I apologize, but
9 it is my impression that it is accurate.

10 I read that it is a very
11 dangerous thing to give the state's police
12 powers to officers who are shielded from
13 accountability to the public by layers of
14 bureaucrats, none of whom anywhere in the
15 chain are chosen by the electorate and, while
16 I applaud Senator Saland for his concern for
17 the well-being of the college students on the
18 SUNY campuses and for people in the area who
19 might be affected by criminal activity and the
20 desire to see more people able to respond to
21 criminal activity, there is still a question
22 about disparity in training as well as
23 disparity in accountability, and I think that
24 we owe it to the men and women of this state
25 who are sworn law enforcement officials and

1 who count the Police Conference or the
2 Sheriffs Association as their voices here in
3 this Capitol, I think it behooves us to take a
4 more serious look at this measure.

5 So at this point I am still
6 prepared to cast a no vote.

7 ACTING PRESIDENT MARCELLINO:
8 Senator Leichter.

9 SENATOR LEICHTER: Mr.
10 President, if Senator Saland would yield
11 please?

12 ACTING PRESIDENT MARCELLINO:
13 Senator, do you yield?

14 SENATOR SALAND: Yes, Mr.
15 President.

16 ACTING PRESIDENT MARCELLINO:
17 Senator yields.

18 SENATOR LEICHTER: Senator, I
19 think it was somewhat telling that, in your
20 explanation of the bill, you never told us why
21 this is needed.

22 SENATOR SALAND: Well, I'll be
23 more than happy to review some of the things
24 that we've discussed previously. I was
25 trying, and perhaps I misjudged and I owe the

1 chamber an apology, not to prolong the debate.

2 Let me give you some of the
3 things which I think would justify a concern
4 and I mentioned this, I believe, in last
5 year's debate: Back in 1993 or 1994 I chaired
6 a task force which dealt with the subject of
7 campus crime, and we held hearings at a number
8 of locales throughout the state and, in each
9 and every instance, one of the things that
10 came up -- and I say in each and every
11 instance, and it came up not merely from the
12 public safety officers but student personnel
13 and administration as well -- was the need for
14 law enforcement police status for campus
15 security personnel.

16 Some of the things of interest
17 and I'll make reference to Senator Hoffmann's
18 comments. What happens far too often is that
19 the requests for response at SUNY campuses
20 become in a number of areas, in a number of
21 situations, very low priority requests and the
22 local police or local sheriff's department
23 will concentrate their resources elsewhere and
24 very often that hampers the ability to pursue
25 a criminal investigation because, as you know,

1 in order to pursue a criminal investigation
2 the sooner you get on the evidentiary trail
3 the sooner you take your statements, the
4 likelier you will have a successful
5 prosecution, and while I'm at it, I'd like to
6 just dispel one other thing and then I'll get
7 into some statistics which I think you will
8 find interesting.

9 There was talk about a lack of
10 training. SUNY personnel currently are
11 trained at the State Police Academy. They
12 receive virtually the same training as
13 municipal police receive, and they receive
14 some 531 hours of training and, if you'd like,
15 I could share with you from the manual what
16 they receive -- training in firearms, training
17 with arrest procedures, virtually identical
18 with certain, I would assume, accommodations
19 to the difference of dealing with a student
20 population than perhaps dealing with the
21 population at large.

22 But I think your question
23 implies the need, and I have before me a chart
24 of crime statistics at the SUNY campuses, and
25 there for the last five years the most recent

1 being 1996, and what it shows is an increase
2 in robberies, an increase in burglaries, an
3 increase in crimes involving dangerous
4 weapons. Yes, in some areas there's been a
5 diminution in crime. Certainly it has not
6 been uniform, and certainly not unlike the
7 situation that exists today where we have seen
8 a diminution in some instances in crime data,
9 nobody is out clamoring for us to do away in
10 our localities or at the state or county level
11 with either municipal police, State Police or
12 county sheriffs.

13 Very similarly, nothing has
14 changed in terms of the need and the desire to
15 have status apply to SUNY security personnel.
16 There's a number of issues of territoriality
17 here, but I -- as I said earlier, I'll be very
18 happy to share and I'll read them into the
19 record at length, some five-plus dozen law en
20 forcement agencies, some of them in SUNY
21 communities, some not, that cross the spectrum
22 -- municipal, city police, county sheriffs'
23 offices all supporting this effort.

24 So we've tried to be as
25 accommodating as possible. We tried to

1 address some of the issues that were raised
2 during the course of your debate last year and
3 others. We believe this is a carefully
4 constructed bill, one which has moved out of
5 committee in the Assembly, I understand, and
6 we're hopeful that we're going to see
7 agreement on this bill and passage this
8 session.

9 SENATOR LEICHTER: Excuse me,
10 Mr. President. If Senator Saland continues to
11 yields.

12 Senator, I looked through the
13 bill quickly and I didn't see it. Is there a
14 provision in the bill which requires the
15 training which you state is now given?

16 SENATOR SALAND: I believe you
17 will find that in -- in law. I'm not sure if
18 you're going to find it here. I do have the
19 Public Safety Training Academy Manual which
20 does at length set forth what the training
21 is.

22 SENATOR LEICHTER: Well, that's
23 -- but my question is there's nothing in this
24 law or bill.

25 SENATOR SALAND: Nothing that

1 -- nothing that we've amended and, in all
2 candor, Senator Leichter, I haven't read this
3 with the provision with attempting to verify
4 where that is. I'm looking now at Section 355
5 of the Education Law, and that provides that
6 any person appointed a peace officer -- and
7 that's the current status for security
8 personnel, public safety officer at SUNY
9 campuses -- must have satisfactorily completed
10 or complete within one year of date of his
11 appointment a course of law enforcement
12 training approved by the Municipal Police
13 Training Council in consultation with the
14 university.

15 SENATOR LEICHTER: But, Senator
16 Saland, I mean, if you continue to yield,
17 that's my point. We now in the law provide
18 for training of peace officers. Now, you're
19 making them police officers. You're not -
20 I'm sure you're not implying that police
21 officers need not have any greater training
22 than peace officers.

23 Now, maybe it's in some other
24 provision of the law, but it would seem to me
25 that that would be important. Even though

1 that training is now provided, if it's not
2 required by law, it certainly creates a
3 problem.

4 So, if you continue to yield.

5 ACTING PRESIDENT MARCELLINO:
6 Senator Saland, do you continue to yield?

7 SENATOR SALAND: Yes, I will,
8 if I may respond.

9 ACTING PRESIDENT MARCELLINO:
10 You may respond.

11 SENATOR SALAND: Again, I'm
12 told that the 531 hours is comparable in terms
13 of numbers to what the local police receive as
14 part of their training, and I must share with
15 you that this will give you some comfort and
16 this is only in part, some of the items, and
17 this is one of 11 parts that are contained in
18 the SUNY basic summary for the training course
19 under "criminal investigation".

20 SENATOR LEICHTER: Senator
21 Saland, excuse me, if -- I don't mean to
22 interrupt you, except I do, but that -

23 I don't doubt that the training
24 as you describe it is sufficient. I would
25 just think it would be wise, in the law, to

1 require that training be given because if it's
2 not required to be given, I can see some
3 campus determining that, for whatever reason,
4 they're not going to provide the training.

5 So that's -- that's the point
6 I'm making.

7 SENATOR SALAND: Senator
8 Leichter, the law does require that there be
9 training, and the training has to be approved
10 by the Municipal Police Training Council, and
11 that training is currently what is described
12 in far greater length and in far greater
13 detail under the Public Safety Training
14 Academy rules and regulations, and my
15 assumption would be -- and I think it's a
16 reasonable one -- to the extent that there
17 would be any additional training by reason of
18 their police status required, that that would
19 be part of that course and, if it gives you
20 any great comfort, I'm sure that that
21 accommodation could be reached, but I
22 certainly think it's implied.

23 SENATOR LEICHTER: Excuse me,
24 Senator Saland, if you continue to yield.
25 Where, in the bill, and that was my initial

1 question, and maybe -

2 SENATOR SALAND: It's in the
3 existing law, existing law, and I have a copy,
4 Section 355 of the Education Law.

5 SENATOR LEICHTER: But that
6 referred to peace officers.

7 SENATOR SALAND: The section
8 deals with the appointment of security
9 officers, and it certainly dictates what the
10 response has been by the SUNY administration
11 by way of the creation of this particular
12 training course and if, in fact, that section
13 should be amended to reflect the word "police
14 officers", that's a relatively simple thing to
15 do, and I'd be more than happy to assure you
16 that it will be done.

17 SENATOR LEICHTER: Thank you,
18 Senator. If you would be good enough to
19 continue to yield.

20 ACTING PRESIDENT MARCELLINO:
21 Senator, do you continue to yield?

22 SENATOR SALAND: Yes, Mr.
23 President.

24 ACTING PRESIDENT MARCELLINO:
25 He continues to yield.

1 SENATOR LEICHTER: Police
2 officers are authorized to make an arrest
3 anywhere in the state if he has reason to
4 believe that a crime has been committed, as
5 opposed to peace officers. Are these peace
6 officers going to have the same power?

7 SENATOR SALAND: You will
8 recall in my earlier remarks I made reference
9 to page 1 of the bill about the geographic
10 employment of a person appointed under this
11 section. Their jurisdiction would be limited
12 to campuses, SUNY campuses.

13 SENATOR LEICHTER: Excuse me.
14 Senator -

15 SENATOR SALAND: The only way
16 their jurisdiction could be increased would be
17 under the section which I referred to you on
18 page 8 which provides for the ability to enter
19 into a protocol with the local municipality to
20 provide some, for lack of a more appropriate
21 term, mutual aid where a community would want
22 that.

23 SENATOR LEICHTER: Senator
24 Saland, again, if you will continue to yield.
25 I understand that provision provides for what

1 their place of employment is but I don't think
2 that changes the general law of the powers of
3 a police officer to make an arrest anywhere in
4 the state. All that says is they're going to
5 be employed in their campus. That's fine, but
6 as police officers, they now have all the
7 powers that are given to police officers and
8 one of those is to make an arrest anywhere
9 within the state.

10 SENATOR SALAND: If you would
11 look at pages 8 and 9, Section 17 -- yeah, you
12 will see language which really recites where
13 the jurisdiction of this SUNY police officer
14 would be permitted to be exercised, and you
15 look at the underlined language at line 7 and
16 8 on page 9, which basically again would limit
17 it to the geographical area of employment of
18 such police officer.

19 SENATOR LEICHTER: Well, with
20 all due respect, and I don't know whether we
21 want to take the time of our colleagues who I
22 know are interested in this debate, but you do
23 take out the key language which is
24 "notwithstanding any inconsistent provision
25 of law" and that section just says that the

1 person designated police officers by the board
2 of trustees, et cetera, shall have among the
3 powers the following: and I don't think that
4 at all addresses the issue of whether they
5 will have the general powers of police
6 officers.

7 But let me ask you if you
8 would, if you will continue to yield, Senator
9 Saland. Will these police officers, like all
10 other police officers, carry guns?

11 SENATOR SALAND: They will
12 still be subject to the policy of the
13 university. Most SUNY campuses, I'm told,
14 roughly two-thirds or while I can't give you a
15 hard number, currently permit their public
16 safety officers to carry. There would still
17 be the ability to -- to -- there would still
18 be the discretion within the board of trustees
19 to determine whether or not a -- a police
20 officer should be able to carry.

21 SENATOR LEICHTER: Just one
22 final question, Senator Saland.

23 I still don't understand why
24 there's a belief that greater security will be
25 provided on the campus by having these police

1 officers than presently having peace officers
2 who certainly have powers, as I understand it,
3 that are sufficient to deal with problems of
4 crimes that arise on the campus. I mean the
5 only real distinction you've made is that, as
6 peace officers, they cannot conduct
7 investigations into crimes that have
8 occurred. I just can't believe any police
9 department where a crime has been committed on
10 a campus, a police department of the
11 municipality wherever that campus is located,
12 saying, Well, you know, this is a campus.
13 We're not going to bother looking into a
14 crime.

15 Outside of that, I -- I just
16 fail to see what additional protection you're
17 giving the students.

18 SENATOR SALAND: Well, Senator
19 Leichter, as I mentioned in my earlier
20 comments, there certainly are statistics which
21 show that not only is crime comparable to
22 whatever may be occurring within the
23 communities within which these campuses are
24 located, but in a number of instances with
25 serious crimes, violent crimes, there the data

1 will show that crimes are on the increase. I
2 certainly can't speak for what occurs on each
3 and every one of those campuses; for that
4 matter not every one of those campuses having
5 the time to spend which are considerable
6 periods of time.

7 I can tell you from my
8 experience in the round of hearings that were
9 held. I can tell you from speaking with both
10 SUNY administrative personnel and with SUNY
11 public safety personnel that, yes, as much as
12 you don't want to believe it, that there are
13 instances in which -- reported instances in
14 which they advise me that local police
15 relegate their criminal complaints to a lesser
16 status. That jeopardizes the student,
17 jeopardizes the students' property,
18 jeopardizes the effective administration of
19 public safety on the campus, and it could be
20 literally resolved by providing these
21 providing these personnel police officer
22 status.

23 Nobody is going to be any the
24 worse for it, and many people are going to be
25 much better by reason of it.

1 SENATOR LEICHTER: Mr.
2 President, on the bill.

3 ACTING PRESIDENT MARCELLINO:
4 Senator Leichter, on the bill.

5 SENATOR LEICHTER: As always,
6 Senator Saland, you're very forceful in
7 support of your legislation, and I understand
8 the good concerns which prompt your
9 legislation.

10 I think that campuses will be
11 worse off, and I think society will be worse
12 off if we bring people with guns onto campuses
13 unless there's a clear compelling need, and
14 you can identify and show a real benefit that
15 will occur.

16 Now, the crime statistics,
17 Senator, that you refer to, and I may be wrong
18 because I haven't really looked at them, but I
19 think by and large they deal with thefts, they
20 have -- they, insofar as violence occurs,
21 there may be fights among students or there
22 are instances of rape or -- which, of course,
23 are very disturbing and certainly need to be
24 deterred and acted on, but I don't think these
25 are the range of crimes where you're going to

1 get any meaningful or significant better
2 protection by having people with guns on the
3 campus than you do now from peace officers.

4 The only reason that you put
5 forth that I could understand is you say,
6 well, we need, where crimes have occurred to
7 conduct investigations and unfortunately, our
8 local police officials fail to do that or in
9 some instances fail to do that, but I think
10 that can certainly be dealt with, Senator,
11 because it's obviously, as I'm sure you agree
12 with me, wrong and we should not countenance
13 it and say that we're going to put uniformed
14 or create a new class of uniformed police
15 officers because a municipality or municipal
16 police forces are failing to carry out their
17 sworn obligation and duty of investigating
18 crimes and trying to arrest people who have
19 committed crimes.

20 I just like to think of a
21 campus as a place that is somewhat an oasis
22 from some of the other vicissitudes of life.
23 I realize that's somewhat naive and somewhat
24 illusory, but it is still true to some extent,
25 and I think to bring in uniformed police

1 officers really changes the character of that
2 campus. I just don't think it's necessary for
3 the protection of students. It isn't as if
4 students are being attacked at such a rate
5 that people are coming onto the campus where
6 you really need somebody with a gun to protect
7 the student. I just don't believe that's the
8 case at all.

9 I happen to represent probably
10 more educational institutions than anyone
11 else. I represent Morningside Heights which
12 is occasionally called the "Acropolis of
13 America". I've got Columbia; I've got
14 Barnard; I've got Union Theological; I've got
15 Jewish Seminary. I represent parts of Fordham
16 or used to represent Yeshiva University. I
17 represent a lot of institutions. I've never
18 had a university president come to me and -
19 in fact, I think the distinguished president
20 of Fordham is going to be in Albany today -
21 and said, "I need unformed police officers,"
22 and these are campuses that are right in the
23 city where you are more prone to -- to
24 difficulties and to crimes occurring.

25 I just don't believe the case

1 has been made nor do I think that you've
2 provided the safeguards that you want to
3 provide. You haven't provided in the
4 legislation itself that training must occur.
5 If we're going to have people with guns on the
6 campus, Senator, it's not enough to have,
7 well, we got a training manual and we send
8 them now. You got to provide in law that that
9 training is going to be given and if you're
10 going to limit those police officers solely to
11 acting within the campuses, then I think
12 you've got to specify that very clearly which
13 I think your bill doesn't -- doesn't do.

14 So for all these reasons and I
15 think, as Senator Hoffmann said, and point to
16 the opposition of the Sheriffs Association, I
17 just don't think this is a bill we should move
18 at this time.

19 ACTING PRESIDENT MARCELLINO:

20 Read the last section, please.

21 THE SECRETARY: Section 20.

22 This act shall take effect on the first day of
23 the sixth month.

24 ACTING PRESIDENT MARCELLINO:

25 Call the roll.

1 (The Secretary called the
2 roll.)

3 THE SECRETARY: Those recorded
4 in the negative on Calendar Number 465 are
5 Senators Hoffmann and Leichter. Ayes 54, nays
6 2.

7 ACTING PRESIDENT MARCELLINO:
8 The bill is passed.

9 THE SECRETARY: Calendar Number
10 479, by Senator Hannon, Senate Print 6263-A,
11 an act in relation to permitting.

12 ACTING PRESIDENT MARCELLINO:
13 That bill -

14 SENATOR JOHNSON: Star that
15 bill at the request of the sponsor.

16 ACTING PRESIDENT MARCELLINO:
17 Thank you, Senator Johnson. Star that bill at
18 the request of the sponsor.

19 THE SECRETARY: Calendar Number
20 545, by Senator Farley, Senate Print 1955, an
21 act to amend the Real Property Tax Law and the
22 Social Services Law.

23 ACTING PRESIDENT MARCELLINO:
24 Senator Paterson.

25 SENATOR PATERSON: Mr.

1 President, Senator Farley and I have discussed
2 this bill at great length the past few years,
3 also Senator Rath has some legislation that
4 pertains to this subject, and she's joined in
5 the discussion. Suffice it to say that the
6 spirit of this legislation, I think, is very
7 good. It would be a way to take taxpayer
8 dollars away from landlords who are in arrears
9 in their collections.

10 The problem is that it does it
11 at the expense of those clients of Social
12 Service who would, therefore, be penalized in
13 the sense that landlords, knowing that they
14 run this risk, would probably be more apt not
15 to rent to those tenants.

16 That pretty much summarizes the
17 opposition for which last year Senator Connor,
18 Kruger, Senator Leichter, and Lachman, Senator
19 Markowitz, Montgomery, Senator Santiago,
20 Stavisky and Senator Sampson and myself voted
21 against this bill, and we will probably vote
22 against it this year.

23 ACTING PRESIDENT MARCELLINO:

24 Read the last section, please.

25 THE SECRETARY: Section 3.

1 This act shall take effect on the 90th day.

2 ACTING PRESIDENT MARCELLINO:

3 Call the roll.

4 (The Secretary called the
5 roll.)

6 ACTING PRESIDENT MARCELLINO:

7 Please announce the results.

8 THE SECRETARY: Those recorded
9 in the negative on Calendar Number 545 are
10 Senators Connor, Lachman, Leichter, Markowitz,
11 Montgomery, Onorato, Paterson, Santiago and
12 Seabrook. Ayes 47, nays 9.

13 ACTING PRESIDENT MARCELLINO:

14 The bill is passed.

15 Senator Montgomery, why do you
16 rise?

17 SENATOR MONTGOMERY: Mr.

18 President, I would like unanimous consent to
19 be recorded in the negative on Calendar 465.

20 ACTING PRESIDENT MARCELLINO:

21 That will be done, Senator, without
22 objection.

23 Senator Paterson.

24 SENATOR PATERSON: Mr.

25 President, with unanimous consent, I'd like to

1 be recorded in the negative on Calendar Number
2 241.

3 ACTING PRESIDENT MARCELLINO:
4 You will be recorded in the negative on
5 Calendar Number 241, without objection.

6 Senator Seabrook, why do you
7 rise?

8 SENATOR SEABROOK: Yes, Mr.
9 President. With unanimous consent I'd like to
10 be recorded in the negative on Calendar Number
11 241.

12 ACTING PRESIDENT MARCELLINO:
13 Without objection, it will be done, sir.

14 Senator Johnson.

15 SENATOR JOHNSON: Mr.
16 President, is there housekeeping at the
17 desk?.

18 ACTING PRESIDENT MARCELLINO:
19 None, sir.

20 SENATOR JOHNSON: There being
21 no further business, I move we stand adjourned
22 until Tuesday at 3:00 p.m.

23 ACTING PRESIDENT MARCELLINO:
24 The Senate stands adjourned until Tuesday, May
25 5th at 3:00 p.m.

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(Whereupon at 4:19 p.m., the
Senate adjourned.)