ALBANY, NEW YORK

May 20, 1998

11:04 a.m.

REGULAR SESSION

SENATOR RAYMOND A. MEIER, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MEIER: The Senate will come to order. I ask everyone present to please rise and repeat with me the Pledge of Allegiance to the Flag.

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

In the absence, I ask that we bow our heads in a moment of silence.

(A moment of silence was observed.)

Reading of the Journal.

ACTING PRESIDENT MEIER:

THE SECRETARY: In Senate, Tuesday, May 19th. The Senate met pursuant to adjournment, Senator Kuhl in the Chair upon designation of the Temporary President. The Journal of Monday, May 18th, was read and approved. On motion, the Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, on page number 68, I offer the following amendments to Calendar Number 1161, Senate Print Number 5583-A, and ask that that the bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MEIER: The amendments are received. The bill will retain its place on the Third Reading Calendar.

Senator Skelos.

SENATOR SKELOS: Are there any substitutions to be made?

ACTING PRESIDENT MEIER: Not at this time, Senator Skelos, no.

SENATOR SKELOS: I believe there's a privileged resolution at the desk by Senator Nozzolio. May we please have the title read and move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read the title.

THE SECRETARY: By Senator

Nozzolio, Legislative Resolution 3549, commending the village of Waterloo, New York, as the federally designated birth place of Memorial Day.

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please take up the non-controversial calendar.

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

THE SECRETARY: Calendar Number 4, by Senator Libous, Senate Print 3887-a, an act to amend the Mental Hygiene Law, in relation to investigations.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 130, by Senator Larkin, Senate Print 2305-A, an act to amend the Real Property Tax Law, in relation to subjecting certain state lands.

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 37.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 137, by Senator Balboni, Senate Print 337-A, an act to amend the Penal Law, in relation to establishing the crime of endangering the welfare of a vulnerable elderly person.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 6. This act shall take effect November 1.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 242, by Senator Leibell, Senate Print 3930-B, an act to amend the Private Housing Finance Law, in relation to participation.

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 38.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number

253, by Senator Leibell, Senate Print 6152-A, an act to amend the Private Housing Finance Law, in relation to affordable housing loans.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 264, by Senator Saland, Senate Print 680-B, an act to amend the Public Health Law, the Tax Law and the State Finance Law, in relation to the Alzheimer's Research Fund.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section -

SENATOR LEICHTER: Lay the bill aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 320, by Senator Holland, Senate Print 3029-A, an act to create the Piermont Library District in a portion of the town of Orangetown.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 338, by Senator DeFrancisco, Senate Print 4117-A, an act to amend the Navigation Law, in he relation to equipment.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 180th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 472, by Senator Libous, Senate Print 1951-A, an act to amend the County Law, in relation to establishing the Chenango County Emergency Communications Systems.

ACTING PRESIDENT MEIER: There is a home rule message at the desk. Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 476, by Senator Libous, Senate Print 6146, an act to amend the County Law, in relation to authorizing the county of Tioga.

ACTING PRESIDENT MEIER: There's a

home rule message at the desk. 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 40.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 531, by Senator Maziarz, Senate Print 4049-A, an act to amend the Real Property Tax Law, in relation to partial payments.

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 40.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number

568, by Senator Skelos, Senate Print 4115-A, an act to amend the Public Health Law and the Social Services Law, in relation to instituting.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 570, by Senator Lack, Senate Print 2374-B, an act to amend the Parks, Recreation and Historic Preservation Law, in relation to establishing.

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 40.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 571, by Senator Marcellino, Senate Print 6132-A, an act to amend the Parks, Recreation and

Historic Preservation Law, in relation to the display of the POW/MIA recognition flag.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 180th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 634, by Senator Cook, Senate Print 6278, an act to amend the Town Law, in relation to the settlement of claims.

ACTING PRESIDENT MEIER: Read the last section.

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

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 635, by Senator LaValle, Senate Print 6315, an

act authorizing the village of Greenport to convey certain parklands.

ACTING PRESIDENT MEIER: There is a home rule message at the desk. Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 639, by Senator Spano, Senate Print 6547, an act to amend the County Law, in relation to the jurisdiction of a coroner or medical examiner.

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 40.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 640, by Senator Skelos, Senate Print 6590, an act authorizing the assessor of the county of Nassau to accept an application.

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 43, nays 2, Senators Cook and Dollinger recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 641, by Senator Rath, Senate Print 6746, an act to amend the Real Property Tax Law, in relation to making technical and clarifying amendments thereto.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 653, by Senator Wright, Senate Print 6450-A, an act to amend the Penal Law, in relation to including possession of an automated teller machine card.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 3. 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 49.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number

671, by member of the Assembly Eve, Assembly Print 10031, an act to amend the State Finance Law, in relation to payment of emergency financial aid.

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 49.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 753, by Senator Lack, Senate Print 6583, an act to amend the Judiciary Law, in relation to juror's waiver of allowance.

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 49.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 776, by Senator Wright, Senate Print 6879, an act to amend Chapter 640 of the Laws of 1990.

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 49.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 781, by Senator Hannon, Senate Print 7338, an act to amend Chapter 884 of the Laws of 1990, amending the public Health Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 804, by Senator Saland, Senate Print 490, an act to amend the Family Court Act, in relation to judicial notification.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 805, by Senator Saland, Senate Print 491, an act to amend the Family Court Act, in relation to the placement of children.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 807, by Senator Johnson, Senate Print 1279, an act to amend the Domestic Relations Law, in relation to visitation rights.

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 49.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 808, by Senator LaValle, Senate Print 1737, an act to amend the Domestic Relations Law and the

Family Court Act, in relation to the visitation rights of great-grandparents.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 817, by Senator Libous, Senate Print 6144, an act to amend the Highway Law, in relation to increasing the limitation on the amount raised by taxes.

ACTING PRESIDENT MEIER: There's a home rule message at the desk. Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 819, by Senator Maziarz, Senate Print 6492, an act to amend the Highway Law, in relation to state highways in Niagara County.

ACTING PRESIDENT MEIER: There's a home rule message at the desk. Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 822, by Senator Johnson, Senate Print 6814, an act to amend the Highway Law, in relation to highway projects.

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 49.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 827, by Senator Volker, Senate Print 888 -

SENATOR PATERSON: Lay it aside.

THE SECRETARY: -- an act to amend the Penal Law.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 829, by Senator Volker, Senate Print 3617-B, an act to amend the Civil Practice Law and Rules, in relation to motions.

ACTING PRESIDENT MEIER: Read the last section.

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

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 832, by Senator Present, Senate Print 4007, an act to amend the Penal Law, in relation to the unlawful taking of trees.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 4. 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 51.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 834, by Senator Volker, Senate Print 4346-B, an act to amend the Penal Law and others, in relation to increasing the penalties for certain

criminal sales.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 16. 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 53.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 839, by Senator DeFrancisco, Senate Print 5976, an act to amend the Criminal Procedure Law, in relation to authorizing electronic appearance.

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 51.

ACTING PRESIDENT MEIER: The bill

is passed.

THE SECRETARY: Calendar Number 841, by Senator Goodman, Senate Print 6196, an act to amend the Penal Law, in relation to concurrent and consecutive terms of imprisonment.

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.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 850, by Senator Holland, Senate Print 6605, an act to amend Chapter 631 of the Laws of 1997, amending the Social Services Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 862, by Senator Nozzolio, Senate Print 5711-A, an act to amend Chapter 973 of the Laws of 1867, relating to the Clifton Springs Water Cure Company.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 876, by Senator Spano, Senate Print 6381, an act to amend the Mental Hygiene Law, in relation to renaming of the Letchworth Village Developmental Disabilities Services.

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.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 877, by Senator Leibell, Senate Print 7138, an act to amend the Mental Hygiene Law, in relation to renaming the Mid-Hudson Psychiatric Center.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 986, by Senator Balboni, Senate Print 6860-A, an

act to amend the Criminal Procedure Law, in relation to authorizing audiotaped or videotaped victim impact statements.

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.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1002, by Senator Balboni, Senate Print 6785, an act to amend the Criminal Procedure Law, in relation to orders of protection.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1152, by Senator Meier, Senate Print 6916, an act to amend the General Construction Law and others, in relation to service in the Armed Forces.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1175, by Senator Leibell, Senate Print 2706, an act to amend the Public Service Law.

ACTING PRESIDENT MEIER: Read the last section -- the Secretary will read a substitution for Calendar 1175.

THE SECRETARY: On page 69, Senator Leibell moves to discharge from the Committee on Veterans and Military Affairs

Assembly Bill Number 422 and substitute it for the identical Third Reading Calendar 1175.

ACTING PRESIDENT MEIER: The substitution is ordered. The Secretary will read.

THE SECRETARY: Calendar Number 1175, by member of the Assembly Gunther, Assembly Print 422, an act to amend the Public Service Law, in relation to utility rates.

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.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos, that concludes the reading of the non-controversial calendar.

SENATOR SKELOS: Mr. President, would you take up the controversial calendar, please.

ACTING PRESIDENT MEIER: The

Secretary will read the controversial calendar.

THE SECRETARY: Calendar Number 264, by Senator Saland, Senate Print 680-B, an act to amend the Public Health Law, the Tax Law and the State Finance Law, in relation to the Alzheimer's Research Fund.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, this bill was laid aside by Senator Leichter and I would not portend to have any idea what Senator Leichter thinks about this bill or what questions he would like to ask. He's okay with it.

Read the last section, Mr. President.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 31st day of December.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT MEIER: The bill

is passed.

THE SECRETARY: Calendar Number 568, by Senator Skelos, Senate Print 4115-A, an act to amend the Public Health Law and the Social Services Law, in relation to instituting.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Skleos, an explanation has been asked of Calendar Number 568.

SENATOR SKELOS: Yes, Mr. President. This legislation which we've named Kathy's Law would require a criminal history report of all new nurses aides and of all new employees of home care service agencies whose jobs require direct care of patients.

All of us in our lives, unfortunately at some point, have to make a decision, whether it involves -- whether it involves an elderly parent, whether it involves a member of the family that has been. or suffered a traumatic injury.

Kathy who was in a coma for ten years from an automobile accident was raped by an employee of the nursing home, became pregnant. The child was born. Ultimately she passed away,

but when we do make that decision that we have to put somebody in a nursing home, that we have to bring a home health care aid into our home or an elderly parents' home, we have a situation where an individual is extremely vulnerable.

We require training of individuals. We require checking on certain immunization records, yet we do not know when this individual is put into the home in a position of trust whether, in fact, they have a criminal history which would really say they should not be in that home, should not be working in that nursing home, and this legislation, through a criminal background check that can include fingerprinting, would add some peace of mind to individuals who have entrusted the care of their loved one either in a nursing home or to a home health care aid.

SENATOR DOLLINGER: Would the sponsor yield to one quick question?

ACTING PRESIDENT MEIER: Senator Skelos, do you yield to a question from Senator Dollinger?

SENATOR SKELOS: Yes, absolutely.

ACTING PRESIDENT MEIER: The

Senator yields.

SENATOR DOLLINGER: Senator, this is clearly a well warranted idea. As you know, in Rochester back in my home community, we had a very similar problem with a comatosed woman raped by a nurse's aide or worker in a nursing home.

I just had a couple quick questions about the technical aspects of the bill that I want to make sure I fully understand. One is the criminal background checks that will actually occur, how long. first of all, who is going to pay for them? How long do you anticipate they'll take? Will this put a real restraint on the hiring practices of nursing homes because, as you know, they have a significant turnover, which is one of the reasons why they so easily fall prey, but where is the balance for getting these checks done quick enough so that they're.

SENATOR SKELOS: Number one, the checks probably can be made within 30 days with the Division of Criminal Justice Services and even quicker. If a person has a criminal background and they know that they're going to be fingerprinted, number one, I think many of them

will probably not make that application for that job.

SENATOR DOLLINGER: I agree with that.

SENATOR SKELOS: Many of the home health care agencies that we've discussed, myself, my office, the Attorney General's office, concerning this legislation, nursing home individuals, owners of nursing homes, have no real problem with this legislation and the fact that it will lend support to them in hiring qualified people. Right now they could not have an intensive criminal background check accomplished on these people.

SENATOR DOLLINGER: So the general sense, again through you, Mr. President, is it would take somewhere around 30 days and the nursing home industry is okay.

SENATOR SKELOS: Probably less.

SENATOR DOLLINGER: Okay.

SENATOR SKELOS: Probably less.

SENATOR DOLLINGER: Again through you, Mr. President, if the sponsor will continue to yield.

ACTING PRESIDENT MEIER: Senator

Skelos, do you continue to yield?

SENATOR SKELOS: Senator Dollinger, just one other thing. They still can hire that person subject to the report coming back.

SENATOR DOLLINGER: Okay. That was one of the other questions I wanted to ask. It does allow -- this does allow the nursing home to actually hire someone, put them on the staff subject to a termination.

Does this bill specifically provide that you can terminate an employee who fails to survive the background check?

SENATOR SKELOS: If they refuse to be fingerprinted?

SENATOR DOLLINGER: No. Let's say they go through the fingerprinting process.

SENATOR SKELOS: That would be at the discretion of the employer.

SENATOR DOLLINGER: Okay. Again through you, Mr. President. Is there any kind of hearing or any due process for the employee if it comes back positive?

SENATOR SKELOS: It would be a decision that an employer would make as to

whether they felt that person would be suitable for the position.

SENATOR DOLLINGER: Okay. Again through you, Mr. President. One of the other issues that's raised by the nursing home industry in their memo is the question of grandfathering. How does this bill deal with the concept of grandfathering, the hundreds of thousands of employees who are currently working in nursing homes?

SENATOR SKELOS: This would cover prospective employees, but remember, there is such a turnover in this industry, that in a short period of time -- I can't give you the exact period of time, probably a few years -- you would have -- most people would be screened or have a criminal background check on them because there is a constant turnover in this industry.

SENATOR DOLLINGER: Okay. One other question, again through you, Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos, do you continue to yield?

SENATOR SKELOS: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DOLLINGER: Many of the home health agencies and other agencies that use nurses aides of this type have a cap on their administrative expenses under the Medicaid system. Does this bill in any way affect that cap so that the additional administrative cost. it's going to take some additional time and effort to run people through the system. Is there any increase in the cap so that nursing homes would get greater reimbursement from the Medicaid -

SENATOR SKELOS: This would be. this cost would be picked up by the state.

SENATOR DOLLINGER: Picked up by the state. Do you know what that cost will be?

SENATOR SKELOS: My estimate is that it would cost the state. remember, part of it would be paid by the federal government. For those who are medicate eligible, it would be somewhere from 3- to $5 million.

SENATOR DOLLINGER: Okay. Mr. President -

SENATOR SKELOS: And effective April 1st of 1999 so that it could be part of the fiscal plan for next year.

SENATOR DOLLINGER: Okay. Thank you to the sponsor.

On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger on the bill.

SENATOR DOLLINGER: I'm going to support this bill. As Senator Skelos knows, the Attorney General has. this is, I believe one of his program bills or a bill that he has had a role in.

He has been involved, as many people in the Rochester community have, with respect to a comatosed patient in one of the nursing homes who was raped -- tragically raped by a nurse's aide and he had a very substantial prior criminal history which was undisclosed and unknown at the time he was hired.

We clearly live in a society in which the secrecy of people's pasts are being invaded all the time. To some extent we all give up a little bit of our privacy when we do all kinds of things, whether it's run for office or become involved in jobs that require a certain sensitivity.

This bill chips away at one of

those privacy rights but it seems to me it does so for the right reason and that is to simply say that we won't allow someone with a secret criminal past to be attending to those who are infirm and elderly and to that extent we are performing, I think, the most important duty we can, which is to protect people who come into unusual situations where they need the protection of government and they need the protection of others in order to be able to live.

So I'm going to vote in favor of this bill. I think there are a couple of technical issues that could probably be cleaned up with respect to the grandfathering and some other things because I think there are a large number of people out there, but I certainly think this is a good bill to move the process along. My hope is that the Assembly will produce one and either through Conference Committee or negotiation we'll get to the bill that achieves the laudable goal of this one.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the first day of April.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 634, by Senator Cook, Senate Print 6278, an act to amend the Town Law, in relation to the settlement of claims by certain towns.

SENATOR DOLLINGER: Explanation, please.

ACTING PRESIDENT MEIER: Senator Cook, an explanation has been requested of Calendar 634.

SENATOR COOK: Mr. President, this bill removes a requirement that is currently in the law. When the town board agrees with a claim that's made against the town or the claim is compromised and the town board is prepared to pay a certain amount of money, under the present law, they still have to go to Supreme Court and have the judge actually sign an order ordering the town to make the payment.

This bill simply says that if

everyone is agreed on the amount of the settlement and the town board then in due course passes a resolution to pay it, that they don't have to go to court.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Just a couple quick questions for the sponsor, if I may. Does this apply to tax tertiary cases as well?

SENATOR COOK: No. This does not apply to tax tertiary.

SENATOR DOLLINGER: Just where. so I understand that, Senator Cook, could you tell me where in the bill that's the case?

SENATOR COOK: I beg your pardon?

SENATOR DOLLINGER: Just tell me where in the bill that specified or is it not -

SENATOR COOK: Well, it is specified except that the section that we're amending, which is Subdivision 4 of Section 68 of the Town Law, relates to claims against the town. The tertiary proceedings are, I believe in the Real Property Tax Law.

SENATOR DOLLINGER: Again through you, Mr. President.

ACTING PRESIDENT MEIER: Senator Cook, do you continue to yield?

SENATOR COOK: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DOLLINGER: If there's a current limitation of any claim above $300 they must go to Supreme Court.

SENATOR COOK: Yes.

SENATOR DOLLINGER: Would it make better sense to increase that claim to a sizeable number but not remove it entirely? The reason for my question is obviously this provision was put in there to allow some independent review of a town's ability to resolve a piece of litigation which, as I'm sure you would acknowledge, could in some cases involve people that the town fathers and mothers are very familiar with, the possible. the possibility of insider dealing in these cases, all of which could come out in the wash in the political process, but nonetheless this was put in to require, much as we do with infants, the approval of a court before large sums of money, public money are paid in these kinds of settlements.

And my question is rather than eliminate it entirely, what if we just upped the amount and allowed smaller cases to be resolved?

SENATOR COOK: Mr. President, as a matter of fact, Senator, we did discuss that option. We talked about what kind of number was logical. In all candor, we couldn't really think of any number that was logical, recognizing that if you're talking about a substantial liability problem, you're probably involving an insurance company in some nature, so you're not going to get huge amounts of money. The town is going to be paying that directly out of tax revenues and it just seemed that there wasn't any sense in having that independent review it, and frankly, Senator, if you were to petition the court, the court is going to see the paper is presented by the town, which are going to present. which are going to contain the very information that the town board would utilize in agreeing to the settlement in the first instance. So it's. it didn't seem that there was any purpose in maintaining this process.

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

there's nothing in this bill that changes the provisions of the Open Meetings Law with respect to discussion of litigation in public.

SENATOR COOK: No.

SENATOR DOLLINGER: Okay. On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger on the bill.

SENATOR DOLLINGER: I appreciate the sponsor's explanation, but I'm going to vote against this bill. I think that at least in instances where small towns are negotiating the settlement of claims, we currently set up under our Open Meetings Law a provision that says you don't have to talk about litigation in public. So you can discuss the settlement of a case entirely in private. It can be done in an executive session. It doesn't have to be done in open session and it seems to me that the intent of this provision was to simply say in certain instances. and I know it's back in 1959, Senator Cook, I would be the first to admit that $300 is a preposterously low number, but it seems to me there is some number beyond which a town under 200,000 people should not be able to discuss the

settlement of the claim in private. It may involve people that the elected officials in the town know very well, the possibility of internal dealing, the possibility of behind closed doors discussion, outside public surveillance. The potential is there that this could be abused, and I would suggest that if this bill said we'll jump it from $300 to $15,000 or $10,000, I know it doesn't eliminate the possibility of small influence peddling which could also occur because of the notion that they don't need Supreme Court approval, but it seems to me that the beneficial purpose of this legislation would be best served by jumping the amount from 300 to some other number to allow small claims to be settled without Supreme Court approval, but to require that a town which negotiates a deal with a third party behind closed doors has some obligation to go convince a state Supreme Court judge that it's in the best interests of the people.

My guess is, Senator Cook, that seldom, if ever, has any Supreme Court judge substituted his judgment for the judgment of the town fathers in settling a case, but I do believe that because it's done behind closed doors under

the public. the Open Meetings Law, that there's a potential there that we should avoid.

If this bill has some increased limitation, I'll vote for it, but to cast it away completely, I think creates a possibility, a potential for misdealing, and I would rather avoid that potential, that temptation for local governments.

So I'll be voting in the negative.

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 56, nays 1, Senator Dollinger recorded in the negative.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT MEIER: First, Senator Paterson, excuse me. Just let me know for the record the bill is passed.

Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If we might pause in our deliberations for just a moment, I would just like to tell the members here that when I was a little kid I used to watch television and watch people debating political points of view, and I suffered from the delusion that some of us here continue that our point of view is always right and have that dogmatic view that anyone else that had another point of view was just wrong or didn't know what they were talking about or was insensitive to some point of view.

I watched a mayoral campaign in the city of New York in which the Republican and the Conservative candidate, who was John Marchi, taught me something about civility and taught me something about a sophistication that I had never seen before and so, as a young person, he was kind of a hero to me, and so on this, the occasion of his birthday, actually his 77th birthday of which he spent, unfortunately, 44 of those years here in this chamber but somehow has managed to persevere through all of this, that we

call the Legislature.

I would like to recognize his birthday, and we have a gift that we would like to give Senator Marchi in celebration of his 77th birthday and we are bringing it to him right now.

(Applause.)

SENATOR PATERSON: And the only other thing I would want to add, Mr. President, is the greatest thrill for me is that I share this birthday with him, so that's how I knew that.

(Laughter.)

ACTING PRESIDENT MEIER: Senator Marchi.

SENATOR MARCHI: I would like to take the pleasure of reciprocating the sentiments expressed by Senator Paterson.

His father was a colleague of mine, and I have great respect and great affection for him, the same affection that I have for every member of this chamber.

The years I've had. I don't know how many I have left but believe me, I am very, very happy with my life and the fact that I spent

it with people that I have the deepest respect.

On a short list of three, I don't think that -- very few people would disagree with me that Senator Paterson. and not because he married a girl from Staten Island. certainly commands a very deep respect for the civility with which he conducts himself, with the intelligence that he conducts himself, and his erudition and literary command, which is evidence in my mind of extraordinary embrace of things that improve the quality of life and he exhibited. exhibits it every time he gets up, not impairing his effectiveness in any way, and often we disagree but even in that disagreement we always maintain that deepest respect for Senator Paterson. He is just a wonderful legislator, and I'm most happy and delighted that we. well, he doesn't share my actual birth date. He's a young man. His. he's got a lot of road to travel and I wish him well as he travels in it, but I. certainly it's a festive occasion for both of us, and I want to thank again each and every one of you for. well, for a very warm. I wish for myself that I could go on enjoying your companionship as long as the good Lord allows it, and the voting

public, but I'm ahead now even if I weren't going to have another day after this. I feel I'm so far ahead that I have to be very grateful.

Thank you much and thank you all.

Thank you very much, Mr. President.

(Applause.)

ACTING PRESIDENT MEIER: On behalf the entire body, we wish both Senator Paterson and Senator Marchi happy birthday.

Senator Marchi, your constituents, your people and the entire people of the state have benefitted from your service and will benefit for many years to come.

And Senator Paterson, you're not too bad yourself.

The Secretary will continue to read the calendar.

THE SECRETARY: Calendar Number 827, by Senator Volker, Senate Print 888, an act to amend the Penal Law, in relation to resisting arrest.

SENATOR PATERSON: Explanation.

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

Calendar 827.

SENATOR VOLKER: Mr. President, now that we've got away with the pleasantries, now we can get into the time when Senator Paterson was wrong -- no, no.

(Laughter.)

This is a bill that has been debated in this house a number of occasions. In fact, last year it passed this house by a vote of 47 to 12.

This bill specifically. and earlier this year we passed a bill, if my recollection is correct, upgrading assault in general. There are many of us who, frankly, believe that assault probably is the area of the law that needs upgrading virtually more than any other area and because it seems to some of us that many of the so-called bias crimes, for instance, and other areas of the law, the striking, and so forth, that occur, relate in part to the fact that unfortunately personal assaults on people has tended to be looked on rather lowly in the courts.

Nowhere is this more evident, I don't think, than assaults on police officers.

It's no secret to law enforcement people across this state that you have to be seriously injured before a court will essentially sentence anyone to any kind of a serious prison term or consider the actions of someone as serious enough to warrant someone to get a jail term.

In fact, more than once. and it frankly dates back to a long time. the attitude that, well, it's part of the business of being a police officer, you get assaulted. I think that's really pretty ridiculous and, in fact, the last time we debated this bill, Senator Leichter asked a question of me if there's any indications that there has been an increase of assault on law enforcement people, and we've done some studies on that and looked at some intelligent reports. intelligence reports and they are very alarming.

For instance, a recent report says that last year 160 police officers were killed in the United States, a 40 percent increase over 1996, and that firearms-related deaths were up 25 percent, traffic-related fatalities were up 50 percent, some of which were deliberate, by the way, as people deliberately drove into police officers, and it talks. it goes on to talk about

an ominous sign being that a number of police officers were specifically targeted simply because they had the badge.

What this bill does is basically set two different types of resisting arrest. The number one penalty, which would make it a Class E felony, would say that a person is guilty of resisting arrest in the first degree when he commits the crime of resisting arrest; in the second degree, by striking, shoving, pushing, kicking or otherwise using physical force. What it really is is the use of physical force - sorry about that -- the use of physical force - I didn't do that deliberately. It differentiates the resisting arrest from the so-called passive resisting arrest which is the traditional Class A misdemeanor that resisting arrest is considered today.

So what we're doing here, we're differentiating between using physical force and the passive nature of resisting arrest and making it a Class E felony. A Class E felony is the lowest felony there is, by the way. Some of us say that in the city of New York, Class E felonies are almost like Class B misdemeanors

used to be because very often, unless you get a Class E, very little, if any, of those charges are ever maintained because they're usually pled out to lesser charges. You start out with a Class A misdemeanor, there's hardly any place to go below that because the person, effectively, never goes to jail.

So what we're doing here is differentiating between physical force and the passive nature of resisting arrest.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Volker would yield for a question.

ACTING PRESIDENT MEIER: Senator Volker, do you yield?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: Senator, we just had a bill a moment ago that we -- almost all of us, I believe, supported by Senator Skelos that definitely impinges upon the ability of

health care workers to get jobs based on whether or not they are convicted of a felony.

So what I would advise is when we go from a Class A misdemeanor to a felony, we are -- even though it's an E felony, we are really changing the options that many people may have, and what you described, I thought very articulately and very compellingly, were the increases of assaults on police officers for which I think we probably should increase the penalties and when that legislation comes to this floor, I assure you that I will vote for it, but here we're talking about resisting arrest, where many times the individual that's resisting arrest is under some duress. Often you have a situation -- maybe two individuals are fighting, the police officer comes in to try to make the arrest, the person is still swinging. They don't even realize they're swinging at a police officer now. It's an emotional period.

There are a lot of instances where I would certainly put forth that a person could be charged with this crime and at the same time really not have made the decision to make the - to cause the police officer any harm and this

doesn't -- this does not in any way allow us to in any way forgive the individual for what they did. They certainly are culpable, but they are not culpable, I would say, in a fashion as it would be if they just assaulted the police officer.

So what I'm saying is I think that while we have resisting arrest as a charge, resisting arrest is often what I call the "pile on" charge. It's disorderly conduct and resisting arrest. It goes along with anyone else that the person is being arrested for, and I just think we have to take a look at this, and I'm wondering if you would just comment on what I said. I think we have to take a look at this because I just don't want to see people who really did not intend any kind of harm and did not make the actual decision to harm the police officer but who may just have needed to calm down and the officer was interfered with in trying to make the arrest. There, the resisting arrest charge might be important but to now upgrade it to a felony, I think would take a very willful and deliberate act.

SENATOR VOLKER: Senator, what you

have stated is -- I understand what you have said. You have stated a factual situation, and when we do cases and when we look at cases involving -- let's use the example of assault, and you have said that the person didn't intend to strike or to hit, or whatever, the police officer, that's the factual situation, then obviously you can't maintain a resisting arrest for striking, and so forth, a law enforcement officer. We understand that and if that's the case, then that's something certainly that as a factual -- in the factual nature of things, should occur and that person should not be convicted of resisting arrest in the first degree.

And remember, that the courts have always looked at these types of charges very, very closely, and as well as they should, in dealing with them, and I think what you're saying to me, Senator, is -- and I know how -- what you're thinking about, but I must tell you that you cannot shirk from making -- it seems to me, that you should not shirk from making changes in the law that deal with the realities of our society and with the protection of individuals

who need to be protected simply because there could be a factual situation that might make it more difficult necessarily to prove otherwise.

It seems to me that we have some serious problems involving abuse of police officers and abuse -- not just police officers but law enforcement people, and we also have a society that has tended to look at these charges, frankly, from a somewhat jaded point of view; that is, that this is all part of the job, and it seems to me that under these circumstances, in particular, it behooves us to give the authority under certain circumstances to charge a higher violation, which would be a Class E felony rather than a Class A misdemeanor the way it is now.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Paterson on the bill.

SENATOR PATERSON: Senator Montgomery wanted ti lead debate on this bill. She's out of the chamber at this time, and I did my best to try to bring forth what Senator

Montgomery's point is, which is that we really would not like to see resisting arrest be a felony.

Now, society does have a jaded view about people fighting with police officers, almost as if Senator Volker described as part of the job, and our solution to that is to upgrade the penalties for assault and at a point when someone is that deliberate in their acts of assaulting a police officer, I don't think that should even be considered resisting arrest anymore. I think that should be a straight out attack on the police officer, and I would be perfectly happy to see everyone who commits that crime charged with that crime.

Resisting arrest was more of an issue where just the definition, "resisting arrest", demonstrates a less violent kind of action, something where the individual is just pushing and shoving and trying to get away from the police officers and not something that I think should graduate to this particular level.

I'm not saying that anyone that assaults a police officer should be punished any less than Senator Volker is saying. We're just

disagreeing on the terminology. I would like that to go into the category of assault on a police officer.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 827 are Senators Connor, Mendez, Paterson, Rosado, Santiago and Smith. Ayes 52, nays 6.

ACTING PRESIDENT MEIER: The bill is passed.

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

SENATOR FUSCHILLO: Thank you, Mr. President.

Is there any housekeeping at the desk?

ACTING PRESIDENT MEIER: There is no housekeeping.

SENATOR FUSCHILLO: There being no further business, I move we adjourn until Tuesday, May 26th, at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Tuesday, May 26th, at 3:00 p.m. Intervening days will be legislative days.

(Whereupon, at 11:59 a.m., the Senate adjourned.)