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ALBANY, NEW YORK

June 9, 1998

3:05 p.m.

REGULAR SESSION

SENATOR RAYMOND A. MEIER, Acting President

STEVEN M. BOGGESS, Secretary

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

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

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

8 In the absence of clergy, I now  
9 ask that we bow our heads in a moment of  
10 silence.

11 (A moment of silence was  
12 observed.)

13 Reading of the Journal.

14 THE SECRETARY: In Senate,  
15 Monday, June 8th. The Senate met pursuant to  
16 adjournment. The Journal of Sunday, June 7th,  
17 was read and approved. On motion, Senate  
18 adjourned.

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

22 Presentation of petitions.

23 Messages from the Assembly.

24 Messages from the Governor.

25 Reports of standing

1 committees.

2 Reports of select committees.

3 Communications and reports from  
4 state officers.

5 Motions and resolutions.

6 Senator Marcellino.

7 SENATOR MARCELLINO: Yes, Mr.

8 President. We have a busy agenda here.

9 Mr. President, on behalf of  
10 Senator Seward, I move to amend Senate Bill  
11 Number 7065-A by striking out the amendments  
12 made on May 8th and restoring it to its  
13 original Print Number 7065.

14 ACTING PRESIDENT MEIER:  
15 Amendments received, and the bill will be  
16 restored to its original print number.

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

19 On behalf of Senator LaValle,  
20 on page number 12, I offer the following  
21 amendments to Calendar Number 431, Senate  
22 Print Number 4741, and ask that said bill  
23 retain its place on the Third Reading  
24 Calendar.

25 ACTING PRESIDENT MEIER:

1 Amendments received, and the bill will retain  
2 it place on the Third Reading Calendar.

3 SENATOR MARCELLINO: Mr.  
4 President, on behalf of Senator Gold, on page  
5 number 36, I offer the following amendments to  
6 Calendar Number 1054, Senate Print Number  
7 3750, and ask that said bill retain its place  
8 on the Third Reading Calendar.

9 ACTING PRESIDENT MEIER:  
10 Amendments received, and the bill will retain  
11 its place on the Third Reading Calendar.

12 SENATOR MARCELLINO:  
13 Thank you, Mr. President.  
14 On behalf of Senator Rath,  
15 please place a sponsor's star on Calendar  
16 Number 1158.

17 ACTING PRESIDENT MEIER: 1158  
18 will be starred at the request of the  
19 sponsor.

20 SENATOR MARCELLINO: And on  
21 behalf of Senator Johnson, please place a  
22 sponsor's star on Calendar Number 1221.

23 ACTING PRESIDENT MEIER:  
24 Calendar Number 1221 will be starred at the  
25 request of the sponsor, Senator Johnson.

1                   SENATOR MARCELLINO: Thank you,  
2                   Mr. President.

3                   On behalf of Senator LaValle, I  
4                   wish to call up his bill, Print Number 5935,  
5                   recalled from the Assembly, which is now at  
6                   the desk.

7                   ACTING PRESIDENT MEIER:  
8                   Secretary will read.

9                   THE SECRETARY: By Senator  
10                  LaValle, Senate Print 5935, an act to amend  
11                  the General Business Law.

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

15                  ACTING PRESIDENT MEIER: Call  
16                  the roll on reconsideration.

17                  (The Secretary called the roll  
18                  on reconsideration.)

19                  THE SECRETARY: Ayes 37.

20                  SENATOR MARCELLINO: Thank you,  
21                  Mr. President.

22                  I now offer the following  
23                  amendments.

24                  ACTING PRESIDENT MEIER:  
25                  Amendments received.

1 SENATOR MARCELLINO: Thank  
2 you.

3 ACTING PRESIDENT MEIER:  
4 Senator Present.

5 SENATOR PRESENT: Mr.  
6 President, may I have a sponsor's star on  
7 Calendar Number 1226.

8 ACTING PRESIDENT MEIER: There  
9 will be a sponsor's star placed on Calendar  
10 1226.

11 SENATOR PRESENT: Thank you.  
12 Secretary will read the  
13 substitutions.

14 THE SECRETARY: On page 7,  
15 Senator Maltese moves to discharge from the  
16 Committee on Rules Assembly Bill 10783, and  
17 substitute it for the identical Senate bill  
18 1446.

19 On page 14, Senator Trunzo  
20 moves to discharge from the Committee on Rules  
21 Assembly Print 6920-A, and substitute it for  
22 the identical Senate bill 3960-A.

23 On page 21, Senator Skelos  
24 moves to discharge from the Committee on  
25 Rules, Assembly Print 4675-A, and substitute

1           it for the identical Senate bill 2641-A.

2                       On page 22, Senator Trunzo  
3 moves to discharge from the Committee on Rules  
4 Assembly Bill 7673-A, and substitute it for  
5 the identical Senate bill 5154-A.

6                       On page 29, Senator Farley  
7 moves to discharge from the Committee on Rules  
8 Assembly Bill 10420, and substitute it for the  
9 identical Senate bill 6525.

10                      On page 35, Senator Balboni  
11 moves to discharge from the Committee on Rules  
12 Assembly Bill 10301-A, and substitute it for  
13 the identical Senate bill 7198-A.

14                      On page 36, Senator Leibell  
15 moves to discharge from the Committee on Rules  
16 Assembly Bill 11012, and substitute it for the  
17 identical Senate bill 7436.

18                      On page 46, Senator Rath moves  
19 to discharge from the Committee on Children  
20 and Families Assembly Bill 234, and substitute  
21 it for the identical Senate bill 4460.

22                      On page 47, Senator Marchi  
23 moves to discharge from the Committee on Rules  
24 Assembly Bill 10105, and substitute it for the  
25 identical Senate bill 6666.

1                   On page 47, Senator Johnson  
2 moves to discharge from the Committee on Rules  
3 Assembly Bill 10930, and substitute it for the  
4 identical Senate bill 7427.

5                   On page 47, Senator Stafford  
6 moves to discharge from the Committee on Rules  
7 Assembly Bill 10950-A, and substitute it for  
8 the identical Senate bill 7489-A.

9                   ACTING PRESIDENT MEIER:  
10 Substitutions ordered.

11                   Senator Skelos.

12                   SENATOR SKELOS: At this time  
13 may we please adopt the Resolution Calendar.

14                   ACTING PRESIDENT MEIER: All  
15 those in favor of adopting the Resolution  
16 Calendar, signify by saying aye.

17                   (Response of "Aye.")

18                   Opposed nay.

19                   (There was no response. )

20                   The Resolution Calendar is  
21 adopted.

22                   Senator Padavan.

23                   SENATOR PADAVAN: Mr.  
24 President, will you place a sponsor's star on  
25 Calendar Number 1156.

1                   ACTING PRESIDENT MEIER: A  
2                   sponsor's star will be placed on Calendar  
3                   Number 1156.

4                   Senator Skelos.

5                   SENATOR SKELOS: Mr. President,  
6                   at this time may we please have the reading of  
7                   the non-controversial calendar.

8                   ACTING PRESIDENT MEIER:  
9                   Secretary will read the non-controversial  
10                  calendar.

11                  THE SECRETARY: Calendar Number  
12                  243, by Senator Marchi, Senate Print 6007-B,  
13                  an act to amend the Real Property Tax Law, in  
14                  relation to exemptions.

15                  ACTING PRESIDENT MEIER: Read  
16                  the last section.

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

19                  ACTING PRESIDENT MEIER: Call  
20                  the roll.

21                  (The Secretary called the  
22                  roll.)

23                  THE SECRETARY: Ayes 37.

24                  ACTING PRESIDENT MEIER: The  
25                  bill is passed.

1 THE SECRETARY: Calendar Number  
2 454, by Senator Skelos, Senate Print 341, an  
3 act to amend the Penal Law, in relation to the  
4 monetary standard.

5 ACTING PRESIDENT MEIER: Read  
6 the last section.

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

10 ACTING PRESIDENT MEIER: Call  
11 the roll.

12 (The Secretary called the  
13 roll.)

14 THE SECRETARY: Ayes 37.

15 ACTING PRESIDENT MEIER: The  
16 bill is passed.

17 THE SECRETARY: Calendar Number  
18 468, by Senator Nozzolio, Senate Print 5294,  
19 an act to amend the Penal Law, in relation to  
20 the assault of bus drivers.

21 ACTING PRESIDENT MEIER: Read  
22 the last section.

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

1                   ACTING PRESIDENT MEIER: Call  
2                   the roll.

3                   (The Secretary called the  
4                   roll.)

5                   THE SECRETARY: Ayes 37.

6                   ACTING PRESIDENT MEIER: The  
7                   bill is passed.

8                   THE SECRETARY: Calendar Number  
9                   564, by Senator Farley, Senate Print 6003-A,  
10                  an act to amend the Vehicle and Traffic Law.

11                  ACTING PRESIDENT MEIER: Read  
12                  the last section.

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

15                  ACTING PRESIDENT MEIER: Call  
16                  the roll.

17                  (The Secretary called the  
18                  roll.)

19                  THE SECRETARY: Ayes 37.

20                  ACTING PRESIDENT MEIER: The  
21                  bill is passed.

22                  THE SECRETARY: Calendar Number  
23                  631, by Senator Stafford, Senate Print 6109-B,  
24                  an act to authorize the village of Saranac  
25                  Lake.

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

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

6                   ACTING PRESIDENT MEIER: Call  
7           the roll.

8                   (The Secretary called the  
9           roll.)

10                  THE SECRETARY: Ayes 37.

11                  ACTING PRESIDENT MEIER: The  
12           bill is passed.

13                  THE SECRETARY: Calendar Number  
14           707, by Senator Volker, Senate Print 3467-A,  
15           an act to amend the Private Housing Finance  
16           Law.

17                  ACTING PRESIDENT MEIER: Read  
18           the last section.

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

21                  ACTING PRESIDENT MEIER: Call  
22           the roll.

23                  (The Secretary called the  
24           roll.)

25                  THE SECRETARY: Ayes 37.

1                   ACTING PRESIDENT MEIER: The  
2 bill is passed.

3                   THE SECRETARY: Calendar Number  
4 724, by Senator Trunzo, Senate Print 5661-A,  
5 an act to amend the Retirement and Social  
6 Security Law.

7                   ACTING PRESIDENT MEIER: Read  
8 the last section.

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

11                   ACTING PRESIDENT MEIER: Call  
12 the roll.

13                   (The Secretary called the  
14 roll.)

15                   THE SECRETARY: Ayes 39.

16                   ACTING PRESIDENT MEIER: The  
17 bill is passed.

18                   THE SECRETARY: Calendar Number  
19 813, by Senator Saland, Senate Print 6994.

20                   SENATOR PATERSON: Lay aside.

21                   ACTING PRESIDENT MEIER: Lay  
22 aside.

23                   THE SECRETARY: Calendar Number  
24 869, by Senator Farley, Senate Print 4719, an  
25 act to amend the Banking Law.

1                   ACTING PRESIDENT MEIER: Read  
2           the last section.

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

5                   ACTING PRESIDENT MEIER: Call  
6           the roll.

7                   (The Secretary called the  
8           roll.)

9                   THE SECRETARY: Ayes 39.

10                  ACTING PRESIDENT MEIER: The  
11           bill is passed.

12                  THE SECRETARY: Calendar Number  
13           918, by Senator Maziarz, Senate Print 7162, an  
14           act to amend the Executive Law, in relation to  
15           increasing.

16                  ACTING PRESIDENT MEIER: Read  
17           the last section.

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

20                  ACTING PRESIDENT MEIER: Call  
21           the roll.

22                  (The Secretary called the  
23           roll.)

24                  THE SECRETARY: Ayes 39.

25                  ACTING PRESIDENT MEIER: The

1 bill is passed.

2 THE SECRETARY: Calendar Number  
3 953, by Senator Balboni, Senate Print 7325, an  
4 act to amend the State Administrative  
5 Procedure Act.

6 ACTING PRESIDENT MEIER:  
7 Senator Balboni.

8 SENATOR BALBONI: Would you lay  
9 that bill aside for the day.

10 ACTING PRESIDENT MEIER: Lay  
11 the bill aside for the day.

12 THE SECRETARY: Calendar Number  
13 1007, by Senator Marcellino, Senate Print  
14 7191, an act to amend the Administrative Code  
15 of the City of New York.

16 ACTING PRESIDENT MEIER: Read  
17 the last section.

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

20 ACTING PRESIDENT MEIER: Call  
21 the roll.

22 (The Secretary called the  
23 roll.)

24 THE SECRETARY: Ayes 39.

25 ACTING PRESIDENT MEIER: The

1 bill is passed.

2 THE SECRETARY: Calendar Number  
3 1009, by Senator Hannon, Senate Print 1498, an  
4 act to amend the Real Property Tax Law.

5 ACTING PRESIDENT MEIER: Read  
6 the last section.

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

9 ACTING PRESIDENT MEIER: Call  
10 the roll.

11 (The Secretary called the  
12 roll.)

13 THE SECRETARY: Ayes 41.

14 ACTING PRESIDENT MEIER: The  
15 bill is passed.

16 THE SECRETARY: Calendar Number  
17 1032, by Senator Alesi, Senate Print 7217-A,  
18 an act to amend the Volunteer Ambulance  
19 Workers' Benefit Law.

20 ACTING PRESIDENT MEIER: Read  
21 the last section.

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

25 ACTING PRESIDENT MEIER: Call

1 the roll.

2 (The Secretary called the  
3 roll.)

4 THE SECRETARY: Ayes 41.

5 ACTING PRESIDENT MEIER: The  
6 bill is passed.

7 THE SECRETARY: Calendar Number  
8 1033, by Senator Rath, Senate Print 7254, an  
9 act to amend the General Municipal Law.

10 ACTING PRESIDENT MEIER: Read  
11 the last section.

12 THE SECRETARY: Section 10.  
13 This act shall take effect immediately.

14 ACTING PRESIDENT MEIER: Call  
15 the roll.

16 (The Secretary called the  
17 roll.)

18 THE SECRETARY: Ayes 41.

19 ACTING PRESIDENT MEIER: The  
20 bill is passed.

21 THE SECRETARY: Calendar Number  
22 1110, by Senator DeFrancisco, Senate Print  
23 6441-A, an act to amend the Parks, Recreation  
24 and Historic Preservation Law and the Vehicle  
25 and Traffic Law.

1                   ACTING PRESIDENT MEIER:  Read  
2                   the last section.

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

6                   ACTING PRESIDENT MEIER:  Call  
7                   the roll.

8                   (The Secretary called the  
9                   roll.)

10                  THE SECRETARY:  Ayes 41.

11                  ACTING PRESIDENT MEIER:  The  
12                  bill is passed.

13                  THE SECRETARY:  Calendar Number  
14                  1111, by Senator DeFrancisco, Senate Print  
15                  6442, an act to amend the Parks, Recreation  
16                  and Historic Preservation Law.

17                  ACTING PRESIDENT MEIER:  Read  
18                  the last section.

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

21                  ACTING PRESIDENT MEIER:  Call  
22                  the roll.

23                  (The Secretary called the  
24                  roll.)

25                  THE SECRETARY:  Ayes 41.

1                   ACTING PRESIDENT MEIER: The  
2 bill is passed.

3                   THE SECRETARY: Calendar Number  
4 1118, by Senator Kuhl, Senate Print 6756-A, an  
5 act to amend the Agriculture and Markets Law.

6                   SENATOR PATERSON: Lay aside.

7                   ACTING PRESIDENT MEIER: Lay  
8 the bill aside.

9                   THE SECRETARY: Calendar Number  
10 1136, by Senator Skelos, Senate Print 6862-A,  
11 an act to establish a "business trust law".

12                   ACTING PRESIDENT MEIER: Read  
13 the last section.

14                   THE SECRETARY: Section 3.  
15 This act shall take effect on the 90th day.

16                   ACTING PRESIDENT MEIER: Call  
17 the roll.

18                   SENATOR PATERSON: Lay aside.

19                   ACTING PRESIDENT MEIER: Lay  
20 the bill aside.

21                   THE SECRETARY: Calendar Number  
22 1140, by Senator Lack, Senate Print 588-B, an  
23 act to amend the Real Property Actions and  
24 Proceedings Law.

25                   ACTING PRESIDENT MEIER: Read

1 the last section.

2 THE SECRETARY: Section 2.

3 This act shall take effect immediately.

4 ACTING PRESIDENT MEIER: Call  
5 the roll.

6 (The Secretary called the  
7 roll.)

8 THE SECRETARY: Ayes 41.

9 ACTING PRESIDENT MEIER: The  
10 bill is passed.

11 THE SECRETARY: Calendar Number  
12 1196, by Senator Volker, Senate Print 7533, an  
13 act to amend the Judiciary Law, the County Law  
14 and the Correction Law.

15 ACTING PRESIDENT MEIER: Read  
16 the last section.

17 SENATOR DOLLINGER: Lay aside.

18 ACTING PRESIDENT MEIER: Lay  
19 the bill aside.

20 THE SECRETARY: Calendar Number  
21 1201, by Senator Goodman, Senate Print 419-B,  
22 an act to amend the Vehicle and Traffic Law.

23 SENATOR SKELOS: Lay aside for  
24 the day.

25 ACTING PRESIDENT MEIER: Lay

1 the bill aside for the day.

2 THE SECRETARY: Calendar Number  
3 1202, by Senator Marchi, Senate Print 1705, an  
4 act to amend the Mental Hygiene Law, in  
5 relation to prohibiting.

6 ACTING PRESIDENT MEIER: Read  
7 the last section.

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

10 ACTING PRESIDENT MEIER: Call  
11 the roll.

12 (The Secretary called the  
13 roll.)

14 THE SECRETARY: Ayes 42.

15 ACTING PRESIDENT MEIER: The  
16 bill is passed.

17 THE SECRETARY: Calendar Number  
18 1203, by Senator Padavan, Senate Print 1932,  
19 an act to amend the Vehicle and Traffic Law  
20 and the Administrative Code of the city of New  
21 York.

22 ACTING PRESIDENT MEIER: Read  
23 the last section.

24 THE SECRETARY: Section 3.  
25 This act shall take effect in 120 days.

1                   ACTING PRESIDENT MEIER: Call  
2                   the roll.

3                   ( The Secretary called the  
4                   roll.)

5                   THE SECRETARY: Ayes 42.

6                   ACTING PRESIDENT MEIER: The  
7                   bill is passed.

8                   THE SECRETARY: Calendar Number  
9                   1205, by Senator Lachman, Senate Print 2618-A,  
10                  an act to amend the Public Authorities Law, in  
11                  relation to prescribing penalties for  
12                  violations.

13                  ACTING PRESIDENT MEIER: Read  
14                  the last section.

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

17                  ACTING PRESIDENT MEIER: Call  
18                  the roll.

19                  (The Secretary called the  
20                  roll.)

21                  THE SECRETARY: Ayes 42.

22                  ACTING PRESIDENT MEIER: The  
23                  bill is passed.

24                  THE SECRETARY: Calendar Number  
25                  1206, by Senator DeFrancisco, Senate Print

1 2971, an act to amend the General Obligations  
2 Law.

3 ACTING PRESIDENT MEIER: Read  
4 the last section.

5 THE SECRETARY: Section 2.  
6 This act shall take effect on the 30th day.

7 ACTING PRESIDENT MEIER: Call  
8 the roll.

9 (The Secretary called the  
10 roll.)

11 THE SECRETARY: Ayes 42.

12 ACTING PRESIDENT MEIER: The  
13 bill is passed.

14 THE SECRETARY: Calendar Number  
15 1207, by Senator Kuhl, Senate Print 3259, an  
16 act to amend the Highway Law, in relation to  
17 the temporary discontinuance.

18 ACTING PRESIDENT MEIER: Read  
19 the last section.

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

22 ACTING PRESIDENT MEIER: Call  
23 the roll.

24 (The Secretary called the  
25 roll.)

1 THE SECRETARY: Ayes 42.

2 ACTING PRESIDENT MEIER: The  
3 bill is passed.

4 THE SECRETARY: Calendar Number  
5 1208, substituted earlier today, by member of  
6 the Assembly Hoyt, Assembly Print 234, an act  
7 to amend the Social Services Law.

8 SENATOR SKELOS: Lay aside for  
9 the day.

10 ACTING PRESIDENT MEIER: Lay  
11 the bill aside for the day.

12 THE SECRETARY: Calendar Number  
13 1209, by Senator Marcellino, Senate Print  
14 5137, an act to amend the Criminal Procedure  
15 Law.

16 ACTING PRESIDENT MEIER: Read  
17 the last section.

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

20 ACTING PRESIDENT MEIER: Call  
21 the roll.

22 (The Secretary called the  
23 roll.)

24 THE SECRETARY: Ayes 42.

25 ACTING PRESIDENT MEIER: The

1 bill is passed.

2 THE SECRETARY: Calendar Number  
3 1210, by Senator Stafford, Senate Print 7556,  
4 an act to amend the Public Officers Law.

5 ACTING PRESIDENT MEIER: Read  
6 the last section.

7 SENATOR DOLLINGER: Lay the  
8 bill aside.

9 ACTING PRESIDENT MEIER: Lay the  
10 bill aside.

11 THE SECRETARY: Calendar Number  
12 1211, by Senator Johnson.

13 SENATOR PATERSON: Lay aside.

14 ACTING PRESIDENT MEIER: Lay  
15 the bill aside.

16 THE SECRETARY: Calendar Number  
17 1212, by Senator Nozzolio, Senate Print 6380,  
18 an act to amend the Vehicle and Traffic Law,  
19 in relation to reports.

20 ACTING PRESIDENT MEIER: Read  
21 the last section.

22 THE SECRETARY: Section 2.  
23 This bill shall take effect on the 60th day.

24 ACTING PRESIDENT MEIER: Call  
25 the roll.

1 (The Secretary called the  
2 roll.)

3 THE SECRETARY: Ayes 42.

4 ACTING PRESIDENT MEIER: The  
5 bill is passed.

6 THE SECRETARY: Calendar Number  
7 1213, by Senator Wright, Senate Print 6480, an  
8 act to amend the Tax Law.

9 ACTING PRESIDENT MEIER: Read  
10 the last section.

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

13 ACTING PRESIDENT MEIER: Call  
14 the roll.

15 (The Secretary called the  
16 roll.)

17 THE SECRETARY: Ayes 44.

18 ACTING PRESIDENT MEIER: The  
19 bill is passed.

20 THE SECRETARY: Calendar Number  
21 1214, by Senator Onorato, Senate Print 6526,  
22 an act to authorize the city of New York to  
23 reconvey its interest.

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

1 the last section.

2 THE SECRETARY: Section 5.

3 This act shall take effect immediately.

4 ACTING PRESIDENT MEIER: Call

5 the roll.

6 (The Secretary called the

7 roll.)

8 THE SECRETARY: Ayes 44.

9 ACTING PRESIDENT MEIER: The  
10 bill is passed.

11 THE SECRETARY: Calendar Number  
12 1215, by Senator Sampson, Senate Print 6637,  
13 an act to authorize the city of New York.

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

17 THE SECRETARY: Section 3.

18 This act shall take effect immediately.

19 ACTING PRESIDENT MEIER: Call

20 the roll.

21 (The Secretary called the

22 roll.)

23 THE SECRETARY: Ayes 43, nays  
24 one, Senator Kruger recorded in the negative.

25 ACTING PRESIDENT MEIER: The

1 bill is passed.

2 THE SECRETARY: Calendar Number  
3 1216, substituted earlier today, by member of  
4 the Assembly Vann, Assembly Print 10105, an  
5 act to amend the Business Corporation Law.

6 ACTING PRESIDENT MEIER: Read  
7 the last section.

8 THE SECRETARY: Section 52.  
9 This act shall take effect in 30 days.

10 ACTING PRESIDENT MEIER: Call  
11 the roll.

12 (The Secretary called the  
13 roll.)

14 THE SECRETARY: Ayes 45.

15 ACTING PRESIDENT MEIER: The  
16 bill is passed.

17 THE SECRETARY: Calendar Number  
18 1217, by Senator Alesi.

19 SENATOR SKELOS: Lay aside for  
20 the day.

21 ACTING PRESIDENT MEIER: Lay  
22 the bill aside for the day.

23 THE SECRETARY: Calendar Number  
24 1218, by Senator Goodman, Senate Print 6852,  
25 an act to amend the Public Officers Law.

1                   ACTING PRESIDENT MEIER: Read  
2                   the last section.

3                   SENATOR DOLLINGER: Lay aside.

4                   ACTING PRESIDENT MEIER: Lay  
5                   the bill aside.

6                   THE SECRETARY: Calendar Number  
7                   1219, by Senator Alesi, Senate Print 6956, an  
8                   act to amend the Vehicle and Traffic Law and  
9                   the Insurance Law.

10                  ACTING PRESIDENT MEIER: Read  
11                  the last section.

12                  THE SECRETARY: Section 4.  
13                  This act shall take effect on the first day of  
14                  September.

15                  ACTING PRESIDENT MEIER: Call  
16                  the roll.

17                  (The Secretary called the  
18                  roll.)

19                  THE SECRETARY: Ayes 45.

20                  ACTING PRESIDENT MEIER: The  
21                  bill is passed.

22                  THE SECRETARY: Calendar Number  
23                  1220, by Senator Maltese, Senate Print 7023,  
24                  an act to amend the Election Law, in relation  
25                  to time limits to bring proceedings.

1                   ACTING PRESIDENT MEIER: Read  
2                   the last section.

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

5                   SENATOR PATERSON: Lay aside.

6                   ACTING PRESIDENT MEIER: Lay  
7                   the bill aside.

8                   THE SECRETARY: Calendar Number  
9                   1223, by Senator Balboni, Senate Print 7444,  
10                  an act to amend the Penal Law, in relation to  
11                  increasing the criminal penalties for sexual  
12                  performances.

13                  ACTING PRESIDENT MEIER: Read  
14                  the last section.

15                  THE SECRETARY: Section 12.  
16                  This act shall take effect on the first day of  
17                  November.

18                  ACTING PRESIDENT MEIER: Call  
19                  the roll.

20                  (The Secretary called the  
21                  roll.)

22                  THE SECRETARY: Ayes 45.

23                  ACTING PRESIDENT MEIER: The  
24                  bill is passed.

25                  THE SECRETARY: Calendar Number

1 1224, by Senator Seward, Senate Print 7469, an  
2 act to amend the Insurance Law.

3 ACTING PRESIDENT MEIER: Read  
4 the last section.

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

7 ACTING PRESIDENT MEIER: Call  
8 the roll.

9 (The Secretary called the  
10 roll.)

11 THE SECRETARY: Ayes 46.

12 ACTING PRESIDENT MEIER: The  
13 bill is passed.

14 THE SECRETARY: Calendar Number  
15 1225, substituted earlier today, by the  
16 Assembly Committee on Rules, Assembly Print  
17 10950-A, an act to amend the State Finance  
18 Law.

19 ACTING PRESIDENT MEIER: Read  
20 the last section.

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

23 ACTING PRESIDENT MEIER: Call  
24 the roll.

25 (The Secretary called the

1 roll.)

2 THE SECRETARY: Ayes 46.

3 ACTING PRESIDENT MEIER: The  
4 bill is passed.

5 THE SECRETARY: Calendar Number  
6 1227, by Senator Johnson, Senate Print 7517,  
7 an act to amend the Vehicle and Traffic Law.

8 ACTING PRESIDENT MEIER: Read  
9 the last section.

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

12 ACTING PRESIDENT MEIER: Call  
13 the roll.

14 (The Secretary called the  
15 roll.)

16 THE SECRETARY: Ayes 46.

17 ACTING PRESIDENT MEIER: The  
18 bill is passed.

19 THE SECRETARY: Calendar Number  
20 1228, by Senator Holland, Senate Print 7536,  
21 an act to amend the Vehicle and Traffic Law,  
22 in relation to the maximum speed.

23 ACTING PRESIDENT MEIER: Read  
24 the last section.

25 THE SECRETARY: Section 2.

1 This act shall take effect immediately.

2 ACTING PRESIDENT MEIER: Call  
3 the roll.

4 (The Secretary called the  
5 roll.)

6 THE SECRETARY: Ayes 47.

7 ACTING PRESIDENT MEIER: The  
8 bill is passed.

9 Senator Saland, that completes  
10 the reading of the non-controversial  
11 calendar.

12 SENATOR SALAND: Take the  
13 controversial calendar, please.

14 ACTING PRESIDENT MEIER:  
15 Secretary will read the controversial  
16 calendar.

17 THE SECRETARY: Calendar Number  
18 813, by Senator Saland, Senate Print 6994, an  
19 act to amend the Executive Law, in relation to  
20 the transfer of juvenile offenders.

21 SENATOR PATERSON:  
22 Explanation.

23 ACTING PRESIDENT MEIER:  
24 Senator Saland, an explanation has been  
25 requested of Calendar Number 813.

1                   SENATOR SALAND: Thank you, Mr.  
2                   President.

3                   Mr. President, what this bill,  
4                   which is being offered at the request of the  
5                   Office of Children and Family Services, would  
6                   do is to change the existing law which  
7                   currently provides that where a juvenile who  
8                   is 16 or 17 years old and within the care and  
9                   custody of the Office of Children and Family  
10                  Services, intentionally causes injury to -  
11                  physical injury to an employee of the staff,  
12                  that person currently would be entitled to a  
13                  judicial hearing to determine whether that  
14                  person should, in fact, be transferred to  
15                  DOCS.

16                  What this bill proposes to do  
17                  is to say that shall now be accomplished  
18                  administratively. In all other respects, the  
19                  bill does not in any way change the existing  
20                  law.

21                  ACTING PRESIDENT MEIER:  
22                  Senator Paterson.

23                  SENATOR PATERSON: Thank you  
24                  very much, Mr. President. On the bill.

25                  ACTING PRESIDENT MEIER:

1 Senator Paterson, on the bill.

2 SENATOR PATERSON: There is  
3 simply here just a disagreement in policy.  
4 The bill was actually very well explained by  
5 Senator Saland, and we thank him for that.

6 The -- in my opinion, the  
7 reason that we separate youthful offenders  
8 from adult offenders is really a circumstance  
9 surrounding maturity. Now, we would impose a  
10 punishment on a youthful offender, would be  
11 one that would suit the maturity level of the  
12 individual. The acting out or assaulting of  
13 an officer is an offense that is -- should not  
14 be pardoned. It should be punished, but to  
15 then send the -- to transfer the youthful  
16 offender to be with adult offenders, in our  
17 opinion, is just not the right course to  
18 take.

19 The issue of maturity would be  
20 one where I would actually suggest that the  
21 youthful offender who is better behaved might  
22 demonstrate that they should go on and be  
23 treated as an adult and perhaps be  
24 incarcerated with adults, but actually the  
25 inability to follow rules, to me, is more

1       synonymous with a young person that's crying  
2       out for help, for further guidance, for  
3       further assistance and for punishment, but not  
4       by necessarily ever exposing them to many of  
5       the dangers that have been documented where a  
6       youthful offender is now housed with those who  
7       are older; and so we recommend that this  
8       particular bill be defeated.

9                       While we do concur that there  
10       should be an apt punishment, we don't think it  
11       should be through a -- through a transfer to  
12       an area where we think that the anti-social  
13       behavior may be enhanced rather than  
14       curtailed.

15                      ACTING PRESIDENT MEIER:  Read  
16       the last section.

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

19                      ACTING PRESIDENT MEIER:  Call  
20       the roll.

21                      (The Secretary called the  
22       roll. )

23                      THE SECRETARY:  Ayes 46, nays  
24       one, Senator Paterson recorded in the  
25       negative.

1                   ACTING PRESIDENT MEIER: The  
2 bill is passed.

3                   THE SECRETARY: Calendar Number  
4 1118, by Senator Kuhl, Senate Print 6756-A, an  
5 act to amend the Agriculture and Markets Law,  
6 in relation to permitting.

7                   SENATOR DOLLINGER:  
8 Explanation.

9                   ACTING PRESIDENT MEIER:  
10 Senator Kuhl, an explanation has been  
11 requested by Senator Dollinger of Calendar  
12 1118.

13                  SENATOR KUHL: Thank you, Mr.  
14 President.

15                  This bill is rather simple in  
16 purpose. It has a rather defined purpose.  
17 The bill is very specific and would allow  
18 raffles to be conducted by agricultural  
19 societies during weeks that county fairs are  
20 held on the county fairground.

21                  SENATOR DOLLINGER: Mr.  
22 President, if the sponsor will yield to just  
23 one question.

24                  ACTING PRESIDENT MEIER:  
25 Senator Kuhl, do you yield to one question?

1 SENATOR KUHL: Yes.

2 ACTING PRESIDENT MEIER:

3 Sponsor yields.

4 Senator Dollinger.

5 SENATOR DOLLINGER: That was my  
6 question, Mr. President. Who is authorized to  
7 conduct these games? Does it specify who is  
8 authorized to conduct them or -

9 SENATOR KUHL: Yes. Right now  
10 the way the law reads, Senator, the way I  
11 understand it reads anyway, is that there is a  
12 specific prohibition, if you will, for the  
13 conducting of raffles by agricultural  
14 societies during the times that they are  
15 conducting county fairs on the grounds, that  
16 the county fairs are conducted unlike the  
17 State Fair where there are raffles that are  
18 permitted, so if you went to Syracuse this  
19 summer and you would see various raffles being  
20 conducted, if you go then to the Onondaga  
21 County Fair or, in your case, the Monroe  
22 County Fair, you will see no raffles that are  
23 actually being conducted under the auspices of  
24 the law. They are prohibited.

25 So what this section or what

1       this proposal attempts to do is just to allow  
2       county fairs to be put on the same parity, the  
3       same ground as the State Fair, and allow for  
4       these raffles to be conducted.

5                       What has happened, I think, in  
6       the past is that these raffles have been  
7       conducted without the knowledge that, in fact,  
8       that this prohibition existed and what we find  
9       is that in many county fairs they may be  
10      raffling off, for instance, the prize bull or  
11      the prize heifer or whatever it happens to be,  
12      and it didn't come up until an opinion was  
13      issued by the Department of Agriculture and  
14      Markets this last year that, in fact, those  
15      are illegal. So in many cases these fairs are  
16      totally dependent for their livelihood, if you  
17      will, or their existence on the revenue that's  
18      generated from these raffles which are very  
19      meaningful to them financially, and so this  
20      proposal was just meant to authorize that  
21      activity.

22                       SENATOR DOLLINGER: Thank you.

23       The explanation is satisfactory, Mr.  
24       President.

25                       I appreciate Senator Kuhl's

1 explanation, and I understand how these have  
2 become part and parcel of making the county  
3 fairs go.

4 I'm going to vote against it,  
5 simply because I think it's another step down  
6 that road to eventually getting to more and  
7 more gambling in this state. It may already  
8 be occurring in the unofficial capacity of  
9 county fairs, but it seems to me that before  
10 you know it, every event we go to somebody  
11 will be selling raffle tickets. Somebody will  
12 be selling something, and you'll be taking a  
13 chance on everything. This is another step  
14 down that road and, for that reason, despite  
15 the fact that it may create parity and keep  
16 our county fairs going, I'd rather not walk  
17 down that road.

18 I'll be voting in the negative,  
19 Mr. President.

20 ACTING PRESIDENT MEIER: Read  
21 the last section.

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

24 ACTING PRESIDENT MEIER: Call  
25 the roll.

1 (The Secretary called the  
2 roll. )

3 THE SECRETARY: Ayes 47, nays  
4 one, Senator Dollinger recorded in the  
5 negative.

6 ACTING PRESIDENT MEIER: The  
7 bill is passed.

8 THE SECRETARY: Excuse me.  
9 Also Senator Balboni. Ayes 46, nays two.

10 ACTING PRESIDENT MEIER: The  
11 bill is passed.

12 THE SECRETARY: Calendar Number  
13 1136, by Senator Skelos, Senate Print 6862-A,  
14 an act to establish a "business trust law".

15 ACTING PRESIDENT MEIER:  
16 Senator Skelos, an explanation has been  
17 requested.

18 SENATOR SKELOS: Mr. President,  
19 this bill will allow New York State to  
20 establish business trusts. Business trusts  
21 function as unincorporated organizations  
22 created by trust instruments under which  
23 properties are held, managed or operated.

24 The business activities of the  
25 trust are conducted by a trustee for the

1 benefit of one or more beneficial owners.  
2 This will allow practitioners to create these  
3 trusts in New York State and be able to  
4 compete with Delaware and other states.

5 ACTING PRESIDENT MEIER: Read  
6 the last section.

7 THE SECRETARY: Section 3 -

8 ACTING PRESIDENT MEIER:  
9 Senator Paterson.

10 SENATOR PATERSON: Mr.  
11 President, for the most part this is a very  
12 good bill, business trusts which are really  
13 unincorporated organizations that are created  
14 by a trust instrument and will probably  
15 stimulate a lot of good activity for small  
16 businesses here in the state.

17 Our concern is we feel that it  
18 limits the liability of benefit owners in this  
19 particular bill, and this is something that's  
20 a general issue that we have raised in the  
21 past and is raised by a memo offered by the  
22 New York State Trial Lawyers Association.

23 The bill would bring the  
24 liability more in compliance with the law as  
25 it stands generally now. It has some

1       excellent attributes to it, but being that it  
2       does not, we recommend a no vote on this  
3       bill.

4                   ACTING PRESIDENT MEIER:  Read  
5       the last section.

6                   THE SECRETARY:  Section 3.  
7       This act shall take effect on the 90th day.

8                   ACTING PRESIDENT MEIER:  Call  
9       the roll.

10                   (The Secretary called the  
11       roll. )

12                   THE SECRETARY:  Those recorded  
13       in the negative on Calendar Number 1136 are  
14       Senators Connor, Kruger, Markowitz, Paterson  
15       and Smith.  Ayes 45, nays 5.

16                   ACTING PRESIDENT MEIER:  The  
17       bill is passed.

18                   THE SECRETARY:  Calendar Number  
19       1196, by Senator Volker, Senate Print 7533, an  
20       act to amend the Judiciary Law, the County Law  
21       and the Correction Law.

22                   ACTING PRESIDENT MEIER:  Read  
23       the last section.

24                   SENATOR PATERSON:  
25       Explanation.

1                   ACTING PRESIDENT MEIER:  Oh.  
2           O.K. Senator Volker, an explanation has been  
3           requested of Calendar 1196, by Senator  
4           Paterson.

5                   SENATOR VOLKER:  Since there  
6           are three hostile amendments to this, I didn't  
7           think they were going to let it go.

8                   This is a bill -- it's a  
9           Governor's program bill that involves the  
10          issue of compensation in death penalty cases  
11          and let me just say very quickly -

12                   ACTING PRESIDENT MEIER:  
13          Senator Volker, excuse me a minute.  Can we  
14          have some order in the chamber, so Senator  
15          Volker can be heard, please.  Members take  
16          their conversations outside, staff take your  
17          seats.

18                   Senator Volker.

19                   SENATOR VOLKER:  When we passed  
20          the death penalty statute some years ago, we  
21          knew that there was the possibility that the  
22          counsel fees that were provided in that bill  
23          could become a problem.  There were many of us  
24          who said we should try desperately to allow as  
25          much latitude as possible in the defense of

1 people who are subject to the death penalty.  
2 We had hoped, frankly, that the Court of  
3 Appeals would be able to -- and because that's  
4 basically the way the system was set up, that  
5 the Court of Appeals would be able to set some  
6 sort of reasonable limitations on attorney  
7 fees, and that we would ultimately have what  
8 we consider a rational process.

9 The reason it's important is  
10 that no matter what the anti-death penalty  
11 people say, the argument nationwide is that  
12 the death penalty is more expensive than  
13 imprisonment. The only way that argument  
14 makes any sense at all is in legal fees, and  
15 by that I mean in defense fees. It doesn't  
16 make any sense from the standpoint of  
17 prosecution. It only makes sense from the  
18 standpoint of the defense fees.

19 There's no question that in  
20 certain states and in certain cases, that  
21 attorneys have run up the bills dramatically,  
22 and enormous amounts of money have been  
23 spent. I hesitate to tell you, but some of  
24 those firms that are involved in that just  
25 happen to have been from New York City, even

1           though these cases were from somewhat remote  
2           places.  So what most states have done is to  
3           put some rather dramatic limitations on  
4           attorneys' fees, and I have them here by the  
5           way.  New York's clearly the most liberal in  
6           the United States of America.  We pay out the  
7           largest attorney fees for capital cases in the  
8           country.

9                           This bill, what it basically  
10           does is go to the federal standards.  What we  
11           are doing is going to the federal standards  
12           with some latitude above the federal  
13           standards, which, still even with this bill,  
14           the attorney fees for capital attorneys will  
15           remain the highest in the country, and I won't  
16           recite to you some of the attorneys' fees in  
17           some of the other states, because admittedly  
18           they're somewhat laughable, but there are  
19           comparable states with attorney fees still  
20           considerably below ours.

21                           The problem really has arisen  
22           in practice and, in practice -- and some of  
23           these attorneys I know very well -- one  
24           attorney, for instance, has vouchered for  
25           \$450,000 in a case that never even came close

1 to going to trial. He pled the case out to  
2 life without parole. By the way, there are 31  
3 people who have pled to life without parole,  
4 another 10 who have been sentenced to life  
5 without parole. If anybody doesn't think the  
6 death penalty is working, then you just have  
7 to look at what has been happening, and that  
8 is those cases -- by the way, someone said,  
9 well, if you had life without parole it could  
10 happen. Nonsense, without the death penalty  
11 none of those things would ever have  
12 happened. The savings to the system in those  
13 cases is enormous.

14 So what this bill does, it  
15 establishes reasonable hourly compensation for  
16 lead counsel, associate counsel, assistant  
17 counsel, and so on. It mandates a cap on  
18 expenditures for these witnesses in capital  
19 cases and keeping in mind, by the way, that  
20 attorneys, in special cases the court can do  
21 other things besides this if it's absolutely  
22 necessary, but only in the most special cases  
23 because that basically is the way the system  
24 works.

25 The attorney compensation rates

1 basically parallel in this bill, basically  
2 parallel the federal rates and let me say  
3 again will still allow New York to have the  
4 highest, in a sense the highest in the  
5 nation. No one can have, under this system at  
6 this point, higher compensation rates as long  
7 as they stay within the federal guidelines.

8 ACTING PRESIDENT MEIER:  
9 Senator Stachowski.

10 SENATOR STACHOWSKI: Mr.  
11 President, I believe I have an amendment at  
12 the desk.

13 ACTING PRESIDENT MEIER: Yes,  
14 you do, Senator.

15 SENATOR STACHOWSKI: Waive the  
16 reading, and I'll just offer some information.

17 ACTING PRESIDENT MEIER:  
18 Reading of the amendment will be waived and  
19 you're recognized for the purpose of  
20 explaining your amendment.

21 SENATOR STACHOWSKI: Mr.  
22 President, on Senator Volker's bill lowering  
23 attorney fees in death penalty cases, I've  
24 been addressing in perpetuity the matter of  
25 the attorneys' fees that we're paying in IDA

1 related matters and that's what my amendment  
2 does; it will bring the same kind of standards  
3 that Senator Volker's bill brings to death  
4 penalty attorneys, mine would bring to  
5 attorneys in IDA matters.

6 I think that it's a situation  
7 where the chosen lawyers are doing very, very  
8 well for themselves at the expense of  
9 businesses that maybe wouldn't have to pay  
10 quite so much in legal fees if it wasn't for  
11 this kind of business, and also the fact, how  
12 I got on this IDA matter was I found out in  
13 Erie County, and I imagine it's the same  
14 throughout the state, that even when you don't  
15 get the loan, you got to pay the attorneys  
16 that represent the IDA, and so I found that  
17 that was a terrible situation, I thought, and  
18 that I think this is something where we should  
19 again limit the expenditures to some of these  
20 lawyers and that I, therefore, move the  
21 amendment.

22 THE PRESIDENT: Senator  
23 Dollinger.

24 SENATOR DOLLINGER: If I could  
25 be heard on the amendment briefly.

1                   Senator Stachowski makes a very  
2                   good point. The types of legal deals that are  
3                   done with IDAs are "cookie cutter" deals.  
4                   They're cut right out of the same cloth. The  
5                   real worker in most IDA deals is your Xerox  
6                   machine and your word processor. You fill in  
7                   the blank, you spit out the document, the loan  
8                   documents are very similar every time you deal  
9                   with it. Sure, there are nuances and I can  
10                  understand why you pay a lawyer to pick up  
11                  nuances in particular transactions, whether  
12                  it's the financing of the transaction or the  
13                  real property limitations in the transaction.  
14                  For those nuances we should pay something, but  
15                  frankly, the cut, the type of thing that  
16                  happens when an IDA deal goes down, these are  
17                  "cookie cutter" deals that lawyers do with  
18                  word processors and Xerox machines. They  
19                  don't involve anywhere near the sophisticated  
20                  legal skills that are involved in defending a  
21                  capital case under a new death penalty  
22                  statute.

23                                It seems to me that it would be  
24                                perfectly prudent to have that standard when  
25                                we protect people's lives, what we pay for

1 legal fees, also apply when we're doing tax  
2 free financing to allow businesses to grow.  
3 What's reasonable and prudent for one should  
4 be reasonable and prudent for all.

5 THE PRESIDENT: On the  
6 amendment, all those in favor please signify  
7 by saying aye.

8 (Response of "Aye.")

9 SENATOR PATERSON: Party vote  
10 in the affirmative.

11 SENATOR SKELOS: Party vote in  
12 the negative.

13 THE PRESIDENT: The amendment  
14 -- Secretary will call the roll.

15 (The Secretary called the  
16 roll. )

17 THE SECRETARY: Ayes 19, nays  
18 33, party vote.

19 THE PRESIDENT: The amendment  
20 is defeated.

21 Senator Dollinger.

22 SENATOR DOLLINGER: I believe  
23 there's another amendment at the desk. I'd  
24 ask that the reading of it be waived and that  
25 I be heard on the amendment.

1                   SENATOR STAFFORD: Madam  
2           President, I'm going to ask Senator Dollinger  
3           if he would let me have the floor just for a  
4           second.

5                   SENATOR DOLLINGER: Yes, I  
6           yield.

7                   THE PRESIDENT: Yes, Senator  
8           Stafford.

9                   SENATOR STAFFORD: Madam  
10          President, we have a very strict rule in this  
11          house that we no longer recognize people in  
12          the gallery, but on your right there's a group  
13          of grade school students who performed in the  
14          park today George M. Cohan's Yankee Doodle,  
15          It's A Grand Old Flag, a number of other  
16          tremendous -- it was just great. Their  
17          parents, faculty, administration, some of  
18          them, friends, are all with them today but  
19          since we don't recognize people any more, I  
20          wouldn't want you to do that, but I wanted to  
21          mention, and Senator Dollinger was very nice  
22          to let me say it, and I will not violate the  
23          rules any more than this other than to say  
24          they did a tremendous job out in the park and  
25          I know you'd be very pleased to know that, so

1 I just wanted to let you know.

2 THE PRESIDENT: I agree,  
3 Senator Stafford, and if we were going to  
4 recognize them, we certainly would.

5 (Applause)

6 THE PRESIDENT: Senator  
7 Dollinger.

8 SENATOR DOLLINGER: Madam  
9 President, will the sponsor yield to a couple  
10 questions before we do the amendment?

11 THE PRESIDENT: Senator  
12 Volker.

13 SENATOR VOLKER: I don't -  
14 well, except for one thing. I don't think the  
15 amendment has been read. You got to at least  
16 read the title or something.

17 SENATOR DOLLINGER: That's  
18 fine, Madam President. If the sponsor will  
19 yield even though the amendment is on the  
20 floor.

21 SENATOR VOLKER: O.K. Sure.

22 THE PRESIDENT: Senator  
23 Dollinger.

24 SENATOR DOLLINGER: Has the  
25 amendment been read, Madam President.

1 THE PRESIDENT: I don't -- it  
2 hasn't, Senator.

3 SENATOR VOLKER: I don't think  
4 so. That's my point.

5 SENATOR DOLLINGER: I'd ask the  
6 amendment be read. Actually, I'd ask the  
7 reading be waived, and I be recognized to  
8 speak on it.

9 THE PRESIDENT: Senator  
10 Dollinger.

11 SENATOR DOLLINGER: Through  
12 you, Madam President, this amendment deals  
13 with the Long Island Power Authority. How do  
14 we justify paying the attorneys involved in  
15 the LIPA deal 3- or \$400 an hour and the  
16 people involved in a capital case less than  
17 half of that?

18 SENATOR VOLKER: Senator, first  
19 of all, let me say there's a grave question  
20 here, and I'm not raising this objection, as  
21 to the germaneness of this amendment because  
22 I'm not sure that the LIPA attorneys have  
23 anything to do with capital defending  
24 attorneys. You may make that argument, but I  
25 assure you in looking at some of the numbers

1 of the capital defense attorneys, they're  
2 going to do a lot better than even the LIPA  
3 attorneys are going to do, but that's beside  
4 the point.

5 I really don't know about the  
6 issue of the LIPA attorneys. I used to be in  
7 energy, as you know, in a prior life, but I  
8 have not been involved in that for a long  
9 time, so I really can't judge on that, but I  
10 can tell you that whatever the hourly rate is,  
11 the LIPA attorneys, I have a feeling that most  
12 of them would not do as well as many of these  
13 defense attorneys in capital cases are doing  
14 representing defendants in the present  
15 situation.

16 SENATOR DOLLINGER: Madam  
17 President, I appreciate Senator Volker's  
18 candid response to my question. I'll just  
19 address the amendment briefly, Senator.

20 SENATOR VOLKER: Sure.

21 SENATOR DOLLINGER: And then  
22 we'll put it to a vote. What this amendment  
23 seeks to do is take the limitations that  
24 Senator Volker's bill would put on attorneys'  
25 fees in capital cases, the hourly rate in a

1 capital case, a complex case involving a new  
2 statute, involving someone's life, and saying  
3 to the people of this state that the fees that  
4 are taken by bond merchants, bond merchants  
5 who sell large securities and debts to cover,  
6 for example, the Long Island Power Authority  
7 when it takes over LILCO, that we'll simply  
8 say in this state that we value those fees the  
9 same way we value the fees that we pay to  
10 people who defend people's lives, that we  
11 create an equality, a parity between what the  
12 government would pay in both of those  
13 instances, and it seems to me it's reasonable  
14 and prudent if we're going to restrict the  
15 fees that are charged in capital cases, why  
16 shouldn't we put the same limitation on those  
17 who take money out of the public trough when  
18 they are taking monies through the Long Island  
19 Power Authority refinancing?

20 My understanding is that the  
21 rates that were charged in that refinancing  
22 varied between 300 and \$400 a hour, that the  
23 total amount paid in some cases to law firms  
24 was 30- and \$40 million, not as Senator Volker  
25 said 400,000 but instead 30- or \$40 million

1 and that the principle of where we make a  
2 judgment about the value of attorneys'  
3 services, it seems to me we would put the  
4 value on those who defend someone's life  
5 rather than someone who simply sells  
6 securities or participates in a transaction.

7 The biggest bond transaction, I  
8 believe, in the history of the United States  
9 but nonetheless one that was like most other  
10 bond transactions, one that I will guarantee  
11 documents were printed by the ton off word  
12 processors. Names were substituted, blanks  
13 were filled in. That isn't what happens in a  
14 death penalty case, so it seems to me that if  
15 we make a judgment about the value of life as  
16 a commodity, if we use it in its basest terms,  
17 we would simply say that legal fees to protect  
18 someone's life ought to be paid at a  
19 reasonable and prudent market rate and  
20 whatever that rate is, if as Senator Volker  
21 says that caps out at \$175 an hour, why  
22 wouldn't we do the same thing for LILCO?

23 Madam President, I would move  
24 this amendment. It would take the same  
25 reasonable standards that Senator Volker

1 properly articulates and says we ought to put  
2 some limitation on the hourly rate. Let's put  
3 it on all those who are at the public trough  
4 especially those who are doing bond financing  
5 and making enormous fees, and I would add  
6 these are not lawyers in capital cases who pay  
7 to play. These are not lawyers who come back  
8 to the political process and put money back in  
9 the political process for the purpose of doing  
10 these bond deals in the future. No, these are  
11 people who believe strongly in the principle  
12 of protecting someone's life from the  
13 government, from the possibility of government  
14 overstepping itself and, under those  
15 circumstances, it seems to me what's good for  
16 the gander is good for the goose. What's good  
17 for defense counsel in cases involving one's  
18 life ought to be good for the refinancing of  
19 our -- by the state of New York and by  
20 authorities created by the state of New York  
21 of the debts of the Long Island Power  
22 Authority.

23 I'd move the amendment, Madam  
24 President.

25 THE PRESIDENT: Thank you,

1 Senator Dollinger.

2 On the amendment, all those in  
3 favor please signify by saying aye.

4 (Response of "Aye.")

5 SENATOR PATERSON: Party vote  
6 in the affirmative.

7 SENATOR SKELOS: Party vote.

8 THE PRESIDENT: Those opposed  
9 nay. Call the roll.

10 (The Secretary called the  
11 roll. )

12 THE SECRETARY: Ayes 19, nays  
13 33, party vote.

14 THE PRESIDENT: The amendment  
15 is defeated.

16 Senator Montgomery.

17 SENATOR MONTGOMERY: Yes.

18 Thank you, Madam President. I would like to  
19 ask a clarification of the sponsor, Senator  
20 Volker, if he would yield.

21 THE PRESIDENT: Senator Volker,  
22 would you please yield?

23 SENATOR VOLKER: Yes.

24 SENATOR MONTGOMERY: Senator  
25 Volker, you have proposed in this legislation,

1 I believe, a cap -

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

3 SENATOR MONTGOMERY: -- of  
4 \$15,000 per case. Is that correct? And how  
5 does that compare to what would be a cap  
6 considered now? Is there currently a cap?

7 THE PRESIDENT: Senator  
8 Volker.

9 SENATOR VOLKER: The 15,000 per  
10 case is on experts. Most states don't -- many  
11 states don't even allow that at all. This is  
12 not -- by the way, this is not a cap. By the  
13 way, what this bill according to estimation,  
14 this will reduce the total cash allocation for  
15 capital attorneys from 13,900,000 to  
16 11,700,000 in the -- in the following year, so  
17 we're talking some extremely big dollars.  
18 That cap is on expert witness testimony. It's  
19 not in -- in most cases. There have been a  
20 couple of exceptional cases where there has  
21 been some real "globbing" onto experts, it  
22 appears, in virtually every case that will not  
23 have any impact.

24 This has nothing to do with  
25 attorneys. This has to do with people other

1 than attorneys. That's what that 15,000 is.

2 SENATOR MONTGOMERY: All  
3 right. If Senator Volker would continue to  
4 yield.

5 THE PRESIDENT: Senator  
6 Volker.

7 SENATOR MONTGOMERY: So the  
8 \$15,000 cap, as I understand it from the memo  
9 here and the bill, is a cap per case on all  
10 fees and expenses, other necessary services.  
11 Is that -- so everything other than the -- the  
12 attorney fees specifically, but every -- for  
13 everything else involved in a capital defense  
14 case has a \$15,000 cap, all other activities  
15 related to the defense of that case.

16 SENATOR VOLKER: Essentially  
17 that is not -- in all honesty, it's most of  
18 the -- there has not been a capital case yet  
19 that, and of course, you remember that we are  
20 -- we've only had one case that has actually  
21 gone to the jury. There has not been a  
22 capital case that has reached that 15,000 yet,  
23 but the problem is that at the rate that some  
24 attorneys in cases that have never got to  
25 trial have been -- have been vouchering, some

1 cases would get much, much higher than that,  
2 and most of that material does not appear to  
3 have anything really connected with -- with  
4 the defense of some of these people. If it  
5 did, it would be a different story, but what  
6 that does is try to limit the use of some of  
7 the things that have been happening that  
8 appear to be just almost make-work kinds of  
9 areas.

10 SENATOR MONTGOMERY: Mr. -  
11 Madam President. Mr. President. You changed  
12 while I looked down at my notes.

13 Mr. President.

14 ACTING PRESIDENT MARCELLINO:  
15 We are quick up here.

16 SENATOR VOLKER: Yeah, have to  
17 keep your eyes open.

18 SENATOR MONTGOMERY: If Senator  
19 Volker would continue to yield.

20 ACTING PRESIDENT MARCELLINO:  
21 Senator continues to yield.

22 SENATOR MONTGOMERY: Senator,  
23 you cap -- you have a \$15,000 cap, and a \$50  
24 per hour hourly rate for investigators, and  
25 you say that we have not -- we have not yet

1 experienced a capital case so that we really  
2 don't have in hand based on experience what -  
3 what would be a reasonable limit to set. In  
4 other words, we haven't really tried a case,  
5 have we, since -

6 SENATOR VOLKER: Yes, we have.  
7 No, we've had one case; we have three others.  
8 There's going to be a bunch of capital cases  
9 that are going to go to trial this year. No,  
10 what I was pointing out is that we are -- what  
11 we are experiencing already is that there are  
12 some vouchered expenses in a number of these  
13 cases.

14 It was just pointed out to me  
15 that some of the expenses, for instance, have  
16 been for messengers and it appears as if let's  
17 just say that there's some questionable  
18 vouchering and what we're trying to do here is  
19 -- and, by the way, this still will be the  
20 highest in the country essentially.

21 What we're trying to do is set  
22 some sort of limitations on the way in which  
23 these cases are handled because it does not  
24 appear, in all honesty, that the Court of  
25 Appeals is inclined to do that.

1                   SENATOR MONTGOMERY: Mr.  
2           President, if Senator Volker would continue to  
3           yield.

4                   SENATOR VOLKER: Sure.

5                   ACTING PRESIDENT MARCELLINO:  
6           Senator continues to yield.

7                   SENATOR MONTGOMERY: You're -  
8           besides the cap you have reduced substantial  
9           ly, it seems to me, the hourly compensation  
10          for attorneys from a range of, as -- according  
11          to current law, 175 an hour to -- 175 an hour  
12          for lead counsel and 150 an hour for associate  
13          counsel. You've reduced that to a range of  
14          one -- of 75 to 100.

15                   SENATOR VOLKER: 125.

16                   SENATOR MONTGOMERY: One -

17                   SENATOR VOLKER: 125 is the  
18          limit for the lead counsel.

19                   SENATOR MONTGOMERY: 75 to 100  
20          for out of court.

21                   SENATOR VOLKER: Right.

22                   SENATOR MONTGOMERY: And 100 to  
23          125 for in-court services for lead counsel.

24                   SENATOR VOLKER: Right.

25                   SENATOR MONTGOMERY: 50 to 75

1 for out of court and 75 to 100 for in-court  
2 services for associate counsel.

3 SENATOR VOLKER: Right.

4 SENATOR MONTGOMERY: 40 an hour  
5 for assistant counsel.

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

7 SENATOR MONTGOMERY: And 25 an  
8 hour for paralegals.

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

10 SENATOR MONTGOMERY: And how  
11 does that compare to the current law? Does  
12 that -- is that a substantial reduction, I  
13 should ask?

14 SENATOR VOLKER: Not a -- not  
15 as -- as I told you, the total amount we'd be  
16 saving here in the first year is a limit over  
17 a million dollars and let's keep in mind that  
18 with these changes, we will still remain  
19 paying the top amount of any state in the  
20 union. We will basically be at the federal -  
21 the federal level as far as death penalty  
22 files are concerned.

23 The big difference, by the way,  
24 is that we will be limiting the -- the fees on  
25 assistant counsel, if I'm not mistaken,

1       because what's been happening is that many of  
2       these counsels have been putting on two and  
3       three people, to so-called assist in these  
4       cases, and there's some question as to whether  
5       these assistant counsels are -- are really  
6       doing the work.

7                       I think the thing about it is,  
8       I'll be very honest about it with you -- I  
9       think what's happened here and what's really  
10      stirred up a bee's nest here is that it does  
11      appear -- it definitely does appear and,  
12      Senator Dollinger, you said that some people  
13      do boilerplate stuff that they don't do in  
14      death penalty cases.  Sorry, they are.  
15      They're using boilerplate question appeals  
16      stuff, and they're doing a lot of the things  
17      that are pretty obvious that it's almost an  
18      attempt to do make work stuff.

19                      Now, we understand that, I  
20      guess, in a sense that when you're doing a  
21      case in a sense and you're trying to do  
22      several cases at once you send in certain  
23      papers and you duplicate them.  The problem is  
24      that there are assistant counsels who are  
25      making a great deal of money who appear to be

1 more messenger boys than anything else as far  
2 as dealing with this.

3 Now, in addition to that, I'll  
4 have to be honest with you there was a meeting  
5 of some of the capital counsels here recently  
6 and apparently they don't think that we know  
7 what goes on at some of these meetings, and it  
8 was suggested at the meeting that they attempt  
9 to submit as many vouchers as possible and put  
10 in as much money as possible because this is  
11 one of the ways that you fight the death  
12 penalty. You raise the ante. You show that  
13 and it was made at a meeting, it was a semi  
14 public meeting.

15 Frankly, they were a little  
16 foolish, but in all honesty keep in mind here  
17 that we are not saying we should pay  
18 unreasonable fees to attorneys. I'd be the  
19 last one to do that. In fact, when we did the  
20 forfeiture, I was one of the people along with  
21 Sheldon Silver, and I some years ago traileed  
22 around the state looking at forfeiture issues  
23 and one of the issues was that we were being  
24 asked not to allow attorneys to get attorney  
25 fees from the forfeiture property, so to

1 speak, because some attorneys admittedly were  
2 using that as a ruse to get the money out of  
3 it, but what we -- when we worked it out, I  
4 said we still have to realize that there has  
5 to be a way to make sure that attorneys get a  
6 fair return.

7 So what we said, we would not  
8 pay on attorney fees as the federal  
9 government, by the way, in some cases has done  
10 but we wanted to make sure, and we did it in  
11 our language that it would allow reasonable  
12 attorney fees for attorneys even though it  
13 could be argued that the property that was  
14 being taken was -- stolen property to make  
15 sure that attorneys were allowed a fair  
16 return.

17 What we're trying to do here is  
18 make sure that attorneys get a fair return and  
19 that people get properly represented because  
20 capital people are having no trouble finding  
21 people to represent them, I can tell you that,  
22 and they shouldn't, but the point is that we  
23 don't want to allow this to become sort of a  
24 grab bag of -- of money that can just take out  
25 of the state -- the state coffers because

1           that's not the way it should be.

2                                 SENATOR MONTGOMERY: All  
3           right. One last question of clarification,  
4           Senator Volker, Mr. President, if the Senator  
5           would continue to yield.

6                                 If you put in your legislation  
7           language which essentially directs the -  
8           which lawyers are eligible to try these cases,  
9           and the -- the court would be required to  
10          appoint in the following order the capital  
11          defender office, or a counsel whose name  
12          appears on a roster provided by the capital  
13          defender office, a legal aid society or other  
14          not-for-profit organization that also has some  
15          agreement with the capital defender office or  
16          an attorney whose name appears on a roster  
17          established by the screening panel in each  
18          judicial district.

19                                 My question to you is how these  
20          -- how these names become part of a roster  
21          and what are likely -- what lawyers are likely  
22          to be part of the capital defender office or  
23          what is the level of experience of lawyers  
24          that are likely to be part of the legal aid  
25          society or any other not-for-profit

1 organization that would have an agreement.

2 SENATOR VOLKER: Well, first of  
3 all, the reason for this provision has to do  
4 with the fact that there's some confusion as  
5 to who represents capital defendants. That  
6 is, in some cases, there are multiple lawyers  
7 from those categories that are listed there,  
8 who represent the people. In other words,  
9 instead of one lawyer being a lead lawyer, you  
10 have several lawyers being the lead lawyer and  
11 being paid the top fees together, so what that  
12 is attempting to do is to set a criteria base  
13 for who will represent these people. The list  
14 is already established. The list is under  
15 rules that we have established by legislation  
16 and that the Court of Appeals has  
17 established. We're not changing really any of  
18 that. In other words, we're not changing the  
19 criteria for people. There are certain  
20 criteria for people who -- certain experience  
21 for people who represent these people. We put  
22 some of that in the law. I remember very well  
23 that we -- my counsel, then counsel researched  
24 the rest of the country to find out what they  
25 were doing, plus the Court of Appeals also had

1       some rules that they promulgated, so this is  
2       not changing that.

3                   All it's doing is setting a  
4       list of people who you choose from so that  
5       there's no question and no confusion as to  
6       whether multiple people, as now seems to be  
7       the confusion, in other words you got a  
8       capital defender here and you also may have  
9       another assigned counsel in the same county  
10      who, in effect, are getting multiple fees for  
11      the same defendant and we're saying if you're  
12      a lead counsel, then that's the capital  
13      counsel fine, if the lead counsel is the next  
14      one in line that's fine too, but all of these  
15      people have to have certain criteria and  
16      certain experience which is already in the law  
17      and in the promulgated rules before they can  
18      represent people. We're not changing that.

19                   SENATOR MONTGOMERY: O.K. Thank  
20      you.

21                   Mr. President, on the bill.

22                   ACTING PRESIDENT MARCELLINO:  
23      Senator Montgomery, on the bill.

24                   SENATOR MONTGOMERY: I am -  
25      obviously, I am against the death penalty and

1 always and each and every time that it has  
2 come before us I certainly have voted no, but  
3 now that the death penalty is law in the state  
4 of New York, I think that in the least we  
5 should have as high a standard as we possibly  
6 can for the defense of death penalty cases,  
7 and what is being proposed here, it seems to  
8 me, is that there is a significant reduction  
9 in the -- the fees that will be paid to  
10 attorneys who would be appointed to represent  
11 defendants who have been sentenced to death;  
12 and not only that, but Senator Volker has  
13 established a \$15,000 cap.

14 The Senator has repeatedly  
15 referred to what other states are doing and  
16 what other states are spending and I would  
17 like to remind him that I should imagine that  
18 there is very little comparison between what  
19 lawyers in New York State and particularly New  
20 York City earn in terms of fees and other  
21 states, most other states in the country, and  
22 particularly those states where there is a  
23 death penalty in place.

24 So that is really not a fair  
25 comparison, and certainly we do not want to

1       undermine our -- our ability to provide the  
2       best possible legal defense even for capital  
3       cases, because we are indeed talking about the  
4       lives of people, and I want to remind Senator  
5       Volker that just an hour away from him and in  
6       the city of Rochester I believe, we have just  
7       released a woman who spent, I believe, 25  
8       years in -- in Bedford Hills for a crime that  
9       she did not commit, and that goes on time and  
10      time again.

11                   Now, it was not a capital case,  
12      but the only thing that I want to point out is  
13      that we do make mistakes and some of those  
14      mistakes are very, very major. It's -- it  
15      seems to be coming to our attention on a daily  
16      basis that some person or other has spent long  
17      periods of time incarcerated, including time  
18      on death row, when they were actually in fact  
19      found innocent and it takes many years very  
20      often and many, many hours of legal work,  
21      including investigations, and what have you.

22                   So I think it is a big mistake  
23      for us to go down this road in the -- under  
24      the guise of saving money. We do not want to  
25      have our state, I don't think, I hope, engage

1 in this cutting corners and end up with having  
2 made some gross error in terms of taking a  
3 person's life who was, in fact, not guilty,  
4 simply because we didn't have the money. We  
5 didn't -- we -- we did not want to spend the  
6 necessary money to give that person a good  
7 defense and pay the costs for that.

8 So this is a bad -- a bad bill  
9 in that certainly there are other ways to save  
10 money, and I think some of my colleagues have  
11 pointed out those other ways, but even if  
12 we're not saving money, I think that because  
13 we could possibly save an innocent life at  
14 some point in time, we should not be at this  
15 early stage, before we even know what it's  
16 going to cost, how much it's going to cost and  
17 what kinds of safeguards we need to put in in  
18 terms of expenses, we should not be already  
19 putting a cap on what we're going to spend on  
20 capital cases.

21 It's far too important, Senator  
22 Volker, and so I'm going to vote no on this  
23 legislation.

24 ACTING PRESIDENT MARCELLINO:  
25 Senator Volker.

1                   SENATOR VOLKER: Yeah, I'll just  
2                   respond quickly, and I would only caution you,  
3                   Senator Montgomery. That woman was not found  
4                   innocent.

5                   ACTING PRESIDENT MARCELLINO:  
6                   Excuse me, Senator, please. (Gaveling) thank  
7                   you, Senator.

8                   SENATOR VOLKER: The story of  
9                   that case is that she spent 25 years in jail  
10                  for a crime she was convicted of, I believe  
11                  twice. What happened was that a judge looked  
12                  at -- which is incredible, in my opinion -  
13                  looked at testimony back at the trial and said  
14                  that there was some evidence that the D.A. did  
15                  not pursue or whatever in the case and,  
16                  therefore, he reversed the decision based on  
17                  the fact that there may have been some  
18                  evidence that wasn't presented in the case,  
19                  something of that nature. The D.A. said,  
20                  however, she spent 25 years in jail; for me to  
21                  retry this case, it would be virtually  
22                  impossible for me to retry this case after 25  
23                  years. There's nobody who says she was  
24                  necessarily innocent of the crime. It's just  
25                  that what happened is that the judge

1       apparently, after all this time, finally said  
2       as she's finishing her sentence, in effect,  
3       because 25 years was the maximum she could  
4       serve in effect, that -- that he was, in  
5       effect, releasing her which meant that the  
6       district attorney really would have been  
7       foolish, I think, to prosecute the case. I  
8       just wanted to point that out. "I'm not going  
9       to argue in another trial," but it was not  
10      necessarily, she was not ever found innocent  
11      is my point.

12                   Second point I want to make is,  
13      in the years that I fought for the death  
14      penalty, and you can -- you can make all the  
15      -- and I understand there are people that  
16      oppose the death penalty and I respect that,  
17      very much so. There's a reporter recently who  
18      made some comment about the fact that somehow  
19      this house played games with the death penalty  
20      over the years and that really, we didn't  
21      really want to enact the death penalty. I  
22      have news for everyone. That didn't happen  
23      and that was the kind of nonsense that  
24      unfortunately some beltway reporters here in  
25      this Capitol have gotten over the years

1       because they don't like the political process;  
2       but we fought here for many, many, many years  
3       on the issue of the death penalty and I worked  
4       very hard. I happen to believe that the  
5       present plunge in the murder rate has a great  
6       deal to do with the death penalty being  
7       restored and with definite and firm sentences  
8       because we're locking up serious offenders  
9       more than we ever did before, and that has a  
10      major impact, plus the collapse of the drug  
11      culture which the media hasn't figured it out  
12      yet, but it is beginning to collapse.

13                   Having said that, let me tell  
14      you that in looking at the death penalty  
15      counsel fees across the country, and I have  
16      them all, I must tell you I think some states  
17      are absolutely foolish. I think it's  
18      ridiculous. There is no way that, as a  
19      responsible legislator, as a responsible  
20      person, I would want the kind of fees that  
21      many of these states pay to capital defenders,  
22      but I wanted you to know that it seems to me  
23      that we are maintaining our responsibility by  
24      paying still the highest under this bill. If  
25      this were to become law, we would still be as

1 high as any, in fact higher than any state in  
2 the country. I think that's responsible. I  
3 think we are fulfilling our responsibility.  
4 Otherwise, I would not do this because more  
5 cases are thrown out by the Supreme Court of  
6 the United States in capital cases because of  
7 bad representation, some of it just as I think  
8 the justices look at the fees that these  
9 people get paid and say, you know, well, maybe  
10 that's never going to happen in New York,  
11 because we will, even under this bill, still  
12 pay the highest fees for capital defenders in  
13 the country.

14 ACTING PRESIDENT MARCELLINO:

15 Senator Abate.

16 SENATOR ABATE: Yes, Mr.

17 President. Before you is a third amendment,  
18 Senate Number 7533. I waive the reading of  
19 that amendment.

20 ACTING PRESIDENT MARCELLINO:

21 Reading is waived and the amendment is  
22 available. You may speak on the amendment.

23 SENATOR ABATE: Yes, this

24 amendment applies the same kind of caps and  
25 limits not just on capital cases, but also all

1        those cases that are contracted out by the  
2        Governor as well as the Attorney General.  If  
3        we are so concerned in this body about saving  
4        dollars and we're concerned that we're paying  
5        the highest legal fees in the country for  
6        capital cases, let's ask ourselves, aren't we  
7        paying the highest fees in the country for  
8        non-capital and civil cases?  So why aren't we  
9        applying the same standard when the Governor  
10       and the Attorney General say they can't do the  
11       work within their own house, that the Attorney  
12       General makes the decision they don't have the  
13       expertise or the ability to defend the state's  
14       interests, that they have to spend money  
15       elsewhere?

16                    Well, look at the money we are  
17       spending, tens of millions of dollars when we  
18       contract out these cases.  The same standard  
19       should apply that we are paying the highest  
20       amount in attorneys' fees when we hire these  
21       law firms.  We are paying them, in fact, 300,  
22       400, \$500 an hour.

23                    So what I'm suggesting if we  
24       are truly concerned about saving dollars,  
25       let's pass this amendment.  This amendment

1 would say, we will cap fees, we'll cap the  
2 amount of money we can pay in these cases but  
3 how can we do it only for capital cases and  
4 not for civil cases? It doesn't make sense.  
5 It's penny wise and pound foolish.

6 Now, are we saying to  
7 ourselves, when the Attorney General contracts  
8 out to defend himself on personnel cases or in  
9 the tobacco litigation, when the Attorney  
10 General hired out six law firms or when the  
11 Governor needed to litigate whether he had the  
12 power to supersede the district attorney in  
13 the Bronx, are these cases more important than  
14 defending the life of an individual and that  
15 we can pay hundreds of dollars per hour for  
16 those cases but limits the amount of money we  
17 pay in capital cases? I think not.

18 If we're going to be consist  
19 ent we should vote for this bill and it's  
20 particularly important that we not reduce the  
21 amount of monies we pay in capital cases.  
22 Speak to lawyers, and I've spoken to many very  
23 good lawyers. They do not want to do these  
24 cases. They're complex, it takes everything  
25 they have, emotionally, professionally, they

1 have to put aside all their other work and  
2 devote almost full time to the defense of  
3 these cases.

4 We have an adversarial system.  
5 That system is based that we want the most  
6 resourced, the highest professional, the most  
7 visual in prosecutors to protect the public's  
8 interest, that in a good adversarial system we  
9 also want defense attorneys that are the  
10 highest quality, people who want to defend  
11 indigent defendants, particularly in the most  
12 difficult of cases, capital cases.

13 So if we're going to be  
14 consistent, if we're truly concerned with  
15 saving taxpayer dollars, I ask everyone in  
16 this chamber to vote for this amendment.  
17 What's good for the goose should be good for  
18 the gander. Let's apply these standards to  
19 the Governor and the Attorney General.

20 ACTING PRESIDENT MARCELLINO:  
21 On the amendment, all those in favor signify  
22 by saying aye.

23 (Response of "Aye.")

24 SENATOR PATERSON: Party vote  
25 in the affirmative.

1                   ACTING PRESIDENT MARCELLINO:

2           Party vote called for. Read the results,  
3           please. Call the roll. I'm sorry.

4                   (The Secretary called the  
5           roll. )

6                   THE SECRETARY: Ayes 21, nays  
7           35, party vote.

8                   ACTING PRESIDENT MARCELLINO:  
9           The amendment is defeated.

10                   Senator Paterson, why do you  
11           rise?

12                   SENATOR PATERSON: Mr.  
13           President, would Senator Volker yield for a  
14           question?

15                   ACTING PRESIDENT MARCELLINO:  
16           The Senator yields, Senator Paterson.

17                   SENATOR PATERSON: Mr.  
18           President, in 1995 when the death penalty  
19           passed in this chamber and in the Assembly and  
20           was signed into law by the Governor, there's  
21           no one who knows better than Senator Volker  
22           how difficult it was to pass that amendment,  
23           to pass that law.

24                   The issue of passing a law for  
25           many turned on the provision of resources to

1       those who would be accused under the statute  
2       and certainly many who had previously voted  
3       against the death penalty voted for it because  
4       they felt that New York was going to provide  
5       as much assistance to anyone accused because  
6       of the seriousness of the actual charge.

7                 Senator Volker, my question is,  
8       earlier I believe that you said, and I will  
9       take it back if it's wrong, that the assist  
10      ant counsels don't actually provide much  
11      assistance in these types of cases, and I'm  
12      getting the feeling maybe you didn't say  
13      that.

14                SENATOR VOLKER:  If I -- I  
15      don't believe I said that.  I was -- what I  
16      was trying to point out is that in certain  
17      cases, in fact there's an argument in certain  
18      cases the assistants actually run some of the  
19      cases.  I mean one of the things that Senator  
20      Abate said is that they devote all their time  
21      to these cases.

22                Well, a number of -- several of  
23      the capital attorneys are doing several at the  
24      same time and they're doing a lot of other law  
25      practice cases, and I don't begrudge that, but

1 let me point out that what I was trying to  
2 point out, in fact, to Senator Montgomery is  
3 that the fees we're talking about here are all  
4 cases where there was a limited number of  
5 time, a number of involvement of time because  
6 virtually all of them have been pled out and  
7 what we're seeing is that the assistants and  
8 the co-counsel, and so forth, are all involved  
9 in the cases, which is fine, but the numbers  
10 are somewhat astronomical in very short  
11 periods of time and our argument is that al  
12 though we certainly think that they should get  
13 reasonable compensation and since we're -  
14 even under my bill here, we're going to allow  
15 the highest compensation for any attorneys in  
16 the country in capital cases, Senator, we  
17 don't think that we're doing any kind of  
18 limitation that would -- of anybody that did  
19 vote specifically on this issue, and I think  
20 most people who voted did vote for the fact  
21 that they thought there would be reasonable  
22 compensation, and we believe in my bill we are  
23 still giving reasonable compensation to these  
24 attorneys.

25 SENATOR PATERSON: Thank you,

1 Senator Volker, and I wasn't exactly sure what  
2 you had said, but I was getting the feeling  
3 that you were implying that the death penalty  
4 cases were kind of a boilerplate type thing  
5 that almost any attorney could actually  
6 execute these types of cases, so thank you for  
7 clearing that up.

8 That being the case then,  
9 Senator, why do you draw the distinction  
10 because the federal government certainly  
11 doesn't and the new Criminal Procedure Act  
12 doesn't, why did you draw the distinction  
13 between out-of-court time and time that's  
14 spent in court?

15 Certainly one of the reasons  
16 that you have demonstrated a greater knowledge  
17 of the criminal law than the rest of us here,  
18 I would attribute not only to your natural  
19 ability but to the preparation that you bring  
20 to this chamber, and so following that rule of  
21 preparation, I would tend to think that you  
22 have put a lot of time outside this chamber  
23 into your work, and it certainly reflects for  
24 those of us who are in the difficult position  
25 of trying to debate you, the question would be

1 similar to the kind of research that goes into  
2 these cases that are argued in court. Often  
3 the lead counsel has the case right in front  
4 of them, and it's not the most difficult thing  
5 to stand up in court, as it might be to stand  
6 up on this floor, when a lot of generous  
7 research and long hours are put into that, and  
8 I hope all the law counsels and analysts have  
9 heard me when I've mentioned that.

10 But in all seriousness,  
11 Senator, why are you drawing that distinction  
12 when it is just as important to research and  
13 prepare a case as it is to argue it in court?

14 SENATOR VOLKER: Senator,  
15 virtually every state in the Union does  
16 differentiate, by the way, except for such  
17 states that have such ridiculously low fees  
18 that they can't very well do that,  
19 differentiate between in court and out of  
20 court and as you well know Surrogate's Court  
21 and virtually every court that I know of, an  
22 attorney dealing in the attorney field deals  
23 differently with out-of-court attorney fees  
24 than they deal with in-court attorney fees.

25 Part of the problem is that

1       some of the preparation is obviously done by  
2       the lead attorneys themselves; some may well  
3       be done by their assistants. I think your  
4       office is probably similar to many others  
5       where I have people in our office that handle  
6       part of the preparation for me, even though  
7       maybe I oversee it, but I don't actually do it  
8       myself.

9                   I think what we're trying to do  
10       here is develop reasonable standards, and I  
11       think generally speaking it's been considered  
12       that the in-court time should have the highest  
13       fees while the out-of-court time should be  
14       something that would be subject to -- to a  
15       lesser amount, still a substantial amount that  
16       would allow the person to get certainly a  
17       goodly fee and, as I pointed out, what there  
18       -- these standards will allow is essentially  
19       the highest still in the country.

20                   SENATOR PATERSON: Thank you,  
21       Mad...thank you, Senator Volker.

22                   Madam President, on the bill.

23                   ACTING PRESIDENT MARCELLINO:  
24       Yes, Senator Paterson, on the bill.

25                   SENATOR PATERSON: I'm sorry

1 about that, Mr. President.

2           It would appear to -- to me  
3 that the death penalty is something, even  
4 though we have passed it in this state, is not  
5 not an issue that should be taken lightly,  
6 that the most scrupulous research and the  
7 greatest attention be paid to those situations  
8 where we, as a society, may have to decide to  
9 take someone's life based on an act that is  
10 proven in the courts to have deprived another  
11 of their life.

12           With that very high standard,  
13 it is alarming to me that we are going to pass  
14 legislation that isn't even going to actually  
15 bring us in compliance with the federal  
16 standard. There will still be a possibility  
17 under this law of paying less than the federal  
18 rate for legal fees and for dollars per hour  
19 to counsel who would handle these types of  
20 cases.

21           New York State, in the last  
22 five years, has spent \$29 million through the  
23 Governor's office, through the Attorney  
24 General's office, on outside counsel paying  
25 over \$150 an hour, sometimes in some cases up

1 to \$350 an hour, on issues relating to  
2 banking, to social service, to Thruway  
3 development, to economic development, the  
4 canal zone, a myriad number of issues that we  
5 have invested money. The firm of Walton,  
6 Weill and Penza estimates that the amount of  
7 money that we would be spending for the hourly  
8 rate of counsel in this particular case would  
9 be in compliance with what lawyers generally  
10 are paid in the Northeast.

11 In addition, a survey shows  
12 that in those states where a lower rate is  
13 provided, there is a greater opportunity for  
14 cases to be overthrown, for cases to be  
15 reversed, and in fact 64 percent of the  
16 convictions for the death penalty in those  
17 cases were actually overturned.

18 So we feel that charging the  
19 higher rate brings in the best lawyers, would  
20 solicit the best counsel and would actually be  
21 a cost saving mechanism because in the end we  
22 would have a higher competence and a greater  
23 experience on the part of the lawyers who  
24 would actually try these types of cases.

25 We think this is a very serious

1 issue. It does not relate to anybody's  
2 individual position whether it be pro or  
3 against the death penalty. It has to do with  
4 the seriousness of the charge which we all  
5 acknowledge and the value that we take in what  
6 would be the -- providing for the defense. In  
7 his initial remarks, Senator Volker did say  
8 that what was driving the cost of death  
9 penalty cases as opposed to life without  
10 parole, which was an argument made by death  
11 penalty opponents, was the defense.

12 Even though that argument was  
13 made at that particular time, we accept the  
14 fact that the death penalty does exist in this  
15 state right now, but it should not diminish -  
16 be diminished from what we understood in 1995  
17 when the Governor put forth a bill in which he  
18 articulated to us how this would be a good  
19 bill and how as an argument in favor of the  
20 bill he averred that there would be a great  
21 consideration given to those charged under the  
22 statute and that a reasonable amount of  
23 resources would be devoted to their defense.

24 A reasonable amount of resources, as we  
25 interpret it, would be that which would comply

1 with what the lawyers in the particular area  
2 are making on similar cases.

3 We see that sometimes the state  
4 is paying them more for different types of  
5 cases. We suggest that there be no case that  
6 could be more important than the life of the  
7 defendant in a death penalty case.

8 SENATOR DOLLINGER: Mr.  
9 President.

10 ACTING PRESIDENT MARCELLINO:  
11 Senator Dollinger.

12 SENATOR DOLLINGER: On the  
13 bill, Mr. President.

14 ACTING PRESIDENT MARCELLINO:  
15 Senator Dollinger, on the bill.

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

18 I want to clarify just one  
19 issue that the chairman of the Codes Committee  
20 has brought up in which I agree with him and  
21 that is if, in death penalty cases, we have  
22 already seen an explosion of the number of  
23 hours in these cases, if the sense is that, to  
24 use an old-fashioned big firm lawyer  
25 technique, lawyer in a big firm will agree to

1 cap his fees at \$175 an hour and then he  
2 brings in an associate and just piles on the  
3 hours and that's what drives up the cost of  
4 defense, then I think that's something where  
5 we as a client, the people of the state of New  
6 York, are not getting our hours' worth of  
7 value out of this.

8 If this is an issue of too many  
9 hours expended by junior counsel, I think  
10 that's something that the Comptroller needs to  
11 deal with or the capital defender's office  
12 needs to deal with, because quite frankly,  
13 Senator Volker, if what you say is true -- and  
14 I certainly take it at face value -- about a  
15 meeting in which everybody says let's just  
16 pile on the hours so we drive up the cost of  
17 the death penalty so we give more ammunition  
18 to opponents of the death penalty, it seems to  
19 me that that's a disingenuous way to try to  
20 deal with the fundamental issues of the death  
21 penalty, what its social costs and what its  
22 legal cost. That, for me, that would be, even  
23 though I'm a death penalty opponent, that  
24 would be playing unfair in trying to  
25 manipulate and inflate the cost of defense

1       beyond what it otherwise is and throughout the  
2       debate over the death penalty I have argued  
3       that the death penalty would be expensive.  
4       It's going to be expensive because there  
5       clearly will be instances in which you're  
6       going to need to pay for proper defense.

7                 If we're spending too much on  
8       hours, if lawyers are bilking the system, we  
9       ought to deal with that through the capital  
10      defender's office. It ought to be handled  
11      administratively and we ought to put an end to  
12      the notion there is a gravy train. It's not.  
13      It's buying quality defense. It seems to me,  
14      however, Senator Volker, that the critical  
15      issue for me is will the \$125 an hour buy you  
16      the type of counsel that will prevent the  
17      occurrence of an overturned verdict on the  
18      basis of insufficiency of counsel?

19                And with -- in this respect,  
20      Senator Volker, I'm willing to suggest that in  
21      my community that you might be able to buy  
22      quality, not the best, the quality legal  
23      services at that cost. However, there's an  
24      enormous part of this state south, my guess  
25      is, of West Point, where you you cannot buy

1        quality legal services for that cost, and what  
2        you will find is in the higher cost legal  
3        portions of this state where the partners'  
4        rates are 350 an hour in the major firms  
5        throughout the City and Long Island, you will  
6        find that for \$125 you cannot attract the  
7        quality talent you need to fully try a death  
8        penalty case, and what I'm afraid is, Senator,  
9        that your attempt to restrict the hourly rate  
10       will ensure -- ensure that we have ineffective  
11       assistance of counsel when cases are  
12       prosecuted south of Poughkeepsie.

13                    It's just my sense that that's  
14       the way the legal market works. We will not  
15       be able to attract the kind of lawyers that  
16       can handle the complexity of issues that are  
17       necessary in this case, and I'll close with  
18       one question for everybody in this chamber.  
19       Raise your hand if you were charged with the  
20       death penalty and you thought you could get  
21       quality legal representation for \$125 an  
22       hour. I submit to you not one person in this  
23       chamber would hire a lawyer for \$125 an hour  
24       and if you did, I would suggest to you you're  
25       significantly increasing the chance that you

1 would end up with a guilty verdict.

2 ACTING PRESIDENT MARCELLINO:

3 Read the last section.

4 THE SECRETARY: Section 4.

5 This act shall take effect on the 30th day.

6 ACTING PRESIDENT MARCELLINO:

7 Call the roll.

8 (The Secretary called the  
9 roll. )

10 ACTING PRESIDENT MARCELLINO:

11 Senator Montgomery, to explain your vote.

12 SENATOR MONTGOMERY: Yes, Mr.

13 President, I would like to explain my vote.

14 On one hand, I am loathe to -  
15 to support increasing expenditures at the  
16 expense of the -- the so-called criminal  
17 justice system that seems to be eating up more  
18 and more of our resources. I would much  
19 rather have that money, and if I certainly  
20 could be assured that the money saved would go  
21 into those areas to help develop and build  
22 young people so that they don't come in  
23 contact with the criminal justice system and  
24 give -- make it possible for us to have  
25 opportunities for them, open up a whole

1           'nother world for them, I would say maybe  
2 this would make sense.

3                         But that certainly isn't going  
4 to happen as it has not happened since I've  
5 been here in this chamber. We've only sought  
6 to reduce the resources that we send into  
7 communities to support the development of  
8 young people while, on the other hand, we  
9 expand and expand the criminal justice system,  
10 so on one hand I hate to defend putting more  
11 money into it but, on the other hand, I must  
12 remind my colleagues that right now in this  
13 nation we see what the extent -- the extent of  
14 the extreme that a prosecutor will go in order  
15 to coerce confession from someone, i.e., Susan  
16 MacDougal who is in prison or may be recently  
17 released, and there's another young woman who  
18 may go to prison to satisfy what the  
19 prosecutor views as his need for a confession,  
20 and there are many instances where there is a  
21 coerced confession that results in  
22 imprisonment and very often it is imprisonment  
23 that is not based on guilt; and I also want to  
24 remind my colleagues that this is a reneging  
25 on a promise, and it is a promise that was

1 made here in this chamber standing on the  
2 floor by the very -- by the very author of  
3 this legislation, and that was that we would  
4 -- we would agree to expend the necessary  
5 funds because we all said, those of us who  
6 opposed the death penalty in the first place  
7 knew that it was going to cost money. That  
8 was one of the arguments that was made, so it  
9 wasn't -- we didn't go into this death penalty  
10 blindly.

11 And lastly, I also want to say  
12 to my colleagues that this is the same kind of  
13 -- is the same kind of attitude and action as  
14 -- as, in my opinion, that represents the  
15 kind of pettiness that we engage in as it  
16 relates to the criminal justice system. We  
17 took away all of the education, even through  
18 the funding for education in the name of  
19 saving money, even though we knew and we still  
20 know that it was a minuscule amount of money  
21 that was expended and it made a tremendous  
22 difference in recidivism. And what happened  
23 to people when they left -- when they leave  
24 the prisons, and so forth and so on.

25 So the whole issue of saving

1 money is to me certainly false and if, as has  
2 been stated here by other members, other  
3 colleagues, that the issue of saving money is  
4 just a false issue, this is a fraudulent kind  
5 of approach that we are saving money on  
6 capital cases when we expend any amount of  
7 money that is necessary on any of those cases  
8 that the Attorney General tries and any other  
9 cases.

10 So it's -- to me, this is not  
11 necessary. It's not appropriate. We should  
12 not be doing this. Senator Volker knows that  
13 we should not be doing this. I think in his  
14 heart, he doesn't believe his own legislation,  
15 but this is just something to say to people  
16 that we are going to save money because we  
17 don't care about capital cases. They are not  
18 important and so this is only something that's  
19 going to pare -- Senator Volker is again, he's  
20 for the death penalty and he is not, and he's  
21 going to cut the cost of the indicted penalty  
22 trial defense.

23 So I'm against it. I hope that  
24 all of my colleagues will vote against this.  
25 This is just one of those times in our history

1 and in our Legislature that is very, very  
2 dark, and my two minutes are up, I'm told, but  
3 I'm voting no. I hope my colleagues vote no.  
4 No.

5 ACTING PRESIDENT MARCELLINO:  
6 Are you sure you're voting no, Senator?

7 SENATOR MONTGOMERY: Yes, I  
8 am.

9 SENATOR SKELOS: Two minutes  
10 and counting.

11 ACTING PRESIDENT MARCELLINO:  
12 Announce the results, please.

13 THE SECRETARY: Those recorded  
14 in the negative on Calendar Number 1196 are  
15 Senators Abate, Breslin, Connor, Dollinger,  
16 Markowitz, Mendez, Montgomery, Paterson,  
17 Rosado, Smith, also Senator Stavisky. Ayes  
18 46, nays 11.

19 ACTING PRESIDENT MARCELLINO:  
20 The bill is passed.

21 Senator Hoffmann.

22 SENATOR HOFFMANN: Mr.  
23 President, I was out of the chamber at the  
24 time 1111 passed. I would request unanimous  
25 consent to be recorded in the negative.

1                   ACTING PRESIDENT MARCELLINO:

2           With unanimous consent, so ordered.

3                   Senator Skelos.

4                   SENATOR SKELOS: Mr. President,  
5           would you call up Calendar Number 1210.

6                   ACTING PRESIDENT MARCELLINO:  
7           Secretary will read Calendar Number 1210.

8                   SENATOR SKELOS: Please  
9           recognize Senator Johnson.

10                   SENATOR JOHNSON: Mr.  
11           President, also I was out at the time that  
12           that bill was passed, was it 1111, I believe  
13           and I'd like to vote no on it also, same bill  
14           Senator Hoffmann just voted negative on.

15                   ACTING PRESIDENT MARCELLINO:  
16           With unanimous consent, so ordered, Senator.

17                   The Secretary will read.

18                   THE SECRETARY: Calendar Number  
19           1210, by Senator Stafford, Senate Print 7556,  
20           an act to amend the Public Officers Law, in  
21           relation to permitting former state officers  
22           and employees to contract.

23                   SENATOR DOLLINGER: Can we have  
24           an explanation, please.

25                   SENATOR SKELOS: Lay it aside

1 for the day.

2 ACTING PRESIDENT MARCELLINO:

3 Lay the bill aside for the day, please.

4 Senator Skelos.

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

8 ACTING PRESIDENT MARCELLINO:

9 There will be an immediate meeting of the  
10 Rules Committee in the Majority Conference  
11 Room, immediate meeting of the Rules Committee  
12 in the Majority Conference Room.

13 SENATOR SKELOS: Mr. President,  
14 would you call up 1218.

15 THE SECRETARY: Calendar Number  
16 1218, by Senator Goodman, Senate Print 6852,  
17 an act to amend the Public Officers Law, in  
18 relation to access to law enforcement  
19 records.

20 SENATOR DOLLINGER:

21 Explanation.

22 SENATOR GOODMAN: Mr.  
23 President, would you please put a Sponsor's  
24 star on that bill.

25 ACTING PRESIDENT MARCELLINO:

1 The bill will be starred at the sponsor's  
2 request.

3 SENATOR SKELOS: Please call up  
4 Calendar Number 1211.

5 ACTING PRESIDENT MARCELLINO:  
6 1211. Secretary will read Calendar Number  
7 1211.

8 THE SECRETARY: Calendar Number  
9 1211, by Senator Johnson, Senate Print Number  
10 6047-B, an act to amend the Civil Rights Law,  
11 in relation to right of privacy.

12 SENATOR PATERSON:  
13 Explanation.

14 ACTING PRESIDENT MARCELLINO:  
15 Senator Johnson, an explanation has been  
16 requested of your bill.

17 SENATOR JOHNSON: Mr.  
18 President, there -- this bill expands the  
19 privacy rights of victims under the Civil  
20 Rights Law by adding a new section 50 (f).  
21 This has been developed because of abuse of  
22 such information, particularly photographs of  
23 crime victims obtained by criminals, also  
24 disseminated on the Internet and used in other  
25 manners which are embarrassing and damaging

1 possibly to the victims of the crime which was  
2 committed.

3           There was several recent cases  
4 where the criminals were, under Freedom of In  
5 formation getting these photographs and  
6 hanging them up in their cells and showing  
7 their fellow inmates the beautiful crimes that  
8 they had committed while they were -- and the  
9 reason they were in that jail for the crimes  
10 they committed, and other cases the addresses  
11 had been gotten, and so forth, and so this  
12 expands the privacy rights.

13           It says your attorney can get  
14 the information, if you're the victim you can  
15 get it, but others can't get it unless they  
16 have good reason to do so, and those  
17 photographs will not be disseminated  
18 throughout society for people getting their  
19 kicks, and so forth, as an embarrassment to  
20 the victims.

21           Any other questions?

22           ACTING PRESIDENT MARCELLINO:

23           Senator Paterson, why do you rise?

24           SENATOR PATERSON: Mr.

25           President, this is a piece of legislation that

1 definitely demonstrates the sensitivities that  
2 Senator Johnson has shown for those who have  
3 been put in the egregious situation of finding  
4 out that perhaps not only were they violated  
5 through the criminality of others but that  
6 photographs from the crime scene were often  
7 paraded around by the actual criminals as some  
8 kind of demonstration or celebration which is  
9 painful to think that any human being would  
10 actually do this.

11 In addition, Senator Johnson  
12 mentioned the use of these types of pictures  
13 on the Internet which are ghoulish and  
14 certainly something that we would want to try  
15 to stop. Of course, no one that ever saw it  
16 could probably forget the picture in the New  
17 York Post of the casket that carried the body  
18 of John Lennon on December 11th, 1980. That  
19 was another demonstration that had no value  
20 and brought no dignity to any type of  
21 proceeding or journalism to allow that kind of  
22 thing to happen.

23 Unfortunately, to pass this  
24 legislation would be to infringe upon law that  
25 we have made in the past, the Freedom of

1 Information Act, and the Freedom of  
2 Information Act is pretty broad and certainly  
3 would allow for certain types of amendments to  
4 be made to it without actually cutting into  
5 what would be the public policy that the  
6 Freedom of Information Act provides.

7 For instance, we have the  
8 federal Driver's Privacy Protection Act in  
9 which, if you want information about a driver  
10 you can obtain some information based on an  
11 understanding or based on a commitment that  
12 the information would be used for a certain  
13 purpose. We suggest that this would be an apt  
14 way to deal with law enforcement cases where  
15 someone would like pictures from a crime  
16 scene. This way the press could use the  
17 pictures from a crime scene that would not  
18 necessarily involve any kind of denigration or  
19 something that would not want to be seen by  
20 victims but wouldn't give the victims  
21 exclusive power as would be provided under the  
22 law to eliminate such an action and would  
23 continue and restore the full teeth of the  
24 Freedom of Information Act.

25 This is a suggestion that we

1 make in good faith to Senator Johnson, that he  
2 take a look at at some point in the future, if  
3 we visit this bill again.

4 ACTRING PRESIDENT MARCELLINO:  
5 Read the last section, please.

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

8 ACTING PRESIDENT MARCELLINO:  
9 Call the roll.

10 (The Secretary called the  
11 roll. )

12 THE SECRETARY: Ayes 56, nays  
13 one, Senator Montgomery recorded in the  
14 negative.

15 ACTING PRESIDENT MARCELLINO:  
16 The bill is passed.

17 Secretary will read.

18 THE SECRETARY: Calendar Number  
19 1220, by Senator Maltese, Senate Print 7023,  
20 an act to amend the Election Law, in relation  
21 to time limits to bring proceedings.

22 ACTING PRESIDENT MARCELLINO:  
23 Read the last section.

24 THE SECRETARY: Section 2.  
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 57.

6                   ACTING PRESIDENT MARCELLINO:

7           The bill is passed.

8                   That completes the  
9           controversial calendar, Senator.

10                   SENATOR DOLLINGER:   Mr.  
11           President -- Mr. President, just if I could  
12           have unanimous consent to be recorded in the  
13           negative on Calendar 1220.

14                   ACTING PRESIDENT MARCELLINO:  
15           Without exception -- without objection.

16                   SENATOR DOLLINGER:   Thank you.

17                   ACTING PRESIDENT MARCELLINO:  
18           Senator Larkin.

19                   SENATOR LARKIN:   May we return  
20           to motions and resolutions.

21                   ACTING PRESIDENT MARCELLINO:  
22           Senator Meier.

23                   SENATOR MEIER:   Mr. President,  
24           I wish to call up Senator Onorato's bill,  
25           Senate Print Number 6526, which is now at the

1 desk.

2 ACTING PRESIDENT MARCELLINO:

3 The Secretary will read.

4 THE SECRETARY: By Senator  
5 Onorato, Senate Print 6526, an act authorizing  
6 the city of New York.

7 SENATOR MEIER: I now move to  
8 reconsider the vote by which this bill was  
9 passed and ask that the bill be restored to  
10 the Third Reading Calendar.

11 ACTING PRESIDENT MARCELLINO:  
12 Call the roll on reconsideration.

13 (The Secretary called the roll  
14 on reconsideration.)

15 THE SECRETARY: Ayes 57.

16 SENATOR MEIER: Mr. President,  
17 I now move to discharge from the Committee on  
18 Rules Assembly Print Number 10034 and  
19 substitute it for the identical original bill.

20 ACTING PRESIDENT MARCELLINO:  
21 The substitutions are ordered.

22 SENATOR MEIER: I now move that  
23 the substituted Assembly bill have its third  
24 reading at this time.

25 ACTING PRESIDENT MARCELLINO:

1 The Secretary will read if you promise not to  
2 hit the microphone again.

3 THE SECRETARY: Calendar Number  
4 1214, by member of the Assembly Butler,  
5 Assembly Print 10034, an act authorizing the  
6 city of New York.

7 ACTING PRESIDENT MARCELLINO:  
8 Read the last section.

9 THE SECRETARY: Section 2.  
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 57.

16 ACTING PRESIDENT MARCELLINO:  
17 And there is a home rule message and the bill  
18 is passed.

19 SENATOR MEIER: Mr. President,  
20 on page number 21, I offer the following  
21 amendments to Calendar Number 710, Senate  
22 Print Number 6432, and ask that said bill  
23 retain its place on the Third Reading  
24 Calendar.

25 ACTING PRESIDENT MARCELLINO:

1 The amendments are received and the bill will  
2 retain its place on the Third Reading  
3 Calendar.

4 SENATOR MEIER: On page number  
5 13, I offer the following amendments to  
6 Calendar Number 480, Senate Print Number 6281,  
7 and ask that the bill retain its place on the  
8 Third Reading Calendar.

9 ACTING PRESIDENT MARCELLINO:  
10 The amendments are accepted.

11 SENATOR MEIER: Mr. President,  
12 on page number 27, I offer the following  
13 amendments to Calendar Number 879, Senate  
14 Print 4417-C, and ask that said bill retain  
15 its place on the Third Reading Calendar.

16 ACTING PRESIDENT MARCELLINO:  
17 So ordered.

18 SENATOR MEIER: Mr. President,  
19 on behalf of Senator Saland, I wish to call up  
20 bill Print Number 7302, recalled from the  
21 Assembly, which is now at the desk.

22 ACTING PRESIDENT MARCELLINO:  
23 The Secretary will read.

24 Senator, repeat that again.

25 SENATOR MEIER: 7302.

1 THE SECRETARY: By Senator  
2 Saland, Senate Print 7302, an act to amend the  
3 Social Services Law.

4 SENATOR MEIER: Mr. President,  
5 I now move to reconsider the vote by which  
6 this bill was passed.

7 ACTING PRESIDENT MARCELLINO:  
8 Call the roll on reconsideration.

9 (The Secretary called the roll  
10 on reconsideration.)

11 THE SECRETARY: Ayes 57.

12 SENATOR MEIER: I now offer the  
13 following amendments.

14 ACTING PRESIDENT MARCELLINO:  
15 The amendments are accepted.

16 SENATOR MEIER: Mr. President,  
17 I wish to call up Senator Seward's bill, Print  
18 Number 3095, recalled from the Assembly, which  
19 is now at the desk.

20 ACTING PRESIDENT MARCELLINO:  
21 The Secretary will read.

22 THE SECRETARY: By Senator  
23 Seward, Senate Print 3095, an act to amend the  
24 Town Law.

25 SENATOR MEIER: Mr. President,

1 I now move to reconsider the vote by which  
2 this bill was passed.

3 ACTING PRESIDENT MARCELLINO:  
4 Call the roll on reconsideration.

5 (The Secretary called the roll  
6 on reconsideration.)

7 THE SECRETARY: Ayes 57.

8 SENATOR MEIER: I now offer the  
9 following amendments.

10 ACTING PRESIDENT MARCELLINO:  
11 The amendments are received.

12 SENATOR LARKIN: Mr. President,  
13 would you recognize Senator Montgomery,  
14 please.

15 ACTING PRESIDENT MARCELLINO:  
16 Senator Montgomery, I'll recognize you.

17 SENATOR MONTGOMERY: Yes.  
18 Thank you, Mr. President.

19 Senator Kuhl tried to get your  
20 attention, but I see you refused him also. I  
21 would like unanimous consent -- I want to  
22 thank Senator Kuhl publicly for helping me  
23 even though it didn't work. I would like  
24 unanimous consent to be recorded in the  
25 negative on Calendar 813.

1                   ACTING PRESIDENT MARCELLINO:

2       Without objection, I think.

3                   Senator Larkin.

4                   SENATOR LARKIN: Mr. President,  
5       we'll stand at ease for a few minutes 'til we  
6       hear from the Rules Committee.

7                   ACTING PRESIDENT MARCELLINO:

8       The Senate will stand at ease awaiting the  
9       report of the Rules Committee.

10                   (Whereupon, the Senate stood at  
11       ease from 4:50 p.m. until 5:00 p.m.)

12                   ACTING PRESIDENT MARCELLINO:

13       Senator Larkin, may we return to motions,  
14       please.

15                   SENATOR LARKIN: Motions and  
16       resolutions.

17                   ACTING PRESIDENT MARCELLINO:

18       Thank you, Senator.

19                   Senator Balboni.

20                   SENATOR BALBONI: Thank you,  
21       Mr. President.

22                   I would like to offer the  
23       following motions:

24                   On page number 47, offer the  
25       following amendments to Calendar 120 -- I'm

1       sorry -- 1221, Senate Print Number 7400, and I  
2       ask that that bill retain its place on the  
3       Third Reading Calendar.

4                   ACTING PRESIDENT MARCELLINO:  
5       The amendments are received.

6                   SENATOR BALBONI:   And I would  
7       also like to -- wish to call up my bill, 6848,  
8       recalled from the Assembly, which is now at  
9       the desk.

10                   ACTING PRESIDENT MARCELLINO:  
11       Read the -

12                   THE SECRETARY:   By Senator  
13       Johnson, Senate Bill 6848, an act to amend  
14       Chapter 268 of the Laws of 1989.

15                   ACTING PRESIDENT MARCELLINO:  
16       Senator Balboni.

17                   SENATOR BALBONI:   Yes.  
18       Actually, Mr. President, I misspoke.  It's not  
19       my bill.  It's Senator Johnson's bill, but I'm  
20       pleased to be able to bring it before the  
21       house.  Mr. President, I would ask to now  
22       reconsider the vote by which this bill was  
23       passed.

24                   ACTING PRESIDENT MARCELLINO:  
25       Call the roll on reconsideration.

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

3                   THE SECRETARY:  Ayes 58.

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

7                   ACTING PRESIDENT MARCELLINO:  
8                   The amendments are received.

9                   SENATOR BALBONI:  Thank you,  
10                  Mr. President.

11                  ACTING PRESIDENT MARCELLINO:  
12                  Thank you, Senator Balboni.

13                  SENATOR LARKIN:  Mr. President,  
14                  would you now recognize Senator Santiago,  
15                  please.

16                  ACTING PRESIDENT MARCELLINO:  
17                  Senator Santiago.

18                  SENATOR SANTIAGO:  Mr.  
19                  President, I ask unanimous consent to be  
20                  recorded in the negative on Calendar Number  
21                  1196.

22                  ACTING PRESIDENT MARCELLINO:  
23                  With unanimous consent, so ordered.

24                  SENATOR SANTIAGO:  Thank you.

25                  SENATOR LARKIN:  May we now

1 return to reports of standing committees, Mr.  
2 President.

3 ACTING PRESIDENT MARCELLINO:  
4 Yes. The Secretary will read the report of  
5 the Rules Committee.

6 THE SECRETARY: Senator Bruno,  
7 from the Committee on Rules, offers up the  
8 following bills directly for third reading:

9 Senate Print 786-A, by Senator  
10 Cook, an act to amend the Facilities  
11 Development Corporation Act;

12 2402-A, by Senator Volker, an  
13 act to amend the Penal Law;

14 2908, by Senator Stavisky, an  
15 act to amend the Penal Law;

16 3165, by Senator Trunzo, an act  
17 to amend the Vehicle and Traffic Law;

18 3860-A, by Senator Montgomery,  
19 an act authorizing the city of New York;

20 3929-A, by Senator Leibell, an  
21 act to amend the Real Property Actions and  
22 Proceedings Law;

23 4179-A, by Senator Johnson, an  
24 act to amend the Highway Law;

25 4462, by Senator Rath, an act

1 to amend the Executive Law;

2 5260-A, by Senator Bruno, an  
3 act in relation to the timeliness of the  
4 election of the village of Castleton-on-the  
5 Hudson;

6 5463, by Senator Lachman, an  
7 act to amend the Railroad Law;

8 5471, by Senator Volker, an act  
9 to amend the Penal Law;

10 6016, by Senators Kuhl and  
11 others, an act to amend the Military Law;

12 6123, by Senator Marchi, an act  
13 authorizing the city of New York;

14 6142-A, by Senators Trunzo and  
15 others, an act to amend the Tax Law;

16 6238-B, by Senator Wright, an  
17 act authorizing the city of Watertown;

18 6361-A, by Senator Kuhl, an act  
19 to amend the Tax Law;

20 6393-A, by Senator Meier, an  
21 act to amend the Military Law;

22 6416, by Senator Skelos, an act  
23 to amend the Civil Practice Law and Rules;

24 6438, by Senator Velella, an  
25 act authorizing the city of New York;

1                   6522, by Senator Nozzolio, an  
2 act to amend the Alcoholic Beverage Control  
3 Law;

4                   6648, by Senator Balboni, an  
5 act to amend the Local Finance Law;

6                   6655-A, by Senator Padavan, an  
7 act to amend the Real Property Tax Law;

8                   6742, by Senator Kuhl, an act  
9 in relation to authorizing the village of Penn  
10 Yan;

11                   6851, by Senator Balboni, an  
12 act to amend the Environmental Conservation  
13 Law;

14                   6937, by Senator Volker, an act  
15 to amend the Penal Law;

16                   6969, by Senator DeFrancisco,  
17 an act to amend the Judiciary Law;

18                   7034, by Senator Alesi, an act  
19 to amend the Social Services Law;

20                   7080, by Senator Seward, an act  
21 to amend the Tax Law;

22                   7222-B, by Senator Larkin, an  
23 act to amend the General Municipal Law;

24                   7320, by Senator Seward, an act  
25 to amend the Tax Law;

1                   7380-A, by Senator Alesi, an  
2 act to amend the Highway Law;

3                   7389-A, by Senator Santiago, an  
4 act authorizing the city of New York;

5                   7432, by the Committee on  
6 Rules, an act to amend the General Business  
7 Law;

8                   7446, by Senator Seward, an act  
9 to amend the Economic Development Law;

10                  7447, by Senator Seward, an act  
11 to amend the Public Service Law;

12                  7450, by Senator Johnson, an  
13 act to amend the Vehicle and Traffic Law;

14                  7500-A, by Senator Skelos, an  
15 act to establish the Bay Park Library;

16                  7555, by Senator Stafford, an  
17 act to amend the Executive Law;

18                  7569, by Senator Libous, an act  
19 to authorize the trustees;

20                  7574, by Senator Nozzolio, an  
21 act to amend the Family Court Act;

22                  7576, by Senator Fuschillo, an  
23 act to amend the Vehicle and Traffic Law;

24                  7628, by Senator Spano, an act  
25 to amend the Labor Law;

1                   5346, by Senator Hannon, an act  
2           to amend the Public Health Law and the  
3           Insurance Law.

4                   All bills directly for third  
5           reading.

6                   SENATOR LARKIN: I move to  
7           accept the report of the Rules Committee.

8                   ACTING PRESIDENT MARCELLINO:  
9           All in favor of accepting the report of the  
10          Rules Committee signify by saying aye.

11                   (Response of "Aye".)

12                   Opposed, nay.

13                   (There was no response.)

14                   The report is accepted.

15                   Senator Larkin.

16                   SENATOR LARKIN: Is there any  
17          other housekeeping at the desk? No further  
18          business, I -

19                   ACTING PRESIDENT MARCELLINO:  
20          Senator, excuse me. We're just checking to  
21          see if the house is clean. The house is  
22          clean, sir.

23                   SENATOR LARKIN: I hope you  
24          swept it.

25                   ACTING PRESIDENT MARCELLINO:

1 We did.

2 SENATOR LARKIN: No further  
3 business, I move we adjourn until Wednesday,  
4 June the 10th, at 10:00 a.m. sharp.

5 ACTING PRESIDENT MARCELLINO:  
6 There being no further business, this chamber  
7 stands adjourned until Wednesday, at 10:00  
8 a.m. Please check the time. 10:00 a.m.  
9 promptly, June 10th.

10 (Whereupon, at 5:07 p.m., the  
11 Senate adjourned.)

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