ALBANY, NEW YORK

June 9, 1998

3:05 p.m.

REGULAR SESSION

SENATOR RAYMOND A. MEIER, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

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

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

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

(A moment of silence was observed.)

Reading of the Journal.

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

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing

committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Marcellino.

SENATOR MARCELLINO: Yes, Mr. President. We have a busy agenda here.

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

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

SENATOR MARCELLINO: Thank you, Mr. President.

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

ACTING PRESIDENT MEIER:

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

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

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

SENATOR MARCELLINO:

Thank you, Mr. President.

On behalf of Senator Rath, please place a sponsor's star on Calendar Number 1158.

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

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

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

SENATOR MARCELLINO: Thank you, Mr. President.

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

ACTING PRESIDENT MEIER: Secretary will read.

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

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

ACTING PRESIDENT MEIER: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 37.

SENATOR MARCELLINO: Thank you, Mr. President.

I now offer the following amendments.

ACTING PRESIDENT MEIER: Amendments received.

SENATOR MARCELLINO: Thank you.

ACTING PRESIDENT MEIER: Senator Present.

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

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

SENATOR PRESENT: Thank you.

Secretary will read the substitutions.

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

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

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

it for the identical Senate bill 2641-A.

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

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

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

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

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

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

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

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

ACTING PRESIDENT MEIER: Substitutions ordered.

Senator Skelos.

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

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

(Response of "Aye.")

Opposed nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Padavan.

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

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

Senator Skelos.

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

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

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT MEIER: The bill is passed.

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

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

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT MEIER: The bill is passed.

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

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MEIER: Lay aside.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT MEIER: The

bill is passed.

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

ACTING PRESIDENT MEIER: Senator Balboni.

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

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

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT MEIER: The

bill is passed.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT MEIER: The bill is passed.

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

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

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

ACTING PRESIDENT MEIER: Read

the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: Read the last section.

SENATOR DOLLINGER: Lay aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

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

SENATOR SKELOS: Lay aside for the day.

ACTING PRESIDENT MEIER: Lay

the bill aside for the day.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT MEIER: The bill is passed.

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

2971, an act to amend the General Obligations Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT MEIER: The bill is passed.

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

SENATOR SKELOS: Lay aside for the day.

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

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT MEIER: The

bill is passed.

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

ACTING PRESIDENT MEIER: Read the last section.

SENATOR DOLLINGER: Lay the bill aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1211, by Senator Johnson.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT MEIER: The bill is passed.

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

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

the last section.

THE SECRETARY: Section 5.

This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT MEIER: The bill is passed.

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

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

THE SECRETARY: Section 3.

This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MEIER: The

bill is passed.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1217, by Senator Alesi.

SENATOR SKELOS: Lay aside for the day.

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

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

ACTING PRESIDENT MEIER: Read the last section.

SENATOR DOLLINGER: Lay aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: Read the last section.

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

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

IThe Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the

roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2.

This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT MEIER: The bill is passed.

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

SENATOR SALAND: Take the controversial calendar, please.

ACTING PRESIDENT MEIER: Secretary will read the controversial calendar.

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

SENATOR PATERSON: Explanation.

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

SENATOR SALAND: Thank you, Mr. President.

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

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

ACTING PRESIDENT MEIER: Senator Paterson.

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

ACTING PRESIDENT MEIER:

Senator Paterson, on the bill.

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

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

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

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

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MEIER: The bill is passed.

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

SENATOR DOLLINGER: Explanation.

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

SENATOR KUHL: Thank you, Mr. President.

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

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

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

SENATOR KUHL: Yes.

ACTING PRESIDENT MEIER: Sponsor yields.

Senator Dollinger.

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

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

So what this section or what

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

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

SENATOR DOLLINGER: Thank you. The explanation is satisfactory, Mr. President.

I appreciate Senator Kuhl's

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

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

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: The bill is passed.

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

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

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

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

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

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 3 -

ACTING PRESIDENT MEIER: Senator Paterson.

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

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

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

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

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: Read the last section.

SENATOR PATERSON: Explanation.

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

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

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

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

Senator Volker.

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

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

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

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

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

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

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

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

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

The attorney compensation rates

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

ACTING PRESIDENT MEIER: Senator Stachowski.

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

ACTING PRESIDENT MEIER: Yes, you do, Senator.

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

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

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

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

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

THE PRESIDENT: Senator Dollinger.

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

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

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

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

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

(Response of "Aye.")

SENATOR PATERSON: Party vote in the affirmative.

SENATOR SKELOS: Party vote in the negative.

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

(The Secretary called the roll.)

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

THE PRESIDENT: The amendment is defeated.

Senator Dollinger.

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

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

SENATOR DOLLINGER: Yes, I yield.

THE PRESIDENT: Yes, Senator Stafford.

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

I just wanted to let you know.

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

(Applause)

THE PRESIDENT: Senator Dollinger.

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

THE PRESIDENT: Senator Volker.

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

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

SENATOR VOLKER: O.K. Sure.

THE PRESIDENT: Senator Dollinger.

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

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

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

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

THE PRESIDENT: Senator Dollinger.

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

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

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

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

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

SENATOR VOLKER: Sure.

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

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

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

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

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

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

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

I'd move the amendment, Madam President.

THE PRESIDENT: Thank you,

Senator Dollinger.

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

(Response of "Aye.")

SENATOR PATERSON: Party vote in the affirmative.

SENATOR SKELOS: Party vote.

THE PRESIDENT: Those opposed nay. Call the roll.

(The Secretary called the roll.)

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

THE PRESIDENT: The amendment is defeated.

Senator Montgomery.

SENATOR MONTGOMERY: Yes. Thank you, Madam President. I would like to ask a clarification of the sponsor, Senator Volker, if he would yield.

THE PRESIDENT: Senator Volker, would you please yield?

SENATOR VOLKER: Yes.

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

I believe, a cap -

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

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

THE PRESIDENT: Senator Volker.

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

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

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

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

THE PRESIDENT: Senator Volker.

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

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

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

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

Mr. President.

ACTING PRESIDENT MARCELLINO: We are quick up here.

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

SENATOR MONTGOMERY: If Senator Volker would continue to yield.

ACTING PRESIDENT MARCELLINO: Senator continues to yield.

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

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

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

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

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

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT MARCELLINO: Senator continues to yield.

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

SENATOR VOLKER: 125.

SENATOR MONTGOMERY: One -

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

SENATOR MONTGOMERY: 75 to 100 for out of court.

SENATOR VOLKER: Right.

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

SENATOR VOLKER: Right.

SENATOR MONTGOMERY: 50 to 75

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

SENATOR VOLKER: Right.

SENATOR MONTGOMERY: 40 an hour for assistant counsel.

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

SENATOR MONTGOMERY: And 25 an hour for paralegals.

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

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

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

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

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

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

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

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

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

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

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

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

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

that's not the way it should be.

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

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

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

organization that would have an agreement.

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

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

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

SENATOR MONTGOMERY: O.K. Thank you.

Mr. President, on the bill.

ACTING PRESIDENT MARCELLINO: Senator Montgomery, on the bill.

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT MARCELLINO: Senator Volker.

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

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

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

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

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

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

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

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

ACTING PRESIDENT MARCELLINO: Senator Abate.

SENATOR ABATE: Yes, Mr. President. Before you is a third amendment, Senate Number 7533. I waive the reading of that amendment.

ACTING PRESIDENT MARCELLINO: Reading is waived and the amendment is available. You may speak on the amendment.

SENATOR ABATE: Yes, this amendment applies the same kind of caps and limits not just on capital cases, but also all

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

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

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

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

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

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

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

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

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

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

(Response of "Aye.")

SENATOR PATERSON: Party vote in the affirmative.

ACTING PRESIDENT MARCELLINO: Party vote called for. Read the results, please. Call the roll. I'm sorry.

(The Secretary called the roll.)

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

ACTING PRESIDENT MARCELLINO: The amendment is defeated.

Senator Paterson, why do you rise?

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

ACTING PRESIDENT MARCELLINO: The Senator yields, Senator Paterson.

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

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

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

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

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

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

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

SENATOR PATERSON: Thank you,

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

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

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

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

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

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

Part of the problem is that

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

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

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

Madam President, on the bill.

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

SENATOR PATERSON: I'm sorry

about that, Mr. President.

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

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

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

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

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

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

We think this is a very serious

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

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

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

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

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Dollinger.

SENATOR DOLLINGER: On the bill, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Thank you, Mr. President.

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

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

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

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

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

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

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

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

would end up with a guilty verdict.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 30th day.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Senator Montgomery, to explain your vote.

SENATOR MONTGOMERY: Yes, Mr. President, I would like to explain my vote.

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

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

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

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

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

So the whole issue of saving

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

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

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

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

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

SENATOR MONTGOMERY: Yes, I am.

SENATOR SKELOS: Two minutes and counting.

ACTING PRESIDENT MARCELLINO: Announce the results, please.

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

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Hoffmann.

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

ACTING PRESIDENT MARCELLINO: With unanimous consent, so ordered.

Senator Skelos.

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

ACTING PRESIDENT MARCELLINO: Secretary will read Calendar Number 1210.

SENATOR SKELOS: Please recognize Senator Johnson.

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

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

The Secretary will read.

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

SENATOR DOLLINGER: Can we have an explanation, please.

SENATOR SKELOS: Lay it aside

for the day.

ACTING PRESIDENT MARCELLINO: Lay the bill aside for the day, please.

Senator Skelos.

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

ACTING PRESIDENT MARCELLINO: There will be an immediate meeting of the Rules Committee in the Majority Conference Room, immediate meeting of the Rules Committee in the Majority Conference Room.

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

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

SENATOR DOLLINGER: Explanation.

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

ACTING PRESIDENT MARCELLINO:

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

SENATOR SKELOS: Please call up Calendar Number 1211.

ACTING PRESIDENT MARCELLINO: 1211. Secretary will read Calendar Number 1211.

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

SENATOR PATERSON: Explanation.

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

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

possibly to the victims of the crime which was committed.

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

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

Any other questions?

ACTING PRESIDENT MARCELLINO: Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, this is a piece of legislation that

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

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

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

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

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

This is a suggestion that we

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

ACTRING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MARCELLINO: The bill is passed.

Secretary will read.

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

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO:

Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO:

The bill is passed.

That completes the controversial calendar, Senator.

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

ACTING PRESIDENT MARCELLINO:

Without exception -- without objection.

SENATOR DOLLINGER: Thank you.

ACTING PRESIDENT MARCELLINO:

Senator Larkin.

SENATOR LARKIN: May we return to motions and resolutions.

ACTING PRESIDENT MARCELLINO:

Senator Meier.

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

desk.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

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

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

ACTING PRESIDENT MARCELLINO: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

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

ACTING PRESIDENT MARCELLINO: The substitutions are ordered.

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

ACTING PRESIDENT MARCELLINO:

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

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

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

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

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

ACTING PRESIDENT MARCELLINO:

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

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

ACTING PRESIDENT MARCELLINO: The amendments are accepted.

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

ACTING PRESIDENT MARCELLINO: So ordered.

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

ACTING PRESIDENT MARCELLINO: The Secretary will read.

Senator, repeat that again.

SENATOR MEIER: 7302.

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

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

ACTING PRESIDENT MARCELLINO: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

SENATOR MEIER: I now offer the following amendments.

ACTING PRESIDENT MARCELLINO: The amendments are accepted.

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

ACTING PRESIDENT MARCELLINO: The Secretary will read.

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

SENATOR MEIER: Mr. President,

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

ACTING PRESIDENT MARCELLINO: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

SENATOR MEIER: I now offer the following amendments.

ACTING PRESIDENT MARCELLINO: The amendments are received.

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

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

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

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

ACTING PRESIDENT MARCELLINO: Without objection, I think.

Senator Larkin.

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

ACTING PRESIDENT MARCELLINO: The Senate will stand at ease awaiting the report of the Rules Committee.

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

ACTING PRESIDENT MARCELLINO: Senator Larkin, may we return to motions, please.

SENATOR LARKIN: Motions and resolutions.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

Senator Balboni.

SENATOR BALBONI: Thank you, Mr. President.

I would like to offer the following motions:

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

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

ACTING PRESIDENT MARCELLINO: The amendments are received.

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

ACTING PRESIDENT MARCELLINO: Read the -

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

ACTING PRESIDENT MARCELLINO: Senator Balboni.

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

ACTING PRESIDENT MARCELLINO: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 58.

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

ACTING PRESIDENT MARCELLINO: The amendments are received.

SENATOR BALBONI: Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Balboni.

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

ACTING PRESIDENT MARCELLINO: Senator Santiago.

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

ACTING PRESIDENT MARCELLINO: With unanimous consent, so ordered.

SENATOR SANTIAGO: Thank you.

SENATOR LARKIN: May we now

return to reports of standing committees, Mr. President.

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

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

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

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

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

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

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

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

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

4462, by Senator Rath, an act

to amend the Executive Law;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

All bills directly for third reading.

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

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The report is accepted.

Senator Larkin.

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

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

SENATOR LARKIN: I hope you swept it.

ACTING PRESIDENT MARCELLINO:

We did.

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

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

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