ALBANY, NEW YORK

December 18, 1998

12:42 A.M.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: The Senate will come to order. Ask all the members and everybody to please rise and join with me and we'll have the Pledge of Allegiance to the Flag.

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

In the absence of clergy, may we bow our heads in a moment of silence.

(A moment of silence was observed.)

Reading of the Journal.

THE SECRETARY: In Senate, Thursday, December 17th. The Senate met pursuant to adjournment. The Journal of Wednesday, December 16th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT KUHL: Hearing no objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing

committees. Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bills:

Senate Print 7879, by Senator Kuhl, an act to amend the Agriculture and Markets Law;

7880, by the Senate Committee on Rules, an act to amend the Legislative Law; and

Senate Print 7881, by the Senate Committee on Rules, an act to amend the Education Law.

All bills ordered direct for third reading.

SENATOR BRUNO: Move to accept the report of the Rules Committee.

ACTING PRESIDENT KUHL: Motion to accept the report of the Rules Committee. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

The Rules report is accepted. Bills are reported to third reading.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time call up Senate 1686.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 1686, Senate Print Number 7880.

THE SECRETARY: Calendar Number 1686, by the Senate Committee on Rules, Senate Print 7880, an act to amend the Legislative Law, relating to the payment of compensation and allowances.

SENATOR BRUNO: Is there a message at the desk?

ACTING PRESIDENT KUHL: There is.

SENATOR BRUNO: Move to accept the message.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity on Calendar Number 1680. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted. The bill is before the house. Secretary will read

the last section.

THE SECRETARY: Section 4. This act shall take effect on the same date as a chapter of the laws of 1988.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: The Chair recognizes Senator Leichter, to explain his vote.

SENATOR LEICHTER: No, no, I want an explanation.

ACTING PRESIDENT KUHL: Roll call is withdrawn.

SENATOR LEICHTER: Mr. President, I've served in the Legislature almost 30 years, and I think back to the many Rules bills that I've seen over those 30 years, quite a few in that span of time, but this bill would certainly make the list of the ten worst.

It's hard to believe that this Legislature would pass a bill that, in effect, would give a sledgehammer to the Governor to

force the Legislature to enact a budget that the Legislature may think is not in the interests of the people of the state of New York and to do it by saying, You will not be paid. Your salary will be deferred unless you agree to the Governor's budget.

And why didn't he find this bill before? Would you think that for two days he should pander a little more about this whole issue in question why a budget is late and what should be done about it. Frankly it started with a previous governor who came out one year that the Legislature should not be paid because the budget is late. Sheer pandering to the public, and I think that the public understands and appreciates as they will if this bill should be held constitu tional and is ever put into effect and is workable, that their interests are not being protected because they've sent us up here to protect their interest, to do what they think is right, and it may well be that what is right as far as the public is concerned, as far as our constituents are concerned -

SENATOR BRUNO: Mr. President.

Will Senator Leichter stand for a question?

ACTING PRESIDENT KUHL: Senator Leichter, will you yield to Senator Bruno?

SENATOR LEICHTER: Yes, I would yield to you, and with delight.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR BRUNO: Senator, thank you. Thank you. I just wonder -

SENATOR LEICHTER: Yeah.

SENATOR BRUNO: -- if you are clear that this bill indicates that only the Legislature has to pass a budget and send it to the Governor. We don't have to pass the Governor's budget. He doesn't have to agree that this is a budget. All we have to do is pass it and send it to the Governor as we have done for the last 200 years in this state, and then it further states that the Comptroller would deem or determine that we have done our work, and that is all that this bill states and all of us fully intend to do a budget before April 1st, and we will have met the requirements of this bill.

SENATOR LEICHTER: Senator

Bruno, you're absolutely correct, but I believe that the guidelines, the parameters of the whole budget debate, are, of course, set by the budget that the Governor proposes, by his Article 7 bills. It's also that when we find ourselves in a situation, as we have for ever since 1974 where we have a split Legislature and the Governor is of the party of one of the houses, that it then becomes extremely difficult to resolve disputes, so I think that to say, Well, all the Legislature has to do is to come up with their own budget and pass it and that will satisfy the -- the requirements of this bill, they have to consider what the realities of the situation are.

You are giving a sledgehammer to the Governor, and what I can't understand is why we would demean this institution, why we would diminish this institution. I'm getting up and speaking on this because I love this institution. I really do, and I believe strongly in it, and I don't think that we should do anything that diminishes our responsibility vis-a-vis the Governor. I

don't want to diminish his responsibility either. But we are a co-equal branch of government, and this bill doesn't say that if a budget isn't passed that the Governor's salary is going to be deferred or that the Governor still isn't free to go out and make speeches out of state and make money.

The fact is that this is a club to make the Legislature act on the budget when it may really not be in the interest. There may be differences that need to be resolved. We all know that we have a very short window within which we have to pass a budget. We have to do it by April 1. I certainly haven't been proud of what has happened in the past few years, but I don't -- I can't say, Well, it was the fault of the Legislature. It wasn't the fault of the Legislature. There were honest differences between the two houses. There were differences between one house and the Governor. There were differences between the two houses and the Governor. It's part of the democratic process of how to work this out, and I don't think that you can resolve it by this sort of an

artificial mechanism.

There are -- the other reason that we see this bill before us at this particular time and, you know, to be doing this sort of legislation at this hour under this pressure is, of course, because of the pay increase bill. Of course, we gave, in this particular instance -- the way that we did the pay increase, you gave the Governor a gun and he's been able to use it to get legislation out of the two houses that, frankly, I don't think ever should see the light of day, and I'm thinking particularly of the charter bill -- charter school bill which comes next, but I think this bill also, so I think what you're doing is just putting yourselves in an inferior position as against the Governor.

It's a bill that really shouldn't be before us and no pay increase, to my mind, is worth our doing something which erodes the authority, the responsibility of this Legislature.

ACTING PRESIDENT KUHL:

Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect on the same date as a chapter of the laws of 1998.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives. Keep your hands up if you're voting in the negative.

Announce the results.

THE SECRETARY: Ayes 47, nays 10; those recorded in the negative are Senators Connor, Gonzalez, Leichter, Markowitz, Montgomery, Paterson, Santiago, Seabrook, Smith and Waldon.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 1666.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 1666, Senate print 7879.

THE SECRETARY: Calendar Number 1666, by Senator Kuhl, Senate Print 7879, an act to amend the Agriculture and Markets Law, in relation to enacting the Northeast Interstate Dairy Compact.

SENATOR BRUNO: Is there a message at the desk?

ACTING PRESIDENT KUHL: There is.

SENATOR BRUNO: Move to accept the message.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity on Calendar Number 1666. All those in favor say aye.

(Response of "Aye.")

Opposed nay.

SENATOR DOLLINGER: No.

SENATOR MENDEZ: No.

ACTING PRESIDENT KUHL: Message is accepted. Bill is before the house.

ACTING PRESIDENT NOZZOLIO: An explanation has been asked for.

Senator Kuhl.

SENATOR KUHL: Senator

Dollinger, this is what is referred to as the dairy compact bill. It's a bill that's been before this house earlier this year. There is one slight modification. An amendment has been written into the bill which would provide for an additional section of the Agriculture and Markets Law in the state of New York that essentially provides that, if the price that were established -- let me put this in the right way -- if the price that were established by the New Jersey-New York Federal Order price were less than what the dairy compact price would be, then the contingent that represents the state of New York would be directed to vote no for raising the price higher than that price.

That's the only amendment to the provision. Now, given today's situation, currently as I understand it, the federal milk marketing order pricing is around $19 and, I think, 24 cents. The compact price is something like $16.84 per hundredweight, and so if the federal order price is higher than the compact price, there's no indication that the compact price is going to go any higher

and this is a provision that is meant to try to protect the consumer in the state from paying an exorbitant price for the milk.

SENATOR DOLLINGER: Through you, Mr. President, if I could, just for a question -

ACTING PRESIDENT NOZZOLIO: Senator Dollinger, why do you rise?

SENATOR DOLLINGER: -- if I could for clarification. If Senator Kuhl would yield to a question?

ACTING PRESIDENT NOZZOLIO: Senator Kuhl, will you yield to Senator Dollinger?

SENATOR KUHL: I'd be happy to.

ACTING PRESIDENT NOZZOLIO: Senator yields.

SENATOR DOLLINGER: Does the amendment that was -- that was inserted this time around, does it provide the New York State delegation must vote no, or does it require New York State to withdraw from the compact?

SENATOR KUHL: As I think I

indicated -- I thought I answered that when I explained the bill -- it's just a no vote.

SENATOR DOLLINGER: Again through you, Mr. President, if Senator Kuhl will yield.

ACTING PRESIDENT NOZZOLIO: Senator Dollinger. Senator Kuhl, do you continue to yield?

SENATOR KUHL: Yes.

SENATOR DOLLINGER: So if the New York delegation votes no, the price could still go up in New York State, correct, by virtue of the compact?

SENATOR KUHL: No, it's not. It's a unanimous vote for the price to go up.

SENATOR DOLLINGER: So if New York votes against it, the price doesn't go up at all.

SENATOR KUHL: That's correct.

SENATOR DOLLINGER: Just on the bill, briefly, Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I'm aware of the time and perhaps the minimal patience

of some of my colleagues. I think it's unfortunate that perhaps the state Legislature on all three of these bills may have given away a portion of its soul for, frankly, something we've all had an interest in, a pay raise, and I find it astounding that on this week before Christmas, literally seven days before Christmas, we're doing a dairy compact, we're doing charter schools and we're doing bud...quote, a budget reform bill.

On this bill, Mr. President, I made my comments; I'm drinking my milk, Senator Kuhl, trying to contribute to increased consumption of milk, which is what's needed if we're going to keep the price where it should be.

This is, in my judgment, the worst thing we could ever do. We made about a 6- or $7 billion mistake 10 or 15 years ago. I wasn't here. We set a price on the commodity of electricity. We've paid for it since then. Our consumers have paid billions more; it's been a disaster.

Setting the price, tinkering with price, frankly, is something they used to

do in those countries they called Communist. We shouldn't be doing it in a free market system like this. It really is -- I understand the need and the interest in protecting small farms, but the way to protect is not to freeze prices and have the state of New York or, for that matter, states working together in the form of a cartel set a price.

It's a horrible idea. It's an un-American idea. We shouldn't be doing it.

ACTING PRESIDENT NOZZOLIO: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President.

I'm acutely aware of some of the information that some of my colleagues in the City, in fact all of us have received, but particularly my colleagues in the City, over the last few months that we have debated the dairy compact in and out of this chamber. There has been an incredible amount of propa ganda put forth, and upon close examination, most of the anti-compact propaganda comes from one principal source. It's an organization headquartered in Washington called the

International Dairy Foods Association. This is the organization of milk dealers. These are the people who make the profit at the middle; whether the market is up or down, they manage to protect their interest in the middle.

Unfortunately, they went too far in their anti-compact propaganda because they attacked dairy farmers. They attacked dairy farmers in a way that disgraces and embarrasses those of us in the Legislature and gives a bad name to the art, and it is an art, of lobbying, by labeling farmers as "milkionaires", they showed their abysmal lack of respect for those people who till the land, and who live in upstate New York et al, by preying upon the fears that people have in New York City that an essential commodity would go sky high. Without knowing what any of the facts were, they successfully stalled this measure over a period of more than a year; but I'm pleased today that we finally have a piece of legislation that addresses even the worst kind of fears from people who represent constituents in New York City.

If it is not possible to explain to your constituents that farmers who may own a hundred acres of land or more can still be living at or near the poverty level when the price is down at the farm gate as many of my constituents are, you can at least tell your constituents in the City who live in housing where they pay rent and sometimes an astronomical amount of rent and never dream of owning their own land, that under the Northeast Dairy Compact, the price of milk to the consumers will never go higher relatively speaking than it is today.

There are safeguards in this bill that ensure that at no time would they be forced to pay more than they pay today relative to their income and relative to inflation. This is the figure for milk that we will live with for years, for generations to come as long as there is a dairy compact in effect, and there is time -- this is the time for a dairy compact because this is the time that the entire federal market order system is to be revamped. It was designed at a time in this country when we were coming through the

Depression, when there was a need to establish a price for milk to ensure that farmers would even remain in business.

It was well-intentioned at the time, but this country has moved past that and I have to give credit where due. Some of you remember our colleague here in the Senate, Senator John McHugh, who chaired the Dairy Commission a number of years ago. It was under Senator McHugh's leadership that the dairy compact was created. The original legislation to create the Northeast Dairy Compact was developed jointly between the state of New York and the state of Vermont in the late 1980s, and a very capable legislator from Vermont by the name of Bob Starr worked with Senator McHugh and his staff. Our Dairy Commission was led at that time by Eric Rasmussen, who is now the market administrator for Federal Order I headquartered in Boston.

All of these individuals had a vision at that time that there was going to be a point in the future in which we would have a federal pricing mechanism that allows all of the parties to be at the table, the milk

dealers, the retail food industry, government, the farmers and, of course, the consumers.

That is the work of the dairy compact. It has been in effect for one year in New England, and the price of milk in New England is stable. In fact, it was less a year after it went into effect than it had been a year before.

Clearly, it is to the benefit of consumers to have a long-term stable price for milk. It is in the best interest of farmers for this state to have knowledge that the consumers can afford to buy milk long into the future, and it is in the best interest of our state to have a dairy economy that is healthy. This measure addresses all of those concerns.

So I would urge all of my colleagues who have expressed their concerns in the past, and understandably expressed their concerns based on the information that they were given, often totally erroneous, often outright insulting to the intelligence of the American people and certainly outright insulting to the people who are farmers in the

state of New York.

I would urge all of my colleagues on both sides of the aisle, urban, rural or suburban, you can in clear conscience support the Northeast Dairy Compact. It is good for everyone in the state of New York.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Wright.

SENATOR WRIGHT: Thank you, Mr. President.

I don't intend to reiterate the virtues of this bill. I think they were well recognized by this house earlier when we passed the first version of the dairy compact with bipartisan upstate/downstate support.

I simply want to point out that we began in the North Country, the dairy farmers began 1998 with probably the worst natural disaster that they had encountered in their history and I think it's important that we recognize the commitment of Senator Bruno and the commitment of Senator Kuhl that they have persevered throughout the 12 months to see that when we end 1998 we're ending it with

legislation that will enact the dairy compact and address the economic concerns of those same dairy farmers who struggled so desperately in the beginning of this year.

So I join my colleagues in supporting this legislation and encouraging all the members of the Senate to do likewise so that we can maintain a strong dairy industry in this state.

Thank you.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Gold, why do you rise?

SENATOR GOLD: Yes, Mr. President. May I ask unanimous consent to be voted in the negative on Calendar 1686 which I believe is the bill we just concluded.

ACTING PRESIDENT NOZZOLIO: Without objection.

Returning to the calendar, read the last section.

Senator Abate.

SENATOR ABATE: Yes, I ask for unanimous consent to be recorded in the negative on Calendar Number 1686.

ACTING PRESIDENT NOZZOLIO: Without objection.

Read the last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT NOZZOLIO: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1666 are Senators Breslin, Connor, Dollinger, Gentile, Gold, Gonzalez, Kruger, Lachman, Leichter, Markowitz, Mendez, Nanula, Onorato, Oppenheimer, Paterson, Rosado, Santiago, Seabrook, also Senator Goodman. Ayes 40, nays 19.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number

1687.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 1687.

THE SECRETARY: Calendar Number 1687, by the Senate Committee on Rules, Senate Print 7881, an act to amend the Education Law, in relation to establishing a charter school program.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity on Calendar Number 1687 which is at the desk. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

The message is accepted. The bill is before the house.

Senator Cook.

SENATOR COOK: Mr. President, I apologize for taking my colleagues' time at this hour of the evening, but no one in this chamber, and particularly Senator Bruno, planned to be here this time of night, and this is just too important an issue for me not to have something to say.

I left this chamber a few weeks

ago amid good cheer, handshakes and hugs, and thought that that would be the atmosphere in which I would leave the Legislature, but unfortunately, tonight we have before us an issue on which I feel compelled to speak, because until December 31st, I still represent the 40th District and have a responsibility to the people who I represent who elected me.

I wonder how many members of this chamber are aware that in voting for this bill we may be actually mandating on some of our constituents a property tax increase of perhaps ten percent? This bill gives to school districts absolutely no say over the private school which would be established in their district for which they would have to make a payment per student equal to the amount that they are spending on all the public school students in their districts.

At the same time, the school district has very little that it can do to actually save money. If ten percent of the students are taken out of the school and put into a charter school, that school district is simply going to have to add the cost of that

charter school to the tax bill that they send to the people in their district. There's very little probability that a school is going to be able to offset by savings these costs that they're going to have to pay over to the private school.

Nothing is going to change their fixed costs. Nothing is going to cut their maintenance costs on the building or the cost of heating the building and maintaining -- paying the insurance on the building. Very little impact will be felt in support areas such as the library or the cafeteria or the gymnasium by removing two or three children from each classroom is certainly not going to eliminate the need for any teachers or any space, and indeed you will be increasing the cost of transportation because the public district is going to have to provide transportation for students to this private school.

What kind of public accountability is this? If your town supervisor were to simply mail a check for ten percent of his budget to some private operator

over whom he has no control or oversight, not only would he be widely criticized but he would probably end up in jail for misappropriation of public funds; and yet in this bill we mandate that public boards of education do exactly that.

And what are the presumed benefits? Do we want to bring to the school the talents of highly qualified professionals to teach certain subjects? The public school system can already do that with no reason it can't be done. Do we want to provide schools with specialized programs and innovative programs and personnel? I was in Manhattan two weeks ago. I walked past two public schools who already do that. Last year I visited a school in Senator Markowitz' district and saw such a program in progress. There are magnet schools in many of our cities. Many of our school districts are running innovative programs.

The difference is they are funded with public money but they also are under the oversight of publicly elected boards of education who are responsible to the voters

in their district.

Is this a means of letting parents and professionals in a given area run a school? Well, Mr. President, there are 60 pretty intelligent people in this room, dedicated people, I'm sure, but I would hate to have this 60 people constitute the faculty of any school that I want my kids to go to.

The Regents are talking about certifying and increasing responsibility for certifying teachers. There's a general acceptance of the -- of the principle that the way we're going to improve education, we're going to improve learning, is to improve the quality of teaching, and yet we're setting up a school system in which we don't require teachers to be certified, even though in the public school system we're increasing the certification requirements for every student -- every teacher who is going to walk into the classroom.

Teaching is not just a matter of assigning home work and checking attendance. Teaching is a process of mentoring, of encouraging and counseling.

It's a profession that requires skill and knowledge. It's not something that can be accomplished by someone who happens to have a Wednesday afternoon with nothing better to do than volunteer to take over a class in a charter school; so to pass this bill is as dumb as permitting teachers to remove our appendix.

So we're going to put these children into storefronts and unused community buildings. Who are we kidding? Who in this room wants to waive the building codes and the fire regulations so that some private group can collect taxpayer dollars to run a charter school? Is this charter school going to be any less subject to the laws of handicapped access or fire drills or air quality than the public schools? If not, then how are they going to make any great savings on their facilities and, if so, do you really want to vote to reduce the quality of the surroundings for students who are attending taxpayer-financed schools in this state?

So we're going to save money by not having expensive equipment in the public

schools. We're going to do away with computers and musical instruments and libraries and laboratories, and end up giving students better education. Tell me that we aren't so naive. Also we're going to save money by reducing mandates. What mandates other than those that I have mentioned are we enforcing in the public schools? I'll tell you what mandates. Education standards. After years of trying to upgrade the school curriculum and ensure that a high school diploma in this state is evidence of real academic performance, we're saying it really doesn't matter.

And what about students with special educational needs? The program provides that charter schools have to provide for those special educational needs of students providing they have the qualifications to do so, but if they don't have the capability of providing services for that student with special needs, those students go back to the public schools to pick up that cost and that responsibility.

And what about students who

have behavioral problems? There's nothing included in the charter school that says they have to keep these kids in the school. They simply expel them. They become the responsibility of the public school. With all this brave language about inclusion, there's no inclusion in the charter school when it can exclude some students who don't fit their profile.

Charter schools in many states have become a clever means for shifting public schools into segregated schools and maybe not schools segregated by race, but there are schools that will be designated to siphon off an elite of students from the public school system, and this leads to the public schools having the children who have the greatest challenges for learning, and yet this bill mandates that dollar for dollar the school district has to fund the elite private school at the same per student level as the public school.

Mr. President, I voted for the pay raise. I voted for that bill because I thought it was justified by the facts, that it

was a justifiable and honorable thing to do, but I do not think, Mr. President, that it is a justifiable and honorable thing to pass this bill in order to get that pay raise signed into law.

Thank you.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the bill?

Senator Oppenheimer.

SENATOR OPPENHEIMER: Well, I certainly have to agree with what Senator Cook said.

I'd like to make a few other observations. One is that there are lots of viable programs right now that are indeed alternative schools within high schools and within other lower grade schools. For instance, in my high school we've had for the last 25 to 30 years, had two alternative schools. One is the potential drop-out students, and yet we're managing to hold onto these kids through these special programs within our high school. We permit them to work part of the day and go to school part of the day, and we have a lower teacher ratio to

the student, and it has been very successful.

You have a very low drop-out rate because of this program in that school district. We also have another program, Senator, involving children one to four years and that is where the autistic children are chosen that are interested in dance and arts and music, and we have held onto these students through a variety of programs. So I think that this can be done within the context of what now exists in our high schools and our lower grade schools.

Also within my Senate District we have at least two or three school systems that are all magnet, so that a child may go to the school that is going to be most appropriate for his skills and for his interest or her interest.

A point, I think, that is made is that about teaching. To teach is more than just to do well or wanting to do the best that you can do to have children learn. Teaching requires study. I have watched my daughter just complete her Master's. I can tell you it was a very complex undertaking at a very fine

school in New York, Bank Street.

I think it just requires a lot of pedagogical skills which, with the best of persons who want to help children, cannot just walk into a charter school and say, I really want to help, because they're not going to help that child.

I think the most important thing for me right now is that we have reached a juncture which I am so pleased with and in our stated policy we have in our state, we have done away with standards for all students in New York State and this isn't going to be easy. It's going to require money. It's going to require every dollar that might be going to these charter schools because we are trying to lift all children. We recognize that our school system is not doing the job it must do to provide children for the work force of the next century.

So what are we doing? We are trying our hardest through after school programs, through summer programs, through a variety of programs to lift all children in our high school systems, and I believe that

charter schools are really a diversionary attractor. I think it would attract the money that should be going to lift all children and, by the way, everybody is on board on these higher standards. Teachers are on board. Administration is on board. Regents are on board. Our super... what is it? -- the head of our Department of Education is on board. Everybody is on, trying their hardest to meet these new standards.

This is no time to try something that can only benefit a very small number of our children and that is going to divert public funds, and I think it's a shame that something like this is put up to hold hostage our pay raise bill. The fact is this is an important issue, and this issue is worthy of public comment, is worthy of public hearings around the state. This is not something that we should be trading on.

I'll be voting no.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Mr. President, I just want to say how much I

appreciate Senator Cook and his laying out some of the really fundamental flaws with this approach and, furthermore, I think that it's very unfortunate that we have been presented with legislation at this hour, 1:25 or 1:00 o'clock perhaps in the morning -- 1:25, to - which will -- which has the potential of substantially changing the way that we fund public education in our state, and it has implications for many decades as it relates to how we fund and support public education.

Let me say that for New York City, I know that there is a tremendous revolution going on. That revolution is related to the change in school governance, number one, and number two, the fact that the Regents have come up with changes in academic standards for all of the schools, specifically for high school graduation.

There have been -- also been changes in requirements for teacher certification, and there are also changes in standards for teacher institutions, teacher training institutions, and so there is essentially a revolution that has come into

play and that has really trickled down to what's happening in the schools, and so people really are trying desperately to improve the approach to education for children universally, certainly in the city of New York. In fact, we're trying desperately to bring our schools up to at least the same level of some of the upstate school districts.

But what do we need to do that in the city, universally for all students? We need school facilities. We need new meal facilities so that we can, in fact, accomplish a major goal which is reducing drop-outs in the city. We need a substantial ability, increase in our ability to provide support to teachers so that they can be trained to meet the new standard and support it, in how they approach curriculum and learning with children.

We need to have a system that we have in place supported in a way that we can have positive outcomes for all children. So for us to now be working on creating another mid-level system that is going to, in

fact, take very stressed dollars out of the public schools to create something that is very mean, that is very new, we don't know if it will work or not and, in fact, some of the information that we're receiving now from other states causes us to question whether or not this is an effective way to approach public education, but nonetheless we're doing this at the expense and despite the fact that we need to be putting more resources to make sure that the system that we have would serve most -- the majority of the children who attend school in the entire state. We're taking money out of that system to put into this.

I am going to oppose this bill, although I think it's much improved from what we were presented with a few months ago and certainly even a couple of weeks ago, but I think it's an issue that is of such importance that we cannot afford to do it and we should not be doing it hastily and without a lot more research, a lot more time, a lot more discussion and consideration of all of the problems that we might be creating while at

the same time removing resources from the public school system that we have already.

So I'm going to vote against this bill, Mr. President, and I certainly hope that the leaders and the Governor will come - will rethink this and consider the possibility of delaying any decision on this because it's so important to so many children for generations.

ACTING PRESIDENT KUHL: Senator Dollinger, do you wish to speak on the bill?

SENATOR DOLLINGER: Mr. President, I didn't say the 1:00 o'clock.

Now, would the Senator, chairman of the Education Committee, yield to just a couple quick questions, Mr. President?

ACTING PRESIDENT KUHL: Senator Cook?

SENATOR COOK: I'll yield, but I'm not going to have very many answers, I'm afraid.

SENATOR DOLLINGER: Through you, Mr. President, we in this chamber passed a law that said every school in the state of New York must teach about the Holocaust.

Would a charter school, under this bill, have to teach about the Holocaust?

SENATOR COOK: Mr. President, it's my understanding that basically the charter school is not mandated to teach anything other than what its charter requires it to teach, and it's my understanding that the -- that that would be prescribed in the charter that's issued to the particular school.

SENATOR DOLLINGER: So if there was nothing in the charter about the Holocaust, it would not have to be taught?

SENATOR COOK: That's my understanding. Is that correct?

SENATOR DOLLINGER: Mr. President, again through you, we also passed a bill that said the Irish potato famine must be taught.

SENATOR COOK: Same answer.

SENATOR DOLLINGER: Senator Maltese -- Senator Cook, Senator Maltese carries a bill that carries a requirement on patriotism and the American flag. Same answer?

SENATOR COOK: Same answer.

SENATOR DOLLINGER: We passed the law, but the charter schools don't have to do it.

Senator Cook, if we pass a law that said abstinence -- that abstinence only, abstinence only was the only type of sex education that could be taught in the schools, if we said that, the charter school could teach anything they wanted to about sex education, is that correct? So they wouldn't be governed; we have would lose our ability to control the curriculum in the schools that are funded by public dollars in this state, is that correct?

Again through you, Mr. President.

ACTING PRESIDENT KUHL: Senator Cook?

SENATOR DOLLINGER: We, by state Education Law, require that fire drills be performed in schools every year; isn't that correct?

SENATOR COOK: (Nods head).

SENATOR DOLLINGER: But a

charter school wouldn't have to abide by that, would they?

SENATOR COOK: Mr. President, I understand that health and safety rules are not -- are not excluded among the mandates, so I believe that probably fire drills are something they would have to do. In fact, Mr. President, if I may volunteer, I believe that the building would have to comply with all the existing fire and building codes that are - that exist, which leads me to the point that nobody is going to take an old A & P store and suddenly run this very inexpensive school system because you're going to have to build a structure that complies with all the existing standards the public schools have to meet, so it's really the other way around.

SENATOR DOLLINGER: O.K. Again through you, Mr. President.

ACTING PRESIDENT KUHL: Are you asking Senator Cook to continue to yield?

SENATOR DOLLINGER: If he would, Mr. President.

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

yields.

SENATOR DOLLINGER: Through you, Mr. President. Senator Cook, we have rules about truancy passed in this Legislature which apply to public schools. Would they apply to charter schools?

SENATOR COOK: Mr. President, truancy is a law that requires the attendance of students at schools, so that applies. The difference, however, is that we have also rules when a student -- when the school suspends a student or dismisses a student that there's a requirement that the public school continue the educational program for the student.

The charter school, on the other hand, if they dismiss a student, they don't have to do that. The student goes back to the public school and they have to provide the program for them.

SENATOR DOLLINGER: One final question for Senator Cook.

ACTING PRESIDENT KUHL: Senator Cook, you continue to yield?

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: Senator, perhaps you can refresh my recollection about the taxpayer bill of rights that we had put into the public schools. Didn't that say that if we raised the tax rate higher than the CPI or four percent, that you required a super majority to approve your budget; is that correct? I'm trying to remember.

SENATOR COOK: No, Mr. President. I believe that the provision to be put in law was if the overall district budget increased -- I'm sorry. If the voters of the school district twice defeated a proposed school budget, that then the board of education would have -- would be empowered, in fact, be required to impose a budget that would increase no more than either four percent or the CPI minus -- plus 20 percent.

SENATOR DOLLINGER: Again through you, Mr. President, if I can just make sure I understand that with Senator Cook. If, as you predicted, we mandate by this action today ten percent increase in the cost of

education to local school districts, if they suddenly had to send this money to other schools for which they had no control over, and they had to increase their budget ten percent and the voters twice turned it down, what does the school district do then?

SENATOR COOK: The school district then, Mr. President, would have to reduce the amount of money that they're spending in the public school in order to stay within the spending parameters because that money that they pay to the charter school is a part of their local school budget. It's an expenditure of the local school districts that is -- it is claimed as a part of their school aid. The state pays it to the school district. It's part of -- those students continue to be counted just as they are today but there's no provision for additional money to go to that school district.

SENATOR DOLLINGER: So is it safe, again through you, Mr. President, safe to say that under the example I just used on a ten percent increase that school district would have to cut its overall school spending

by six percent, in order to comply?

SENATOR COOK: Well, Mr. President, the interesting -- the interesting thing, though, is if they cut it by six percent they would increase the amount they pay to the charter school by six percent because it's the same amount as they're spending so, yeah, but the charter school would bear some of that cost in addition.

SENATOR DOLLINGER: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Negatives please raise their hands to be counted. Please keep your hands up so that the desk can make sure you're counted.

Announce the results.

THE SECRETARY: Those recorded

in the negative on Calendar Number 1687 are Senators Abate, Breslin, Connor, Cook, Gold, Hoffmann, Kruger, Leichter, Markowitz, Montgomery, Nanula, Onorato, Oppenheimer, Paterson, Rosado, Sampson, Santiago, Seabrook, Stachowski, Fuschillo. Ayes 39, nays 20.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we now return to motions and resolutions.

ACTING PRESIDENT KUHL: We'll return to the order of motions and resolutions.

Senator Bruno.

SENATOR BRUNO: Reconsider the vote by which Resolution 4306 -

ACTING PRESIDENT KUHL: Secretary will read.

SENATOR BRUNO: -- was adopted.

THE SECRETARY: Concurrent resolution, by Senator Bruno, 4306 of the Senate and Assembly fixing the salaries of the office of Governor and Lt. Governor.

ACTING PRESIDENT KUHL: Motion is to reconsider the vote by which the resolution passed the house. The Secretary will call the roll.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: Resolution is before the house and recommitted -- or pardon me.

SENATOR BRUNO: Mr. President, can we recommit that resolution to Rules.

ACTING PRESIDENT KUHL: Resolution is recommitted to the Rules Committee.

Senator Bruno.

SENATOR BRUNO: May we now return to messages from the Assembly.

ACTING PRESIDENT KUHL: Return to messages from the Assembly. Secretary will read.

THE SECRETARY: The Assembly sends for concurrence Resolution Number 2653 of the Assembly fixing the salaries of Governor and Lieutenant Governor.

ACTING PRESIDENT KUHL:

Question is on the resolution. All in favor signify by saying aye.

SENATOR GOLD: Wait a minute. Are we voting to recommit this to Rules?

ACTING PRESIDENT KUHL: No, we are not.

SENATOR GOLD: Oh, too bad.

ACTING PRESIDENT KUHL: No, it's a resolution before the house, Senator Gold.

Call the roll.

(The Secretary called the roll.)

On the roll call, record the negatives; announce the results.

THE SECRETARY: Ayes 56, nays 3, Senators Breslin, Dollinger and Gentile -

ACTING PRESIDENT KUHL: Results.

THE SECRETARY: Also Senator Nanula. Ayes 55, nays 4.

ACTING PRESIDENT KUHL: The resolution is adopted.

Senator Bruno.

SENATOR LACK: Mr. President.

ACTING PRESIDENT KUHL: Senator Lack. Excuse me. Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time return to motions and resolutions and recognize Senator Lack, please.

ACTING PRESIDENT KUHL: Return to motions and resolutions, recognize Senator Lack.

SENATOR LACK: Mr. President, would you call up Senate Print 3963-A recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: Calendar 1638, by Senator Lack, Senate Print 3963-A, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT KUHL: Senator Lack.

SENATOR LACK: Mr. President, I now move to reconsider the vote by which this bill was passed and ask that the bill be returned to the order of third reading.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: Senator Lack.

SENATOR LACK: Now, Mr. President, that the bill has been restored to its place on the Third Reading Calendar, I'd like to offer up the following amendments.

ACTING PRESIDENT KUHL: Amendments are received.

SENATOR LACK: Mr. President, I now move to discharge the Committee on Rules from Assembly Bill Number 6986-B, and substitute it for my identical bill and ask that it have its third reading at this time.

ACTING PRESIDENT KUHL: Secretary will read. Substitution is ordered.

THE SECRETARY: By member of the Assembly Vitaliano, Assembly Print 6896-B, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2.

This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, is there any housekeeping left at the desk at this time?

ACTING PRESIDENT KUHL: Senator Bruno, there is no housekeeping at the desk.

SENATOR BRUNO: Mr. President, there being no further business to come before this Senate at this time and this hour, I move that we stand adjourned subject to the call of the Majority Leader, intervening days to be legislative days, and may I wish you a Merry Christmas and a happy, happy, happy New Year.

Thank you.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned subject to the call of the Majority Leader,

intervening days to be legislative days.

(Whereupon at 1:42 a.m., the Senate adjourned.)