NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:08 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

I ask everyone present to please rise and repeat with me the Pledge of Allegiance.

(Whereupon, the assemblage recited the Pledge of Allegiance.)

THE PRESIDENT: In the absence of the clergy, may we bow our heads in a moment of silence, please?

(Whereupon, the assemblage respected a moment of silence.)

THE PRESIDENT: The reading of the Journal.

THE SECRETARY: In Senate, Friday, January 22nd, the Senate met pursuant to adjournment. The Journal of Thursday, January 21, was read and approved. On motion, Senate adjourned.

THE PRESIDENT: Without objection, Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Holland, from the Committee on Social Services, reports:

Senate Print 16, by Senator Holland, an act to amend the Social Services Law;

17, by Senator Holland, an act to amend the Social Services Law;

18, by Senator Holland, an act to amend the Social Services Law;

20, by Senator Holland, an act to amend the Social Services Law and the Workers' Compensation Law; and

863, by Senator DeFrancisco, an act to amend the Social Services Law.

Senator Trunzo, from the Committee on Transportation, reports:

Senate Print 561, by Senator Fuschillo, an act to amend the Vehicle and Traffic Law;

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

790, by Senator Goodman, an act to

amend the Vehicle and Traffic Law.

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

908, by Senator Bruno, an act to amend the Vehicle and Traffic Law;

909, by Senator Bruno, an act to amend the Vehicle and Traffic Law;

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

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

1020, by Senator Skelos, an act to amend the Vehicle and Traffic Law; and

1076, by Senator Trunzo, an act to amend the Vehicle and Traffic Law.

Senator Seward, from the Committee on Insurance, reports:

Senate Print 858, by Senator Balboni, an act to amend the Insurance Law; and

Senate Print 1365, by Senator Seward, an act to amend the Insurance Law and the Banking Law.

Senator Farley, from the Committee

on Banks, reports:

Senate Print 1164, by Senator Farley, an act to amend the Banking Law and others;

1165, by Senator Farley, an act to amend the Banking Law and the Criminal Procedure Law; and

1222, by Senator Farley, an act to amend the Banking Law.

Senator Bonacic, from the Committee on Housing, Construction and Community Development, reports:

Senate Print 94, by Senator Alesi, an act to amend the Real Property Law; and

Senate Print 848, by Senator Holland, an act to amend the Executive Law.

All bills ordered direct to third reading.

THE PRESIDENT: Without objection, all bills directed to third reading.

Report of select committees.

Communications and reports from State officers.

Motions and resolutions.

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

On behalf of Senator Kruger, I'd like to move the following bill be discharged from their respective committees and recommitted with instructions to strike the enacting clause. That's Senate 515.

THE PRESIDENT: So ordered, Senator.

Senator Kuhl.

SENATOR KUHL: Thank you, Madam President.

I understand we're waiting for a privileged resolution from Senator Mendez, that hasn't arrived, and I haven't -- I have one that's being prepared that hasn't arrived yet either. But there are some young individuals in the balcony that I would like the members of the chamber to recognize.

There is an association in the State of New York called the New York State Association of Continuing and Community Education. And this organization is made up of about 400 member groups made of school

district and BOCES and other not-for-profit organizations. Well, every year, they pick from their students, who are being educated, 12 people representing various areas across the state, and these are -- individuals are certainly very exemplary students who signify the important things that are being done in the educational arena, but they're picked for their specific ability to enhance their independence, their self-reliance and their self-sufficiency. As a result of their efforts, these outstanding students have established themselves as role models amongst the other students who are participating in this continuing community education.

As I said, we're very privileged today to be joined by 12 of them, and I would like to name their names, if I could, their place and the Senator who represents them.

Coming from Senator Balboni's district, there's Arely Franco from Great Neck -

THE PRESIDENT: Senator, do you wish me to make a ruling on your motion?

SENATOR KUHL: Well, I haven't

made a motion yet, your Honor.

THE PRESIDENT: All right. Well, on your application, at this time, without objection, you may proceed.

SENATOR KUHL: Thank you, Madam President.

From Senator Seward's district, Nick Gurnavage from Oneonta. And from Senator McGee's district, Pauline Hunt from Jamestown and Melinda Tunderman from Olean. From Senator Nozzolio's district, Jennifer Johnson from Farmington and Randielee Jones from Fort or Port Gibson. From Senator Wright's district, Kevin McCarthy from Ogdensburg. And from Senator Maltese's district, from Richmond Hill, Hector Perez. From Senator Spano's district, Ann Marie Scofield from Yonkers. From Senator Fuschillo's district, from Freeport, Tina Springer. From Senator Holland's district, from Spring Valley, Dehavillin White. And from Senator Trunzo's district, from East Patchogue, Roxanna Yancy.

And, Madam President, I know they're in the gallery and, if you could, I'd like you to extend the well wishes of the

Senate to them and certainly congratulate them on behalf of all the members for the outstanding achievements that they are accomplishing in their lives.

THE PRESIDENT: Certainly, Senator.

Without objection, the President hereby recognizes these students and I wish you an enjoyable day and productive visit here in Albany. Congratulations.

(Applause.)

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, what's happening right now is, unfortunately, there's been a little delay on a couple of resolutions and, normally, we don't have this procedure without resolutions, but I believe Senator Mendez's privileged resolution is here now, so I would ask if we could have it read in its entirety and moved for its immediate adoption.

THE PRESIDENT: Thank you, Senator.

The Secretary will read.

THE SECRETARY: By Senator

Mendez, a Legislative Resolution, honoring the Instituto Duartiano upon the occasion of the visit of a delegation representing its members of the New York State Capitol on January 25, 1999.

WHEREAS, It is the sense of this Legislative Body to recognize those institutions which represent the rich cultural heritage of citizens of the State of New York; and

WHEREAS, This Legislative Body is honored to welcome a delegation from the Instituto Duartiano upon the occasion of their visit to Albany on January 25, 1999; and

WHEREAS, The Instituto Duartiano is dedicated to maintaining and keeping alive the life and history of Juan Pablo Duarte, a deliberator and founder of the Dominican Republic; and

WHEREAS, This year, 1999, marks the 186th Anniversary of the birth of Juan Pablo Duarte; and

WHEREAS, The representatives of the Instituto Duartiano are visiting Albany to present a portrait of Juan Pablo Duarte to the

members of the New York State Legislature who represent the largest Dominican community in the State; and

WHEREAS, Accompanying Mr. Fernandez, President of the Institute Duartiano, is Mrs. Maldonado, founder of the Institute and Director of the Central Cultural Ballet Quisqueya, as well as members of the committee of the Instituto; now, therefore, be it

RESOLVED, That this Legislative Body pause in its deliberations to welcome the visitors of the Instituto Duartiano upon the occasion of their visit to the State Capital in Albany, New York on January 25, 1995; and be it further

RESOLVED, That copies of this Resolution, suitably engrossed, be transmitted to the visitors from the Instituto Duartiano.

THE PRESIDENT: Senator Mendez.

SENATOR MENDEZ: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR MENDEZ: I certainly appreciate the courtesy that's being extended

today to members of the -- to constituents of mine, who, from the Washington Heights community, representing very aggressive community in business activities, in education and everywhere else. But above all today, they are visiting this chamber because they are celebrating the birth of the greatest liberator in the Dominican Republic, Juan Pablo Duarte. And Mrs. Normandia Maldonado and Mr. Fernandez are, precisely, the founders of that institute. So we are most gratified that they are -- that their presence here is being acknowledged. And we appreciate it enormously.

THE PRESIDENT: Thank you, Senator.

The question is on the resolution.

All in favor, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

And I note the presence in the

gallery and I welcome you and wish you a good day and extend to you all the courtesies of the New York State Senate.

(Applause.)

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, if we could take up the non-controversial calendar at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 5, by Senator Alesi, Senate Print 88, an act to amend the Penal Law in relation to the minimum sentence upon conviction.

SENATOR MONTGOMERY: Lay it aside, please.

THE PRESIDENT: The bill will be laid aside.

THE SECRETARY: Calendar Number 8, by Senator Volker, Senate Print 110, an act to amend the Penal Law in relation to determining whether a prior conviction is a predicate felony conviction.

SENATOR MONTGOMERY: Lay it aside.

THE PRESIDENT: The bill will be laid aside.

THE SECRETARY: Calendar number 18, by Senator Larkin, Senate Print 173, an act to amend the Real Property Tax Law in relation to school districts.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2, this act shall take effect on the 1st day of January.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 21, by Senator Marcellino, Senate Print 962, an act to amend Chapter 581 of the Laws of 1998.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 33, by Senator Seward -

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The resolution is laid aside.

THE SECRETARY: Calendar Number 35, by Senator Skelos, Senate Print 907, an act to amend the General Obligations Law in relation to exoneration of certain crime victims and good samaritans.

SENATOR DOLLINGER: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 37, by Senator Volker, Senate Print 456, an act to amend the Tax Law in relation to the imposition of sales and use taxes.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4, this act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: The bill is passed.

THE SECRETARY: Those recorded in the negative on Calendar Number 37 are

Senators Dollinger, Duane and Gentile.

Ayes 53. Nays 3.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could take up the controversial calendar at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 5, by Senator Alesi, Senate Print 88, an act to amend the Penal Law in relation to the minimum sentence.

THE PRESIDENT: Senator Alesi, an explanation has been asked for.

SENATOR ALESI: Thank you, Madam President.

This simply makes a technical correction to a bill that passed with the Senators vote a couple of years ago. It applies the same sentence to those with a determinate sentence as well as those with an indeterminate sentence.

THE PRESIDENT: Call the roll.

Excuse me. Read the last section.

THE SECRETARY: Section 2, this act shall take effect the 1st day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 5 are Senators Duane and Montgomery.

Ayes 54. Nays 2.

THE PRESIDENT: Senator Duane, why do you rise?

SENATOR DUANE: Madam President, I wish to change my vote on item Number 37.

THE PRESIDENT: Before we address that, Senator, you want to address the bill that has now been voted upon and we had the vote on that bill. The bill is passed.

Senator Duane, you may now be recognized.

SENATOR DUANE: Thank you, Madam President. Now I rise to request to change my vote on item Number 37, please, from a no to a yes.

THE PRESIDENT: Without objection, your vote is changed from a no to a

yes.

SENATOR DUANE: Thank you.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 8, by Senator Volker, Senate Print 110, an act to amend the Penal Law in relation to determining whether a prior conviction is a predicate felony conviction.

SENATOR MONTGOMERY: Explanation.

THE PRESIDENT: Senator Volker, an explanation has been requested.

SENATOR VOLKER: Madam President, this, this is rather -- this is also a technical amendment, in one sense. There is already on the books a statute as regards to tolling of a predicate felony where a individual is already in jail.

What happened was that a person who was in jail escaped while in custody and was out for, I don't know, five or six years, and when he was recaptured, there was an attempt to prosecute him as a predicate felony and the judge said, although he realized the intent of the statute may have been to include this sort

of thing, that it couldn't be included.

What this bill says is, we don't increase the tolling. It's still 10 more years. But if you are in jail and if you escape from custody or whatever, totaling 10 years, the statute would be 20 years. What we're really doing is saying, if you escape, you don't benefit from the time you're out of jail when you escaped. That's basically what this statute says.

SENATOR WALDON: Madam President.

THE PRESIDENT: Senator Waldon.

SENATOR WALDON: Thank you very much, Madam President.

Would the kind Senator from the western part of New York yield to a question or two?

THE PRESIDENT: Senator, do you yield?

SENATOR VOLKER: I do yield.

SENATOR WALDON: Thank you, Madam President.

THE PRESIDENT: You may proceed.

SENATOR WALDON: Thank you very much. Thank you, Madam President.

Thank you very much, Senator Volker.

Senator, just out of curiosity, does this also include a situation where someone has been sentenced, has done time, they're now out on parole, they technically violate, exit the state and return five, 10 years later?

SENATOR VOLKER: No. It would only include actual escaping from custody. And where this is a -- this is somebody who is either in jail or should be in jail and escapes from custody. It wouldn't include parole violations, if that's what you mean.

SENATOR WALDON: One more question, Madam President -

SENATOR VOLKER: Sure.

THE PRESIDENT: Senator, do you yield?

SENATOR WALDON: -- if I may.

I assume then -

Thank you, Madam President.

I assume then, Senator, that also includes any probationary situation would not be covered by this?

SENATOR VOLKER: The reason it wouldn't is because the person has -- the reason that there's a tolling at all is that because this person, although he's been charged, the law doesn't go through with it because the person's not available. If the person is actually in jail, the law wouldn't go on and move toward, toward a, toward a - moving the charge. The same thing, of course, would be true if person escaped from custody, because they wouldn't be available. But if it's a mere violation of probation or parole, that's a whole different issue because they have actually been -- presumably, they've been arrested a second time and there wouldn't be any tolling anyways because they'd be charged with the predicate felony at that time and this statute would have nothing to do with it.

SENATOR WALDON: Thank you very much, Senator.

Thank you, Madam President.

THE PRESIDENT: Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: I rise to ask Senator Volker if he would yield to just a

question.

SENATOR VOLKER: Why, certainly.

THE PRESIDENT: Senator, you yield?

SENATOR MONTGOMERY: Okay. Thank you, Senator Volker.

THE PRESIDENT: All right. You may proceed, Senator Montgomery. Go ahead.

SENATOR MONTGOMERY: Thank you.

This bill, I'm assuming, tries to -- you say that it is aimed at a person who escapes custody. If -- does this cover a situation where the person does not necessarily commit any other crime?

SENATOR VOLKER: Oh, no. If they commit no other crime, they wouldn't be subject to the predicate felony statute. So this wouldn't cover it at all. It would only be where a crime is committed that could be considered to be used for the predicate felony; in other words, a persistent violator statute. So they would have to be in a position to be charged with a sex -- with a subsequent serious felony and the fact that they're either in jail or escaped from custody

would prevent that charge from being made. There's no other way that this statute would have anything to do with any other person.

SENATOR MONTGOMERY: And the additional -- it can be an additional 10 years or an additional five years?

SENATOR VOLKER: Well, here's the thing. Technically speaking now, you can go up to 10 years, which would be, in other words, 20 years in the tolling. That's being in prison. What we're really doing is technically adding escaped from custody to the question of being in jail. It still tolls 20 years, no matter how you, how you set it up. In other words, it can never be more than 20 years. It's got to be up to 20 years. In other words, 10 additional years tolling either for escaped from custody and/or for being in jail.

SENATOR MONTGOMERY: Thank you, Senator.

SENATOR VOLKER: You're welcome.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3, this

act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55. Nays 1.

Senator Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 21, by Senator Marcellino, Senate Print 962, an act to amend Chapter 581 of the Laws of 1998.

SENATOR DOLLINGER: Explanation.

THE PRESIDENT: Senator Marcellino, an explanation has been requested.

SENATOR MARCELLINO: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR MARCELLINO: Last year, this Legislative body, both the Senate and the Assembly, passed Chapter 581 of the Laws of 1998, which currently allows Nassau County to accept an application for real property taxation from the Plain Lawn Cemetery. The

Chapter that was passed carried with it certain incorrect references and these, this bill basically corrects those references.

SENATOR DOLLINGER: Madam President, if the sponsor will yield to a question.

THE PRESIDENT: Senator, will you yield to a question?

SENATOR MARCELLINO: Yes, I will.

SENATOR DOLLINGER: How much is the total tax break that's granted by this legislation passing and becoming law?

How much of the taxes are forgiven?

SENATOR MARCELLINO: I, frankly, do not know, Senator.

SENATOR DOLLINGER: As I understand it, this bill will affect -

Again, through you, Madam President, if the sponsor will continue to yield.

THE PRESIDENT: Senator, will you yield?

Yes. Go ahead, Senator Dollinger.

SENATOR MARCELLINO: Sure.

SENATOR DOLLINGER: As I

understand it, this is a property that was acquired in 1996. And yet this will include the '95-96 taxes, the '96 taxes and all of the '97 taxes as well?

SENATOR MARCELLINO: From my reading of the bill, Senator, you're right.

The property is a -- rather, the organization is a not-for-profit organization and they never should have been collecting taxes or paying taxes. The property is used solely as a cemetery. And this is simply making resolution and making correct that which was in error.

The technical references that I referred to before were the bill mentioned - and this was given to us by the people who are asking for the legislation -- that they put the property in the Town of Hempstead and they made reference to a certain section of the law which does not quite clearly reference cemeteries. This property is actually located in the Town of Oyster Bay and we've corrected the reference to the section of law.

SENATOR DOLLINGER: Thank you very much, Madam President. Just on the bill

briefly -

THE PRESIDENT: Senator Dollinger -

SENATOR DOLLINGER: -- I commend Senator Marcellino for his work on the bill -

THE PRESIDENT: -- on the bill.

SENATOR DOLLINGER: -- this is a sign of legislative perseverance to make sure that the information is correct, that they get the tax treatment that they're entitled to.

Two things about it, however. I voted against these bills with Senator Cook in the past because I'm one of those who continues to believe that, unless we address the problem of taxable status state for everybody in this state, what too often happens, and for some reason I know -- Senator Skelos, I believe, has carried some bills in the past that do this. We seem to have this problem crop up in Nassau County all the time and we fix it in Nassau County. And my concern is that this problem is probably cropping up -- I know it crops up in Rochester and in Monroe County, and for some reason we don't seem to get it fixed there. And I would

just suggest, there is a tradition in this House of passing these bills to deal with the tax status state. And I'm sure, Senator Marcellino, you know the complications of that, in the sense that we've established a system which says that on a specific date you're entire taxable status is determined by that date even if your house burns down the next day, you still pay all the full property value at that day. Or if it turns out that you're improperly on the rolls or off the rolls, you get that benefit for the whole taxable year.

I would just ask you and others who have sponsored bills of this type, take Senator Cook, who's no longer here, and take me off the hook, put us in a position where we can pass a bill that creates a statewide adjustable system for tax status state so that we don't have to deal with these things on a case-by-case basis, and worse, we run the potential that someone will think that Nassau County can get these problems solved and other counties in the state can't.

I applaud you for doing it,

Senator, but I'd like to think that we have a system, much as we used to do the old pension bills, when people would come up with pensions -- Senator Marchi knows -- we did hundreds of pension bills when people didn't qualify for readmission to tiers, we'd do them on a case-by-case basis. Let's do it in one big happy bill that deals with the tax status state for the entire state and we can, hopefully, solve the problem for everybody without giving the semblance that this is something that it's who you know or where you are.

THE PRESIDENT: Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR MARCELLINO: Thank you, Senator Dollinger. I thought my, this bill was relatively calm and quite and it would not elicit much. I did not say it -- I would like credit for this, that I did not say, because this bill refers to a cemetery, that people were dying for this bill. I did not say that

people are rolling over in their graves in order to get this bill. I did not say that this bill represents a grave matter. I did not say let's not bury ourselves with this bill. And I also did not say that most people believe that everything is certain but death and taxes, and that we can't fight death but we can relieve ourselves of taxes. I didn't say any of those things. I just wanted you to know that.

Thank you, Madam President.

THE PRESIDENT: All right. Read the last section.

THE SECRETARY: Section 2, this act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 33, by Senator Seward, Senate Print 497, concurrent resolution of the Senate and Assembly proposing an amendment to Subdivision 2 of Section 8 of Article 7.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Seward.

SENATOR SEWARD: Yes. Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR SEWARD: At the outset, I must say that Senator Marcellino is a very difficult act to follow, but I will do my best.

The measure before us is a first passage of a concurrent resolution of the Senate and the Assembly which deals with a problem that we are having with the New York State Emergency Services Revolving Loan Fund.

Now, we established this fund back in 1994, and it was an excellent program that this Legislature established, which makes funds available for very low interest loans to fire departments and ambulance squads who are under the auspices of various or various municipalities. These loans can be used everything from equipment to vehicles to the buildings that house the equipment and vehicles. And it's been an excellent program which, over the last few years, has loaned out

some $11 million over this period of time.

Now, the problem is this, that we're attempting to solve under this measure: A large portion of our fire departments and ambulance squads in the state are in the category of what we call independent companies, fire and independent ambulance companies. And under the Constitution, they cannot directly receive these state funds. And so what this legis -- this concurrent resolution would do, would be to amend the Constitution to allow the disbursements of these funds to the so-called independent companies.

And I'm pleased that the statewide organizations that speak on behalf of our emergency services, such as the Firemen's Association of the State of New York, support this, New York State Association of Fire Chiefs, and I know there's a great deal of additional interest on behalf of this concurrent resolution.

THE PRESIDENT: All right.

SENATOER OPPENHEIMER: I'd just like -

THE PRESIDENT: Senator Oppenheimer. Go ahead.

SENATOER OPPENHEIMER: Thanks.

THE PRESIDENT: You're welcome.

SENATOER OPPENHEIMER: I'd just like to underline the importance of this bill and support Senator Seward's bill.

We have many instances where we have volunteer ambulance courses, corps, but we also have many instances where we have rescues which are inside of fire departments as must be by law, so the ambulance service is a rescue inside of a fire department as opposed to a volunteer ambulance corps. They do the exact same service to the community and one can except and one can't. This would equal the opportunity to receive out the funds that they really are desperately in need of.

So this is a very good bill and I applaud you.

SENATOR DOLLINGER: Madam President.

THE PRESIDENT: Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Thank you,

Madam President. Will the sponsor yield to just one question?

SENATOR SEWARD: Certainly, Madam President.

THE PRESIDENT: Would you yield? Thank you.

Go ahead, Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

Is there a definition -- through you, Madam President.

Is there a definition of independent fire and ambulance companies so that this will only apply to not-for-profit organizations instead of for-profit organizations?

Is there a restriction in the Constitution or in this language that prevents it from, the revolving funds from being used by for-profit agencies?

SENATOR SEWARD: The -- yes, Madam President.

Senator Dollinger, there is under, in the Not-For-Profit Corporation Law, this is covered under Section 1402, which, which is

the, that's the definition that we use in the concurrent resolution, which deals with the so-called independent corporations. So it's covered under -- these are not-for-profits covered under Section 1402.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: That raises one other question.

That's a section of statute that we're referring to in the Constitution?

I guess my concern would be we're taking a statutory term and putting it in the Constitution without a constitutional definition. Should we have that definition as part of Constitutional Law so we permanently restrict this only to not-for-profit groups?

SENATOR SEWARD: Well, Senator, if you look at the concurrent resolution, there are a number of others, entities which are listed that are able to, that are so-called exceptions here that we're adding these independent incorporated entities to that list. And, you know, they are not all covered under the Constitution or defined in

the Constitution. These are all well defined in the statutes of the State. I don't see a problem here at all.

It's both a recognized in the emergency services community and in the statutes of the State of New York what we're talking about, and so I just don't see a problem at all. And that's been the pattern in the other exceptions that have been made over the years.

SENATOR DOLLINGER: Thank you.

Madam President, just one comment on the bill. I'm going to vote in favor of this -

THE PRESIDENT: Senator, on the bill.

SENATOR DOLLINGER: -- I accept Senator Seward's comment on it.

Just to respond to my friend, Senator Marcellino. This means there will be few skeleton, fewer skeletons crews in the ambulance corps of this state. It's a good idea.

THE PRESIDENT: Senator Waldon.

SENATOR WALDON: Madam President,

will Senator Seward yield to a question or two?

THE PRESIDENT: Senator Seward, do you yield?

SENATOR SEWARD: Yes.

THE PRESIDENT: You may proceed.

SENATOR WALDON: Senator, if I may, I'd like to ask a series of little short response questions. I think I can clear the air about some of this, and then one with a longer response, if you choose to do so.

Senator Seward, is it important for those who fight fires, especially our voluntary fire departments, to have the necessary equipment?

SENATOR SEWARD: I'll give you a short answer. Yes.

SENATOR WALDON: Is it important for them, when they need equipment and other kinds of support mechanisms and systems to be able to get them with great dispatch?

SENATOR SEWARD: Yes.

SENATOR WALDON: Is there greater difficulty for them to obtain these resources and materials if the law remains as it is, or

is it better for them and for the communities they serve if the law will be as you wish it to become?

SENATOR SEWARD: No question, it's better if this measure passes.

SENATOR WALDON: Tell us a little bit about the timeframe from needing a new piece of fire equipment under the old system versus the system that you propose?

And I thank you.

THE PRESIDENT: Senator, a further explanation has been requested.

SENATOR WALDON: Thank you. I apologize, Madam President.

THE PRESIDENT: You're welcome. I accept your apology.

SENATOR SEWARD: Well, Senator, you raise through your series of questions some excellent points. And what this measure would do, if we can correct this in our State Constitution with the passage, first passage of this, and, of course, it will require a second passage, what this will do will be to open up the revolving loan fund to these independent companies who currently have great

difficulty in obtaining the necessary funding to purchase equipment, to build that fire house, to serve the people, protect their property and their lives out in our communities. And so the passage of this measure will open up an additional funding source for these fine, fine people who serve, serve us all and protect our lives and property. And so that's why I'm sponsoring this and that's why it's important to pass it.

THE PRESIDENT: Senator Maziarz.

SENATOR MAZIARZ: Thank you, Madam President.

On the bill, if I may, I just want to say -

THE PRESIDENT: You may proceed.

SENATOR MAZIARZ: -- as a volunteer firefighter myself and as a representative of 52 volunteer fire company, fire companies in the counties of Niagara, Orleans and Monroe, I know full well the difficulty that some of them are having in purchasing additional equipment, particularly with the technology that we have today.

And I just want to commend my

colleague, Senator Seward. I know that he has worked very closely with the Firemen's Association of the State of New York on this legislation. It's very difficult, of course, when you have several different types of volunteer fire companies, some that are incorporated into a, into a municipal system and others that are independent are not, and some of them are eligible for this revolving loan fund and some are not. I think that this legislation goes a long way towards correcting those inequities.

Thank you, Madam President.

THE PRESIDENT: Thank you, Senator.

On the resolution, the Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

THE PRESIDENT: The resolution is adopted.

The Secretary will read.

THE SECRETARY: Calendar Number 35, by Senator Skelos, Senate Print 907, an act to amend the General Obligations Law in

relation to exoneration.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Skelos, an explanation has been requested.

SENATOR SKELOS: Madam President, this legislation, which has passed the Senate every year since 1991 to 1998, debated and re-debated, last year it passed on the non-controversial calendar 54 to 3, would basically bring back the assumption of risk doctrine in certain civil lawsuits.

In a personal injury action, if the defendant shows that the injuries sustained by the plaintiff arose during the commission or attempted commission of certain enumerated crimes and that the actions of the defendant were justified pursuant on Article 35 of the Penal Law, which defines what acts are justifiable, then the plaintiff is deemed to have assumed the risks of injury coming from the encounter with the victim and the proof shall constitute a complete defense to the action.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam

President, nobody wants criminals who are injured by -

THE PRESIDENT: On the bill. Go ahead. Go ahead, Senator.

SENATOR PATERSON: Thank you. I was just saying that nobody wants criminals to, who are injured by their victims or by good samaritans to recover from their, from these types of situations. That's certainly not the intent of the objection to this legislation.

These criminals assumed the risk of injury when they committed the crimes and can properly be found to be at fault and not be able to recover damages. This is what the fact finders in civil lawsuits may find under the comparative negligence statute as it is written. The courts can find that the criminal contributed to his or her own injury and, therefore, be barred from any kind of recovery in a civil lawsuit. But this bill distinguishes from what the existing law is now by prohibiting any kind of lawsuit against an entire class of people, whether it be criminal, whether it be good samaritans or

whether it be victims of crimes. The fact is that there is no regard for any situation, no regard for any circumstance, and the freedom of fact finders to make these determinations is impaired and would be by the passage of this kind of legislation.

Scholars of law once, have written many times that no case is unique but each case is distinguishable. And it is those distinguishable circumstances that often come up when it might be determined, determined in an individual or perhaps in a low percentage of the cases that there was some action taken by a victim or by a good samaritan that was in excess of their own defense. And, at that point, there might be a determination that there was some civil liability. But to have an entire situation of cases be barred through the passage of one piece of legislation would, would move us in a direction which I believe would get, bring us closer to a situation that could not be litigated and, therefore, a ruling that would be unjust.

And so, therefore, to preserve the freedom of fact finders in these types of

situations, Madam President, I would urge a no vote on this legislation.

THE PRESIDENT: Senator Waldon.

SENATOR WALDON: Madam President, would the sponsor yield to a question?

THE PRESIDENT: Would you yield, Senator Skelos?

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR WALDON: Thank you, Madam President.

Thank you, Senator.

I was, I thought, on very firm ground until I heard Senator Paterson speak just now. And now I am confused. So, Senator Skelos, I'm asking that you help to edify me.

I'm going to make a statement and then ask the question so you'll understand where I'm coming from.

As I understand it, if John Doe Criminal confronts someone, commits an act of criminality, subsequent to that original action, John Doe is injured in any form or

fashion by the person he perpetrates a crime upon, then he is not allowed to bring a civil action for tort damages.

Is that what you intend with this legislation?

SENATOR SKELOS: What the legislation says, that the defendant, in this case, either the good samaritan or the victim of the crime, if he or she could show by a preponderance of the evidence that, number one, that the crime committed, and they're enumerated, we're talking about serious crimes, murder, robbery, burglary, arson, forcible rape, sodomy, kidnapping in the first degree, and that the conduct was justified in terms of the force, perhaps, used, by Article 35 of the Penal Law, which is presently the, the law now, then it would be a complete bar to recovering any money in a civil lawsuit. Does not mean if a person exceeded their, the type of force that would be permissible under Article 35, they could be sued plus they could be sued criminally plus there could be a civil rights action brought by the federal government.

SENATOR WALDON: Madam President, would the gentleman continue to yield?

THE PRESIDENT: Senator, would you yield?

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: Thank you, Senator.

SENATOR WALDON: Thank you very much, Madam President.

Just for my clarity, Senator, if you will, John Doe commits a crime, the person committed -- against whom he committed the crime defends himself and a third person is injured by the person upon whom the crime was committed. Where does the liability rest for that injury?

SENATOR SKELOS: The person's a good samaritan?

SENATOR WALDON: Or a good samaritan. He may come to the aid -

SENATOR SKELOS: What this does is says that this person could not sue the victim of the crime or the good samaritan that goes to assist that person to prevent the

commission of a crime or helps a police officer apprehend somebody who has committed a crime.

SENATOR WALDON: Thank you very much, Senator.

Thank you, Madam President.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Just on the bill, Madam President.

THE PRESIDENT: Go ahead.

SENATOR DOLLINGER: I voted against this in the past and I really draw a distinction in this bill. I'm not bothered all that much by the provisions that deal with victims, crime victims. I'm concerned not about the good samaritan, I'm concerned about the well-intentioned samaritan who happens to show up at a crime scene and does what is well intentioned but it doesn't turn out, necessarily, to be the right thing or a good thing for the victim or the person who is eventually hurt.

And the danger is that if we have a good samaritan test, where, in essence,

exonerating what would have happened. If we had taken the Biblical story and good samaritan's walking down the road and he helps the person out of the gutter and he picks him up and he carries him down and he then leaves him at the front door of the hotel or the front door of the building, knowing that's filled with criminals, or he walks him across the threshold, knowing there's a gap in the sidewalk, and he trips and falls. The story might have a different Biblical ending if it were just the well-intentioned samaritan rather than the good samaritan.

And the question is, does this bill exonerate reasonable conduct by a person in the position of being a samaritan?

And I think to some extent it goes a little too far in exonerating for conduct the good samaritan. And what we should look as is to simply require the samaritan to do what we require of everybody: Do what's reasonable and prudent under the circumstances and you won't be charged with any kind of civil liability.

So I appreciate what Senator Skelos

is doing, and I agree with him on crime victims. I'm concerned about the good samaritan and whether this exception goes too far. If it were just crime victims, I'd vote for it. In the past I've voted against it. I think it's moving in the right direction, but I'll still vote no.

THE PRESIDENT: Read it.

THE SECRETARY: Section 2, this act shall take effect on the 1st day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 35 are Senators Connor, Dollinger, Duane, Paterson and Schneiderman.

Ayes 52. Nays 5.

THE PRESIDENT: The bill is passed.

Senator Skelos, that completes -

SENATOR SKELOS: Madam President, is there any housekeeping at the desk?

THE PRESIDENT: -- that completes -- excuse me. That completes the reading of

the controversial calendar.

SENATOR SKELOS: Is there any housekeeping at the desk?

THE PRESIDENT: No, Senator.

SENATOR SKELOS: There being no further business, I move we adjourn until Tuesday, January 26th, at 11 a.m. sharp.

THE PRESIDENT: On motion, the Senate now stands adjourned until Tuesday, January 26th, 11 a.m.

Have a good evening.

(Whereupon, at 3:52 p.m., the Senate adjourned.)