NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 2, 1999

3:06 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

THE PRESIDENT: The Senate will come to order.

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

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

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, March 1st. The Senate met pursuant to adjournment. The Journal of Friday, February 26th, was read and approved. On motion, Senate adjourned.

THE PRESIDENT: Without objection, the 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 Fuschillo, from the Committee on Consumer Protection, reports:

Senate Prints 925, by Senator Meier, an act to amend the General Business Law;

1605, by Senator Alesi, an act to amend the General Business Law.

Senator Lack, from the Committee on Judiciary, reports:

Senate Prints 1529, by Senator Balboni, an act to amend the General Obligations Law;

1666, by Senator Trunzo, an act to amend the Eminent Domain Procedure Law;

1905, by Senator Padavan, an act to amend the Real Property Law;

1910, by Senator Meier, an act to amend the General Construction Law;

2733, by Senator Wright, an act to amend the Estates, Powers and Trusts Law.

Senator Padavan, from the Committee on Cities, reports:

Senate Print 1734, by Senator Velella, an act to amend the General City Law and the Penal Law.

Senator Hannon, from the Committee on Health, reports:

Senate Prints 463, by Senator Holland, an act to amend the Public Health Law and the Penal Law;

1178, by Senator Farley, an act to amend the Public Health Law;

2197, by Senator Libous, an act to amend the Public Health Law;

2302, by Senator Hannon, an act to amend the Public Health Law;

2937, by Senator Hannon, an act to amend the Public Health Law.

Senator Rath, from the Committee on Local Government, reports:

Senate Prints 124, by Senator Rath, an act to amend the General Municipal Law;

596, by Senator Volker, an act to amend the Local Finance Law;

904A by Senator Skelos -

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President,

forgive the interruption. But can we at this time call for a Rules meeting immediately in Room 332 while we're progressing?

THE PRESIDENT: There will be a Rules meeting immediately in Room 332.

Thank you, Senator.

The Secretary will continue reading.

THE SECRETARY: Going back, Senator Rath, from the Committee on Local Government, reports:

Senate Print 124, by Senator Rath, an act to amend the General Municipal Law;

596, by Senator Volker, an act to amend the Local Finance Law;

904A, by Senator Skelos, an act to amend the General Municipal Law;

1211, by Senator Bonacic, an act authorizing the Village of Hunter;

1388, by Senator Padavan, an act to amend the General Municipal Law;

1980, by Senator Leibell, an act to amend the Real Property Tax Law;

2088, by Senator Libous, an act to amend the Real Property Tax Law;

2586, by Senator Meier, an act to amend the Real Property Tax Law.

Senator Trunzo, from the Committee on Transportation reports:

Senate Prints 139, by Senator Nozzolio, an act to amend the Vehicle and Traffic Law;

1101, by Senator Goodman, an act to amend the Transportation Law;

2094, by Senator Libous, an act to amend the Vehicle and Traffic Law;

2101, by Senator Libous, an act to amend the Vehicle and Traffic Law.

Senator Saland, from the Committee on Children and Families, reports:

Senate Prints 965, by Senator Skelos, an act to amend the Domestic Relations Law;

1075, by Senator Skelos, an act to amend the Social Service Law and the Family Court Act;

1257, by Senator Spano, an act to amend the Social Services Law;

1531, by Senator Johnson, an act to amend the Domestic Relations Law;

1621, by Senator LaValle, an act to amend the Domestic Relations Law;

2722, by Senator Saland, an act to amend the Family Court Act;

2724, by Senator Saland, an act to amend the Family Court Act.

Senator Kuhl, from the Committee on Education, reports:

Senate Prints 1347, by Senator Holland, an act to amend the Education Law;

1922, by Senator Holland, an act to amend the Education Law;

2475, by Senator LaValle, an act to amend the Education Law.

Senator DeFrancisco, from the Committee on Tourism, Recreation and Sports Development reports:

Senate Print 831, by Senator Marcellino, an act to amend the Parks, Recreation and Historic Preservation Law.

All bills directly for third reading.

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

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Libous.

SENATOR LIBOUS: Madam President, on behalf of Senator Lack, on page 9, I'd like to offer the following amendments to Calendar Number 122, Senate Print 1527, and ask that the said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: The amendment is accepted, and the bill will retain its place on the third reading.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time adopt the Resolution Calendar with the exceptions of 492 and Resolution 514?

THE PRESIDENT: All those in favor of adopting the Resolution Calendar, with the exception of Resolutions 492 and 514, signify by saying Aye.

(Response of "Aye.")

THE PRESIDENT: Opposed nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is adopted.

Senator Bruno.

SENATOR BRUNO: Can we at this time have the title read on Resolution 492, by Senator Kuhl and move for its immediate adoption?

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Kuhl, Legislative Resolution Number 492, celebrating "Read Across America," an effort by the National Education Association and the National Education Association of New York to promote the joy of reading.

THE PRESIDENT: 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.

Senator Bruno.

SENATOR BRUNO: Madam President, Senator Kuhl is indicating that anyone that would like to be on this resolution is welcome to be on it.

And if you don't want to be on it, you might so indicate to the desk.

THE PRESIDENT: All right. Senator Kuhl, this -- Senator Kuhl -- the resolution, pursuant to Senator Kuhl's request, is open at this time for cosponsorship. Those who do not wish to be on the resolution should notify the desk.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time have the title read on Resolution Number 514, by Senator Marcellino and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Marcellino, Legislative Resolution Number 514, memorializing Governor George E. Pataki to proclaim March 7th through the 14th, 1999, as Childhood Cancer Awareness Week in the state of New York.

THE PRESIDENT: 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.

Senator Bruno.

SENATOR BRUNO: Madam President, can we also open up the sponsorship, at the request of Senator Marcellino, on this resolution.

THE PRESIDENT: The sponsorship of this resolution is open. All those who do not wish to be on the resolution, please notify the desk.

Senator Bruno.

SENATOR BRUNO: I believe, Madam President, there is a privilege resolution at the desk by Senator Skelos. I would ask that it -- the title be read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Skelos. Legislative resolution commending David and Karen Portal upon the occasion of their designation as Parents of the Year by the Yeshiva of South Shore at its 42nd Annual Scholarship Awards Banquet, March 7, 1999.

THE PRESIDENT: 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.

Senator Bruno.

SENATOR BRUNO: Madam President, can we now take up the noncontroversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 52, by Senator DeFrancisco, Senate Print 863, an act to amend the Social Services Law, in relation to the transportation of certain persons.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 116, by Senator Larkin, Senate Print 1490, an act to amend the General Municipal Law, in relation to eliminating certain exceptions.

THE PRESIDENT: Read the last section.

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: Ayes 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 119, by Senator Alesi, Senate Print 96, an act to amend the General Business Law, in relation to altering mileage.

THE PRESIDENT: Read the last section.

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

November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 121, by Senator Hannon -

SENATOR PATERSON: Lay it aside.

THE SECRETARY: -- Senate Print 1524, an act to amend the Public Health law.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 160, by Senator Bruno, Senate Print 2862, an act to amend the Education Law, in relation to requiring colleges and universities to implement plans.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President, to explain my vote.

THE PRESIDENT: Senator, could we read the last section first?

Read the last section, please.

SENATOR BRUNO: Thank you, Madam

President. We thought the last section had been read.

THE PRESIDENT: Call the roll and read the last section, please.

SENATOR BRUNO: He is properly chastised.

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

(The Secretary called the roll.)

THE PRESIDENT: All right. Senator Bruno.

SENATOR BRUNO: Thank you. It is nice to have a presiding officer paying such close attention to our proceedings. Thank you very much, Madam President.

THE PRESIDENT: It's good to be appreciated, Senator.

SENATOR BRUNO: Thank you.

THE PRESIDENT: You may proceed.

SENATOR BRUNO: And the counsel is appreciated as well.

THE PRESIDENT: Just kudos all around.

SENATOR BRUNO: This bill -- and we're going to ask anyone in the chamber that

would like to cosponsor this bill, you are welcome to do that. And I would encourage you to do it, because it is a very, very serious response to a very tragic situation.

Very specifically, a year ago today, Suzanne Lyall was reported missing from the SUNY campus here in Albany. Suzanne is still missing. And her parents, Doug and Mary, with her sister Sandra, were in earlier today at a press briefing on this legislation. And they still don't know what has happened to their daughter. Their experience, when they shared it with us, led us to this legislation.

And what this legislation does is indicate to any college in the state that they have to put a plan in place so that there's an immediate reporting and action on any missing person or any violence to a student on campus.

And that doesn't say that the universities don't do this. Some of the colleges do it; some don't. Here at SUNY Albany, for instance, there are five different police agencies that can relate to that campus. Now, you can imagine the distraught parents reaching in and wondering who to talk

to and where to get information and who to report to.

So it will be up to the college to reach out into the community to put together a protocol, a plan.

And in addition, the Lyalls shared with us that they sometimes had a difficulty in just getting a conduit. So this will establish a hotline to the Office of Criminal Justice. And that hotline will be accessible so that people will be able to get in one place whatever resources are available to help a family deal with a tragedy that may occur or that they think may be occurring.

That's the essence of this bill. And it's up today because this is exactly a year ago that Suzanne was reported missing. So we ask for your support here in this chamber.

And thank you, Madam President.

THE PRESIDENT: Senator Bruno, you will be recorded as voting in the affirmative.

Senator Waldon.

SENATOR WALDON: Thank you, Madam

President. To explain my vote.

I wish to commend our leader on this proposal. A parent's worst nightmare is what happened to the Lyall family. And all of us and each of us can empathize and sympathize with the pain and suffering they are experiencing in regard to their daughter. So I commend the leader's wisdom, I commend his compassion, I commend his ability to allow us to empathize and to sympathize in a very positive way with this family and to take steps here today which may preclude another family experiencing a like circumstance. Because with this proposal, speed and efficiency will enter into the equation of trying to find the student who is lost.

So I commend you, sir. I'm grateful that you've brought this to our attention. I commend all of us today for doing the right thing in voting yes on this proposal.

Thank you very much, Madam President.

SENATOR OPPENHEIMER: Madam President.

THE PRESIDENT: Senator Waldon, how do you vote on this bill?

SENATOR WALDON: In the affirmative.

THE PRESIDENT: You will be recorded as voting in the affirmative.

I believe Senator Paterson was next.

SENATOR PATERSON: Thank you, Madam President. I vote in favor of this bill and would commend to our colleague, Senator Bruno, our deepest gratitude for bringing it forward at this time.

There is certainly the fear, not only as Senator Waldon described, of any parent to lose a child, but also any encumbrance or disabling of an attempt to have information provided or to perhaps try to locate a missing individual, that it would be caused by the inability of different agencies to communicate or certainly be due to the fact that there wasn't significant coordination among those who could have provided assistance, would really just exacerbate the tension, the anxiety, and the fear that any

victim would feel.

Our prayers certainly on the date of St. David's Day would be with the family of Ms. Lyall on the one-year anniversary of her disappearance. And it represents all the missing boys and girls around the state whose parents grieve for them and wish to see them again.

And we certainly are strongly in favor of this bill. We believe in it. And Senator Connor, the minority leader, has asked me, along with Senator Mendez and Senator Smith and all of the colleagues -- Senator Oppenheimer -- to extend to you our deepest appreciation that we have thought of this to perhaps minimize the burden and the encumbrance on those who might be put in this very, very tragic situation in the future.

THE PRESIDENT: Senator Paterson, you will be recorded as voting in the affirmative.

Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you.

Of course, I think we all feel a loss and empathy for the parents of the

missing student.

What I would commend to Senator Bruno is a series of recommendations in legislative form that I made a few years back concerning violence on campus. One of those suggestions was that when the campus police is brought in, that the jurisdiction, the - every campus is within a jurisdiction, and therefore the jurisdiction should be notified at the same time as the campus police is notified.

And there are a variety of reasons for doing that which we won't go into now. But certainly coordination of information is one of them, one of the reasons.

We also had suggestions concerning blue lights on campuses, telephones, services where students could be bused to where they wanted to be or could be escorted by another adult. We had other considerations, of cards to permit entry into dormitories.

At any rate, these were all with the object of making a campus as safe as possible and coordinating services. And I think this is an avenue that we should be

going down now.

But I do applaud this bill and urge you to look at some of the other recommendations on campus safety, Senator Bruno.

Thank you.

THE PRESIDENT: Senator Oppenheimer, you will be recorded as voting in the affirmative on this bill.

Senator Smith.

SENATOR SMITH: Thank you, Madam President.

I too rise to thank our distinguished leader for this fine piece of legislation. I am hopeful that it will assist in allaying the concerns and fears of some distraught parents. Because at a time when a child is missing, a parent can never be more distraught.

And it is great to see a piece of legislation that all of us, whether on that side of the aisle or this side of the aisle, can support. And I'm pleased to cast my vote in the affirmative.

THE PRESIDENT: Senator, you will

be recorded as voting in the affirmative on this bill.

Senator Mendez.

SENATOR MENDEZ: Thank you, Madam President.

I too want to express my admiration for our majority leader in dealing with this issue. This will not only help those parents that have children missing deal in that situation, but will also give some peace of mind to those parents that for the first time are going to send their children away during their first year of college.

So again, my congratulations. And all of us should be congratulated, because this is an issue that has made it possible for a complete bipartisanship in easing the plight of parents, of those who have children missing as well as those that will eventually send their kid to colleges and universities in this state.

THE PRESIDENT: Senator Mendez, you will be recorded as voting in the affirmative.

SENATOR MENDEZ: I vote yes.

THE PRESIDENT: That was my sense. Thank you, Senator.

Senator LaValle.

SENATOR LAVALLE: Madam President, I rise to both cast my vote in the affirmative and to congratulate our majority leader and also to thank the Lyalls for their participation in bringing to our attention a problem that has presided on our campuses.

With this legislation that Senator Bruno has offered to us today, we will now have a process that parents who are faced with that acrimony will at least know how to proceed and will have some methodology.

And again, Senator Bruno, thank you for your leadership with this legislation.

I vote in the affirmative.

THE PRESIDENT: Senator LaValle, you will be recorded as voting in the affirmative.

Senator Lachman.

SENATOR LACHMAN: I also rise, Madam Chair, in consonance with my colleagues, to commend the majority leader on this legislation, which is in truth a nonpartisan

piece of legislation that all of us can support wholeheartedly, that is tied up not only to the security issue and safety issue of missing children but is a major piece of what must be provided for all students in safe surroundings within an educational center, whether it is university or college, secondary school, elementary school.

So I would like to be recorded in the affirmative on this issue and hope it will lead us to other legislation that will continue to impact positively on this very serious situation that afflicts education in American society today.

Thank you.

THE PRESIDENT: Senator Lachman, you will be recorded as voting in the affirmative on this bill.

Anyone else? All right.

The Secretary will announce the results.

THE SECRETARY: Ayes 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

170, by Senator Rath, Senate Print 1071, an act to amend the Penal Law -

THE PRESIDENT: Before we continue, I'd like to announce that the sheet for multisponsorship of the bill that was just passed is at the desk. I want to emphasize that it's an important bill. As many multisponsors who are interested, please feel free to come up to the desk and sign it.

The Secretary will read. Thank you.

THE SECRETARY: Calendar Number 170, by Senator Rath, Senate Print 1071, an act to amend the Penal Law, in relation to repeat offender status.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52; nays 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 173, by Senator Goodman, Senate Print 1117, an act to amend the Penal Law in relation to gambling.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 176, by Senator Spano, Senate Print 1259, an act to amend the Penal Law, in relation to the crime of criminal employment.

THE PRESIDENT: Read the last section.

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

SENATOR PATERSON: Lay it aside.

THE SECRETARY: -- on the first day of November.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 190, by Senator Wright, Senate Print 2421, an act to amend the Public Service Law, in relation to annual reports for gas, electric,

steam, and water corporations.

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 SECRETARY: Ayes 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 191, by Senator Wright, Senate Print 2422, an act to amend the Public Service Law, in relation to the elimination of the mandate for the Public Service Commission.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

Senator Bruno, that completes the noncontroversial reading of the calendar.

SENATOR BRUNO: Madam President, can we at this time take up the rules report?

THE PRESIDENT: All right. The Secretary will read. And then we'll return to

the order of the reports of the standing committees. The Secretary will read.

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

Senate Print 3109, directly for third reading, an act to establish administrative procedures to be followed in relation to certain failure to file applications.

SENATOR BRUNO: On the bill, Madam President.

This relates to the STAR program that -

THE PRESIDENT: Senator, could we move to accept the report of the committee?

SENATOR BRUNO: Madam President, can we move to accept the report of the Rules Committee?

THE PRESIDENT: Thank you, Senator.

All those in favor of accepting the report of the Rules Committee, please say aye.

(Response of "Aye.")

THE PRESIDENT: Opposed nay.

(No response.)

THE PRESIDENT: The report is accepted.

SENATOR BRUNO: Is there a message at the desk, Madam President?

THE PRESIDENT: Yes, there is, Senator.

SENATOR BRUNO: I would move that we accept the message.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 237, by Senator Bruno, Senate Print 3109, an act to establish the administrative procedures to be followed, in relation to certain failures to file applications for the school tax relief STAR exemption.

THE PRESIDENT: All those in favor of accepting the message of necessity signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The message is accepted.

Read the last section.

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

SENATOR DOLLINGER: Explanation.

THE PRESIDENT: Senator, an explanation has been requested.

SENATOR BRUNO: Yes, Madam President. On the bill.

This relates to the STAR program, property tax-cut relief, that we in this chamber provided homeowners, seniors and other homeowners, as part of the budget last year. What this does simply is hold anyone that is eligible for the STAR tax-cut deduction harmless.

March 1st was the deadline for filing, and some people were confused. Seniors that signed up last year thought they were signed up for life. The law indicates that they have to sign up every year, because with seniors it's tied to income.

So this law, if it becomes law, simply says that if you qualified last year as a senior, you automatically qualify going forward. So it holds them harmless.

In addition, there are others in

the general population that will qualify now for the first time. They must sign up on March 1st. Many people won't have signed up by March 1st, and you're going to hear from them when they discover their omission.

This law states that those people can file next year by March 1st and, if they qualified this year, they will retroactively get their deduction. So there will not be a loss to anyone. So it truly holds anyone that is eligible harmless.

I know that there's another version of this in the other house that extends the filing deadline to April 15th and then does some other things. You're hearing -- and if you're not hearing, we're hearing from assessors and county executives all over the state that that will inhibit their ability to put out their tax requests, the tax bills, if we extend this deadline. It's going to create some chaos and some confusion.

So we would like not to add to the confusion. This bill doesn't. So we would ask for your indulgence on this bill and your support.

And, Madam President, we would invite, as well, anyone in the chamber that sees fit to sign on this bill to do so. And the procedure is that you have to go to the desk and execute the proper signature on the proper document.

THE PRESIDENT: Senator Gentile.

SENATOR GENTILE: I believe, Madam President, there's an amendment at the desk.

THE PRESIDENT: We have an amendment at the desk, Senator.

SENATOR GENTILE: I'd ask that it be waived and I'd have an opportunity to explain.

THE PRESIDENT: The amendment is waived. You may proceed, Senator.

SENATOR GENTILE: Thank you.

The amendment to the STAR exemption bill would extend the simple extension of the deadline to April 15th of this year, 1999. This would replace the recoupment plan that is in the original bill.

The plan allows the taxpayer to get -- under the recoupment plan, the taxpayer

would have to get this year and next year's STAR exemption in the year 2000 should they miss -- should they miss the March 1st deadline. That's the bill that's on the floor.

The amendment that we propose is to allow homeowners to get their 1999 exemption in 1999 and to allow them to have the real dollar value of their exemption this year and not the reduced real dollar value next year. Our plan will do that by just simply extending, as the Assembly bill does, simply extending it to April 15th of this year.

This amendment in no way changes the -- proposes a change in the protection that the bill has for seniors. In case they forget to file their renewal application, the -- our amendment would still allow for that automatic exemption once it's first filed.

It's -- Madam President, this STAR program is such a new program that many individuals and many homeowners are still not familiar with the fact that an application process is necessary and the deadline for an

application process. I think that once this becomes more of a standard procedure in this state, we will not be in this situation for years to come.

But yet, nevertheless, it's been estimated that between 10 and 30 percent of eligible homeowners have missed the March 1st deadline for the STAR property tax exemption.

Now, while the Governor has put out a wonderful plan in the STAR program, what he has failed to do is to -

THE PRESIDENT: Pardon me, Senator Gentile.

SENATOR GENTILE: Sure.

THE PRESIDENT: Senator Padavan, why do you rise?

SENATOR PADAVAN: Will the Senator yield to a question?

THE PRESIDENT: Senator, do you yield?

SENATOR GENTILE: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR PADAVAN: What if a homeowner fails to file by April 15th?

SENATOR GENTILE: Well, I'm hoping within the next six-week period -

SENATOR PADAVAN: Well, what if they fail to apply on April 15th?

SENATOR GENTILE: On April 15th will be the deadline, Senator. What -

SENATOR PADAVAN: They'll be out of business; right?

SENATOR GENTILE: What I'm hoping, that in the next six weeks -

SENATOR PADAVAN: Will the Senator yield again? Will the Senator yield again, Madam President?

SENATOR GENTILE: Yes, I will yield.

THE PRESIDENT: You may proceed.

SENATOR PADAVAN: What you're saying, of course, is that come April 15th, if they've not filed, they're out of luck for the tax year '99.

SENATOR GENTILE: I'm hoping, Senator, by this procedure today, we have six more weeks to publicize the program that has not been widely publicized up to now. In fact, Senator -

SENATOR PADAVAN: Senator, wouldn't it be better to allow -

SENATOR GENTILE: Senator, if I might, please.

SENATOR PADAVAN: -- those homeowners -- here's my final question. Wouldn't it be better, under this proposal that's before us, to allow those homeowners a whole year with which to file and then get the 1999 property tax abatement in any event?

It would seem to me that the present bill here, the basic bill we're dealing with, provides more protection for the homeowners in my district, who, by the way - you know, we extended the earlier deadline to March 1st. Many of them caught on, came in. Many will not have. And by April 15th there will still be a certain number who will not have filed.

And it would seem to me, Senator - and this is my question -- that you should agree with a plan that gives them a whole year, virtually, to reapply for 1999 property tax abatement. Don't you think that's the better way to go?

SENATOR GENTILE: Senator, I don't think it's the better way to go, in this sense. Because they will be getting their 1999 exemption in the year 2000, reducing the real dollar value of their exemption for this year.

Seniors -- you're saying seniors might be forgetful. Well, we want to make sure that they remember in the next six weeks.

THE PRESIDENT: Senator Gentile, again.

Senator Bruno, do you wish to be recognized?

SENATOR BRUNO: Will the Senator stand for another question?

SENATOR GENTILE: Yes, I will, Senator.

THE PRESIDENT: Go ahead, Senator.

SENATOR BRUNO: Thank you.

Do you understand that the bill that's before us automatically covers seniors -- automatically -- and the bill - the amendment that you're proposing doesn't deal with that issue at all?

SENATOR GENTILE: It does - we -

SENATOR BRUNO: What is wrong, is my question, with allowing seniors to be automatically covered instead of having to go through the procedure that you will force them to go through again by April 15th?

SENATOR GENTILE: Senator -

SENATOR BRUNO: What's wrong with the bill -

SENATOR GENTILE: -- you are denying -- you are denying seniors the benefit of their exemption this year because of a failure to promote -

(Cries of "No" from Republican side of the aisle.)

SENATOR BRUNO: You've answered my question.

SENATOR GENTILE: Senator, if I might. If I might.

SENATOR BRUNO: Yes.

SENATOR GENTILE: You are delaying their benefit till next year, till the year 2000.

SENATOR BRUNO: As a matter of -

SENATOR GENTILE: Senator, if you want, I'll answer the question.

SENATOR BRUNO: But -- but you don't understand -

SENATOR GENTILE: Senator -

SENATOR BRUNO: -- the bill that's on the floor, Senator.

SENATOR GENTILE: What this - what our amendment will do is give them their exemption this year -- 1999 -- not, as proposed, in the year 2000. Give them the real dollar value this year.

SENATOR BRUNO: But, Senator, it's apparent -

THE PRESIDENT: Senator Bruno -

SENATOR BRUNO: -- that you don't understand the bill that's on the floor. And I'm not trying to be unkind. But what you're saying is wrong.

SENATOR GENTILE: Senator -

SENATOR BRUNO: Let me finish. And I want to just finish my question. Okay?

A senior that qualifies will automatically be covered. Okay? That's different than what you're saying. They don't

have to wait -

SENATOR GENTILE: No, no. What I said at the beginning, Senator -

SENATOR BRUNO: They don't have to wait for anything.

SENATOR GENTILE: Senator, what I said at the beginning is that our amendment - and if you read our amendment, it does not change the automatic acceptance for seniors.

What we're saying is that the April 15th -- most people don't realize there is a regular STAR program and an enhanced STAR program. And the regular STAR program is what we're talking about in terms of the April 15th deadline.

THE PRESIDENT: Senator.

SENATOR GENTILE: Yes.

THE PRESIDENT: I'm going to interrupt you again. I believe Senator Bruno had a question to complete.

Senator, are you completed?

SENATOR GENTILE: I believe he completed that question.

THE PRESIDENT: Go ahead.

SENATOR GENTILE: I believe he

completed that question.

And I want to make it clear that our amendment does not change the provisions of the bill that's on the floor, that seniors would still receive the automatic exemption if they have filed.

However -- however -- what this does for those who are not 65 and have an income of less than $60,000 and would fall not under the enhanced STAR program but under the regular STAR program, they are still cut out of the program for March -- for the March 1st deadline.

It is our proposal that we give them an additional six weeks to file the STAR property tax exemption application so that those -- not the enhanced STAR, but the regular STAR program applicants would get their exemption and their tax break in 1999.

Now, I believe what has happened is that there's a confusion as to what the amendment says. And the amendment does not change the senior portion of the STAR program and the automatic exemption. The basic exemption applies to some seniors who exceed

the $60,000 limit. Those who exceed the $60,000 limit do not come under the enhanced STAR property tax provisions.

And those are the seniors that we're talking about, and those who are not 65. Those are the individuals, the homeowners that we're trying to extend to April 15th to give them the opportunity to file for this tax exemption.

I have to say that if there was a concerted effort to make this program known - it was known among the seniors in great -- in great measure, but not among the general populace. Even if you look at today's Times-Union, there's a story in it that one of the individuals said, "I thought it was only a senior program, it's only for seniors."

It is not only for seniors. Underscoring the point that we have not done enough to publicize the fact that the STAR property program is for homeowners regardless of income. The regular STAR property tax program is available to homeowners regardless of income and requires an application process. An application must be filed.

Given those factors that have not been well-publicized, we believe that an application extension, as was done in the other house, to April 15th would give us the opportunity to publicize this among ourselves within our districts and for the Governor to publicize this program.

So that if we're serious about giving homeowners the tax break we propose to give homeowners, we could give them that tax break this year by extending a simple extension to April 15th. And everybody knows what April 15th is. Everybody looks at taxes and tax exemptions for April 15th. It's the perfect day to extend this benefit.

Senator, I think you confuse the issue by saying that it affects the senior exemption. It does not, unless a senior did not file last year or a senior makes more than $60,000.

This is something that will keep us true to what we proposed, and that's a tax exemption for New Yorkers who qualify. Let New Yorkers who qualify apply for the next six weeks.

Madam President, I'd ask that - I'd ask that if we're serious about this we pass this amendment and allow the April 15th deadline to stand.

THE PRESIDENT: Thank you, Senator.

Senator LaValle, do you wish to be heard on the amendment?

SENATOR LAVALLE: Thank you, Madam President. I know that the sponsors of this amendment are well-intentioned. But I think that Senator Bruno, through his questions, and Senator Padavan, through his questions, I think really brought to light why the bill that is before us is an excellent proposal.

Those of us I believe who have been working to make people aware of this program have known the frustration of getting to the public to make them aware of the STAR program. And whether we extend the date to April the 15th or May the 15th or June the 15th, there will be people that will miss each of those deadlines.

Under this bill, they will be held

harmless and still be able to receive a benefit under the '99-2000 taxable year. Under the proposed amendment, if you missed April 15th or if we extended it again to May 15th, those people that did not meet that deadline are out. O-U-T, out. They would not receive a benefit.

So this bill holds harmless the seniors. And a good question was asked in the Rules Committee about the enhanced benefit and holding those seniors harmless. Because it's sound public policy to continue those who applied last year, to carry them forward again.

But there are some other issues that I think we need to bring up. You cannot -- in this state, each county has a tax act. And in the tax act are different deadlines, dates: Taxable status date, when the roll is closed out, and so forth.

If we jeopardize and play around with a date, we are jeopardizing other things. The tax roll may not be closed out in time for the school districts to know what is their assessed value when they form a budget.

We also play around and jeopardize the grievance procedure. So there are other taxpayers that will be put in harm's way because the grievance procedure will be jeopardized.

So this proposal is a very simple, straightforward proposal that allows the tax assessors throughout the state to be able to deal with their deadlines within their tax acts. The school districts will know what the assessed values are. Those individuals that want to grieve their assessments will be able to do so under an established procedure and time period under their tax act.

Because what we will do as legislators is push off the grievance procedure. And we're going to have people coming in and saying, "Well, we didn't know you changed things in the time period for the grievance procedure. And now I can't grieve my taxes."

So I think this bill does the job. It holds harmless those seniors for the enhanced program and protects those for the basic program so that they will be able to

receive their basic exemption for the '99-2000 and the 2000-2001 year.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, I saw Senator Libous's hand before mine. So I believe he's next up on the list.

SENATOR LIBOUS: It's all yours, Senator.

SENATOR DOLLINGER: Thank you.

THE PRESIDENT: You may proceed.

SENATOR DOLLINGER: Madam President, I rise to speak in favor of this amendment.

And I think there are a couple of things that we need to keep in mind as we talk about this. First of all, this issue of tax status date has been a troubling issue for us for a long time. I know that there are a number of cases that arise -- and, Senator Balboni reminds me, for some reason more of them now, apparently, (unintelligible). The question of taxable status date; that is, the date under which the assessor has to be able to say, Here's the property, is it subject to

exemptions, not-for-profit exemptions or senior exemptions?

We've been through this many times as we've tried to figure out should we come up with some adjusted tax status date, should we allow retroactive reimbursement if a not-for-profit institution acquires land in the middle of the year and it exceeds the tax status date.

This has always been a troubling issue for us to deal with, because Senator LaValle properly points out there are some days, if you're on the right side of the day or apply on that date, you get it, and if you don't, you miss it by a day, you're gone.

However, I still think that under this proposal -- and I appreciate the Majority bringing out a bill that will increase the tax advantages from the STAR program to as many people as possible. But there are two things about the bill, the approach that the Majority has taken, which I would just remind everybody will slightly vary the terms of the STAR program.

The first is one that I mentioned

in the Rules Committee. And I'm willing to abide by that. That is, because it's income-sensitive -- that is, you have to make less than $60,000 -- there may be some seniors who qualified last year, made less than $60,000, who this year would not be eligible for the enhanced STAR program because they make more than $60,000. And I understand - we talked about this in the Rules Committee. The chairman of the Rules Committee made it clear that there's a valid public policy that says, okay, we're going to fudge that a little. We're going to give some people who would not otherwise qualify this year, for administrative convenience, because we can't quite be as sensitive with the law as we want, we're going to expand that and give them the benefit of that for a second year, even though they may not be entitled to it.

But let me just mention one other consequence of this approach. And that is Senator Bruno, in explaining the bill, pointed out that the seniors will benefit. That isn't technically correct. Who will benefit? The property benefits.

The way the exemption works is that if you got the enhanced STAR benefit, it was attached to the property. It's an exemption that runs with the property. If you sell the property the day after you get the exemption, you -- the new owner gets the benefit of the exemption for the following year and, under the bill as proposed by the majority, would get the benefit for two years.

So you have a senior citizen who sells their property sometime during the course of the last year, and they have an enhanced STAR exemption on that property, they are -- in some cases, their assessment is reduced by $50,000. We last year accelerated the enhancement so that there's a $50,000 tax benefit with that. Under the bill as drafted by the majority, even if I bought that property, I would get the benefit of the senior exemption now for a period of almost two full years.

When we discussed this issue in committee -- and I understand the concern of members that say in this approach we can, for valid reasons of public policy, fudge a little

at the extremes to allow some people who wouldn't otherwise qualify because of income to get the benefit. But understand, we may also take many people who would not ever be entitled to the enhanced STAR because they're not old enough, we may give them the benefit as well.

So as a consequence of that, we have a system, as proposed in the underlying bill, that has a fudge factor that may give some people the benefit that they're not otherwise entitled to; those whose income has increased or those who buy property from seniors whose property already qualified.

Or we have the other approach, which is to create an absolute continuation of the tax status date. I'll agree with Senator LaValle, it is difficult to establish an absolute cutoff. But I would simply suggest that in this state we have absolute cutoff dates for taxable status on almost every other thing that deals with real property: normal senior citizen exemptions, veterans' exemptions, not-for-profit exemptions. They all must be filed on the tax status date.

So the notion that we have a cutoff date doesn't bother me. And I will confess, Senator LaValle, the question of whether we should bump it back to April 15th, how much effect that will have on the assessors, I'll accept your explanation that it causes them significant concern.

But it seems to me that the creation, the mere extension of the tax cutoff date is not inconsistent with the prior policy of this state. It will open the door to some people who would not otherwise get the benefit this year to get it.

I would hope -- and I agree with Senator Gentile -- that if we aggressively promoted this more, we might pick up that additional 20 percent of people that would qualify.

And, quite frankly, I think this offers a different approach. I won't say it's ironclad or guaranteed to do everything that we would all want it to do. But I certainly think the amendment has a clarity attached to it that will, rather than sort of fudge our public policy as the underlying bill might do

or might accomplish, inadvertently or otherwise, the notion of having an absolute cutoff date is not necessarily a bad idea.

I would also point out to everybody that while the assessors may be concerned about their obligations for city, county, and town taxes, the STAR program only affects school taxes. Those school tax warrants aren't issued until late August. It would seem to me, although it accelerates the process for assessors, they'd still have four full months to get the assessments completed so that we could certify the school tax bills.

It's a complicated issue. I think they're complicated questions. But I think the proposal by Senator Gentile continues a tradition in this state, one that has a clarity and a finality attached to it that we apply everywhere else and, in retrospect, seems a slightly better approach than what the majority offers.

I would simply point out I intend to vote for this amendment. And if it fails, I'll vote for the underlying bill as well.

SENATOR LIBOUS: Madam

President -

THE PRESIDENT: Senator Marcellino, I believe you're next. Do you wish to be recognized?

SENATOR MARCELLINO: I believe Senator Libous was ahead of me. But he's - he's out -

SENATOR LIBOUS: Go ahead.

THE PRESIDENT: Senator Marcellino.

SENATOR MARCELLINO: Well, as long as I have Senator Libous's permission. As you know, Madam President, I always seek his permission to speak. Otherwise, I simply can't.

I'm going to vote against the amendment. I know that may shock some people. But I just happen to think that this issue is so confusing and has been so muddied that any further extensions, any further delays in getting this thing resolved in a positive way is only going to add to the confusion.

I object to the comment that there has not been an attempt or there has not been proper notification out there to the general

public on behalf of the administration and on behalf of we as individual legislators. I personally in my district have received close to seven different mailings, just in the last few weeks, from every level of government, from every county legislator, from every county executive, from village mayors and the like, going out and telling people that this program is due and that this deadline was here.

Senator Bruno's bill resolves this issue in a fair and equitable manner. It allows the assessors to go on and do their business in a fair and equitable way without inhibiting them and without causing further delays and further confusions with all the subdivisions of government that we have to deal with.

Let's end this process. Let's move ahead in a positive direction, vote down the amendment and vote up Senator Bruno's bill.

Thank you, Madam President.

THE PRESIDENT: Senator Padavan, why do you rise?

SENATOR PADAVAN: Madam

President, on the bill.

THE PRESIDENT: We're not on - Senator, we are -

SENATOR PADAVAN: On the amendment, excuse me.

I was listening to Senator Dollinger's comment relevant to what he perceived would be an inadvertent application of a senior citizen's tax abatement to a person who really should not qualify for it by virtue of income or age -

THE PRESIDENT: Senator Padavan, I'm going to interrupt you, sir, because Senator Rath had requested to speak first. I wanted to ask you why you were rising.

But, Senator Rath, it's appropriate for you to speak first. Go ahead, Senator.

SENATOR RATH: Senator -- I'll yield my time so Senator Padavan can continue his line of thinking, if I can have your assurance that I'll be the next speaker.

THE PRESIDENT: You have that assurance.

SENATOR RATH: Thank you, ma'am.

THE PRESIDENT: Senator Padavan,

go ahead.

SENATOR PADAVAN: Thank you very much.

Senator Dollinger was explaining his view on the extension provision as it might relate to a senior citizen who sold a home in the two-year cycle that we're referring to and the new owner did not really qualify by virtue of age or income.

And what I simply wanted to do so is draw his attention to the underlying bill that we're amending which specifically addresses that issue. It says, "The enhanced STAR exemption shall not be continued on the 1999 assessment roll where -- without an application where the assessor determines there are one or more new owners of the property," and so on and so on.

So that problem that you cited is addressed in the underlying bill, Senator. And I hope you understand that. So -

SENATOR DOLLINGER: Page and number?

SENATOR PADAVAN: Yeah, the front page. First page.

THE PRESIDENT: Senator Rath.

SENATOR RATH: Thank you, Madam President.

The Assessors Association sent me a letter on the 24th of February indicating their strong opposition to the extension of the deadline for accepting STAR applications. And some of the points they made I thought were important for us to recognize.

Senator LaValle went to some effort to speak to those issues and the timely manner that the assessors need -- and in the timely manner in which the assessors need to finalize their tentative assessment rolls. The dates varying differently, but some are as early as April 9th to 15th in order to be able to get those data files completed.

However, there is another point to that, that it would be impossible for them to do that if indeed this deadline was extended, as assessors are already behind in their fieldwork collecting new construction, due to the volume of people coming into their offices to file the STAR applications.

Recognizing that this will have a

very negative impact on the property taxes if they cannot gather the information and document the new construction. That's new money that will not be coming in if the assessors are not able to go out there and do that work because they are busy with a STAR extension that they had not anticipated.

So I think for all good reasons, I think that the bill that's before you from Senator Bruno is the one that we should support. And I urge my colleagues to do so.

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

SENATOR DOLLINGER: Party vote with exceptions.

THE PRESIDENT: The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 24. Nays 33. Party vote.

SENATOR PATERSON: Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: The -- keep

following me. The acting leader asked for exceptions on the party vote.

THE PRESIDENT: Senator, could you speak up, please?

Please identify yourself -

SENATOR DOLLINGER: Madam President, when I made a -

THE PRESIDENT: Senator, please identify the exceptions.

SENATOR PATERSON: The exception's identified by raising their hand, Madam President.

THE PRESIDENT: All right. And you may proceed.

SENATOR PATERSON: In other words, you should ask the exceptions to please raise their hands.

THE PRESIDENT: All the exceptions have been noted.

THE SECRETARY: Ayes 23; nays 34. Party vote with an exception.

THE PRESIDENT: The amendment is defeated.

On the bill. Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Libous. To explain your vote?

SENATOR LIBOUS: Thank you, Madam President. I'd like to explain my vote.

And I want to applaud Senator Bruno and the Governor for coming up with this creative way.

I'm not sure I understand what my colleagues were trying to do with the amendment, because I thought our role here was to make an opportunity, to give as many people as possible this tax break.

You know, it's always very simple in this chamber and the other house when money is taken away from the taxpayer. But for some reason, why would we want to make it difficult to give it back to them?

This proposal that we're voting on I think is very simple. It makes all of the assessors happy because what we were doing is putting -- by doing an extension, you're

putting an unburdened mandate, a mandate that you're not paying for -- they have to bring in more people to meet the deadline date.

This is simple, and yet it gives an opportunity to those senior citizens, those folks who are not senior citizens, to receive something back from the government. And that something happens to be their tax dollars.

Madam President, I vote aye.

THE PRESIDENT: Senator, you will be recorded as voting in the affirmative.

Senator Bruno.

SENATOR BRUNO: Madam President, to explain my vote.

I want to commend Senator Libous on his comments, because he is very accurate and right on.

I want to explain to my colleagues that the bill that's before us is a Governor's program bill. And the Governor, in his wisdom, put this bill before us with a message of necessity, to help the people, to clarify for the people that they're not going to lose a benefit. And this is the only bill that's going to get signed. And no other bill is

going to get signed.

So if you want to provide relief, I am sharing with you that this is the bill that must pass both houses and get sent to the Governor for his signature, because the Governor sent it to us.

And I want to commend the Governor and applaud the Governor for providing this relief and this comfort level and to alleviate whatever confusion that's out there for people that will have lost their benefit otherwise.

And I would wager that there are people in this chamber that, unless this bill becomes law, are going to lose the benefit.

THE PRESIDENT: Senator, you are recorded as voting in the affirmative.

The Secretary will announce - Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

I just wanted to point out -- and I'm voting in favor of this bill, that the -

(Sound of applause.)

SENATOR PATERSON: Thank you.

THE PRESIDENT: Thank you,

Senator.

You may proceed.

SENATOR PATERSON: Maybe I should just stop while I'm ahead.

(Laughter.)

SENATOR PATERSON: But I just wanted to point that the Assembly has a bill, the Senate has a bill. Presumably they will meet in conference, and that's the way that the final determination would be made as to which bill would be passed in both houses.

As to which bill would actually would be signed, I'd presume neither, since neither of the bills has been passed in both houses.

So hopefully at this point there will be some relief of those who have been benefited by the program in the very near future.

THE PRESIDENT: Senator, you're recorded as voting in the affirmative.

And the Secretary will now announce the results.

THE SECRETARY: Ayes 57.

THE PRESIDENT: The bill is

passed.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time take up the controversial reading of the calendar.

(Laughter.)

THE PRESIDENT: Without further comment, the Secretary will read.

THE SECRETARY: Calendar Number 52, by Senator DeFrancisco, Senate Print 863, an act to amend the Social Services Law, in relation to the transportation of certain persons.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

SENATOR PATERSON: Explanation.

THE PRESIDENT: All right. Senator, an explanation has been requested.

SENATOR DeFRANCISCO: This is an identical bill that we've passed the last two years which simply says that if you are receiving transportation as part of your

Medicaid benefits, that that transportation, if you live along a public transportation route and you are physically and mentally able to take the public transportation, you should do so.

The concept is, number one, it's the lowest-cost transportation. Number two, it provides more funding for public transportation, which comes to us annually looking for more funds to exist. And in my judgment, it's a win-win proposition.

And lastly, the bill does nothing more than require people who are receiving Medicaid to do exactly what those other people do with a fixed income, they rely on public transportation. Nothing more, nothing less.

And the bill's passed the last two sessions, and hopefully it will pass this session.

THE PRESIDENT: Senator Lachman, I believe.

SENATOR LACHMAN: Will the distinguished Senator from Syracuse yield to a question?

THE PRESIDENT: Senator, do you

yield?

SENATOR DeFRANCISCO: I will, yeah.

(Laughter.)

SENATOR LACHMAN: As a former academic, I sometimes attempt not to sound like an academic. And in this bill, I think of my Aunt Sylvia, who's a senior citizen. And the way it's worded, Senator DeFrancisco, you expect a senior citizen who thinks she needs emergency care and is on Medicaid to go to the closest subway station or bus stop in New York City to get relieved of any pain or illness she might have?

SENATOR DeFRANCISCO: Is your Aunt Zilia on Medicaid?

SENATOR LACHMAN: There are many Aunt Sylvias that are on Medicaid.

SENATOR DeFRANCISCO: Okay, Sylvia, I'm sorry.

SENATOR LACHMAN: (Laughing).

SENATOR DeFRANCISCO: The point of the matter is if they're physically capable of doing so. Obviously, in an emergency situation, no one is going to tell a Medicaid

recipient to stand on a bus corner or to run down to the subway and try to get there.

This is for regular medical treatment that people are receiving, and that's the intent of the bill.

In a situation where it's an emergency, I don't think anyone would suggest it's a physically capable situation to sit there and wait until they're seriously in need of medical treatment.

SENATOR LACHMAN: Will the Senator continue to yield?

SENATOR DeFRANCISCO: Yes.

SENATOR LACHMAN: Okay. It specifically says, Senator, to obtain emergency care. You're aware of that? It's your bill.

SENATOR DeFRANCISCO: Yes, I am.

SENATOR LACHMAN: Okay. Will you continue to yield?

Are you aware of the fact -

THE PRESIDENT: Senator, you do continue to yield, Senator DeFrancisco?

SENATOR DeFRANCISCO: Yes.

THE PRESIDENT: Go ahead,

Senator.

SENATOR LACHMAN: -- that in at least three of the boroughs of the city of New York -- I'm not quite sure of Manhattan -

SENATOR DeFRANCISCO: Well, may I go back to the last question?

SENATOR LACHMAN: Sure.

SENATOR DeFRANCISCO: The first section of the bill, which is already law, says emergency medical care.

SENATOR LACHMAN: Right.

SENATOR DeFRANCISCO: The "provided that" says -- that I've added in this bill does not deal with emergency medical care.

And you were aware of that, were you not?

SENATOR LACHMAN: I'm aware of that as well.

SENATOR DeFRANCISCO: So you understand fully, before asking that question, that my bill wasn't intending for someone to stand on a corner if they need emergency medical care.

SENATOR LACHMAN: I have two

corollary questions. If -

THE PRESIDENT: Senator, please address your comments to the chair. Would the Senator -

SENATOR LACHMAN: Madam Chair, it's always a pleasure to address my comments to you.

THE PRESIDENT: Thank you. I appreciate that.

SENATOR LACHMAN: Will the Senator continue to yield?

SENATOR DeFRANCISCO: Absolutely.

SENATOR LACHMAN: All right. The two corollary questions dealing with this is that in New York City, even if a senior citizen whose name is not Aunt Sylvia has a problem -- that senior sometimes has to go up 30 stairs, 60 stairs, 70 flights of stairs in order to get to a train -- now, this bill the way it is written I think can make it much more difficult for a senior to get the type of care that he or she needs, whether the senior is called Sylvia or Sam.

SENATOR DeFRANCISCO: There are some seniors in this chamber that are in

better shape than you or I and that could run up nine flights of stairs -

SENATOR MARCHI: (Raising hand.)

(Laughter.)

SENATOR LACHMAN: John -- John Marchi, Friday morning at the corner of Bay Parkway and 86th Street.

SENATOR DeFRANCISCO: So this bill is not limited or focused on seniors. It's focused on those who are capable. If an individual is 20 years old or 80 years old and they can't make those stairs, they are not physically capable. Consequently, they would not fit under this definition.

SENATOR LACHMAN: Madam Chair, it's a pleasure to look at you. May I -- one final question -

THE PRESIDENT: -- don't have to request permission to be -

SENATOR LACHMAN: Okay, thank you kindly.

How is a person, senior or not senior, how does that person realize that he or she is capable of doing this? Because when a person gets some symptoms, they're in a

state of panic, whether they're 80 years old or 50 years old.

SENATOR DeFRANCISCO: The Department of Social Services will make a determination if someone is required to take public transportation, based upon their status.

In the event that they disagree with that, as in any decision made by the Department of Social Services, they could have a fair hearing.

SENATOR LACHMAN: Before or after the symptoms occur?

SENATOR DeFRANCISCO: No. If it's an emergency situation, Senator -

SENATOR LACHMAN: But who decides on whether it's an emergency situation?

SENATOR DeFRANCISCO: If it's an emergency situation, I think anybody would understand that the senior or anyone else is going to take the quickest transportation in an emergency.

SENATOR LACHMAN: Including the Department of Social Services throughout the state?

SENATOR DeFRANCISCO: Absolutely.

THE PRESIDENT: Senator -

SENATOR DeFRANCISCO: Absolutely.

THE PRESIDENT: -- are you finished?

Please direct all comments to the chair.

Senator DeFrancisco, you may continue.

SENATOR DeFRANCISCO: And then there will be a determination as to future treatment after the emergency. But this, as I mentioned before, does not deal with emergency situations, the amendment.

THE PRESIDENT: Senator Paterson, do you wish to be heard?

SENATOR PATERSON: Not publicly, Madam President.

(Laughter.)

SENATOR PATERSON: Thanks, though.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: If I may be permitted to remain seated, I would appreciate it.

THE PRESIDENT: Of course, Senator. Go ahead.

SENATOR STAVISKY: In part of my district, we have the No. 7 line, which is an elevated line and will require individuals to climb substantial numbers of stairs. Now, this may not be construed as an emergency situation. But it definitely causes great pain and suffering to anyone who is not able to climb the stairs. And I believe that the No. 7 line is an elevated line over much of its tracks.

And I believe that this legislation will require issuance of a statement of medical necessity for situations which are in a sense brutal for many individuals. Come with me to western Queens where, from downtown Flushing to the city line, there is this No. 7 line which consists of elevated tracks. It will not be possible for all individuals to require and expect a certificate of medical necessity.

I think that this legislation will indirectly impair the ability of such individuals to take advantage of the access to

the subway line, which is really an elevated structure. And I believe that this is -- this is a -- an incongruous impediment to access to rapid transit.

There are trains all along the No. 7 line, but the trains do not necessarily meet the expectations or the ability of individuals wishing to use mass transit. Climbing up and climbing down will impair the ability of citizens and noncitizens to have access to this public rapid transit. Which, if you can get to the train, is one thing. But if you can't reach the train because of the elevated structure, I believe that impairs the ability of this legislation to do the right thing for so many people.

For these reasons, I intend to oppose this bill as it's presently written. So it will not be a question of a certificate of medical necessity in each case, but, rather, it is necessary to recognize the reality that a subway route in your neighborhood, which is not truly a subway route but rather is on an elevated structure, will impair the ability of tens of thousands

of people to take advantage of the intent of the legislation.

For this reason I will vote against this bill, as I have done on a previous occasion two years ago, and ask that members consider this situation of an elevated train which is not in close proximity to the constituents' needs.

Thank you, Madam President.

THE PRESIDENT: Thank you, Senator.

Senator Paterson.

SENATOR PATERSON: Madam President, would the Senator yield for a question?

SENATOR DeFRANCISCO: Yes.

THE PRESIDENT: He yields. You may proceed, Senator.

SENATOR PATERSON: Senator, the notion of this bill is quite apt. People who are able to meet these appointments should be able to do them. And if they can ride the buses and the subway, they certainly should.

But my question is, how does your legislation address those kind of transient

situations where, for instance, a subway might be three or four blocks away from where an individual lives, but with a significant snowstorm that trip that could be made by a person one day could be an emergency in the sense that they could not get to that transportation on another day?

And I don't know, in an ambiguous situation such as that, how that is -- there is any kind of regulation that can provide for any kind of guidance in that situation. And to adjudicate these cases administratively, in my opinion, would probably cost more money than would be saved by implementing this type of regulation.

So my question is, how do you address those situations that are -- have an inertia to them, that are not static?

SENATOR DeFRANCISCO: First of all, these are being addressed voluntarily in some counties, including Onondaga, where I come from. And basically it's not creating a hardship to anybody that's physically or mentally capable of using public transportation.

And what it's doing is saving dollars from cabs that were used previously, which dollars are being used for, guess what, medical care. So Aunt Sylvia can get medical care once she gets there, because those who are capable of using the lower-cost transportation are doing it.

Now, no question, any legislation, if you're going to look at one exception - there's a major snowstorm. What do we do then? You can't legislate by exception. In situations like that, obviously, if that person cannot make it on that day because of the circumstances, then I would imagine the Social Services Department could make an exception on that day.

But generally speaking, when you are capable, just like a low-income individual who doesn't have the luxury of Medicaid is capable to use the lowest-cost transportation, so dollars are used for medical care rather than transporting people to the medical care.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you very much, Madam President.

THE PRESIDENT: You're welcome.

SENATOR DUANE: On the legislation. Although if the sponsor cares to respond, I would -- with your permission, that would be more than welcome.

THE PRESIDENT: There will be no need for my permission. Go ahead, Senator.

SENATOR DUANE: I thought there was always need for your permission, Madam President.

(Laughter.)

THE PRESIDENT: The sponsor can respond. The sponsor can respond. Go ahead.

SENATOR DUANE: While I understand the intention to bring down costs and to encourage use of mass transportation, both of which I think are laudable goals, I think that this legislation is really too much. And in fact, there might be better ways to achieve the goal, by regulation or other ways, which might take into account the very, very complicated decisions that people make when it comes to their health, how it is that they access health care.

And probably most specifically what

I wanted to raise was health care when it's a parent or a foster parent or a grandparent or a guardian dealing with the health of a child. As many of us know, many of the people covered by Medicaid are in fact children. And I think that a mom or a dad or an adult needs to be able to have the full range of options on how it is that they provide access to health care for their children.

In addition, it may not always be perfectly well known on the spot whether or not a particular health-care situation is an emergency or not. And I don't think that it's appropriate to, in many cases, hold accountable after the fact actions which were taken with the best interests of what could have been the health needs of a child.

And so that's why I think that this is much too much to do it legislatively and in this manner on an issue which, yes, is important as it applies to mass transportation and health care and Medicaid costs. But I don't -- I just don't think that this is the way to go.

Thank you, Madam President.

THE PRESIDENT: Senator Waldon.

SENATOR WALDON: Thank you very much, Madam President.

I don't want to belabor this too long. But if the gentleman would just let me preface a question, I would be greatly appreciative, Madam President. I will ask a question with a few brief remarks before.

THE PRESIDENT: Senator, go ahead on the bill.

SENATOR WALDON: Just sit, Senator, until I get to the point.

Where I live, the area that I'm honored to represent, all of the Rockaways is in that area. In the Rockaways is the heaviest concentration of senior citizens in any small geographical area in the state of New York.

When you were speaking on your bill, I was wondering what happens in an ice storm. And someone raised that -- I believe Senator Paterson -- about inclement weather.

But what happens in a snowstorm or heavy rain and the senior citizen is, as one senior citizen I know, 84 years of age, from

the Caribbean, not too capable in terms of language to communicate in the native tongue of America, and has to walk great distances to where the bus stop is, has to walk an extraordinary distance to get to where the elevated subway is and then up the stairs in order to get the medical facility?

What happens in Cambria Heights, where there's one bus line going through the area from Murdoch to 121st Avenue? What happens when there's such distances and the weather is inclement?

What happens when the person affected is also an octogenarian and has to make a decision: I know I'm sick. For 80-some years I've been able to determine when I'm sick. But considering the bill that was passed, sponsored by Senator DeFrancisco, I now must call my doctor to see whether or not I'm sick enough to call for the EMS vehicle, or whatever would transport her to the medical facility?

So my question, Senator, is what would happen under those extraordinary circumstances. And I appreciate your

response.

SENATOR DeFRANCISCO: I've already answered the question. I think the question was already raised concerning the ice storm, and I indicated that in emergency situations individuals could take other transportation.

But this is no different than someone of low income or someone who has to rely on public transportation anyway. It's simply for someone who is on a fixed transportation route, that's capable of getting on the transportation, they should use it.

And, you know, it's not intended to be punitive. I mentioned it's used voluntarily in our county. It's saved an awful lot of money for health care. And those people that have complained that they can't, because of whatever reason, are entitled to a hearing. And in most cases, they're accommodated.

It's simply a way to try to reduce costs and indirectly to provide more funds for mass transportation so it's there for

everybody, to benefit everybody.

SENATOR WALDON: Madam President, I apologize. I said I would ask one question. If you would ask the gentleman would he yield to just one more -

THE PRESIDENT: Will the Senator yield?

SENATOR WALDON: -- I guarantee I won't ask another.

SENATOR DeFRANCISCO: Yeah, absolutely.

THE PRESIDENT: Senator, you have the floor for one more question.

SENATOR WALDON: Thank you very much, Madam President.

Senator, if you have the information and the data, could you give us an idea as to what savings you were able to determine would happen if this became law versus what is in existence now?

SENATOR DeFRANCISCO: About the only thing I can do is provide you -- and I don't have it with me, but I could certainly provide it to you -- the savings that we've experienced in Onondaga County under the

voluntary program. But it's substantial. And I can't tell you the numbers.

In fact, it was the public transportation and the Onondaga County Department of Social Services that told me about the program, that prompted the concept that it should be considered statewide.

SENATOR WALDON: Madam President, I thank you. And I thank the Senator. Thank you, Senator DeFrancisco.

THE PRESIDENT: Senator Schneiderman.

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

THE PRESIDENT: Senator, will you yield?

SENATOR DeFRANCISCO: Yes.

THE PRESIDENT: Go ahead, Senator.

SENATOR SCHNEIDERMAN: Senator, the question I have, as you know, it's been more than a month since the Clinic Anti-Violence Bill was introduced in this house and the Assembly, and -- thank you.

It's been more than a month since the Clinic Anti-Violence Bill was introduced in this house and in the Assembly, and we're facing a very serious problem in this state of demonstrations, harassment, threats, and acts of violence outside reproductive health facilities.

My question to the sponsor is, would this require a woman seeking reproductive health services to take public transportation when that would result in her having to run the gamut of screaming, abusive, and possibly threatening protesters, as opposed to attempting to take a car service or taxi to deposit the woman in front of a reproductive health facility?

SENATOR DeFRANCISCO: I don't think it matters whether you get to the health facility where the demonstration is going on, whether you get there by bus, train, car, or plane.

I think the problem that you're talking about is totally unrelated, and it's related to a problem around the facility itself. How they get from home to the

facility I think is irrelevant to the issue.

SENATOR SCHNEIDERMAN: If the sponsor will continue to yield.

THE PRESIDENT: Senator, do you continue to yield?

SENATOR DeFRANCISCO: Absolutely.

THE PRESIDENT: Go ahead, Senator Schneiderman.

SENATOR SCHNEIDERMAN: In certain clinics where I have represented clinic defenders, in fact, the problem is precisely that the area directly in front of the clinic may be cleared by escorts and the police while on all sides of the clinic there are protesters who will accost every woman, frankly whether she's seeking reproductive health services or not and seeks to approach the facility.

If it is a situation like that, I take it -- am I correct in assuming that this bill would nevertheless require someone to take public transportation even if it meant walking through that particular unpleasant, possibly threatening situation?

SENATOR DeFRANCISCO: Yes, it

would. And I'm just wondering if they took - may I ask, would you yield to a question?

SENATOR SCHNEIDERMAN: Certainly.

SENATOR DeFRANCISCO: If they took their car to that facility, how would they avoid that same problem?

SENATOR SCHNEIDERMAN: Well, in the situations where the police are able to clear an area directly in front of the facility, between the facility and the road or the driveway, there is in some cases better access.

Where people have to walk, everyone of course has First Amendment rights. And what's most common is for protesters to - police to attempt to move protesters to the sides, although sometimes that can be difficult.

Those are the situations I'm speaking about, Senator.

SENATOR DeFRANCISCO: And my question is, how does someone that's protesting identify someone getting off the bus as walking to this area, to the health clinic?

SENATOR SCHNEIDERMAN: Just - just -- just by -

SENATOR DeFRANCISCO: Do they have signs on them that say they're -

SENATOR SCHNEIDERMAN: Just by the direction they're walking.

No. In fact, that's one of the problems at reproductive health facilities, is that many women who are not even seeking such services are screamed at, berated, called murderers, just for approaching the building or, in some cases, attempting to go to a different office in the same building.

And it is a serious problem, as you know. It's something that we're seeking to address here.

I do not think that the network of terrorists is getting any lighter in its touch. And I think you're correct in pointing out that in many cases this is a problem even for women seeking to obtain reproductive health services arriving by car.

As I think you probably are aware, last week envelopes with powder in them that said "Anthrax. Have a nice death" were sent

to the National Organization of Women, the National Abortion Rights Action League. We have representatives from that organization here with us today.

The terrorist campaign is getting worse. And I would urge that you take into consideration this particular problem and the implementation of any sort of bill that would restrict women in any way from prompt, efficient, and safe access to their health-care providers.

SENATOR DeFRANCISCO: To answer your question directly, this bill does not address that, nor do I think it needs to be. That's a totally separate issue that there may be a different remedy.

SENATOR SCHNEIDERMAN: Madam President.

THE PRESIDENT: Do you continue to yield, Senator DeFrancisco?

SENATOR DeFRANCISCO: Yes.

SENATOR SCHNEIDERMAN: I just want to say that I am an advocate for mass transit and I appreciate the intent of this piece of legislation. I think that some of

the issues that have been raised here in questions of my colleagues have great merit.

And I would also urge that until our house addresses the issue of violence at reproductive health facilities, we will continue to face anomalies like this in the law. And that the ultimate solution to this problem is to make sure that every form of access is safe. And if that was true, I think that it would be easy to support a well-intentioned bill like this.

Thank you.

THE PRESIDENT: Senator Lachman.

SENATOR LACHMAN: On the bill, Madam Chairman.

THE PRESIDENT: On the bill.

SENATOR LACHMAN: Madam Chairperson. And briefly.

I understand the Senator's noble intentions. And they're good and they're wise. But this bill is penny-wise and pound-foolish, in my opinion, because it does not take into consideration those troubling, transient transit problems that arise every day of the year, especially in emergency

situations and especially with senior citizens.

And unless you have an ex post facto provision written into this bill, it will not adequately do justice to the citizens of my borough of Brooklyn and most of the city of New York, including the distinguished Senator who's sitting next to you, his borough of Staten Island.

I therefore would respectfully vote no on the bill.

THE PRESIDENT: 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 PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yeah, I'd like to explain the vote.

I want to thank Senator Lachman for calling this bill wise and noble. And I appreciate the alliteration that we heard as well, with the transient transit authority or

whatever.

But I just want to make very clear, it sounds from all the discussion of the negative points here that there's some meanspiritedness around this bill.

All I want to say very clearly is that this concept works in Onondaga County. Monies have been saved. It does not apply to people who cannot use the public transportation for whatever physical or mental reason. And it provides more funds for what Medicaid is truly used for; namely, medical care.

And I think it's a good bill, and hopefully it will be passed in this house. And I vote -

THE PRESIDENT: All right. Senator, you will definitely be recorded as voting in the affirmative.

And the Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 52 are Senators Connor, Dollinger, Duane, Kruger, Lachman, Markowitz, Mendez, Montgomery,

Onorato, Oppenheimer, Paterson, Rosato, Santiago, Schneiderman, Smith, Stavisky, Waldon. Also Senator Gentile, Senator Hevesi.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: I apologize for any confusion, Madam President.

THE PRESIDENT: That's all right, Senator. Thank you.

THE SECRETARY: Ayes 39; nays 18.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 121, by Senator Hannon, Senate Print 1524, an act to amend the Public Health Law, in relation to reimbursement.

SENATOR ALESI: Madam President, may we lay the bill aside for the day, please?

THE PRESIDENT: The bill is laid aside for the day, Senator Alesi.

THE SECRETARY: Calendar Number 173, by Senator Goodman, Senate Print 1117, an act to amend the Penal Law, in relation to gambling offenses.

THE PRESIDENT: Read the last

section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Hevesi.

SENATOR HEVESI: Madam President, I rise to explain my vote.

Madam President, I had reservations about this bill, in that my initial concern was that potentially individuals who would play three-card monte could be subject to prosecution if we classified the offense this way. I've since been assured by the sponsor that that's not the case and, as a result, enthusiastically support this legislation.

Fortunately, in the city of New York, it's been my personal experience that we've seen less and less of these three-card monte games. But this legislation is exceedingly necessary in light of the fact that although there are less of these games right now, probably as a result of the city's crackdown on quality-of-life offenses, the

city is doing so well economically that our tourism is exceedingly high. Hotel occupancy is at some of its highest levels ever. And therefore, we have more potential victims in the city from this scourge.

These three-card monte players are by definition insidious. And the games are often set up in an elaborate fashion to entice people, where they have individuals who are shills, if you will. And they entice people; they act as if they're playing the game and are successful in their winnings when they're in fact not successful.

So I enthusiastically support this legislation and commend Senator Goodman and Senator Maltese on sponsoring it -- I know it passed unanimously in this house last year - and would also urge my Assembly colleagues to pass this bill as soon as possible.

THE PRESIDENT: All right. You will be recorded as voting in the affirmative.

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. Just to explain my vote.

In my prior discussions about this

bill in committee, Senator Goodman, I said I've never seen three-card monte. And I never realized it was a problem. And then lo and behold, Madam President, last night what am I doing, I'm watching Ally McBeal. Ally McBeal, who's gone through an emotional trauma much like, I guess, others, is at the end of Ally McBeal in the middle of downtown Boston. Who does she run into, Senator Goodman, but a guy with three cards on a little stand. And Ms. McBeal, who's gone through the trauma of Hollywood, suddenly starts betting dollars. And then I'm informed by staff, before the program ends she's betting twenties and apparently losing at great measure.

So I guess if it's real in Boston, if it's real in Hollywood and real for Ally McBeal and, according to my colleague, Senator Hevesi, real in New York City, we ought to include three-card monte, whoever he or she is, in the list of games that we ban in this state.

THE PRESIDENT: Senator, you are recorded as voting in the affirmative.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, to explain my vote.

I'm going to be voting yes, but I just want to remind my colleagues that three-card monte is a local activity, a street-level gambling activity, similar to our casinos, which we certainly don't have in New York State. They're illegal too. But nonetheless, we once had the local numbers runners and that was unfortunately very much involved with organized crime. But nonetheless, we replaced it with legal numbers games, which we sponsor in this state.

So I'm going to vote yes for this, but I do have some -- some sense of hesitancy, in that I'm reminded that it really removes a little activity at the street level by people who are really hustling to make a little money for themselves.

Thank you.

THE PRESIDENT: So recorded, Senator. Thank you.

The Secretary will announce the results.

THE SECRETARY: Ayes 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 176, by Senator Spano, Senate Print 1259, an act to amend the Penal Law, in relation to the crime of criminal employment.

THE PRESIDENT: Read the last section -- excuse me.

Senator Duane.

SENATOR DUANE: Thank you, Madam President. Would the sponsor yield to a question, please?

THE PRESIDENT: Senator Spano, do you yield?

SENATOR SPANO: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: Thank you very much.

In committee the question arose - first let me say that I'm very, very supportive of the intent of the legislation and -- that of the despicable use of by an adult of a child in a drug transaction.

But the question came up in the committee as to whether or not a child who engaged another child in a drug transaction would also be covered by the penalties in this legislation. Which I'll -- as you know, Senator, I am not supportive of. And I just wanted to clarify that they would not be covered, that it's only the adults who would be -- an adult who would be punished.

SENATOR SPANO: You're correct, Senator Duane.

And we, in researching this in anticipation of your question, were told that a juvenile would be covered under the Juvenile Delinquency law and not covered -- because that juvenile would be covered under the Juvenile Delinquency Act. So it would not cover a minor.

SENATOR DUANE: Thank you very much.

Thank you, Madam President.

THE PRESIDENT: Thank you.

The Secretary will now announce the results.

THE SECRETARY: Ayes 57.

THE PRESIDENT: The bill is passed.

The last section will now be read.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 191, by Senator Wright, Senate Print 2422, an act to amend the Public Service Law, in relation to the elimination of the mandate for the Public Service Commission.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Senator Duane.

SENATOR DUANE: I wanted to rise to explain my vote, Madam President.

THE PRESIDENT: First we'll call the roll, Senator, please.

(The Secretary called the roll.)

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you very much, Madam President.

I'd like to be recorded as voting in the negative on this. I don't think that it is that burdensome to submit to an audit every five years by the Public Service Commission for utility companies. I just think that this provides an additional protection for -- to make sure that with energy deregulation that our small businesses are able to be provided with affordable energy. And also, frankly, for older New Yorkers and low-income New Yorkers.

I just think this provides an additional check to make sure that the needs of small businesses and at-risk New Yorkers are taken into account by deregulated energy companies.

Thank you.

THE PRESIDENT: Senator, you will be recorded as voting in the negative.

SENATOR DUANE: Thank you, Madam President, yes.

THE PRESIDENT: Announce the results, please.

THE SECRETARY: Ayes 56; nays 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

Senator Skelos.

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

THE PRESIDENT: No, Senator.

SENATOR SKELOS: Would you please recognize Senator Montgomery?

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Madam President, I would like unanimous consent to be recorded in the negative on Calendar 170.

THE PRESIDENT: Without objection, you are so recorded as voting in the negative.

SENATOR MONTGOMERY: Thank you.

THE PRESIDENT: All right. Senator Mendez.

SENATOR MENDEZ: There will be an immediate Minority conference in Room 314.

THE PRESIDENT: There will be an immediate Minority council meeting in Room 314.

Minority conference, excuse me. I didn't hear you correctly.

Go ahead, Senator Skelos.

SENATOR SKELOS: Madam President, would you please recognize Senator Breslin? I believe he has a motion.

THE PRESIDENT: Senator Breslin.

SENATOR BRESLIN: Madam President, I believe there's a motion at the desk. And I would waive reading and be allowed to explain the motion.

THE PRESIDENT: You may proceed, Senator. Thank you.

SENATOR BRESLIN: There's a bill at the desk on a motion to discharge which would -

THE PRESIDENT: Senator, first we should read the title.

The Secretary will read.

THE SECRETARY: By Senator Breslin, Senate Bill Number 801, an act to amend the General Obligations Law and the

Civil Practice Law and Rules.

THE PRESIDENT: Senator Breslin.

SENATOR BRESLIN: This bill is a relatively simple bill. It's a bill that essentially duplicates the bill which has passed the Assembly the last three years holding insurance companies and HMOs responsible for their own medical decisions.

Doctors are held responsible, lawyers are held responsible, and HMOs are now making decisions which crowd the medical area. And they should be responsible for them.

It's certainly not a partisan issue, as many of my Republican friends on the other side as well as Democrats on this side have supported the concept and in fact the legislation dealing with HMO responsibility.

The key word in the legislation is "accountability." Currently, if an HMO makes a medical decision, we are precluded from having a lawsuit emanate from that decision, as they cannot be held responsible for malpractice. This legislation would change that.

We've waited far too long. We've

waited a number of years and watched HMOs make decisions. There are many fine HMOs who do make medical decisions and they're made by medical people. I can emphasize the ones in our Capital District as being so good. But there are others that don't, and we must hold them responsible.

And this legislation has tremendous cross-based support, including but not limited to the Center for Independence, Citizens Action of New York, the Mental Health Association of New York, the League of Women Voters, NYPIRG, the New York State Senior Citizens Action Council, and many other groups.

It's time to come together as Democrats and Republicans and pass this legislation. And I urge all of you to vote positively on this motion to discharge so we can take up this important issue.

Thank you.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

I'd also like to speak in support of the motion to discharge offered by Senator Breslin. This is an issue that he has been closely involved with and taken the lead on, and I commend him for that.

What this bill seeks to do is not to create a revolution in New York law but simply continue the evolution of New York law with respect to creating damages for pain and suffering -- damages in tort -- for certain entities that engage in tortious conduct.

All the lawyers in this room -- and I'm sure Senator Balboni will give me the name of the case that involved the Buick in 1918 that was driving down the road. MacPherson-Buick.

Remember what happened to MacPherson-Buick? The tire falls off the car. Somebody's in an accident. Under the old law -- up in Plattsburgh, I'm told by Senator Stafford. Right up in Plattsburgh, the New York Court of Appeals says, "What are the damages for not repairing the car correctly?"

MacPherson-Buick would turn around and say, "Wait a second. The only thing you

can get is damages, are breach of contract damages. I told you I'd repair the car. I didn't repair it. What would the car have been worth if it were properly repaired? I'll give you that amount of money." Simply breach of contract.

But instead the Court of Appeals, which continued the evolution of New York's common law of torts, said, "No. If you're involved in a contract and you breach that contract and it's a product, you are now liable for pain and suffering that is caused as a consequence of your breach of contract."

And we ended up with product liability, a theory based on the notion that you should be responsible for your actions and when they cause a harm, a foreseeable harm, you should have to pay not only for the breach of contract but pay for the pain and suffering that was foreseeable at the time your conduct caused the harm.

That is all that Senator Breslin's bill seeks to do, is to say to an organization involved in a contract, that has a contractual obligation to provide health insurance and

health coverage for an individual, that if they breach that contract and do not fulfill their contract responsibilities, because it's health, because this is the health of New Yorkers that's at stake, we will simply treat them exactly the same way we treat a physician and we will hold them to a negligence standard of conduct.

If what they do is to disregard a foreseeable risk -- if it is because they deny a mammogram, they foreseeably create the risk of breast cancer or undetected breast cancer or delayed detection of breast cancer. Or if they deny experimental treatments that would include, as it included in a case that I took to the courts in this state several years ago -- they were unwilling to cover what they considered to be an experimental treatment that involved surgery for an epileptic child. They refused to do it for two years. And under those circumstances, when we sued, all we could get were breach of contract damages.

But I'll tell you, for the little boy who had eight epileptic seizures a month prior to that surgery and two a year

thereafter, I believe that I could have proven to a jury that he suffered a personal suffering and pain as a consequence of the health maintenance organization's failure to provide him with that coverage and with that access to care.

It seems to me that in the evolution of the business world we simply have said to some people who are involved in such conduct that it creates a direct risk of harm, where we know what the harm is, that under those circumstances they can be held to a tort standard of liability. That's all Senator Breslin's bill does.

If insurance companies want to get into the business of telling doctors what to do for their patients, let them stand up and say "We accept the same responsibility that a doctor has." And that is, if their conduct causes a harm, they must respond in tort damages.

I look at this as the next evolution of New York's liability laws. We are told that this is a revolutionary idea, that this changes the whole tort system.

Senator Breslin has pointed out to me a number of times, since when was there a revolutionary idea that was put in place in Texas before it was put in place in good old New York?

I'd simply point out to you, let's do what Texas has done and ten other states that don't consider themselves to have the same progressive tradition of New York. Let's follow their lead and march down the road of telling insurance companies that want to play physician that when you play like a physician, if you're negligent, you have to pay like one too.

THE PRESIDENT: All those in favor -- Senator Paterson.

THE PRESIDENT: Senator Schneiderman, I've been informed you were first. Go ahead. Senator Schneiderman first. Go ahead.

Excuse me, Senator Paterson. I didn't see you.

Go ahead.

SENATOR SCHNEIDERMAN: Madam President, I'll be very brief. There was a fascinating -- Senator Dollinger just

mentioned a lot of issues relating to the denial of health care. There was a fascinating and thoughtful article in the Sunday New York Times this week discussing how in many cases health maintenance organizations, managed-care companies, are making too many decisions approving certain procedures which may be unnecessary and overly increasing the cost of the health-care system.

Whether you think that there are too many denials, too few denials, it is absolutely clear when you get to the end of this piece -- which I think was a very balanced statement -- that they are the decision-makers. We should stop kidding ourselves about who's making the decisions on whether medical procedures are available or not. And I do not understand why they should be uniquely exempt from malpractice liability.

And I also concur in the sentiment that if Texas can have this, under the leadership of Governor Bush, I don't see any reason why New York State cannot also achieve these results.

And perhaps it's something that we

can achieve this session and provide aid to those supporters of the Governor who wish to see him join Governor Bush in future endeavors.

THE PRESIDENT: Thank you.

Senator Paterson.

SENATOR PATERSON: Thank you, Madam President. Thank you for holding the vote so I can stay here.

I want to just say that Senator Dollinger joined Senator Breslin and Senator Schneiderman as the -- they have been going around the state trying to enlist support on a number of health-care items, but particularly this one.

We do have standards in our state, particularly in the major medical and legal professions, for what is considered to be a malicious practice of those professions. We have the Office of Professional Discipline, which through the Department of Education supervises 32 other professions.

But we do not have any protections against these types of decisions that are made by a new entity -- in a sense, practicing

medicine not only without a license but practicing medicine sometimes without even any supervision.

And so what we're just saying is that as long as those decisions are made in good faith, we can abide by them. But the problem is that even in good faith, where there's been establishment of -- an establishment of negligence, there must be some kind of remedy for the afflicted and for the victim.

And for that reason, I rise in support of this motion for discharge.

THE PRESIDENT: All those in favor of accepting the motion to discharge, signify by saying aye.

SENATOR PATERSON: Party vote to affirm.

SENATOR SKELOS: Party vote in the negative.

THE PRESIDENT: The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 24; nays 33. Party vote.

THE PRESIDENT: The motion is defeated.

Senator Skelos.

SENATOR SKELOS: Will you recognize Senator Paterson, please?

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, I just wanted to remind my colleagues on -- in the Minority that there'll be an immediate meeting in the Minority Conference Room.

THE PRESIDENT: There will be an immediate meeting of the Minority conference.

Senator Skelos.

SENATOR SKELOS: Madam President, there being no further business, I move we adjourn until Wednesday, March 3rd, at 11:00 a.m. sharp.

THE PRESIDENT: On motion, the Senate stands adjourned until Wednesday, March 3rd, 11:00 a.m.

(Whereupon, at 5:00 p.m., the Senate adjourned.)