NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 8, 1999

3:07 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

THE PRESIDENT: The Senate will come to order.

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

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

THE PRESIDENT: With us today to say the invocation is Reverend David Miracle, Rector, All Saints Episcopal Church in Brooklyn.

REVEREND MIRACLE: Heavenly Father, we give You thanks and praise for the blessings of this day. We thank You, Lord, for providing so well for our needs and for giving us another day to love and serve You.

As we serve You, Lord, let us always keep in mind the people that we have accepted to serve. Let us seek Your wisdom, Oh Lord, in decision-making, and not be governed by the whims of society or by the almighty dollar, but base our decision on Your truth and word, which You have made known to us in the scriptures. And we ask, Lord, for forgiveness when we do not obey Your word.

And, Lord, I ask for Your special blessing on the Governor of this state and for each person who shares in the tremendous responsibility of making and carrying out the necessary policies to govern it.

And, Lord God Almighty, in whose name the founders of this country won liberty for themselves and for us and lit the torch of freedom for nations then unborn, grant that we and all the people of this land may have grace to maintain these liberties in righteousness and peace.

In Jesus's name, amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Friday, March 5th, the Senate met pursuant to adjournment. The Journal of Thursday, March 4th, 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.

SENATOR SKELOS: Madam President -

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: -- may I interrupt for a minute?

Have we received the resolution from the Assembly establishing a time for the election of members of the Board of Regents?

THE PRESIDENT: Yes, Senator, we have.

SENATOR SKELOS: Thank you.

THE PRESIDENT: Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Libous.

SENATOR LIBOUS: Thank you, Madam President. I'd like to star one of my bills, Calendar Number -- or, actually, two of them, 204 and 223. And -

THE PRESIDENT: So ordered, Senator.

SENATOR LIBOUS: Thank you, Madam President.

I have one other. On page 16 I offer the following amendments to Calendar Number 224, Senate Print Number 2101, and ask that said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: So received. And the bill will retain its place on the Third Reading Calendar.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

On behalf of Senator Skelos, I wish to -- on page 9, I offer the following amendments to Calendar 118, Senate Print 11. I ask that that bill retain its place on Third Reading Calendar.

THE PRESIDENT: Amendment received. And the bill will retain its place on the Third Reading Calendar.

SENATOR FARLEY: On behalf of Senator Johnson, I move that the following bill be discharged from its respective committee and be recommitted with instructions

to strike the enacting clause. That's Senate Print 1611.

THE PRESIDENT: So ordered.

Senator Skelos.

SENATOR SKELOS: I believe there's a privilege resolution at the desk by Senator Holland. I ask that the title be read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Holland, Legislative Resolution Number 574, commemorating the 87th anniversary of the founding of the Girl Scouts of the USA, on March 12, 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 Skelos.

SENATOR SKELOS: If we could take

up the noncontroversial calendar, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 114, by Senator Volker, Senate Print 1455, an act to amend the Private Housing Finance Law, in relation to a limited profit housing company.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 139, by Senator Padavan, Senate Print 1888, an act to amend the Agricultural and Markets Law, in relation to spectators at exhibitions of animal fighting.

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 45; nays 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 148, by Senator Lack, Senate Print 1143, an act to amend the Labor Law.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 151, by Senator Wright, Senate Print 1881, an act to amend the Workers' Compensation, Law in relation to granting civil immunity.

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 SECRETARY: Ayes 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 154, by Senator LaValle, Senate Print 1067, an act to amend the Education Law -

SENATOR ONORATO: Lay it aside.

THE SECRETARY: -- and the Public Officers Law.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 155, by Senator LaValle, Senate Print 1068, an act to amend the Education Law, in relation to the Board of Regents.

SENATOR ONORATO: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 156, by Senator Balboni, Senate Print 1737, an act to amend the Education Law, in relation to authorizing memorial awards.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect April 1st, the year of

2000.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 177, by Senator Marcellino, Senate Print 1325, an act to amend the Penal Law, in relation to including the theft of dogs and cats.

SENATOR PATERSON: Lay that aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 201, by Senator Velella, Senate Print 1734, an act to amend the General City Law and the Penal Law in relation to creating the crimes of urinating or defecating in public.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

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

SENATOR SKELOS: If we could take

up the controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 148, by Senator Lack, Senate Print 1143, an act to amend the Labor Law.

SENATOR PATERSON: Lay it aside temporarily.

THE PRESIDENT: The bill will be laid aside.

THE SECRETARY: Calendar Number 154, by Senator LaValle, Senate Print 1067, an act to amend the Education Law and the Public Officers Law in relation to the Board of Regents.

SENATOR PATERSON: May we have an explanation, please.

THE PRESIDENT: An explanation has been requested.

SENATOR SKELOS: Lay it aside temporarily.

THE SECRETARY: Calendar Number 155, by Senator LaValle, Senate Print 1068, an act to amend the Education Law, in relation to the Board of Regents.

SENATOR DUANE: Explanation.

SENATOR SKELOS: Lay it aside temporarily.

THE PRESIDENT: Laid aside temporarily, as with the prior bill.

THE SECRETARY: Calendar Number 177, by Senator Marcellino, Senate Print 1325, an act to amend the Penal Law, in relation to including the theft of dogs and cats.

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 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 201, by Senator Velella, Senate Print 1734, an act to amend the General City Law and the Penal Law.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Velella,

an explanation has been requested.

SENATOR VELELLA: Madam President -- yes, Madam President.

Those who asked for the explanation are certainly familiar with this bill that we have passed a number of times. I might point out, the last time 13 members of the Democratic side of the aisle voted against it, and three of them didn't return. So be careful what you do.

(Laughter.)

SENATOR VELELLA: But this does allow -- this does allow for a city or municipal government -- not only the City of New York, but statewide -- to pass legislation in their own local legislative body which would give them the opportunity to address the qualify-of-life issues that are so important to our cities.

The first part of a three-part bill would be that they would be able to have commercial zones. And this originally came to me as a result of the actions of our good former mayor, Mayor Dinkins.

If you could remember back to the

Democratic Convention when Mayor Dinkins said, "We're going to clean up the streets and get these vagrants that are laying in the storeways and on the sidewalks off the streets, and we're going to let the Democratic delegates see a good, clean New York City."

And I said that was an excellent idea that Mayor Dinkins had, so why not have commercial zones in the City of New York where we can put signs up that this is a commercial zone and stop people from laying in doorways, laying on the streets during the hours that are posted, after they've been warned by a police officer to move out of the way, so that we could have a city, as Mayor Dinkins envisioned it, free of these people sleeping in our doorways. And this bill would provide for that.

The second part is just a little bit of a health problem, I guess, within the city. It provides for criminalizing, in a sense, the public urination or defecation on the streets of the city of New York. That I think speaks for itself. I can't see anybody who would be against that. I don't think

anybody in this chamber would dare to say that they are supportive of it. And certainly we have debated that issue a number of times.

The last part of the bill, the third part, would allow cities to establish a law against aggressive begging. And that is where someone approaches you and puts you in fear of imminent bodily harm that you may be injured if you don't turn over some property to them.

Those are the three parts of the bill. I think most of you are familiar with them. And I urge its passage.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes. Thank you, Madam President.

I'm not going to ask the sponsor any questions, because I've asked the questions beforehand. And the main question that I have asked in the past is whether or not there are laws that we -- that already exist on the books that would allow for the arrest of someone who was participating in this kind of behavior and that the law

enforcement felt that it was warranted that they be arrested.

And in the past -- I have my notes here from the last time that we debated this bill, and I'm assuming that that is still the case -- Senator Velella has said unequivocally yes, that we do have that on the books. And that -- so that the localities already have that capacity. So that's -- that's -- that question, I think, is not necessary to be asked.

What I want to say is that as I have said in the past, Senator Velella, Madam President, this bill is simply a bill which would criminalize homelessness.

If you are a person who has -- a person of means, you have a job, you have a home to go to, you are comfortable. When you need to go to the bathroom, you have a restroom in your place of work, a restroom, a bathroom in your home. There is no need for you to go and defecate or urinate on the streets. There is no need for you to go and beg for nickels and pennies and quarters at the -- at the corner -- the corner, in the

streets and what have you.

But if you are a person who is destitute -- and as we have a number of people who are working every day who have no place to live in the city of New York. They live in shelters. There are working people, thousands of working people who live in shelters because they have no home. They have been priced out of their homes and so forth and so on.

So that means that with this legislation, the meanness of it is that we're going to criminalize the people who find themselves in that position.

So Senator Velella knows how I feel about this. I talk about it all the time. We live in the same city. I live in the same city as Senator Velella. And he knows that I certainly don't want someone doing that in my front yard or in -- where I live. I understand you don't want that to happen in your yard or your neighborhood. I really deplore seeing people sleeping -- in front of City Hall, people are sleeping under their blankets or in their box -- in their boxes that they've made into houses and what have

you.

So yes, we have a problem. It's an issue that we have to deal with. But I don't think that the solution is criminalizing them.

So I urge my colleagues to vote against this, because it really sends a message that I don't think we want to send to poor, homeless people in our state, that we don't care anything about them, the only thing that we -- only answer we have to their problem is to put them in jail.

Thank you.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Results. The Secretary will read.

THE SECRETARY: Those recorded in the negative on Calendar Number 201 are Senators Breslin, Connor, Duane, Montgomery, Paterson, Santiago, Schneiderman, and Waldon.

Ayes 45; nays 8.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 148, by Senator Lack, Senate Print 1143, an act to amend the Labor Law, in relation to direct sellers.

SENATOR SKELOS: Lay it aside for the day, please.

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

THE SECRETARY: Calendar Number 154, by Senator LaValle, Senate Print 1067, an act to amend the Education Law and the Public Officers Law, in relation to the Board of Regents.

THE PRESIDENT: Senator LaValle.

SENATOR LAVALLE: Yes. Madam President, Senator Paterson has asked for an explanation. And I'd like to just talk about 1067 and 1068 at the same time.

These are two bills that we have considered in this house on certainly last year and the year before. And the two bills are basically to reform a system that just is

not working in how we select members of the Board of Regents, the time in the legislative session that we consider members of the Board of Regents, and what the members of the Board of Regents do and how they interact with the Legislature and the stakeholders in the various areas that they are involved in.

And just to remind everyone that the Board of Regents -- who are volunteers, do not receive a salary -- have an enormous number of areas on their plate. They deal with elementary and secondary education, higher education, the libraries, the museums, the professions, and the archives. And they are the policymakers for this broad range of areas.

We in this legislation talk about how we elect members to the Board of Regents. Right now we have codified here in the Legislature, by agreement, that the four chairs get together and hold meetings or hearings with members of the respective committees to ask questions of the prospective members that we are considering.

And I would tell you that probably

no one in this body can tell me how any of the three candidates who we will be considering tomorrow for the Board of Regents got into the process. You would be hard-pressed.

I am calling for a similar process to how we elect members to our Court of Appeals. And that is by a bipartisan, blue-ribbon commission that would screen various applicants and then send to the Legislature, for hearings, the members that the blue-ribbon commission would send to us.

We would consider those members on the third Tuesday in May. That's the same day that school districts vote on a school budget and elect school board members. Hopefully - and I say hopefully -- far away from the budget process that we are currently involved in.

Members of the Board of Regents should be treated very, very seriously because they play very important roles -- very important roles -- in our government. And yet we are considering it at one of the busiest times of the year, the time of the year when we do the budget.

That may have been great years ago when the Legislature was a part-time Legislature, dealt with the state budget and actually passed the state budget -- many times, before the April 1st deadline -- and then before they left town would consider electing members of the Board of Regents.

Today our budget is a much busier process, a much more intense process than it was years ago. And so members of the Board of Regents deserve a point in time in the legislative process that is less hurried, where we can give those members that would like to be Regents -- an important position - greater scrutiny, greater attention that it - that it deserves.

The process of how you elect a chancellor and a vice chancellor needs to be revised and reviewed. I think we - regardless of who the Governor is, or what party, the Governor is disconnected totally from the process of the Board of Regents and the state Education Department.

One wonders why -- whether the governor is Mario Cuomo, Hugh Carey, or George

Pataki -- when we look at the budget for the state Education Department, why that budget, Governor's budget, looks kind of lean for the department. Because it's the only way an executive can get some attention from the bureaucracy, some attention from the members of the Board of Regents.

And so we would involve the Governor in the selection of the chancellor and the vice chancellor, with the advice and consent of the Senate.

While those members of the Board of Regents, because our debates and our discussions here on this floor -- in more recent years, I believe the members have been of a higher quality, have been better motivated, have been more focused on their position. However, I still feel a disconnect between members of the Board of Regents and those who serve, those 14 members who serve - 12 members who serve in a judicial district.

And so we say that there needs to be some sort of a hearing process, some sort of members, stakeholder members, that come together with that Regent to discuss issues

pertaining to elementary and secondary education, higher education, the libraries, the professions, the archives, and the museums. Locally. And so we make for such a recommendation.

We also ask that the chancellor and the commissioner come before the Legislature to discuss their education plan, to have an intense debate and discussion over what is taking place.

And lastly, Madam President, and the last bill really -- the second bill really brings together in a concurrent way the terms of the members of the Board of Regents and those that are elected to the local boards of education, where their term begins on July 1st. So that there is a compatibility in what is happening above in the system, with the election of the Board of Regents, down to the local school board members.

I believe that there is a disconnect between what goes on in the selection process of the Board of Regents, what they do -- and what they do is very important to the future of our children, those

that are going on, higher education institutions, those who practice in the 38 professions, and the libraries and the museums and the archives.

And so I think reform, reform is the operative way. Whether every detail in my bills is perfect, I think not. But I would hope that at some juncture the Assembly would join us in an effort to reform a system that really doesn't work very well. And if we are to remain the Empire State in the areas that I have repeatedly mentioned, then I think we need to have a process of inclusion rather than exclusion.

This house and this body should be involved in the process. We are irrelevant to what goes on tomorrow. We are not needed to form a quorum. We are not needed to elect, by a majority vote, members to the Board of Regents.

And so this process really says the joint session should not take place. Like every other endeavor that we have, whether it's the budget or a piece of legislation, the bicameral process, by a majority vote in each

house, should be the process in which we select members to the Board of Regents.

And I think that is very critical and the underpinning through all of the reforms that I try to make in how we select members of the Board of Regents and what they do.

Thank you, Madam President.

THE PRESIDENT: Senator Lachman.

SENATOR LACHMAN: Yes. With due deference to the -- my distinguished colleague, the chairman of the Higher Education Committee of the New York State Senate, I would have to vote against these measures.

And I would have to vote against them because I also believe, Senator LaValle, that reform is necessary. But not through this process. Not a day before the electoral process takes place for the selection of the members of the New York State Board of Regents.

And we've gone through this for the last three or four years since I've been here, and it ends up with no reform whatsoever.

Now, I know and you know -- and in fact, it was the one governor that you did not mention -- that there was a governor 30 years ago -- whose name I will not mention, but whose edifices adorn the Capitol -- who would send one day the name or names of members of the Board of Regents to this chamber, and within 24 to 48 hours, those names would be approved.

Now, this process, as imperfect as it is, is an improvement over the last process, of that governor. I would still like to see, as you would, Senator LaValle, an improvement of this process. But the only way that can take place is if the majorities as well as the minorities of both chambers of this Legislature sit down together -- not 24 hours before a selection process, but months before that process -- and iron out differences and create a vehicle by -- a means by which we can truly reform the process that exists today. Which is imperfect but better than what existed 30 years ago.

And I am looking forward to a real reform involving the majorities of both houses

of the state Legislature in the near future.

Thank you.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 154 are Senators Breslin, Connor, Duane, Kruger, Lachman, Markowitz, Montgomery, Nanula, Onorato, Oppenheimer, Paterson, Schneiderman, Smith, Stachowski, Stavisky, and Waldon.

SENATOR LACHMAN: Two more.

THE SECRETARY: Also Senators Rosado, Hevesi, Seabrook, and Santiago.

Ayes 34; nays 20.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 155, by Senator LaValle, Senate Print 1068, an act to amend the Education Law, in relation to

the Board of Regents.

THE PRESIDENT: Read the last section -- Senator Paterson.

SENATOR PATERSON: Madam President, if Senator LaValle would come back, would he yield for a question or two?

THE PRESIDENT: Senator LaValle, do you yield for a question?

SENATOR LAVALLE: Yes.

THE PRESIDENT: Go ahead, Senator Paterson.

SENATOR PATERSON: I'm sorry, Senator. I know that you explained basically the text of both bills in your original statement.

But if we could just turn to the bill at hand. By changing the date, you don't have any provision at all for what should happen, where the bill right now is clear. It says that there should be a concurrent resolution of both houses if the two houses can't agree by concurrent resolutions.

Your remedy is not to -- is to have the legislative mandate be silent on the issue. And I was wondering if you thought

that was -- how that could be a better way, since now there's actually no explanation, so that our different houses of government can fight over it presumably for another few years.

SENATOR LAVALLE: Senator, this bill was filed, I think, with some input from your side on the fact that there was recognition that there was a better time to have this discussion than in the middle of the budget process.

And so this, as other measures that I've talked with Senator Lachman -- Senator Lachman and I were sponsors on one bill together. We pulled out various pieces to try and make -- go from making big changes, major reforms, to smaller things that seem to make some sense.

You know, as I have said, the most important underpinning is to move away from the unicameral session, to do it by concurrent resolution. That's the period, end of story. But I feel just as strongly that it's madness to be -- to talk about selecting members of the Board of Regents at this time.

I mean, if we took -- went around this room and asked who are the three candidates that people are going to be voting on tomorrow, I think we would have very few answers from the members, the 61 members in this house. And that is not because of a lack of interest; it's because the members are very involved in the budget process. That's number one on everyone's agenda, as it should be.

So what we're merely saying here is that taking an imperfect process, we should at least consider members who are very, very important to the people of this -- of this state, and at least do it at a more sober time.

SENATOR PATERSON: Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: I hope that Senator LaValle is aware that we have the deepest respect for the amount of work that he did, and that we agree with a great deal of it.

Speaking to the previous bill that we just passed, if I might just for a moment,

he has a lot of interesting reforms in there -- open meetings, advisory committees, what I think is a new view of how government should interact with people, particularly in the area of education, a process that is far more inclusive.

And we are particularly impressed with the organized and certainly specific way that he's documented these changes. Our objection to the last legislation was that we just felt that regardless of who the governor is, that to give the executive branch the choice of picking the head of the Board of Regents politicizes the process.

Now, in the current bill, we agree completely the third Tuesday in May would be a far more apt time. Unfortunately, too many of our budgets have even passed that period of time. But hoping that we can come to an agreement on a budget and with our new remedies that the Speaker and the Majority Leader have brought in with the conference committees, bringing us all together, hopefully after the experience last year, our budget process will be shorter.

And Senator LaValle is right, and we should commend him. The third Tuesday in May would be an apt time to pick the Regents' chair.

And I'm certainly glad because I know two of them, but I couldn't name all three of tomorrow's candidates. So, Senator LaValle, I want to go on record and say that you were quite gracious with me, because you could have asked me what their three actual names were. And I think that further affirms how correct you are.

But what I was pointing out -- and this is leading up to my question, Madam President, for Senator LaValle -- is that by putting in this new statute, we are removing the language that allowed for a concurrent resolution of the two houses of government, settled, if there's some disagreement, by a joint session.

And even before our disagreement about how that process should work, Senator LaValle, you haven't replaced it with anything. And as specific and detailed and organized as you were in writing both bills, I

was just asking why you didn't at least put your solution into the legislation.

SENATOR LAVALLE: Senator, I thought I answered that the first time.

I would have loved to have put my solution into the -- into the mix. But I think here we're just basically focusing on the time of the year. That's the -- that's the thrust of this bill.

SENATOR PATERSON: Madam President -- Madam President, if the Senator would continue to yield.

THE PRESIDENT: Senator LaValle, do you yield for an additional question? Senator LaValle -

SENATOR LAVALLE: Yes, I -- yes, I do, Madam President.

THE PRESIDENT: Go ahead, Senator Paterson.

SENATOR LAVALLE: Senator, I see what you're talking about with -

THE PRESIDENT: Senator Paterson, do you have an additional question? Senator LaValle has yielded. Go ahead.

SENATOR PATERSON: Yes. I think

Senator LaValle is answering my question.

SENATOR LAVALLE: Yeah.

THE PRESIDENT: All right. Go ahead, Senator LaValle.

SENATOR LAVALLE: Yeah. We kept in the concurrent resolution, and then we took out in brackets all the language on the first Tuesday. And then the joint ballot, we took that out.

SENATOR PATERSON: Senator, my question is -- even before we get to our perhaps disagreement -- is that it's my opinion that there's a technical flaw in the bill itself, in that you've removed the concurrent session to be followed, if an agreement can't be reached, by a joint session, and you haven't replaced it with anything. So now the law is silent on the issue. And I -

SENATOR LAVALLE: No, no, Senator. This is -- this is -- this is what I have said, you know, over and over again, that the period should be after the concurrent resolution. Because that allows for the bicameral process. That allows for the

majority votes in each of the houses.

And what we're trying to get away from is what I feel is unconstitutional, is to go into a unicameral legislative session.

SENATOR PATERSON: Thank you, Madam President.

Senator, I stand corrected. You are right. The joint session is removed, but the concurrent resolution stands.

My question is, in the case of Regents as opposed to other areas of government, how do we resolve that situation? In other words, if we have a budget and the two houses don't agree, along with the Governor, then we just don't have a budget. But in the case of the Board of Regents, the Board of Regents is still acting, what is the way to resolve a concurrent -- two concurrent resolutions that don't have any agreement, and then at that point we're just going to go on ad infinitum without anyone being placed on the Board of Regents?

In other words, how do we break the tie? How do we resolve that problem?

SENATOR LAVALLE: Senator, I

would say to you if you look back in history, the members of the Board of Regents from 1784 to 1904 were elected for life. So the only - the only time that you really had a vacancy in the Board of Regents was upon death.

And at a much kinder time -- I think from 1904 into the 1970s -- the Legislature pretty much agreed by concurrent resolution.

One of the years, however -- and that's how we got into March -- the leaders could not agree by concurrent resolution. And the people at that time said, Well, we can't agree. And then rather than just let the deadline go -- because legislatures at that time, dates were very important to them. When you said something was to happen on such-and-such a date, the members at that time believed it had to happen at that time or you changed the date.

And that's how we got into March, by the way. We changed it from February into March. And the reason I know that is because I was director of the Education Committee that was called up to write that statute to change

the date.

So people changed the date. And that's how they -- that's how they did things back -- up until the '70s. As we got into the '80s, we became more contentious, and of course we relied more on the joint session than we did by concurrent resolution.

But history will show that legislatures and those people that served in the Legislature were much kinder and gentler to one another, were much more respectful, and were able to come to a decision easier, despite whether the houses were controlled by one political party or not.

And so I have -- and in the oral arguments on the litigation that we've -- you and I have talked about, it has been mentioned that legislatures find methodologies but agree, whether it's on the state budget or other things, even though it goes beyond a particular point in time, a particular date.

So I don't use -- and I know we had this discussion last year, that the joint session is the breaker, the tiebreaker of how you get away from a disagreement. I would

rather think that if you just had a concurrent resolution process and no joint session, we would be forced into coming up with the agreement on who should be seated on the Board of Regents.

SENATOR PATERSON: Madam President, if -

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: -- Senator LaValle would continue to yield.

THE PRESIDENT: Senator, do you continue to yield?

SENATOR LAVALLE: Madam President, while he's wearing me down, I will graciously concede, yes.

THE PRESIDENT: Senator Paterson, you may proceed.

SENATOR PATERSON: Madam President, my question to Senator LaValle is, isn't it true, Senator, that when we come to executive appointments, that quite often we understand that there's a seasonalness, a timeliness to legislative approval, and so that we don't have this problem with respect to other appointments made by the Governor -

that the Senate, this chamber, actually resolves that by offering advice and consent in confirming executive nominations?

So if you look at the whole picture and not just how it is resolved when it is applied to the Board of Regents, would it not be fair to say that in this instance, the concurrent resolution not being agreed upon, that joint session -- which does, and I concede, contain in it 150 Assembly members to the 61 Senators -- but that that process is more inclusive of the entire Legislature than the confirmation of appointees by the Senate where only we decide?

SENATOR LAVALLE: Senator, I'll answer the last part of your question.

I guess I'm just an institutional person. And I believe that the members of this body deserve the respect of their office, in the fact that close to 300,000 people send us to Albany to represent them, and that we have one vote, and that in our Senate districts there are two and a half or more, maybe more, Assembly members who have the same vote as we do.

You do not need this body for a quorum. You do not need this body to elect, by a majority vote, members to the Board of Regents.

The first part of your question, getting into executive appointments, is that the constitution crafts that out and says that these appointments shall be done with the advice and consent of the Senate. Whereas members of the Board of Regents are elected. And the methodology, by 202 of the Education Law, a statute.

And so you're comparing apples and oranges. One a constitutional basis, and the other a statutory basis.

And so I really am, Senator, concerned that this house does not really have standing when it comes to the process of selecting and electing members to the Board of Regents.

And I would think you would be equally concerned about that, from an institutional perspective and from a perspective of the people who send you to Albany, that you should have a greater voice

in the selection process.

SENATOR PATERSON: Madam President, if I was going to address all the areas that I'd like to have a greater voice here, that would be certainly on the list.

There are a number of concerns that we have, particularly here in the Senate minority, about representing 300,000 people and not necessarily having a voice.

But that aside, on the bill -

THE PRESIDENT: Senator, are you on the bill or do you have a question?

SENATOR PATERSON: No, I'm on the bill. Thank you, Madam President.

THE PRESIDENT: Go ahead.

SENATOR PATERSON: Senator LaValle does raise what I consider to be a constitutional issue. He aptly describes himself as an institutionalist. And he graduates from some of the finer institutions that we have in this state -- namely, Touro Law School, which I have an affiliation with. And way back when, I believe we're the only two senators to graduate from the same high school, neither of which represents that

district now.

So that's an open question. If anyone can figure out the answer to it, we might confer a gratuitous benefit on them.

But on the bill, I'd like to say that when I used the comparison of executive appointments, it was not necessarily to make a direct comparison with this situation, but rather to establish how the constitution might speak on this issue. If anything, it was to recommend to the Senator that there is certainly a relationship and a dicta with which the Constitution might give us some bearing as to how to resolve this issue.

And it's my conclusion that both of our houses of the Legislature -- which at the time, the Senate was and Assembly were not of the same party as it is right now -- they nonetheless agreed that this would be a good way to resolve a concurrent resolution process where there was not agreement.

So hopefully one day, perhaps to Senator LaValle's satisfaction, there will be some judicial ruling on this matter. And although I think that Senator LaValle might be

disappointed by what the ruling might be, I still think that it is in our best interest to include all the members of the Legislature at some particular point.

The Senate and the Assembly are separate bodies but do not have separate and distinct points of view. We cannot assume that the Assembly is going to have a similar point of view to each other's when voting on members of the Board of Regents.

So with that in mind, all of us being individual legislators, the actual weight of the vote, when it comes to comparing the Senate and Assembly, may not really have the relevance when one considers the fact that it may in fact be better than this being voted upon in one house or agreed upon by leadership where presumably we haven't even been aware of what all the votes of the members actually is.

And so this is the reason that many of us are unable to support this legislation, in spite of the fact, as I said before, that we are very much in favor of changing the date.

We feel that Senator LaValle has

absolutely hit the nail on the head, that the middle of May is better than the middle of March to resolve it. And his other measures that he has put into the previous bill that we discussed are really welcomed at this point - opening up government, opening the process, establishing public attendance at meetings, which we wholeheartedly endorse.

Other than the issue of who would appoint the chair of the Board of Regents and which way the Regents would be elected, we commend Senator LaValle for his work but must urge a no vote on this legislation until such time as it's understood that the joint session of the Legislature is probably the best way to elect members to the Board of Regents.

THE PRESIDENT: Senator Waldon.

SENATOR WALDON: Madam President, thank you very much. If the gentleman would yield to just one question.

THE PRESIDENT: Senator LaValle, do you yield to a question?

SENATOR LAVALLE: Yes, I do.

THE PRESIDENT: You may proceed.

SENATOR WALDON: Thank you, Madam

President.

Senator, I just want to make sure that I am on the same page with you. It is my understanding that 155 will eliminate the process, as we understand and function now, where we have a joint session to elect Regents. Is that correct?

SENATOR LAVALLE: Yes.

SENATOR WALDON: Thank you very much.

Thank you very much, Madam President.

SENATOR LACHMAN: Madam Chair.

THE PRESIDENT: Senator Lachman.

SENATOR LACHMAN: Madam President, I'd like to ask the Senator to yield.

THE PRESIDENT: Senator LaValle, do you yield?

SENATOR LAVALLE: Yes.

THE PRESIDENT: Go ahead, Senator Lachman.

SENATOR LACHMAN: Senator LaValle, the words in brackets this year, were they in brackets last year which removed

the -

SENATOR LAVALLE: I'm sorry, Senator, I can't hear you.

SENATOR LACHMAN: I'm sorry. Let me get closer to my microphone.

The words that are in brackets in this bill at the bottom of the page -

SENATOR LAVALLE: Yes.

SENATOR LACHMAN: -- were they similarly in brackets last year, or is this something new?

SENATOR LAVALLE: Last year it was -- it was pointed out that -- in the debate that the brackets should have taken out what the brackets have taken out this year.

SENATOR LACHMAN: But they were not there, it was pointed out in debate -

SENATOR LAVALLE: That's my recollection, Senator, yes.

SENATOR LACHMAN: On the bill, Madam Chair.

THE PRESIDENT: Go ahead, Senator Lachman.

SENATOR LACHMAN: I commend the Senator for moving in the right direction in

terms of achieving positive change. But because of the language that is now removed by the brackets, that there will not be a joint session, I regret that I cannot support this measure.

But I do hope in the future to work with the distinguished chairman of the Higher Education Committee and our colleagues in the Assembly to really move towards a reforming of the process that needs to be reformed.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: May I remain seated, Madam President?

THE PRESIDENT: Yes, of course, Senator. Go ahead from your seat.

SENATOR STAVISKY: Thank you.

I believe it is important to point out that the method of resolving the impasse has been taken out. Instead of having the joint session, at which time members of both houses would have the opportunity to vote, that has been taken out of this bill.

Are we so enamored of the idea that the Governor and the Majority of this house shall have control over this process? Why do

we take out the method of resolving the impasse? I think that that's a mistake. I think that that causes me to be opposed to the bill in the way it is drafted here.

There are a few things that the Legislature has the primary role in dealing with, and the election of Regents is one of those. It's not a gubernatorial appointment with confirmation by the Senate that we are taking out. We are substituting selection by the Governor and confirmation by the Senate, the Majority of this house. Which means that those of us who believe that there should be the opportunity to resolve the issue in a legislative way, through a joint session, have been given short shrift.

I think that's a mistake. We are not confirming a traditional gubernatorial appointment. We are instead substituting the Governor and the Majority of this house in place of the existing procedure, which is for a joint session that would enable everyone in the Legislature to participate.

There are too many situations -

THE PRESIDENT: Senator, are you

on the bill or do you have a question, sir?

SENATOR STAVISKY: I'm on the bill.

THE PRESIDENT: Go ahead, sir.

SENATOR STAVISKY: There are too many situations where the Governor and the Majority of this house control the process. The Legislature is given short shrift by the omission of the joint legislative session. And I think that's a mistake. I think it's a mistake for all of the members of the Legislature.

It's a mistake that we should not allow to happen. It is a mistake that causes me grave concern that we are abdicating a method of resolving the issue that is presently in the law and we are substituting the judgment of the Governor and the Majority of this house without any input by the Minority or the other house.

This is a legislative function that should not be abdicated by the deletion of the existing language. And for that reason, I am opposed to the bill in its present form. I have no problem with other provisions of the

bill. But let's deal with the changing of the date in a separate bill, a clean bill, one that does not intrude upon the powers of the Legislature to resolve a dispute.

And what is being done here is a subterfuge to eliminate all participation by the minority, all participation by those who may have a different perspective than the Governor and the Majority of this house.

And I believe that that is not the intention. This is a legislative function, one of the few occasions where the Legislature has primary responsibility. And we should not be abdicating that primary responsibility for the Legislature. All the members of the Legislature have a right to vote on the settling of the impasse.

And for that reason, I will oppose the bill and urge my colleagues to oppose it as well.

Thank you, Madam President.

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: Madam President, I went on for years under the system -- and I'm not fully persuaded by Senator LaValle

yet -- that it is indeed a question that was to be resolved by the Legislature. And it functioned well, and then we came up to where there was a split in the two houses.

And I remember that we brought up the question of one-man-one-vote on a quorum call; it was not squarely on the issue. And Governor Wilson, your predecessor, ruled against this house at that time and said that under the plain significance of the language that we have that governs us, each person, each individual, was entitled to one vote equally in the two houses. So that effectively knocked out the Senate, where you weren't able to establish a concurrence.

I'm going to support this bill, because I believe that he has opened up the question -- and I would hope a dialogue generally -- that would accommodate the larger view of how we dispose of it. And I'm still of the opinion that it should be legislative. But we are effectively locked out of that process under the present circumstances.

So I understand how, you know, you folks may oppose this legislation. And

perhaps you feel more secure that the decision will be made over in the Assembly. But it effectively negates meaningful participation by this house. It's absurd. I don't know how it -- we just circumvent this or get around it.

But I compliment Senator LaValle on at least opening up the question to other alternatives. So I'm going to support it in the hope that it engenders -- because obviously we're not going anywhere here, except as it expresses a deep-felt sentiment of this house that we're not really wholly satisfied with the present process, much as you may agree with the results that will probably follow.

So I do hope that we -- this bill is supported by everyone and it opens the door to what all of us desire, and -- which I believe is Senator LaValle's primary aim, is to open up the dialogue to the wider issue of our exclusion.

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: The Secretary will announce the results.

THE SECRETARY: Those record -

THE PRESIDENT: Senator Seabrook.

SENATOR SEABROOK: I'll wait until the vote.

THE PRESIDENT: Thank you, Senator.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 155 are Senators Breslin, Connor, Duane, Gonzalez, Hevesi, Lachman, Markowitz, Montgomery, Nanula, Onorato, Oppenheimer, Paterson, Rosado, Santiago, Schneiderman, Seabrook, Smith, Stachowski, Stavisky, and Waldon.

Ayes 36; nays 20.

THE PRESIDENT: The bill is passed.

Senator Seabrook.

SENATOR SEABROOK: Yes. Madam

President, with unanimous consent, I'd like to be recorded in the negative on Calendar Number 201. That's Senate Bill 1734.

THE PRESIDENT: Without objection, you are so recorded, Senator.

Senator Stavisky.

SENATOR STAVISKY: I too would like to be recorded in the negative on Calendar Number 201, Senate 1734.

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

Senator Skelos, that completes the controversial reading of the calendar.

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

THE PRESIDENT: Yes.

SENATOR SKELOS: Please recognize Senator Smith.

THE PRESIDENT: I'm going to recognize Senator Smith first.

Go ahead, Senator Smith.

SENATOR SMITH: Thank you, Madam President. I request unanimous consent to be recorded in the negative on Calendar Number

201.

THE PRESIDENT: Senator Smith, without objection, you are so recorded.

We have two substitutions at the desk, Senator Skelos.

SENATOR SKELOS: Please make the substitutions.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 10, Senator Maziarz moves to discharge, from the Committee on Aging, Assembly Print 3480 and substitute it for the identical third reading, 134.

On page 15, Senator Hannon moves to discharge, from the Committee on Health, Assembly Bill 5100 and substitute it for the identical third reading, 205.

THE PRESIDENT: The substitutions are ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, there being no further business, I move we adjourn until Tuesday, March 9th, at 3:00 p.m.

THE PRESIDENT: On motion, the

Senate now stands adjourned until Tuesday, March 9th, 3:00 p.m.

(Whereupon, at 4:15 p.m., the Senate adjourned.)