NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 10, 1999

11:02 a.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

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

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

THE PRESIDENT: The invocation today will be given by Reverend Norman B. Evans, retired pastor from American Baptist Churches in Cazenovia.

REVEREND EVANS: Thank you.

Shall we bow in prayer.

Almighty God, Creator of the universe and of our wonderful State, we come today and ask You to bless us and that we might bless You by what we do this day in this session. As stewards of this State in its beauty and its resources, its history and its people, help us to know that not only are we responsible to our constituents, but we're also responsible to You, not only in our State work but in our personal lives. And may that great day come and may we be greeted with,

"Well done now, good and faithful servant."

Help us to progress this day and in this session. Help us when we disagree, and we usually do, to be not disagreeable. And when we agree, to give wholehearted approval, not worrying about our status.

And we ask, Lord, that we might bless You in all that we do and we ask it in the name of that Hebrew -- in the name of the One whom the Hebrew Prophet Isaiah and the Angel Gabriel called Emmanuel.

God with us. Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, March 9th. The Senate met pursuant to adjournment. The Journal of Monday, March 8th, 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 Marchi, from the Committee on Corporations, Authorities and Commissions, reports:

Senate Prints 1023, by Senator Skelos, an act to establish a Business Trust Law;

1808, by Senator Padavan, an act to amend the Public Authorities Law;

2453, by Senator Goodman, an act to amend the Public Authorities Law.

Senator LaValle, from the Committee on Higher Education, reports:

Senate Prints 175, by Senator Larkin, an act to amend the Education Law;

1250, by Senator Meier, an act to amend the Education Law and the Public Health Law; and

3024, by Senator LaValle, an act to amend the Education 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: Thank you, Madam President. On behalf of Senator Meier, on page 11, Calendar Number -- I offer the following amendments to Calendar 163, Senate Print Number 1908, and ask that said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: Without objection, the bill will retain its place on the Third Reading Calendar.

Senator Bruno.

SENATOR BRUNO: Madam President, I believe that there is a privileged resolution at the desk by Senator Leibell. I would ask that the title be read and moved for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator

Leibell, Legislative Resolution Number 618, honoring Temple Beth El of Northern Westchester upon the occasion of its 50th anniversary commemorative service on Friday, March the 12th, 1999.

THE PRESIDENT: The question is on the resolution.

All in favor, signify by saying aye.

(No response.)

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Madam President, can we, at this time, go to the non-controversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 107, by Senator Nozzolio, Senate Print 637, an act to amend the Correction Law and the Public Health Law.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 135, by Senator Farley, Senate Print 1836, an act to amend the Education Law, in relation to authorizing the State University trustees.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 141, by Senator Libous, Senate Print 2091, an act to amend the Mental Hygiene Law, in relation to disqualification.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 150, by Senator Stafford, Senate Print 1509,

an act to amend the Labor Law, in relation to licenses.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 168, by Senator Skelos, Senate Print 966, an act to amend the Penal Law, in relation to sentencing.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 221, by Senator Nozzolio, Senate Print 139, an act to amend the Vehicle and Traffic Law, in relation to reports.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 222, by Senator Goodman, Senate Print 1101, an act to amend the Transportation Law, in relation to increasing penalties.

THE PRESIDENT: Read the last

section.

THE SECRETARY: Section 3, this act shall take effect on the 1st day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 235, by Senator Holland, Senate Print 1922, an act to amend the Education Law, in relation to pupils afflicted with asthma.

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 38.

THE PRESIDENT: The bill is passed.

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

SENATOR BRUNO: Madam President,

can we, at this time, return to reports of standing committees.

I believe there is a report from the Finance Committee at the desk and ask that it be read at this time.

THE PRESIDENT: All right. We'll, at this time, return to the reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, offers up the following nominations:

As a member of the Rochester-Genesee Regional Transportation Authority, Leslie M. Goldstein, of Rochester.

THE PRESIDENT: All right.

Senator Stafford.

SENATOR STAFFORD: Move confirmation, please.

SENATOR DOLLINGER: Madam President, may I be heard on the confirmation?

SENATOR STAFFORD: Could we please lay them aside. Thank you. Discontinue. Thank you.

THE PRESIDENT: It is laid aside

at this time, Senator.

The Secretary will read.

THE SECRETARY: As a member of the Rochester-Genesee Regional Transportation Authority, Thomas C. Tucker, of Batavia.

SENATOR STAFFORD: Move confirmation, please.

THE PRESIDENT: The question is on the confirmation.

SENATOR DOLLINGER: Madam President, could we lay that nomination aside, too.

SENATOR STAFFORD: Lay it aside, please. Thank you.

THE PRESIDENT: The nomination is laid aside.

The Secretary will read.

THE SECRETARY: As a member of the Metropolitan Transportation Authority, Lawrence W. Gamache, of Greenwood.

SENATOR STAFFORD: Move confirmation.

THE PRESIDENT: The question is on the confirmation of Lawrence W. Gamache as a member of the Metropolitan Transportation

Authority.

All in favor, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Lawrence W. Gamache is hereby confirmed as a member of the Metropolitan Transportation Authority.

The Secretary will read.

THE SECRETARY: As a member of the New York State Olympic Regional Development Authority, Janet H. Bliss, of Lake Placid.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move confirmation.

THE PRESIDENT: The question is on the confirmation of Janet H. Bliss, Esquire, as a member of the Olympic Regional Development Authority.

All in favor, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Janet H. Bliss, Esquire, is hereby confirmed as a member of the Olympic Regional Development Authority.

The Secretary will read.

THE SECRETARY: As a trustee of the State University Construction Fund, Eugene K. Tyksinski, of Altamont.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move confirmation.

THE PRESIDENT: The question is on the confirmation of Eugene K. Tyksinski as a trustee of the State University Construction Fund.

All in favor, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Eugene K. Tyksinski is hereby confirmed as a trustee of the State University Construction Fund.

The Secretary will read.

THE SECRETARY: As a member of

the State Public Transportation Board, Thomas Clements, of Saratoga Springs.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move confirmation, please.

THE PRESIDENT: The question is on the confirmation of Thomas Clements as a member of the State Public Transportation Board.

All in favor, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Thomas Clements is hereby confirmed as a member of the State Public Transportation Board.

The Secretary will read.

THE SECRETARY: As a member of the Central New York State Park, Recreation and Historic Preservation Commission, Linda DeFrancisco, of Syracuse.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move confirmation, please.

THE PRESIDENT: The question is on the confirmation of Linda Ann DeFrancisco as a member of the Central New York State Recreation and Historic Preservation Commission.

All in favor, signify by saying aye.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Since I have a personal interest in this volunteer, non-paid position, I would like to abstain.

THE PRESIDENT: Without objection, Senator DeFrancisco is abstaining.

All those in favor, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Linda Ann DeFrancisco is hereby confirmed as a member of the Central New York State Park, Recreation and Historic Preservation Commission.

The Secretary will read.

THE SECRETARY: As a member of Board of Visitors New York State Home for

Veterans and Their Dependents at Oxford, Richard M. Pedro, of Owego.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move confirmation, please.

THE PRESIDENT: The question is on the confirmation of Richard M. Pedro as a member of the Board of Visitors of the New York State Home for Veterans and Their Dependents at Oxford.

All in favor, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Richard M. Pedro is hereby confirmed as a member of the Board of Visitors of the New York State Home for Veterans and Their Dependents at Oxford.

The Secretary will read.

THE SECRETARY: As a member of the Rochester-Genesee Regional Transportation Authority, Leslie M. Goldstein, of Rochester.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Please -- move

confirmation, please.

THE PRESIDENT: The question is on the confirmation.

Senator Dollinger.

SENATOR DOLLINGER: Madam President, may I be heard on the confirmation, please.

THE PRESIDENT: Go ahead, Senator.

SENATOR DOLLINGER: Madam President, I rise today to oppose Mr. Goldstein's renomination to the Rochester Transit Authority, Greater Rochester Regional Transit Authority. And I do it with all due respect to my colleagues who are on the Finance Committee and my colleagues across the aisle. But, quite frankly, Madam President, I feel that one of the prerogatives of members, that I understand apply and that I learned the hard way in my prior experience in the Finance Committee when I was a rookie, I learned something about the way the Finance Committee dealt with nominations. And what I was told, and I believe it was the last time Mr. Goldstein was nominated, what I was told

then, when I, at the committee meeting, asked why Mr. Goldstein wasn't appearing, I was told that the rule of the Finance Committee was that, in order to obtain someone's appearance, in order for them to be asked questions about their service on something as vitally important as the Greater Rochester Regional Transit Authority, which has had enormous financial problems and which has suddenly seems to have done better in the last couple of years, to give me, as a person who represents 70 percent of the people who ride on the buses owned by the Transit Authority, to give me an opportunity to stand up and ask them questions.

So consistent with that policy, I requested that Mr. Goldstein appear before the Senate Finance Committee so I could ask him about the operations of the Transit Authority and about two other critically important issues.

Mr. Goldstein, who is a philanthropist in Rochester, who I don't have any personal complaint with, nonetheless, his company, Mapco, Limited, is a major parking

lot operator in the City of Rochester and in Monroe County. One of the fundamental questions that you can ask someone who operates a parking lot is what about their interest as an owner and operator of a parking lot company, who is also supposed to provide public transportation. I think it's a legitimate question that ought to be answered by a nominee, to what extent his occupation as the owner of a parking lot would affect his ability to serve as a member of a transit authority. There seems to me to be a fundamental incompatibility with someone who wants to be on a transit authority and promote public transportation and someone who is operating a parking lot.

But there's a second issue that Mr. Goldstein needed to be asked questions about. Two years ago, when Mr. Goldstein was appointed by this body, over my objection and without his appearance, I had questions which I raised at that time about Mapco, Limited, his company's contributions to political candidates in this state in excess of the limitation of $5,000.

Everybody in this room knows that corporations in this state cannot give in a single year more than $5,000 in total contributions to any particular candidate or to any political party.

The proof at that time was that Mr. Goldstein's corporation had given $7500. I would point out, I believe, almost all of it to the public entities that are involved or the public officials who are involved in the Greater Rochester Regional Transit Authority. And, in fact, what I've been able to learn, although I would have liked to have verified this from Mr. Goldstein, as well, that after 1996, his company continued to do the same thing, give political campaign contributions that violate the law of this State, the law that was passed by this body, the law that was endorsed by the Republican majority in this house as the reasonable ground rule under which corporations could participate in public debate and in public campaigns. I wanted to raise that issue. I wanted to ask Mr. Goldstein, "Why did you do it in 1996? Why, after you did it in 1996 and you were

told you couldn't do it, why did you do it again? Why is it that the appearance of violating the law in this State, the law passed by this Legislature, suddenly is disregarded when an individual is seeking appointment to a public authority and commission to spend public money?" Very legitimate question. Mr. Goldstein may have very legitimate answers. I didn't get a chance to do that.

The third issue I wanted to talk about with Mr. Goldstein was something that happened within the last two months. Two months, less than two months ago, there was a member, the commission had an architect, the Authority had an architect on its board. Sure enough, what happens? One day, the architect, a man named Mr. DeWolff, again, another good Rochester person, good man, done a lot for our community, but one day he's a member of the Transit Authority, he resigns, and the very next day he gets a design contract in his role as an architect for work on behalf of the Transit Authority. And the Transit Authority waves its rules and ethics to allow him to

take that assignment. I would suggest that that is not only an enormous appearance of a conflict of interest but it may also violate the conflict of interest rules and laws set by this Legislature, and, I presume, endorsed by the Republican majority in this house and I further presume one that's of continuing importance to the members of the Republican majority in this house.

All I wanted was an opportunity to ask those three questions of Mr. Goldstein.

If anybody can tell me why those aren't legitimate questions about the importance of public nominations and why they shouldn't be the subject of debate in the Finance Committee so that I, who represent probably 70 percent of the people who ride these buses, would know how Mr. Goldstein answers those questions, I'd like to know.

I asked the Finance Committee to hold that nomination. Mr. Goldstein has a health problem. He couldn't be here today. And I would simply suggest to everyone in this chamber that, if someone were nominated to be a Supreme Court judge and came before this

body and had a health problem and he couldn't be here, we wouldn't approve his nomination if someone, a member of the Majority had asked for them to be there.

I would also point out, if there were a commissioner who were appointed by the Governor and we wanted him to appear before the Finance Committee, if he had a health problem and a cold that day, the Senate Finance Committee would do the reasonable thing under the circumstances, which is to say he can't appear here today, we know members have questions, let's do this, let's hold his nomination for a period of a week or two until he recovers his health so he can come back and answer these very legitimate questions.

So I appear here -- I rise today to oppose this nomination, but, more importantly, to oppose the process. I've learned in this chamber that the rules are important. I know they're important. I played by the rules. I gave the notice. I asked as a prerogative of a member, the member who is most affected by this appointment, I asked for the opportunity to put on the public record questions and

answers to critical issues that may involve violations of the State Ethics Laws, that may be in violation of the State Campaign Finance Laws, and philosophical questions about the competence of this individual to serve.

I don't know and won't presume what Mr. Goldstein's answers would be, but I'm darned if I am not entitled to those answers in this forum. And I'm exceptionally discouraged and distressed that this is the way the rules get bent to prevent important public discussion. It was done in the Finance Committee. In my opinion, it would be distrustful of the public interest not to allow Mr. Goldstein to recapture his health and to come in and answer these questions.

I would actually move, Madam President, that the nomination be laid aside until Mr. Goldstein appears before the Senate Finance Committee.

I'd like that motion voted on now.

THE PRESIDENT: The question is on the confirmation of Leslie M. Goldstein as a member of the Rochester-Genesee Regional Transportation Authority.

SENATOR DOLLINGER: Madam President, could I make a motion that it be laid aside?

THE PRESIDENT: On the motion, all in favor, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(Response of "Nay.")

THE PRESIDENT: The motion is defeated.

SENATOR STAFFORD: Madam President, I know we want to stay right by the book, and there was a motion, and correct me if I'm wrong, there was a motion to confirm, so I think we vote on that motion. I think any other motion is -- we're just going by the rules.

THE PRESIDENT: The motion is defeated.

The question is on the confirmation of Leslie M. Goldstein.

SENATOR DOLLINGER: Madam President, could I be heard, one other second.

As a member of the -

THE PRESIDENT: We have

resolution that we were voting on.

I'll repeat, the motion -- the question is on the confirmation of Leslie M. Goldstein as a member of the Rochester-Genesee Regional Transportation Authority.

All in favor, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(Response of "Nay.")

SENATOR DOLLINGER: Madam President, may I explain my vote?

THE PRESIDENT: Senator Dollinger, to explain your vote.

SENATOR DOLLINGER: I was criticized by a lot of people in this chamber when I first came here six years ago, because I didn't follow the rules. I can remember standing over there, being very critical of people about votes, critical issues. I can remember debates with Senator Velella that were somewhat heated. I can remember debates with Senator Hannon that were heated. I can even remember debates with the Chairman of the

Finance Committee that were somewhat heated. I learned how to play by the rules, Madam President. I was told those were the rules. Now I'm told that there are a whole set of rules, but, wait a second, there's this other rule that we didn't tell you about the first time. Just like Animal Farm, two legs are better than four. Remember the progression of the rules in Animal Farm? The rules were made up as they went along.

I would just submit that, if someone asks me to act with a little bit more decorum than the people in Animal Farm, I'll just remember that the rules kept getting modified day by day by day. The Majority has the power to make those rules. I appreciate that power. I'm respectful of that power. But why those rules get bent time and time again makes a person like me say the hell with the rules.

THE PRESIDENT: Leslie M. Goldstein is hereby confirmed as a member of the Rochester-Genesee Regional Transportation Authority.

The Secretary will read.

THE SECRETARY: As a member of the Rochester-Genesee Regional Transportation Authority, Thomas C. Tucker, of Batavia.

THE PRESIDENT: The question is on the confirmation of Thomas C. Tucker as a member of the Rochester-Genesee Regional Transportation Authority.

Senator Rath.

SENATOR RATH: Has Senator Stafford moved the confirmation? I'd like to speak on it.

SENATOR STAFFORD: Move the confirmation.

We certainly yield to Senator Rath.

THE PRESIDENT: Thank you, Senator Stafford.

Go ahead, Senator Rath.

SENATOR RATH: Madam President, I'd like to rise in support of the confirmation of Thomas Tucker, Rochester-Genesee Regional Transportation Authority.

I've known Mr. Tucker for a number of years in his capacity as a Genesee County Legislator. Inasmuch as I represent all of

Genesee County, I feel his resume speaks for itself. His experience speaks or itself. He's well qualified to serve in this capacity. I look forward to working with him as a commissioner of that board.

Thank you.

THE PRESIDENT: The question is on the confirmation of Thomas C. Tucker as a member of the Rochester-Genesee Regional Transportation Authority.

All in favor, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

SENATOR DOLLINGER: Madam President, may I been heard -

THE PRESIDENT: Thomas C. Tucker is hereby confirmed as a member of the Rochester-Genesee Regional Transportation Authority.

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

I yield to Senator Paterson.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, point of order. Senator Dollinger's explaining his vote.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

I am going to reluctantly vote against Mr. Tucker. I met Mr. Tucker for the first time in the Senate Finance Committee meeting and I asked him a question in which he gave me an answer that he didn't know.

I have here on the top of my desk an enormous newspaper article that deals with the Greater Rochester Regional Transit Authority that was published on February 14th of this month that describes the conflict of interest issue that I raised earlier with respect to Mr. Goldstein. I'm disappointed that Mr. Tucker, who seeks to be put on this board, doesn't know about the conflict of interest question. And, quite frankly, as I asked Mr. Tucker, puts me in a very difficult position. Either Mr. Tucker -- and I don't question Mr. Tucker's answer. He has a good

career as a county legislator. I think Senator Rath properly points it out. What disappoints me is that someone who seeks appointment to a board, doesn't follow the newspaper accounts about what's going on with that board. I'm even willing to give Mr. Tucker the benefit of the doubt that he doesn't reside in Monroe County and might not have seen the newspaper. But it's just somewhat inconceivable to me that a big public issue of which someone who wants to be on that authority is unaware.

I would just -- with all due respect, I'm going to vote in the negative, Madam President.

And I made my pitch earlier for what the rules mean and I still don't quite understand them.

THE PRESIDENT: Thomas C. Tucker is confirmed as a member of the Rochester-Genesee Regional Transportation Authority.

The Secretary will read.

THE SECRETARY: Also, Senator Stafford reports:

Senate Prints Number 39, by Senator Volker, an act amend the Executive Law;

1781, by Senator Farley, an act to amend the Executive Law;

2012, by Senator Spano, an act to amend the State Finance Law;

2271, by Senator Skelos, an act to amend the Executive Law.

All bills directly for third reading.

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

Senator Velella.

SENATOR VELELLA: Madam President, can we go to the controversial calendar, starting at 141.

THE PRESIDENT: The Secretary will read, beginning at 141.

THE SECRETARY: Calendar Number 141, by Senator Libous, Senate Print 2091, an act to amend the Mental Hygiene Law, in relation to disqualification.

SENATOR PATERSON: Explanation, please.

THE PRESIDENT: An explanation has been called for, Senator Libous.

SENATOR LIBOUS: Madam President, who's asked for the explanation?

Who has asked for the explanation?

THE PRESIDENT: Senator Paterson asked for the explanation.

SENATOR LIBOUS: Thank you, Madam President. And I was hoping it was Senator Paterson because we do have dialogue each year on this very, very important bill. And, Senator, I'm going to convince you this year to vote for the bill. I'm going to do my best.

But the bill, basically, what it does, Madam President, it allows a physician on the staff of a private hospital to admit a mentally ill person to that hospital. And we've made some changes in this bill than in previous years, where we actually put in a sunset of three years because it's something that the Assembly said that they would like to see in the bill, it would be more palatable to them and they felt they would be able to pass it in their house. And along with that would

be a report by the Office of Mental Health that would be required within two years to help determine how effective this measure has been.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President. And I am very grateful to the Senator for making the changes. And, actually, in our discussions, what I have pointed out is that, having somewhat, in a previous career, worked a little bit with the hospitals and understand the problem that the hospitals are trying to address, which is often that in these situations there really aren't enough doctors to be in position to actually facilitate signing the two physician certificates. And I understand why that this is the case.

What I think, in spite of the sunset, and would like to have some comment from the Senator, is that it still doesn't really clear up just the appearance. And I emphasize appearance, because I don't think they really is an intentional conflict of interest. But if you do have a doctor that's

on the board of a hospital and they are admitting patients, there, certainly, at some point in the future, the conflict could be raised as an issue of the doctor helping to create further work for the hospital.

And so, the sunset is actually a very good idea, but I don't know and I wish the Senator would comment on whether or not it actually addresses the conflict.

THE PRESIDENT: Senator Libous.

SENATOR LIBOUS: Thank you, Madam President.

The issue that addresses the conflict stems to a couple of things that are on the books already. Keep in mind that we have a number of agencies that have oversight such as the State Mental Hygiene Legal Services Group that has oversight, it looks at these type of issues, we have the State Commission on Quality Care and we also have in our hospitals, as I know everyone is aware, Madam President, the Patient's Bill of Rights. This would ensure that if a physician, who is working at that particular hospital, is trying to fill beds, beds that are unneeded, I think

that the hospital would come under a tremendous scrutiny through any one of these vehicles or even through the State Health Department.

I understand the Senator's concern about why he feels there could be an issue of conflict of interest, but I think what we're trying to accomplish here is opportunity for involuntary commitment so that we can help those people who have mental illness, we can help them get the help that they need.

So, Senator, I hope that those agencies that are on the books that have done oversight, along with the Patient's Bill of Rights, is as much oversight that I think is needed in this case. And while I respect your concern, I also would hope that you would consider the concern for the patient.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President. On the bill.

This is, this is a very difficult question, and I'm going to continue to talk to Senator Libous, not only in your presence but off the floor, because I understand what he's

saying about the patient and if you don't have a doctor that's available at the time that the commitment really is needed, that becomes an extremely serious issue and it's really a matter of trying to balance the values.

I'm going to vote against the bill. I note that the Mental Health Association of New York for the same reasons opposes the bill. But somehow, with Senator Libous's persistence and my continuing willingness to exchange in the movement of ideas and opinions, I know that we're going to get this worked out, maybe even by the end of this session. So we beg your indulgence, Madam President.

THE PRESIDENT: Senator Libous.

SENATOR LIBOUS: Madam President, I'm disappointed that I could not convince Senator Paterson to see it my way.

And, Senator, I'm hoping that, that what we can do is get the Assembly to pass this and send this to the Governor so you won't have to deal with it again.

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: Those recorded in the negative on Calendar Number 141 are Senators Duane, Montgomery, Paterson, Schneiderman, Seabrook and Waldon.

Ayes 47. Nays 6.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 150, by Senator Stafford, Senate Print 1509, an act to amend the Labor Law, in relation to licenses to possess and use explosives.

SENATOR MONTGOMERY: Explanation.

THE PRESIDENT: Senator Stafford, an explanation has been called for.

SENATOR STAFFORD: We passed this bill -- thank you -- we passed this bill last year, I believe it was 57 to 1. And I would point out that with this bill there are still safeguards, there are still rules and regulations, there is still are laws that have to be followed and followed very carefully.

This is a step to try to be more reasonable with business.

There'd be a three-year license rather than a two -- one-year license. And we would suggest that the bill does make sense. In this State, when we're trying to be reasonable, we shouldn't do anything that will not be in the public interest or, or safe for our people. I would suggest this is. It's a good bill and that's why I think it passed last year 57 to 1, and I'd hope it would pass this year unanimously.

Thank you.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes. Madam President, I would just -- I understand Senator Stafford's desire that it pass this year unanimously, and I know I was the only one that voted against it. And I know that the issues that I raised were in relationship to the fact that we -- the bill, it seems to me, relaxes our, our licensing and thereby our ability to more closely monitor the purchase and sale of explosives at a time when it seems

to me we need to be strengthening it rather than relaxing it. There have been a number of very, very serious incidents where people have used explosives just indiscriminately and people -- I fear, even still, opening my mail because of the possibility of some devious person sending an explosive through the mail and so forth and so on.

So I'd raise that. I still have that concern. I will still vote no and hope that passing this legislation won't, in fact, lead to us losing more capacity to monitor this kind of business.

I vote no.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: I certainly respect the Senator and we've discussed it.

I would want to put on the record and emphasize, this does not reduce the safeguards or it does not reduce or lessen the control because it's people who are lawfully using it in business. And we would suggest that doing it every three years, to cut down on costs, is not really relaxing anything because you are checking on these people.

Now, when it is used illegally, Senator Montgomery and I are right on the same wavelength. But I think it is a good bill.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

I rise just to support that the Chairman of the Senate Finance Committee. I understand Senator Montgomery's concern but, under this bill, this effects the obligation to renew the license. The actual purchase of certain types of explosives is still controlled. The actual purchase, there has to be filings, there has to be disclosure at the time of purchase. It's just simply the license, once the purchase has been made, to possess them lawfully and to use them.

And Senator Stafford's correct that this bill will also -- it simply says that instead of renewing it every single year, they'd do it every three years.

It's actually one that came about, I think, through a common constituent of the two of ours that we've worked together on.

And I appreciate the Plattsburgh, Rochester access of the bill. So -

But any explosive purchase that is now required to be disclosed, would still be required to be disclosed at the time of purchase. This simply says that the person who buys it, who has a license to use it for mining or excavation doesn't have to renew their license every single year, except every three years.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you.

Would the sponsor yield to a question?

THE PRESIDENT: Senator Stafford, would you yield in a question?

SENATOR STAFFORD: By all means.

THE PRESIDENT: Senator Duane, go ahead.

SENATOR DUANE: Thank you.

Under, under this legislation, if the person who holds the license moves or if the principals of the company changes, if they're new people, do you have to report that to the licensing agency?

SENATOR STAFFORD: Good question. I would say, as far as moving within New York State, you would not. On any license of this type if the principals change, or any of the decision-making changes, as far as ownership, as you asked, that obviously has -- the license is no longer valid.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: On the bill, Madam President.

I am concerned because of recent, very tragic things that have happened around the nation that we in any way would be able to lose the, you know, knowing where people who have access to explosives are at any given time. If it were that you had to -- if there were any changes within that three-year period, if you had to report whether your company moved or if the principals moved to another location, even within New York State, I would be more confident about it. But I still have, because of terrible things that have happened, uneasiness about that.

SENATOR STAFFORD: Move the bill, please.

THE PRESIDENT: Read the last -

Senator Stafford.

SENATOR STAFFORD: I usually don't debate enough.

The problems you are raising, if they were a -- are problems, would be very serious, but it isn't. See, it doesn't change.

Move the bill, please.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52. Nays 2.

Senators Duane and Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 168, by Senator Skelos, Senate Print 966, an act to amend the Penal Law.

THE PRESIDENT: Read the last

section.

THE SECRETARY: Section 4, this act shall take effect on the 1st day of November.

SENATOR SMITH: Explanation.

THE PRESIDENT: Senator Skelos, an explanation has been called for.

SENATOR VELELLA: Can we put that over to tomorrow's calendar?

THE PRESIDENT: Pardon me, Senator?

SENATOR VELELLA: Can we put that over to tomorrow's calendar?

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

SENATOR VELELLA: We'll debate that bill tomorrow.

THE SECRETARY: Calendar Number 221, by Senator Nozzolio, Senate Print 139, an act to amend the Vehicle and Traffic Law.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2, this act shall take effect on the 60th day.

THE PRESIDENT: Senator Duane, do

you wish to be recognized?

SENATOR DUANE: Yes. Thank you, Madam President. I was wondering if the sponsor would take a question or two.

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

SENATOR NOZZOLIO: Madam President, thank you.

The measure before us amends the Vehicle and Traffic Law in relation to reports of motor vehicle accidents during the involvement of correction officers while they are on duty.

The purpose of the bill is to grant those on-duty correction officers with the same types of privacy protections afforded to police officers and firemen in this State. When they are on duty and have an accident, those officers have a privacy protection in that they do not have to file an accident report, that that exemption, from personally reporting the accident, the accident needs to be certainly dealt with by the individual department in question. But, but the report does not list the driver personally;

therefore, this exemption protects his privacy.

The reason for that, I think, is obvious, but for those who do not know how stressful it can be walking up and down a cell block and having the inmates yell to you, "I know where you live," is something that none of us in this chamber, I believe, would want to put forth on a good servant of the people of this State.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President.

Other than transporting prisoners, what are the other occasions when a correction officer would be driving while on duty?

SENATOR NOZZOLIO: You just mentioned -- Madam President, Senator Duane just mentioned, certainly, the major vast, vast majority of effort that transport entails is taking prisoners from one prison to health services, from a prison moving them to another prison in this State. So the vast, vast majority, 99 percent of the time, correction officers are traveling, that is in the

transport of prisoners. There are occasions when items need to be picked up, courier entity needs to be taken from one prison to another. But that is a very, very rare circumstance. Vast majority of cases, virtually all cases are those in transporting prisoners.

SENATOR DUANE: Madam President.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Would the sponsor yield to another question?

THE PRESIDENT: Senator, do you continue to yield?

SENATOR NOZZOLIO: Yes, Madam President, continue to yield.

THE PRESIDENT: Go ahead Senator Duane.

SENATOR DUANE: I understand why the bill would include this during prisoner transport, but I don't -- it doesn't seem to me that if you are transporting files or, I don't know, other things from one prison to another, why it raises the same level of concern that the Senator mentioned. I also don't think that, you know, while driving

within speed limits, when transporting items, is not an emergency situation, there wouldn't be any need for high speed transportation, and so I'm wondering why it is that the bill wasn't crafted so that it just narrowly was for, for instance, the transport of prisoners when it is possible that I suppose a prisoner could overhear an address or something like that.

THE PRESIDENT: Senator Nozzolio.

SENATOR NOZZOLIO: Madam President, let me try to explain.

The purpose of this legislation is not just to protect the officer while he's transporting prisoners, I'd also would say it would apply to an officer who may get in a vehicle accident when there are no prisoners in his vehicle, on his way back to the home prison after transporting prisoners. There's not a guarantee that once prisoners are transported form prison A to prison B, that prisoners necessarily would be transported back from prison B to prison A. So that there will be many times when the officer will be driving with an empty vehicle after he has

made his, his appropriate assignments in transporting prisoners to a particular location.

It's not the question, Madam President, of prisoners overhearing an officer describe his personal home, place of home to the officer in charge of, responsible of reviewing the accident; rather, it is a prisoner filing a Freedom of Information Act request on the locality which would present that prisoner with the entire report of an accident, which in many, many cases, I would say, probably virtually all cases, but certainly the vast majority of cases an accident which would occur not at the fault of a correction officer. It's the Freedom of Information Act request that we're concerned with, that the prisoner would take that report, find the home address of the officer driving the vehicle and, in effect, engage in the typical harassment and somewhat unnerving harassment which could occur as a result of having that information.

It's not, it's not a dealing with overhearing prisoners. It's a correction

officer acting within the scope of his responsibility, on official business, who happens to get in a vehicular accident that, to protect that officer from the taunts, the harassment of prisoners in the correctional system from having that officer's home address.

SENATOR DUANE: Madam President, one -- if I may ask one final question?

THE PRESIDENT: Do you continue to yield Senator Nozzolio?

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator.

SENATOR DUANE: Thank you.

I would be more compelled if it were more narrowly drafted, this legislation. But just as -

One final question. Does this bill only include if the correctional officer is driving an official vehicle or is it also if they are using their own vehicle?

The bill may be silent on that point. I understand. But it's of concern to

me as well that it's, it's not -- it doesn't say whether it's only if you're in an official vehicle or whether you're in your own, and under what circumstances you're on official business in your own, etcetera.

I don't -- I mean, not to belabor it, because I'm intending on voting against it, so we don't need the answer now, but I was just -- it's of concern.

SENATOR NOZZOLIO: I'd be glad to respond to the question. That the measure is exempting or modifying existing law. And in existing law does provide the issue of department vehicles while on duty, which temptates (sic) official business.

SENATOR DUANE: Thank you, Madam President.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2, this act shall take effect on the 60th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55. Nays 1. Senator Duane recorded in the

negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 107, by Senator Nozzolio, Senate Print 637, an act to amend the Correction Law and the Public Health Law.

SENATOR NOZZOLIO: Lay it aside for the day.

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

Senator Valella.

SENATOR VELELLA: Madam President, at this time would you recognize Senator Paterson, who has an announcement.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, the announcement I'm going to make involves a conference that's being held by the Minority. It's going to be immediate. It's going to be in Room 314. That's three one four, which is the mathematic derivation of pi, by the way. The meeting will be held promptly, immediately and without delay.

THE PRESIDENT: Okay. Senator

Velella.

SENATOR VELELLA: Lunch will be served in Room 314. And the Senate will stand in recess -- the Senate will stand at ease pending the Minority conference.

THE PRESIDENT: All right. Thank you for that clarification, gentlemen.

There will be an immediate Minority conference in Room 314.

The Senate will stand at ease.

(Whereupon, at 11:55 a.m., the Senate stood at ease.)

(Whereupon, at 12:46, the Senate resumed.)

THE PRESIDENT: The Senate will come to order.

Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Rules Committee in the Majority Conference Room. And the Senate will stand at ease pending the report of the Rules Committee.

THE PRESIDENT: There will be an immediate meeting of the Rules Committee in the Majority Conference Room and the Senate

will stand at ease.

(Whereupon, at 12:46, the Senate stood at ease.)

(Whereupon, at 1:00 p.m., the Senate resumed.)

THE PRESIDENT: Senator will come to order.

Senator Skelos.

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

ACTING PRESIDENT McGEE: There will be an immediate meeting of the Senate Finance Committee in the Majority Conference Room.

SENATOR SKELOS: Thank you. And we'll stand at ease.

ACTING PRESIDENT McGEE: The Senate will stand at ease.

(Whereupon, at 1:00, the Senate stood at ease.)

THE PRESIDENT: The Senate will come to order once again.

Senator Skelos.

SENATOR SKELOS: Madam President,

if we could return to reports of standing committees. I believe there's a report of the Rules Committee at the desk. I ask that it be read.

THE PRESIDENT: The Secretary will read.

We'll return to the reports of the committees, specifically the Rules Committee.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bill directly for third reading:

Senate Print 3580, by Senator Padavan, an act to repeal Section 5 of Chapter 149 of the Laws of 1998.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, I move to accept the report of the Rules Committee.

THE PRESIDENT: All 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 SKELOS: Madam President, if we could take up Calendar Number 290, Senate 3580.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 290, by Senator Padavan, Senate Print 3580, an act to repeal Section 5 of Chapter 149 of the Laws of 1998.

SENATOR DOLLINGER: Explanation.

SENATOR SKELOS: Madam President, is there a message of necessity at the desk?

THE PRESIDENT: Yes, there is, Senator.

SENATOR SKELOS: Move to accept the message.

THE PRESIDENT: All in favor of moving to accept 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.

SENATOR STACHOWSKI: Explanation, please.

THE PRESIDENT: An explanation has been requested, Senator.

Senator, Senator Padavan.

SENATOR PADAVAN: Very briefly, Madam President. As everyone here, I'm sure, recalls last year, we reformed the method, the methodology by which what elect community school board members in the City of New York, by eliminating a rather archaic paper ballot, proportional methodology and replacing it with one where we use the voting machines in a direct, more direct approach. That bill passed unanimously in both houses, was widely supported and viewed as a way to involve more people in school board elections and improve the system.

Unfortunately, earlier this year, the Justice Department chose to evaluate or to review that new law. The Justice Department has jurisdiction under the Voting Rights Act over three of our counties, three boroughs; Manhattan, Bronx and Brooklyn. And the

administrative decision by that Department, that agency, was that the new system that we were about to implement was contrary to the best interests of certain minorities. That decision is being appealed by the Corporation Counsel and a new application, a new refiling is being made with the Justice Department simultaneously. We're very hopeful that we will succeed in that initiative, supported by the Board of Education, the Chancellor and many, many others.

Now, what does this bill do? It does several things. First, in order to provide uniformity, we can't really, I think, with all prudence, have part of the City using one system and another part of the City using another. And so this bill says we go back prior to last year's enactment to the old paper ballot, proportional method of electing school board members. However, if we get a favorable decision by April 5th, then that part of this bill before us destructs. We're now on the new, the new method.

We also indicate that, because of this delay and this occurrence, that the

school board election will be delayed from May 4th, the first Tuesday in May, to the third Tuesday, which is May 25th.

We also open up the window for filings by candidates. There will be four consecutive days for new people to file for these elections the tenth day after this bill would become law, which would be mean after the Governor signs it.

An unfortunate circumstance but I think we are dealing with it, agreement in both houses, in the most efficient way we can and the most practical way that we can.

Thank you.

THE PRESIDENT: Read the last section.

SENATOR DOLLINGER: Madam President, recognize Senator Seabrook.

THE PRESIDENT: I certainly will. Senator Sefert. Seabrook. Excuse me, Senator.

SENATOR SEABROOK: Not a problem, Madam President.

Will the sponsor yield to a couple of questions?

SENATOR PADAVAN: Yes, I'd be happy to.

SENATOR SEABROOK: Senator Padavan, the bill that was passed to talk about reforming this old archaic system, what was wrong with that system?

SENATOR PADAVAN: Well -

SENATOR SEABROOK: As to why we brought about this bill, to change it, not, not the bill, but -

SENATOR PADAVAN: Yes. I understand what you're asking.

I think you voted for it.

SENATOR SEABROOK: That's right.

SENATOR PADAVAN: Okay.

What was wrong about the old system is, number one, people were discouraged. You went in there and you got a paper ballot and your votes for Candidate 1 might shift down to Candidate 6, and is rather, as I referred to it, convoluted, proportional, cascading voting system. And it did not allow for voting on a machine because, obviously, there's no way in the world you could do that on a voting machine. And I think it discouraged people

from participating both as candidates and as voters.

So the new system said, in effect, nine people running, the top or the top nine people who run are elected. Just the way we are elected. And that was, in essence, the improvement that we had adopted in law last year.

SENATOR SEABROOK: Will the Senator yield to another question?

THE PRESIDENT: Senator, do you yield?

SENATOR PADAVAN: Yes. I'm sorry.

SENATOR SEABROOK: Senator Padavan, what is the time period in which these votes are actually calculated, come to a conclusive -

SENATOR PADAVAN: The paper ballot -

SENATOR SEABROOK: The paper ballot system.

SENATOR PADAVAN: Weeks. It took weeks for this counting of these paper ballots.

SENATOR SEABROOK: And, perhaps you're familiar with a couple of cases in the City, the last election there were people who I think had some problems with stuffing ballot boxes and putting names in, a couple of districts, one in the Bronx and places -

SENATOR PADAVAN: I did read about it.

SENATOR SEABROOK: -- that, with this old system, and thank God we was looking for a new system -

SENATOR PADAVAN: Correct.

SENATOR SEABROOK: -- to come in place.

Will you yield to another question?

THE PRESIDENT: Senator, do you yield?

SENATOR PADAVAN: Yes.

SENATOR SEABROOK: Senator, where else in the State of New York do they have a paper ballot voting for school board elections?

SENATOR PADAVAN: I don't know of any. There may be some, but I'm not familiar with them.

SENATOR SEABROOK: On the bill.

Thank you, Senator.

On the bill.

SENATOR PADAVAN: They're not elected in that proportional system.

SENATOR SEABROOK: So this system is basically a New York City -

SENATOR PADAVAN: Yeah, it was a New York City (laughter), a New York City special.

SENATOR SEABROOK: New York City special.

On the bill, because we're going back to the New York City special.

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

SENATOR SEABROOK: On the bill.

The concern that I have about this bill is because we all felt that there needed to be a sense of reform with this whole school board, school board elections and the process of how we elect people to school boards. And it was with a unanimous vote, I think it was, that we all agreed that this system should be changed, it was old, outdated, made no sense

and created a lot of problems in our communities and a lot of corruption that was actually involved in this. And everybody said thank God that the legislative body made a decision to talk about a change, a reform system. And everybody -- it was a package. And Senator Padavan got up and spoke eloquent about it and all these changes that would actually take place.

Now we have a bill that says guess what, we got to go back to that same old system, the New York special, which says that you will probably have people stuffing ballot boxes again, we will have people voting on an election day and they will find out if they are the winners, if they vote in May, they'll find out in June if they actually won, and then there will be some sense of -- there might be some contesting about did they actually win, how it was done.

Then you also have people who had the idea that they was now going to be able to vote directly for their candidate to the school board, that now my vote was going to be for that particular candidate. Now these

people -- we're going to go back to the community and say guess what, you can't vote for the person that you really wanted to vote for now because you're going to be voting for one person that might get a lot of votes that will elect other people that you really didn't want to get elected to the school board. So you're actually really disenfranchising that individual who really had a sense that I am going to vote for someone who is fighting for my children in the district in which I live.

Now we have another situation with this proportional representation. We've never redrawn school district lines since the first time we drew school districts. Communities have changed, districts have changed. And now we're still under the same old system, the New York special, that we're actually going to again allow certain communities to, who actually might have a small amount of real hard voting folks consistently, we have a large population of immigrants, although, in school board elections, if they have children in the district, they can actually be certified as parent voters. Most of them are

afraid to do that because there's a whole process and most schools don't want them to participate and vote. So you will now have people who don't have children in the school district again being eligible to control the whole entire school district. So we're actually going backwards on this fast New York special. And I think it's a disservice because we applauded the change that would actually take place with this whole school board reform, this omnibus reform that we're going to talk about changing. And we heard some eloquent speakers about the historical dynamics of it; Senator Marchi talked about how it, all this came about. And I listened to that debate. And Seymour Lachman. All of the things that we would really talk about the need to change that old archaic system. Nowhere else in this state do people vote on paper ballots. I mean, it might have happened in the '30s and '40s. I'm not sure. I wasn't born. But it seems to me it's time for some sense of change. I mean, we're talking about Y2K and we're still using paper ballots in school board elections that people will make

decisions.

The danger of this is that people wanted the right to elect Tom Duane to be their Senator, and they voted for Tom Duane and they voted for Hevesi because wanted them to represent them. Now with school boards, they might vote for Mr. Schneiderman and he might have a slate that four people that nobody likes, they get elected, for one guy's popularity. And it can happen.

Until we decide to really talk about it -- now, I mean, if we really wanted to do something about this proportion representation, then you tie it into redrawing school district lines. Then, perhaps, you might get people a fair shot at proportion representation. But you can't have this whole proportion representation, this paper ballots and all these things and you haven't redrawn these lines since 1969 or '70. So it makes, you know -- I mean, I don't understand it, because we have to redraw lines and we're going to be doing that soon again.

So I'm saying, on this bill, it is a real contradiction, if we vote it

overwhelmingly, to say that it was a bad system and everybody talked bad about it, but we need to read that transcript of what everybody said about that bill. All of us talked real bad about that bill and said how horrible it was. We got up on the floor and talked about it was bad, and now we're going to vote for the same bill. So, obviously, it's something wrong. We need to call a time out on this, go back to the drawing board and think of something else, because now Justice is going to look at us because all of what we did went to the Justice Department. And we said the reason why it has to be passed - because they called our office for clearance of all of this and said, "Well, what's your opinion about this and what do you think about this?" They called our office because we were covered counties. And we said that this is a great idea that the change is going to be made, thank God for that. I'm in support of that. And now the Justice Department is going to call us again and say, "Wait a second. You just voted for that bill before and you said this was bad." And they read transcripts,

too. So I'm confused as to how we're going to now tell Justice -

Perhaps, if the sponsor would yield to a question.

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

SENATOR PADAVAN: If I may, Senator, before I yield to your question, tell you that I agree with 99 and nine-tenths percent of everything you said. As a sponsor of the bill that you lauded from last year and all the reasons you gave, you're absolutely correct.

If there's any contradiction, and their is, in what we're doing here today, any fallacy in the logic of what we've been confronted with, it rests at the feet of the Justice Department; specifically, a man by the name of Lee, who, ironically, wrote a decision -- if you've read it or not had an opportunity -- the most convoluted piece of dictum that I've ever read. And, ironically, he talks primarily about Asian-Americans, most of whom are in Queens, who are not covered by his decision. Shows you how absurd the whole

thing is.

We are forced to do this today, not because we want to, but because of that decision in the Justice Department at the federal level in an administration by a individual who doesn't belong there, many have said.

However, I draw your attention to one part of this bill that you may have not heard me correctly or not heard me speak to. If we win the case by April 5th, we don't go back in time, we continue forward as we had planned to. If we win the case after April 5th, then this proportional voting will evaporate in the year 2000. So we have allowed ourselves in this bill before us every opportunity to continue as we had planned to with regard to the elections.

Unfortunately, however, if we fail, both in the new application before the Justice Department or in the Federal Court, where we are as of this moment, then, obviously, we cannot have a divided city, one part of it voting one way and another part of it going, voting another way. And we will to have do

what you said, try and come up with something different that will satisfy these people down there, if it is at all possible.

But this is the best way to go in the short term. It gives us all the options we could possibly seek to attain at this moment in time.

Now I'll be glad to yield to your question.

SENATOR SEABROOK: Will the sponsor yield to a question?

THE PRESIDENT: Senator Padavan, will you yield?

SENATOR PADAVAN: Yes.

SENATOR SEABROOK: Now, Senator Padavan, Mr. Lee, and I read of his concerns, and it looks as if he focused on the Asian community as it relates to the new system.

Are you aware that the NAACP and other groups were opposed to this system that we are voting for now?

SENATOR PADAVAN: Right. Absolutely, and with good cause for the reasons you articulated, which I won't repeat.

SENATOR SEABROOK: Right. So

there will be another lawsuit and another question -

SENATOR PADAVAN: Well, Senator, that's always a possibility, if that is a question that you're raising. However, keep in mind what we've said here. April 5th is only a matter of weeks away. Hopefully, if we could all, you know, cross our fingers, we'll prevail at the federal, in the Federal Courts and the application before the Attorney General, in which case then that possibility becomes moot. But we cannot stop people from taking actions that they think are appropriate. And if NAACP or anyone else were to step forward and say that old system disenfranchised many of us, I would say, "You're absolutely right. That's why we changed it."

The fault is not here, Senator. It is not with anything we have done or about to do. It is elsewhere. And what we can do is defend ourselves in the interim until we sort this out at the judicial level.

SENATOR SEABROOK: Will the sponsor yield to another question?

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

SENATOR PADAVAN: Yes.

SENATOR SEABROOK: Now, Senator Padavan, the real issue that Mr. Lee raised was also a question that it was not the one-person, one-vote situation and that here you had that there would be a sense of disenfranchisement.

SENATOR PADAVAN: Very strongly.

SENATOR SEABROOK: No, I'm saying that's the issue that he raised.

SENATOR PADAVAN: You vote for four people and the top nine win. I mean, that's -- you can't be any more direct than that.

SENATOR SEABROOK: But the issue, again, in terms of him raising in that which was brought about was a sense of a community that had not participated and not been involved, so they raised that issue.

My concern is that the people who had been raising issues about proportion representation, now you wake them up again with an sense of going back to the Justice

Department.

SENATOR PADAVAN: You will have to explain to them, as I've been trying to do here as best I could, that we were forced to do this, we're hopeful that we will prevail and that it will not become effective in the period of time that I've tried to explain and outline for you and we will pursue the matter in every venue, in every way we can. And because we all agree, there is no disagreement, in this house or the other, no disagreement with the Board of Education, no disagreement with the Chancellor, the entire establishment.

And you pointed out, we were all asked to comment, and everyone I know said just what you said, this is a major improvement, and they ignored us, they ignored us. I don't understand those people down there, but we have to deal with what they have brought upon us.

SENATOR SEABROOK: Thank you, Senator.

On the bill. Just on the -- I have to say that it would really be a disservice

for us, and I understand the predicament that we might assume that we are in; however, I think that there can be some sense of a little more creativity than for us to go back and resurrect the dead. And I think that what has to be done is that we have to begin to look that there are other ways of dealing with this.

I am certain that if there are no problems in other parts of the State, then perhaps we need to take what they're doing in other parts of the State. They seem to be functioning pretty well in Buffalo. They seem to be functioning pretty well in Syracuse. They seem to be functioning in Westchester. They seem to be functioning in Albany. So perhaps we need to just take a look around.

SENATOR PADAVAN: Will the Senator yield?

Are you aware -

Senator, would you yield?

SENATOR SEABROOK: Yeah.

THE PRESIDENT: Go ahead, Senator.

SENATOR PADAVAN: Are you aware

that only in the City of New York, in those three counties, are we in this entire State subject to civil rights review on these elections? So -

SENATOR SEABROOK: I'm aware of it, and even rightfully so -

SENATOR PADAVAN: So, even though, even though many other parts of the State are doing things that we could emulate, it's not applicable because they are not subject to the review we are in three counties.

SENATOR SEABROOK: Well, I'm not going to throw out the review with all of this, because I think it's necessary and essential to have this review because there was some injustices that took place in those counties and continue to take place. So we can't just throw that out either.

But, I'm also certain that perhaps we can learn a little bit about what takes place in Albany and various surrounding counties and that we can implement that in the City of New York. Even if we had to implement it in those other areas and allow where they

be covered counties to have that type of voting to actually take place.

So I would hope that we would not vote for this, which forces us to really do something creative by just deciding to do what other parts of state do and send that to Justice and then let Justice make that particular decision. That's not a hard job. They've been running elections all over this State for school boards and they haven't had these particular problems. So we need to just do that. That's the most simplest, creative way of doing this. And perhaps the Justice Department would look favorable upon us.

So I would hope that my colleagues would not vote for this, which would force us just to take a little look around the corner at places like Albany, places like Buffalo, places like Rochester, Syracuse and those other places.

Thank you very much.

THE PRESIDENT: Senator Smith.

SENATOR SMITH: Thank you, Madam President. On the bill.

As a person who has personally

witnessed this archaic system of school board voting, and 49 percent of my district is not covered under the Voting Rights Act, I have a great concern.

I voted for the new bill last year, even though I realized later that with the voting on the machine any one section of a community could control at least five to seven votes, if they turned out. And that's done mathematically. It's still a great improvement over a system that takes sometimes a month to count votes, where people were elected last year and later -- well, not last -- in the last election, and later removed because they didn't even have enough signatures to be on the ballot to run, in a system where people stuffed ballots; therefore, we don't know in those districts who were actually eligible to be, to sit on the school board. And in districts where people won with less than a hundred votes and where you have a turnout of less than 200 people in a district where there are 20 and 30 schools. It's unconscionable to think that we would return to that system.

In previous years, we have extended the period of the school board's term. We have allowed them to stay for a longer period. That could have been done while we researched other possibilities.

There are other actions that we could have taken if we had jointly come together to look into how it could be done, and I do not see how we can possibly vote to return to a system that has destroyed our communities.

THE PRESIDENT: Senator Waldon.

SENATOR WALDON: Thank you, Madam President. My colleagues, I'll be brief.

I am baffled and confused by the fact that we're going back to something that didn't work in the past and, if history is true in terms of its predictions, won't work in the future.

My reasons for that bafflement and confusion has to do with the fact that people who are in the minority, in the districts I represent, and there are three school districts in the area I am most fortunate to represent, control the school board all too

often, control the power, are not even parents of students in the schools. It is confusing to me that there's a need to maintain control of the schools and the children. What is the reason? Maybe it's money. Maybe it is power. Maybe it is the reluctance to turn over the community to the people who are now in the majority. Whatever the reason, I cannot see a need to go back to what didn't work in the past.

And so I'm confused not only by what we are going to review here today and vote upon, but by Justice, those high and mighty people down in Washington, who seem, on certain issues and at certain times, have great intellect, how could they been so stupid.

So, my colleagues, I encourage you today to look at this and say, nah, this ain't the way to go. Let's vote it down today and maybe we can conjure up something, you know blue smoke and mirrors, a little three-card Monte or maybe some real thoughtful processes going into our deliberations and come up with something that will work.

This will not work for the people in 29, 27, 28. This will not work for African-American people and Caribbean-American people, Latinos. I will vote in the no.

Thank you, Madam President and my colleagues.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you very much.

Would the sponsor yield to a question, please?

THE PRESIDENT: Senator Padavan, would you yield?

SENATOR PADAVAN: Yes.

SENATOR DUANE: Thank you.

The legislation makes it so that the Board of Elections is able to set the date for the school board elections; is that correct?

SENATOR PADAVAN: No, the date is set in the bill, May 25th. Previously, it would have been May 4th. We've extended it from the first Tuesday to the third Tuesday.

SENATOR DUANE: If the sponsor would continue to yield for a further

clarification?

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

SENATOR PADAVAN: Yes.

THE PRESIDENT: Senator Padavan, do you yield?

SENATOR PADAVAN: Yes, I will yield.

SENATOR DUANE: I'm under the impression, I'll take another look again, I thought that the legislation, and maybe not for this election, although, it seems to me that the Board has the power to set it back to May 4th.

SENATOR PADAVAN: Future elections. Future, not now. The current, the election coming, in May, because of all of these problems, will be delayed from the first Tuesday, which is current law, to the third Tuesday, for that election only.

SENATOR DUANE: However, Madam Chair, if I may continue along this line of questioning?

THE PRESIDENT: Senator Padavan -

SENATOR PADAVAN: Yes.

THE PRESIDENT: Do you continue to yield?

SENATOR PADAVAN: Yes. yes.

THE PRESIDENT: Go ahead.

SENATOR DUANE: But later on, should there be another school board election date set, the setting of that date is left to, in the hands of the Board of Elections; is it not?

SENATOR PADAVAN: No, it reverts to the law that is in effect that we're dealing with here.

This statute, or this bill, which hopefully becomes statute, is specific to this election only in terms of the delay. It is in fundament -- in basic law, the first Tuesday of May, just like our elections are in the first Tuesday in November.

SENATOR DUANE: I was under the impression that the Board would be able to take action if there was a religious conflict. Not a -

SENATOR PADAVAN: Not to my knowledge.

SENATOR DUANE: -- with a holiday, not a war.

SENATOR PADAVAN: We would have to take action. If there was any changes in those fundamental dates of elections, the Legislature would have to act.

SENATOR DUANE: And then I just wanted to clarify it and make sure it's on the record.

Those people who petition for the later date -

SENATOR PADAVAN: The what?

SENATOR DUANE: -- for the later date, for the May 18th -

SENATOR PADAVAN: It's the same election, just on a different date, yeah.

SENATOR DUANE: But the people who petition under the new ability to petition -

SENATOR PADAVAN: Just opening the door.

SENATOR DUANE: -- they are permitted -- though, they are then enabled to be on the ballot for the earlier election, should the Justice Department say it's okay to

have the election then; is that correct?

SENATOR PADAVAN: No matter what happens, we win the case, the election's still going to be on the 25th of May. That's a given for this year.

SENATOR DUANE: So the people -

SENATOR PADAVAN: So the new people, who would be petitioning, would be running on that date.

SENATOR DUANE: I mean, I think there's some confusion about that, Madam Chair, if I may continue.

SENATOR PADAVAN: Well, I tried to explain that earlier. They, the new petitioners will be permitted to file petitions as candidates 10 days, beginning 10 days after this becomes law for four consecutive days. So that, in effect, if the Governor, for instance, were to sign it tomorrow, they'd have another two weeks.

SENATOR DUANE: And everybody could potentially be on the ballot for May 4thr?

SENATOR PADAVAN: Exactly. Right.

SENATOR DUANE: I think then, Madam President, if I may speak on the bill.

THE PRESIDENT: Go ahead, Senator Duane, on the bill.

SENATOR DUANE: Well, let me say that it is always a thrill to hear my name invoked in the Senate and particularly by Senator Seabrook. And I agree with Senator Seabrook in many ways but not in all ways, but that's democracy, that's America.

I'm actually a proponent of proportional representation and feel that it has and potentially could do an awful lot to empower communities that don't always get to have a seat at the table. My position has been that we retain proportional representation.

I share unhappiness with paper ballots. But I, more than anything else, share an enormous unhappiness with the Board of Elections and I have virtually no faith in the Board of Elections' ability to run anything appropriately. And, obviously, as was exemplified in the Attorney General's race, their ability to count it all is highly

suspect.

I also do not believe that changing dates wildly and not coming to a final decision today will in any way, under any circumstances increase voter participation. I think that's absurd. That we don't know and that we can't definitively say what day the election is going to be, that we are tinkering with it even further today and leaving the door even open, I think belies the ability of us to generate voter turnout for a school board election, which, tragically, doesn't generate that much attention as it is.

In addition, the Board right now has done a terrible job in terms of publicizing that this election is happening at all, and I don't see anything that points to their ability to publicize it even if it happens a couple weeks later. So, again, that, you know, in any way setting the date further in advance would make anything better, certainly flies in the face of anything that the Board of Elections has ever done about school board elections in the past, and I believe and I think it will be proven if this

bill would -- goes through, that voter turnout will probably be unbelievably low as compared to the terribly low turnouts that we've previously had on this.

I'm also very, very concerned that this legislation is coming forward without any public comment period. We hear nothing publicly or on the record or any kind of public discussion about how it is that people believe that school board elections would actually generate the interest that they should have and will generate the kind of voter turnout that they should have on such an important issue. We've heard nothing from any of the groups who believe that traditionally they are under represented on school boards. They have in no way been able to put their views on the record so that their views could be incorporated as we decide what to do with the issue of school board elections. And I think that that is a disgrace, because the whole reason that there's voting rights action on school board elections is because those very people who we haven't heard from complained about the past ways that this has

been done.

So, for all of those reasons, I believe that this is the wrong action to take and will actually make it so that school board elections are even more poorly paid attention to.

Thank you.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Madam President, I just briefly wanted to ask my colleague, Senator Waldon -- Senator Waldon - if he would yield just a minute. Or you don't really have to yield, it doesn't require an answer. I just wanted to remind you that we did pass legislation last week, I believe, that makes three-card Monte players subject to arrest, so we want to make sure that that's not part of your suggestion for us to do in order to rectify Senator Padavan's bill.

That's it, Madam President.

Thank you.

SENATOR WALDON: Madam President, may I respond to the inquiry of myself?

THE PRESIDENT: You may, quickly,

Senator Waldon.

SENATOR WALDON: I thank you for your graciousness, Madam President.

The house is conducted in such a marvelous way since you've arrived, and I'd like to say that first.

In regard to the question or the inquiry or statement from my learned colleague from Kings County, I believe that three-card Monte, if it has been practiced by Justice or by the Board or by whomever in regard to the destiny of our children, if they've done the crime, they should do the time.

Thank you very much.

THE PRESIDENT: Senator Schneiderman, germain on the bill, please, you may proceed.

SENATOR SCHNEIDERMAN: On the bill.

THE PRESIDENT: Go ahead.

SENATOR SCHNEIDERMAN: On the bill, not on the game, Madam President.

No, I just want to say very, very briefly, that I concur in a lot of what has been said already.

We have to recognize, though, that the elected officials in the government in the City of New York and the State of New York, including members of this house, in my view, we have, we are failing the 1.1 million children in the city schools, that this is not a matter of casual observation or procedural technicality. We have righted a construction authority that can't build buildings. We don't provide adequate funds or target them correctly. We now have a situation which I am unable to explain to my constituents when a school board election will be. And that this legislation, and I'm sure it is well intentioned, is just a matter of compounding our prior failures and that we really have to seek this session to take fundamental steps to remedy a problem for the economic future of our state and for the future of our country, that if our 1.1 million children aren't getting the education that they need, we're not getting the advocates enabled in the school boards to work on their behalf, we are creating a disaster for our state coming into the next century and we are committing, I

think, a great violation of human decency as well.

THE PRESIDENT: Senator Hevesi.

SENATOR HEVESI: Madam President, I don't want to take up this body's time reiterating a lot of the comments that we've already heard, except I must echo the comments and sentiments of my colleague, Senator Waldon, in that I hope we would, as an institution, move forward and attempt to remedy a situation that I cannot, in good conscience, vote to perpetuate, which is what we'd be doing here today.

And just to share my experience, I have been a Democratic district leader for years and years, intimately familiar and involved with the electoral process and school board process in New York City, and I will confess before this body that I do not fully understand all of the intricacies involved in this so-called proportional representation system of voting in school board elections. It is a hinderance to democracy as a result it precludes participation to the extent that we believe it all should -- we all believe it

should be desirable. And we must institute some type of reform, make some type of effort -- and I commend Senator Padavan for his work in this area but, but this action today would extend the situation which we know cannot, cannot stand. This is, this is something that we cannot stand in support of.

As a result, Madam President, I vote in the negative on this legislation.

THE PRESIDENT: And to close, Senator Lachman.

SENATOR LACHMAN: Madam President, I'll attempt to be much briefer this time than I was when we adopted the original legislation. And my colleagues were quite eloquent in describing why we adopted it, the legislation, to prevent the corruption or the possibility of corruption that existed at that point with paper ballots and proportional representation.

However, before discussing the reasons why I'm voting against it, I'd like to bring to the attention of all my colleagues the process and procedures that were used to bring this to our attention.

I think it's unconscionable, at a period when we should be shortly discussing major issues of the budget, to have this placed on our desk five minutes before we go to discuss this in our conference. Many of us did not even see it until we walked into our conference room. This is not the way to run a government.

Now, Winston Churchill once said that democracy is the worst form of government except for all the other alternatives. I happen to agree with him.

Why do we have to again and again in important issues that can disenfranchise many people in the City of New York, proceed in a manner that does not allow us to adequately discuss, examine, and look into the facts regarding this bill?

Now that that is on the record, I would like to speak on the objections to this bill.

This bill will undo all the reforms that we had attempted, through prior legislation, to clean up an act that should have been cleaned up many years ago. This

bill is a quick fix that resolves nothing. Some of my colleagues have said, "Well, we had to act now because we're in court." Why can't we wait until the court decision? I predict we'll be in court again as a result of voting for this bill, because, in midstream, when all the rules and regulations are already out, in terms of dates and times and procedures, we are changing this again with less than two months to go. And if my learned colleagues on the right or the left of me, don't fully understand what's involved, how in the world are we going to explain it to our constituents?

Furthermore, I was told it will be easy this time because we have a new method that will scan the votes. That's easy to do with the machine, but how do you differentiate between a one and a seven on a paper ballot and other numbers?

Ladies and gentlemen, this is a disaster waiting to occur. As Voltaire once said, the idea of proportional representation -- paraphrasing Voltaire, who said, on something else, this was an idea that

has come and gone. We have buried proportional representation. It's an idea that has come, has failed and is now gone. Why are we resurrecting this at this point in history and time?

I think it would be a major mistake for anyone in this chamber to take a quick fix and to bring upon ourselves total chaos on an election day, which might be the 25th of May or the 18th of May or the 4th of May, and also bringing upon ourselves in, along with that, another major court case.

Finally, Madam Chair, I believe that this impacts negatively upon the minority populations of the City of New York. The NAACP has said this and other groups have said this, and it's the minority population of the City of New York that comprise the vast majority of our public school students.

I vote nay.

THE PRESIDENT: Senator Padavan.

SENATOR PADAVAN: Hopefully, to close debate, if I may.

Senator Lachman, we didn't resurrect this failed system. We corrected

it. And using the old adage, no good deed deserves to go unpunished. I was the person who's led the way with your support, with your strong support, I might add.

SENATOR LACHMAN: Right.

SENATOR PADAVAN: It was resurrected by the Justice Department.

Now, let's consider for a moment if we did nothing.

SENATOR LACHMAN: And wait for the court decision.

SENATOR PADAVAN: You cannot wait for the court decision, Senator, because time is wasting. The court decision has to be implemented. You cannot implement it between April 5th and May 4th, less than four weeks. We had to put in place safeguards that provide for either eventuality, winning or losing. And we've done that. And I think we've done it appropriately.

As I said earlier, none of this makes me happy. But, nevertheless, we have to accept it. If we do nothing, the entire City, correction, three boroughs of the City, yours, Manhattan and the Bronx, would have to begin

to prepare for paper ballots. It's not an easy task you do in the blink of an eye. And the other two counties, Queens and Staten Island, would have to prepare for machine ballots. And I think we'd all have to agree it's not the most desirable circumstance to find ourselves in.

And so we have allowed two things to happen. If we win the court case, this destructs, except for the delay in the date. By the way it is the third Thursday, third Tuesday. That happens to be the 18th. And I stand corrected, Senator Smith, you're right. The third Thursday, third Tuesday.

SENATOR LACHMAN: Not Tuesday.

SENATOR PADAVAN: Tuesday.

SENATOR LACHMAN: Tuesday.

SENATOR PADAVAN: And aside from that change and opening up for the opportunity for people to petition, we go back to the system we are all applauding here, and which I join you in applauding. If we don't get a decision by April 5th, then for this election only, we have to endure that failed system, Senator Lachman. However, if we get a

favorable decision after April 5th, then the next election beginning, of course, in the new year and thereafter, we go back to our improved procedure.

I think, you know, Senator, you've complained and I don't disagree with you to some degree about not having had an opportunity to study this bill. Unfortunately, you know, we work with two houses here. We have been negotiating with the Assembly now for over two weeks to come up with an appropriate measure. We completed our negotiations this morning at 10 o'clock, and then we had to get a rush print on the bill. So I apologize to you for that, but, nevertheless, it was something that I had no control over. And, frankly, we want to get this done because time's a wasting with the recess, hopefully, coming up in April and so on.

So, in any event, Senator, I know I probably haven't convinced anyone to change their vote, but I do want the record to show, quite clearly, that I think we've covered all the bases with all the eventualities and put

ourselves in the best possible position that we find ourselves, regrettably, as a result of the action of others a long way from Albany.

Thank you, Madam President.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 7, this act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 290 are Senators Dollinger, Duane, Hevesi, Kruger, Lachman, Montgomery, Nanula, Oppenheimer, Paterson, Rosado, Sampson, Santiago, Schneiderman, Seabrook, Smith, Stavisky, Waldon, also Senator Onorato.

Ayes 40. Nays 18.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could return again to the reports of standing committees.

I believe there's a report of the

Finance Committee at the desk.

THE PRESIDENT: We will return to the reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports:

Senate Prints 3581, Budget Bill, an act to amend Chapters 50 and 54 of the Laws of 1998;

Senate Print 3582, Budget Bill, an act to amend Chapter 57 of the Laws of 1998.

All bills directly for third reading.

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

SENATOR SKELOS: Madam President, at this time, if we could take up Calendar Number 291, Senate Print 3581.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 291, Budget Bill, Senate Print 3581, an act to amend Chapters 50 and 54 of the laws of 1998.

SENATOR SKELOS: Madam President,

is there a message at the desk?

THE PRESIDENT: Yes, Senator Skelos, there is.

SENATOR SKELOS: Move to accept.

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.

Senator Dollinger.

SENATOR DOLLINGER: Yes. Just, would the sponsor yield to a question, or perhaps the chairman of the Finance Committee yield to a question?

THE PRESIDENT: Senator Stafford, will you yield.

SENATOR STAFFORD: Sure.

SENATOR DOLLINGER: In the Finance Committee deliberations, Senator, I asked for some information about the Public Officers Law portion of this bill, this is -

SENATOR STAFFORD: Right, we have some information and the information is that this is money that's going to pay plaintiffs' attorneys -- excuse me. I know I'm supposed to talk into this -- plaintiffs' attorneys who have sued the State.

SENATOR DOLLINGER: Again, Madam President, through you. Just so I make sure I understand this.

The bill I have, on page 3, contains, on line number 8, it says "for public lands." That's the $4 million for the payment in lieu of taxes on public lands.

The second says, "for judgments against the State," and that talks about going from 47 to 70 million. And I was concerned about why that number was up so high.

And then the third one says, "for the payment of the defense by private counsel in the indemnification of payment on behalf of state officer and employees." I assume, again through you, Madam President, with your continued indulgence and Senator Stafford's as well, that that's for private counsel defending us, defending Lieutenant Governor,

the Governor or the Attorney General the Comptroller, other state officers, including, I'm sure, corrections officers when there are conflicts, and we retain private counsel. I'd just like to know where that 15.5 -- point 2 million and the 20.2 million, where it's going and why we need to spend more.

SENATOR STAFFORD: That -- most of those funds are going in payment of the plaintiffs' attorneys who have sued the State in various actions.

SENATOR DOLLINGER: Do you happen to know -- and through you, Madam President - Senator Stafford, who was defended in those actions?

SENATOR STAFFORD: I certainly could get the details, and that's -- in fact, they, the question was thought about before you asked it and we're getting a list.

SENATOR DOLLINGER: Again, through you, Madam President, if I could.

I have no interest in prolonging this proceeding, but the answer to those questions will affect, certainly, my vote and perhaps others. Is it possible to put this

aside for a moment until that information is here?

SENATOR STAFFORD: Madam President, I would point out then, again, Senator Dollinger and I often visit on the floor and we visit in the committee and I'm sure we will have many exchanges, and I think they're good. I think they're wholesome. And sometimes it gets heated on one side or the other, but we've done very well so far -

SENATOR DOLLINGER: We have.

SENATOR STAFFORD: -- this year. There's been done that we would call heated. Yet.

I would say that this question, obviously, cases are documented, obviously, there will be a list of exactly where this money goes due to lawsuits, and I would, I would respectfully submit to my colleague that, really, I don't think we have to hold up.

And let's be very candid now, very open and very frank, whether we've been here one day or 20 years, when we have a budget in front of us, it does not take a bright person,

it takes any person. And I'm not considering you in the latter.

SENATOR DOLLINGER: I appreciate that.

SENATOR STAFFORD: It's a compliment. You can ask questions to get details that can hold up a budget. And I think that that question, I respectfully submit, is really not something to hold up this, because we're passing it today, it is necessary, we'd like to have it done by the end of the week and we certainly can get that list. But I -- you hear the gist of my suggestion and I say it very respectfully and so far we're doing very well.

SENATOR DOLLINGER: Through you, Madam President. I appreciate the graciousness of Senator Stafford's comments.

I, I would simply point out to Senator Stafford, although it's been abundantly clear to me for seven, six and a half years, that my vote may not matter in the final compilation of approval on this bill. But what I've just suggested, however, is that in order for me to say whether this $5 million

additional appropriation makes good sense, especially when the issue is the defense of officers of the public -- the public officers of the State of New York, it just seems to me that having a breakdown as to why that expense line is up 25 percent in a single year or less than a single year, I don't know, maybe there were prior transfers, maybe there's other evidence that this money's been put in there. I've requested the information.

I would just ask again, I'm not going to make a motion. I'm not prepared to do that. I don't want to do that. But -- and I don't want to delay this bill. But it seems do me, having the backup detail to explain why we need $5 million more to buy, hire outside counsel to defend the officers of this State is a very legitimate question and should have a reasonable answer that would satisfy my inquiry and perhaps put me in a position where I'd vote for this bill.

SENATOR STAFFORD: Thank you.

SENATOR DOLLINGER: Can I -- we don't know and I guess the answer is -

SENATOR STAFFORD: Well, I think,

again, I've made the point. You said six and a half years? Thirty-four years for me. And I will make this point and I make it very respectfully and I make it very directly and very candidly and I say it with all the respect and I consider I'm sharing it with a friend, and I mean that. You're making your point and you're making your mark and the type of mark you make is entirely up to you. I think I've answered it.

SENATOR DOLLINGER: Fine. Thank you.

Madam President, just on the bill briefly.

I appreciate Senator Stafford's candor. I understand that he may not be in the possession of the information, he or no one in his staff is in the possession right now of the information on this bill. I appreciate that. I understand how that's how government works. I understand that that's sometimes how communications between this body and the executive downstairs may work.

But, nonetheless, Senator Lachman pointed out that, here we are, doing something

again very quickly. It may be the right thing to do. It may very well be the right thing to do, but the backup information just isn't here and it seems to me it's premature to do it under those circumstances.

I've learned that that doesn't necessarily dictate how we're going to do things, but it does seem to me to be, to be asking us to spend more money without knowing exactly what it's for and where it arises, doesn't seem to be that we're doing our full job.

THE PRESIDENT: Senator Gentile.

SENATOR STAFFORD: I haven't said Mr. President; have I? I just caught myself.

Madam President.

THE PRESIDENT: I would have noticed.

SENATOR STAFFORD: Please, Madam President, I still want to -- my answer was, and I think it should be on the record again, which is stated. We talk in terms of outside counsel, we're not talking about outside counsel. We're talking about money who has been paid to plaintiffs' attorneys who have

sued the State. So I want to make that clear, please.

THE PRESIDENT: Senator Gentile.

SENATOR GENTILE: Thank you, Madam President. On the bill.

The provision in the deficiency bill, which adds money to the EPIC Program, I just want to point out that that money that's added to the program only covers the increased enrollment because of the miscalculation of the enrollment over the past year. While that's a laudatory move to cover the level of about a hundred thousand seniors that are in the EPIC Program, what this bill fails to address and what we have failed to address in this State is the situation of almost 55,000 seniors across New York State who have been dropped by their HMOs come January 1st, this past January 1st. And as a result, 55,000 seniors or more are without prescription drug coverage. We have this program, the EPIC Program, that can cover those seniors if we were to increase the income eligibility levels. It would be something that we can do very easily in this State, in this

Legislature. It was an indignity upon those seniors who three or four years ago were recruited by these HMOs to join, to join the HMOs and then three years later get a notice saying they were being dumped. These seniors now cannot afford prescription drug coverage. They are over the income limits that are now set in the law under the EPIC Program.

What we need to do as a State, what this body needs to do, what the executive chamber needs to hear is that these seniors are out there on the streets in New York State without prescription drug coverage. We need prescription drug coverage for those seniors who cannot otherwise afford them. The way to do it is to increase the EPIC eligibility limits to 24,000 and 35,000 will cover many of them. It's a small, small price to pay.

So while this is a good provision in the bill to cover those seniors that still fit under the income limits, we need to do more. We need to do more quickly, ladies and gentlemen. We need to do more quickly for the seniors who are walking around today, almost 55,000 of them, without prescription drug

coverage.

Thank you, Madam President.

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 Dollinger, to explain your vote.

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

I just, I feel compelled to stand and just say, my interest in this particular appropriation is because, contrary to what Senator Stafford said, I'm not interested in what's paid to the plaintiffs' lawyers, I'm interested in the line that says for the payment of the defense by private counsel and the indemnification or payment on behalf of state officers and employees in civil judicial proceedings in accordance with the provisions, Section 17 of the Public Officers Law. And in criminal proceedings in accordance with the

provision of Section 19 of the Public Officers Law.

I would simply like to know how much money we spend when public officers are sued in civil courts and they need outside counsel and how much we pay them, and when they're subject to criminal actions how much we pay private counsel to defend them. That is somewhere in the books and records of this State. Somewhere, someone on the second floor knows the answer to those questions and there's someone on the third floor, namely, me, who would like an answer to them, too, and who was elected, I think, with the obligation to get the information so that if somebody asks me why we spent $5 million more, I'll be able to team them.

I would hope, even though that information isn't available today, that it would be made available to me so that I can make that determination in the future.

Under those circumstances, I'm voting nay.

THE PRESIDENT: Senator Dollinger, you will be recorded as voting in

the negative.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 291 are Senators Dollinger, Schneiderman and Smith.

Ayes 55. Nays 3.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, would you please call up Calendar Number 292, Senate 3582.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 292, Senate Budget Bill, Senate Print 3582, an act to amend Chapter 57 of the Laws of 1998.

SENATOR SKELOS: Madam President, is there a message of necessity at the desk?

THE PRESIDENT: Yes, there is, Senator Skelos.

SENATOR SKELOS: Move to accept.

THE PRESIDENT: All right. All 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 3, this act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

THE PRESIDENT: The bill is passed.

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

THE PRESIDENT: Yes, Senator, we have three motions at the desk.

Senator McGee.

SENATOR McGEE: Thank you, Madam President. On behalf of Senator Marcellino, I would ask, on page number 5, I offer the following amendments to Calendar Number 70, Print Number 1130.

THE PRESIDENT: The amendment is

received, Senator.

SENATOR McGEE: And I ask that the bill, I ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR McGEE: Thank you.

In continuation, if I may. On behalf of Senator Saland, I offer on page number 20, I offer the following amendments to Calendar Number 36, Senate Print 1031A, and ask that said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: The amendment is received and the bill will retain its place on the Third Reading Calendar, Senator.

SENATOR McGEE: And one more, if I may.

And on behalf of Senator Maltese, on page number 12, I offer the following amendments to Calendar 184, Senate Print Number 2191, and ask that said bill retain its place on Third Reading Calendar.

THE PRESIDENT: The amendment is received and the bill will retain its place on

the Third Reading Calendar.

SENATOR McGEE: Thank you, Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, there being no further business, I move we adjourn until Monday, March 15th at 3 p.m., intervening days being Legislative days.

THE PRESIDENT: On motion, the Senate stands adjourned until Monday, March 15th, at 3 p.m., intervening days being Legislative days.

The Senate is adjourned.

(Whereupon, at 2:15 p.m., the Senate adjourned.)