NEW YORK STATE SENATE

THE

STENOGRAPHIC RECORD

ALBANY, NEW YORK

June 2, 1999

3:07 p.m.

REGULAR SESSION

SENATOR RAYMOND A. MEIER, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MEIER: The Senate will come to order.

Will everyone please rise and repeat with me the Pledge of Allegiance.

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

ACTING PRESIDENT MEIER: In the absence of clergy, I ask everyone to please bow their head in a moment of silence.

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

ACTING PRESIDENT MEIER: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, June 1st, the Senate met pursuant to adjournment. The Journal of Sunday, May 30th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT MEIER: 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 Lack, from the Committee on Judiciary, offers up the following nominations:

As a Judge of the Court of Claims, Susan Phillips Read, of West Sand Lake.

ACTING PRESIDENT MEIER: Senator Lack.

SENATOR LACK: Thank you, Mr. President.

It's with great pleasure that I rise to move the nomination of Susan Phillips Read, of West Sand Lake, to succeed herself as the Judge of the Court of Claims. Judge Read appeared before us last year, she appeared before us this year. And on both occasions, her credentials were examined by the staff of the Judiciary Committee, were found to be extraordinary. She appeared before the committee this morning and was unanimously moved to the floor for purposes of the confirmation.

And it's with great respect that I turn to Senator Bruno for purposes of a

second.

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Thank you, Mr. President. Thank you, Senator Lack.

I'm very pleased to be able to rise on behalf of Susan Read, a constituent of mine and a constituent that I am mighty proud of. She excelled from the time she was at the University of Chicago Law School as a prizewinning scholar. She excelled when she was in public service with the Governor as a deputy counsel for several years. And there were questions on whether or not the administration could go forward when Susan left. But they have. And they have done that in an exemplary way.

Susan has been on the bench for this past year. She has been in private law practice, she has been a corporate attorney. And in all of those things, as Senator Lack indicated, she excels.

So on behalf of the people that we all represent in this chamber, I know we will have unanimous consent in approving the

reappointment of Susan Read to the Court of Claims. And I am informed that the Governor, in his great wisdom -- Susan was an integral part of that Administration, and all the good things that have happened in this state under the governor's able leadership -- that he is going to appoint Judge Susan Read as Presiding Judge of the Court of Claims.

So I am proud to second the nomination.

ACTING PRESIDENT MEIER: The question is on the confirmation of Susan Phillips Read as a Judge of the New York State Court of Claims. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: Susan Phillips Read is hereby confirmed as a Judge of the New York State Court of Claims.

We're pleased to have Judge Read in the chamber with us today, and she's joined by her husband, Howard.

Judge Read, on behalf of the Senate, as Temporary President, I wish you good luck and Godspeed with your important duties.

(Applause.)

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: As a Justice of the Supreme Court for the Tenth Judicial District, Anthony F. Marano, of Valley Stream.

ACTING PRESIDENT MEIER: Senator Lack.

SENATOR LACK: Thank you, Mr. President.

I rise to move the nomination of Anthony F. Marano, of Valley Stream, who has been nominated by the Governor to be a Justice of the Supreme Court of the Tenth Judicial District.

Judge Marano's credentials were examined by the committee, they were found to be extraordinary. He appeared before the committee this morning. By unanimous vote of the committee, he was sent to the floor for confirmation this afternoon.

And I'm very privileged to yield, for purposes of a seconding, to Senator Skelos.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Thank you very much, Mr. President, and Senator Lack.

I appreciate the Judiciary Committee for moving this nomination to the floor, and of course to the Governor for making the nomination.

I've known Judge Marano for a long time. He has been a very good friend to me over the years, a good friend to my brother Peter, who is presently on the Supreme Court, the bench which Anthony is going to join today.

He has a great experience as a district court judge, as practicing attorney for a number of years, where he has always given his best in representing his client, and I know as a judge of the district court has represented everybody fairly, has treated attorneys with respect -- and from comments that he made at the Judiciary Committee

meetings, I know that Senator Dollinger picked up on it, in terms of his priority is making everybody feel, whether they win or lose when they appear in court, that they have received justice. And that's really what our judicial system is about.

He graduated St. John's University, which makes Senator Balboni happy. He didn't go to Fordham Law School, which is unfortunate. We all can't be perfect. But he did graduate from St. John's University School of Law.

He's here with his wife, Rosalie; his mother, Marie; children, Stacy and Victoria.

And, Judge, from myself and all of us, we're delighted on your confirmation today, and we wish you the best.

ACTING PRESIDENT MEIER: Senator Balboni.

SENATOR BALBONI: Mr. President, I rise as a member of this body who actually has had the opportunity to appear before Judge Marano on several occasions.

And the court that he currently

presides in is a court where not always the best scenes are played out. It is a difficult court. It is the District Court of Nassau County. It is a court where you have landlord-tenant matters, you have civil claims, you have criminal claims, you have a great deal of DWI actions brought. And oftentimes, as I mentioned in the Judiciary Committee, you have families who come into court with screaming children, you have very agitated individuals, and you have attorneys trying to make a living trying to protect their clients.

It is essential that you have someone of the proper demeanor, someone who at once is both respectful, judicious, but at the same time compassionate and can understand that these are real people, not just numbers on a docket. Judge Marano has been able to tread that very fine line with excellence. He is a qualified judge not only in terms of his experience, his intellect, and his ability but also in his manner towards people and his understanding of the human condition.

He is going to make an excellent

addition to the Supreme Court bench, and I look forward to many great years of Judge Anthony Marano as a Justice of the Supreme Court.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

I did not go to St. John's Law School or to Fordham Law School. I went to NYU. The -- not a law school. The first time I met Judge Marano was when he was -- before he became a judge. It was on a campaign trail. He was running for the office of district court, and I was running for another office -- the result of that election we won't get into.

But Judge Marano was successful. And during that time I got to know the gentleman. And that's a good word for him. He is truly a gentleman. He's a fine person and he's a caring person, and the district court has been well served by his presence.

And in his next step, the higher

court will be just as well served and the people of this state will be even better served.

ACTING PRESIDENT MEIER: Senator Hannon.

SENATOR HANNON: Mr. President, I just want to add my recommendation to this body for the confirmation of Justice Marano.

He is a very fine, intelligent lawyer -- good logic, good reasoning, a hard worker. And I can't think of a more fitting addition to our bench. And I'm sure the people in our state and our county will be well served by him.

Thank you.

ACTING PRESIDENT MEIER: Senator Fuschillo.

SENATOR FUSCHILLO: Thank you very much, Mr. President.

I just want to rise with my colleagues from Nassau County and proudly second the nomination of Judge Anthony Marano. I think Senator Marcellino said it best. To know him, he's a true gentleman. But most importantly, and my colleagues in the Senate

will appreciate this, he's from Nassau County, which means he's a great person.

And I want to commend the Governor on his recommendation. And I salute you, Judge Marano. You've served the district court with both pride and distinction. I know you'll be a credit and an asset to the Supreme Court. Best of luck to you.

ACTING PRESIDENT MEIER: The question is on the confirmation of Anthony F. Marano as Justice of the Supreme Court for the Tenth Judicial District. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: Anthony F. Marano is hereby confirmed as a Justice of the Supreme Court.

Justice Marano is with us today in the gallery, and he's accompanied by his wife, Rosalie; his mother, Marie; and by his daughters, Stacy and Victoria.

Justice Marano, on behalf of the

Senate, congratulations and good luck with your duties, sir.

(Applause.)

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: As a Judge of the Family Court for the County of Warren, J. Timothy Breen, of Glens Falls.

ACTING PRESIDENT MEIER: Senator Lack.

SENATOR LACK: Thank you, Mr. President.

I rise once again to move the nomination of J. Timothy Breen, of Glens Falls, who has been nominated by the Governor to be a Judge of the Family Court for the County of Warren. Mr. Breen's credentials have been examined by the committee. They've been found to be in order. He appeared before the committee this morning, was unanimously moved from the committee to the floor.

And it is with great pride that I yield for purposes of a second to Senator Stafford.

ACTING PRESIDENT MEIER: Senator

Stafford.

SENATOR STAFFORD: Thank you, Senator Lack.

Mr. President, this is a great day for the County of Warren, the home county of our leader. And I also want to mention - want to mention these fine judges, all of them. But I want to second what has been said about both of them.

And as the leader mentioned, those of us who have worked with Judge Read understand just the tremendous job she has done and she will be doing. And of course, when you're from Nassau, there's -- you know, there's -- it's just a foregone conclusion, and I mean that.

We have a tremendous candidate from Warren County to be the county judge. And, Mr. President, it's just so -- it's so good to have the Governor appoint professionals. And Tim Read has been a hearing officer in the Family Court for 15 years.

And I would mention this, too. In this day and age when we're complaining about so much, and of course the judiciary is not

excluded, the hearing officer process has worked very well. And it's because of people like Tim Read, who are professionals -- Tim Breen, excuse me. But both names are very good.

But Tim Breen, who is a professional and who has done so well in fulfilling his responsibilities. He's practiced law in the private sector. He's done very, very well. And we're very proud to have Tim Breen now being our county judge. I know he'll do a tremendous job. He's here with his family. And as I say, this is just another example of a professional being appointed who will do the job he has done in the past. And again, I compliment a very, very fine appointment.

ACTING PRESIDENT MEIER: The question is on -- Senator Dollinger.

SENATOR DOLLINGER: Mr. President, thank you.

I just want to follow up Senator Lack's comments with respect to all three of these nominees. I think they're all representative of their communities. I think

they have a good sense of justice. I think they may have at some point been involved in something we call the political world, because of their affiliation with a political party. But I think all of that is in a testament to the fact that they have been involved in the community, that they represent them, and that the face of justice in New York will be one of a positive image for the people that come into these courtrooms.

I addressed all three of them in the Judiciary Committee. I wish you good luck and good experiences in your future as judges from the Democratic side as well.

ACTING PRESIDENT MEIER: The question is on the confirmation of J. Timothy Breen, of Glens Falls, as a Judge of the Family Court of the County of Warren. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: J. Timothy Breen is hereby confirmed as a Judge

of the Family Court for the County of Warren.

Judge Breen is with us in the gallery today. He is joined by his sisters and brother-in-law, Johanna and Joseph Bak, Mary Ellen and Frederick Field, by his aunt, Mary M. Breen, and his niece, Carolyn Bossinas.

Judge Breen, on behalf of the Senate, congratulations and good luck with your new duties, sir.

(Applause.)

ACTING PRESIDENT MEIER: The Secretary will continue to read.

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

As members of the New York State Employment Relations Board, Lloyd Demboski, of Queensbury, George C. Frost of South Glens Falls.

ACTING PRESIDENT MEIER: Senator Stafford.

SENATOR STAFFORD: Mr. President, I will turn this over to the Majority Leader. Anything I would say would deserve little more

than a footnote. But I would say in the Finance Committee they did -- again, did so well today. They understood my son left for Africa for a two-year stint, I was at the airplane seeing him off. But I got very good reports.

And with that, Senator Bruno.

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Thank you, Mr. President. Thank you, Senator Stafford.

It's with great pleasure that I rise and speak on behalf of the reappointment of Lloyd Demboski. Lloyd and I were neighbors and friends in the town of Queensbury for a lot of years. We were, if you can focus on this, in the Young Republicans together. Lloyd was my campaign manager when I ran for president of the New York State Young Republicans, the most successful campaign in the whole state.

Lloyd was a financial consultant for Smith Barney, so he knows how to manage people and money. But while he was doing that, he had 37 years in public service, 22

years on the Board of Supervisors. And in those 22 years, served as 16 years as chair of all the major committees -- Finance, Rules, Labor -- and did all of those things in an outstanding way. He was the New York State president of the Association of Counties, where he served the entire constituency of this state.

Lloyd presently serves on the Employment -- the New York State -- now, I have to get this right -- the New York State Employment Relations Board, and he has served for several years. He is up to be reappointed, and I wholeheartedly support his reappointment and ask my colleagues to join me.

ACTING PRESIDENT MEIER: Senator Farley.

SENATOR FARLEY: When I saw Lloyd in Saratoga not so long ago, he spoke of his appointment and he asked if I would say something nice about him.

And Joe has said almost everything they could say about you, Lloyd. But I'll tell you, you have dedicated an awful lot of

your life to public service. We're very proud of you. And I'm pleased to be one of the many in here that support your nomination. We wish you the best.

ACTING PRESIDENT MEIER: Senator Stafford.

SENATOR STAFFORD: Lloyd does vote in my district now, so I've got to stand up. But let me share with you. My friends, if you wanted to see two political operatives 35 years ago supporting a guy for the Senate who didn't know anything -- hasn't changed too much either -- let me tell you, when you had -- when you had them on your side - again, 35 years ago -- you knew that things were going to hopefully go quite well. And they did, and I'm most appreciative.

I just want to second what has been said by Senator Bruno and Senator Farley. It has been mentioned the years he has put in this public service and, yes, the years he's put in the political arena, which isn't all bad because that's really what this whole system is all about. We understand it is a part, but it's a very important part.

And again, this is a tremendous appointment, as is his colleague with him, and I certainly want to support, join, them in supporting my constituent, Lloyd Demboski.

ACTING PRESIDENT MEIER: The question is on the confirmation of Lloyd Demboski as a member of the New York State Employment Relations Board. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: Lloyd Demboski is confirmed as a member of the New York State Employment Relations Board.

Lloyd, there is life after county government, isn't there?

Lloyd is here today with his wife, Marguerite. And we'd ask, Lloyd, that you please rise and receive the recognition of the chamber and our best wishes for successful work on your duties.

(Applause.)

ACTING PRESIDENT MEIER: The

Secretary will read.

THE SECRETARY: As a member of the New York State Employment Relations Board, George C. Frost, of South Glens Falls.

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Again, Mr. President, I am happy to rise on behalf of a good friend, a neighbor, George Frost, who serves on the Employment Relations Board here in the state now. George is the retired CEO and president of Rist-Frost Consulting Engineers, retired several years ago.

George has had a very active public life. He is well respected in his profession. He served as past president of the Consulting Engineers Council of New York State and past chairman of the Illuminating Engineering Society. He's been an active member and is now a 60-year veteran of the Boy Scouts of America, and he has helped them throughout the country. A member of the South Glens Falls Rotary Club for 43 years. And he has received more public service awards than I can list and repeat here.

He is a dedicated, able, capable public servant. He and his wife, Bea, are godparents of one of my children, Kenneth. And one of the best friends, the best neighbors -- but more important, a great, great public servant.

Mr. President, I am happy to speak on behalf of the reappointment and the confirmation of George Frost.

ACTING PRESIDENT MEIER: Senator Farley.

SENATOR FARLEY: I represented South Glens Falls and the Town of Moreau before Joe Bruno took it away from me a few years ago. But I also rise to second George's nomination. And again, somebody that has served his community so well.

I understand you lived in South Glens Falls, did you not, Joe, after you got married? Well, never mind. I think he did.

But anyway, George, you've been a great member of the committee of South Glens Falls, serving your community so well for so many years. It's my pleasure to second your nomination.

ACTING PRESIDENT MEIER: The question is on the confirmation of George -

I'm sorry, Senator Stafford.

SENATOR STAFFORD: Senator Farley stood up, so now I have to.

But I can only say that the tremendous organization that George ran in our district and the great work he's done, I only want to second what's been said so effectively here today by Senator Bruno and Senator Farley.

ACTING PRESIDENT MEIER: The question is on the confirmation of George C. Frost as a member of the New York State Employment Relations Board. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: George Frost is confirmed as a member of the New York State employment relations board.

Mr. Frost is with us in the gallery today. Would you please stand, Mr. Frost, so

we can see you and extend to you our congratulations.

(Applause.)

ACTING PRESIDENT MEIER: The Secretary will continue to read.

THE SECRETARY: As a member of the State of New York Housing Finance Agency, Jerome M. Becker, of New York City.

SENATOR STAFFORD: Move confirmation, please.

ACTING PRESIDENT MEIER: The question is on the confirmation of Jerome C. Becker as a member of the State of New York Housing Finance Agency. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominee is confirmed.

The Secretary will continue to read.

THE SECRETARY: As a member of the Ogdensburg Bridge and Port Authority,

Frederick J. Carter, of Ogdensburg.

SENATOR STAFFORD: Move confirmation, please.

ACTING PRESIDENT MEIER: The question is on the confirmation of Frederick J. Carter as a member of the Ogdensburg Bridge and Port Authority. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: Frederick J. Carter is confirmed as a member of the Ogdensburg Bridge and Port Authority.

The Secretary will continue to read.

THE SECRETARY: As a member, Board of Visitors of the New York State Home for Veterans and Their Dependants at Batavia, R. Stephen Hawley, of Batavia.

SENATOR STAFFORD: Move confirmation.

ACTING PRESIDENT MEIER: The question is on the confirmation of R. Stephen

Hawley as a member of the Board of Visitors of the New York State Home for Veterans and Their Dependents at Batavia. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominee is confirmed.

Reports of select committees.

Communications and reports of state officers.

Motions and resolutions.

Senator McGee.

SENATOR McGEE: Mr. President, amendments are offered to the following Third Reading Calendar bills.

On behalf of Senator Marcellino, page 30, Calendar Number 740, Senate Print 2790B.

On behalf of Senator Seward, page number 35, Calendar Number 820, Senate Print 4175.

On behalf of Senator Goodman, page

37, Calendar Number 832, Senate Print 3305.

On behalf of Senator Stafford, page 46, Calendar Number 960, Senate Print 5160.

Mr. President, I now move that these bills retain their place on the order of the third reading.

ACTING PRESIDENT MEIER: The amendments are received and adopted, and the bills will retain their place on the Third Reading Calendar.

SENATOR McGEE: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Thank you, Senator McGee.

Senator Seward.

SENATOR SEWARD: Yes, I would like to place a sponsor star on Calendar Number 968, Senate Print Number 4073.

ACTING PRESIDENT MEIER: Sponsor star on Calendar 968.

Senator Trunzo.

SENATOR TRUNZO: Mr. President, please put a sponsor star on Calendar Number 1101, Senate Bill 2674A.

ACTING PRESIDENT MEIER: Place a

sponsor star on Senate Calendar 1101.

Senator McGee.

SENATOR McGEE: Mr. President, on page number 25, I offer the following amendments to Calendar Number 634, Senate Print Number 13, on behalf of Senator Skelos, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MEIER: Amendments are received and adopted, and the bill will retain its place on the Third Reading Calendar.

SENATOR McGEE: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Seward.

SENATOR SEWARD: Are there any substitutions at the desk?

ACTING PRESIDENT MEIER: Yes, there are. Would you like us to read those?

SENATOR SEWARD: Please.

ACTING PRESIDENT MEIER: Secretary will read the substitutions.

THE SECRETARY: On page 11, Senator Velella moves to discharge, from the

Committee on Rules, Assembly Bill 1495A, and substitute it for the identical third reading, 329.

On page 36, Senator Seward moves to discharge, from the Committee on Rules, Assembly Bill 7631A and substitute it for the identical third reading, 821.

On page 39, Senator Kuhl moves to discharge, from the Committee on Rules, Assembly Bill 7901 and substitute it for the identical third reading, 855.

On page 40, Senator Lack moves to discharge, from the Committee on Rules, Assembly Bill 7459 and substitute it for the identical third reading, 879.

On page 41, Senator DeFrancisco moves to discharge, from the Committee on Rules, Assembly Bill 1051 and substitute it for the identical third reading, 884.

On page 41, Senator Johnson moves to discharge, from the Committee on Rules, Assembly Bill 1269A and substitute it for the identical third reading, 896.

On page 43, Senator LaValle moves to discharge, from the Committee on Rules,

Assembly Bill 6421 and substitute it for the identical third reading, 918.

On page 50, Senator Goodman moves to discharge, from the Committee on Rules, Assembly Bill 8337 and substitute it for the identical third reading, 1023.

On page 51, Senator Maziarz moves to discharge, from the Committee on Rules, Assembly Bill 3713 and substitute it for the identical third reading, 1034.

On page 52, Senator Farley moves to discharge, from the Committee on Rules, Assembly Bill 8212 and substitute it for the identical third reading, 1043.

On page 52, Senator Farley moves to discharge, from the Committee on Rules, Assembly Bill 154A and substitute it for the identical third reading, 1046.

ACTING PRESIDENT MEIER: Substitutions ordered.

Senator Seward.

SENATOR SEWARD: Mr. President, at this time may we please adopt the Resolution Calendar, with the exception of Resolutions 1635 and 1642.

ACTING PRESIDENT MEIER: All in favor of adopting the Resolution Calendar, with the exception of Resolutions 1635 and 1642, signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The Resolution Calendar, with exceptions, is adopted.

Senator Seward.

SENATOR SEWARD: Yes, Mr. President, may we please have Resolution 1635, by Senator Libous, read in its entirety, and move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: By Senator Libous, Legislative Resolution memorializing Governor George E. Pataki to proclaim Wednesday, June 2, 1999, as Legislative Disability Awareness Day in the State of New York.

Whereas, The New York State Senate

Select Committee on the Disabled in conjunction with the New York State Assembly Task Force on People with Disabilities is sponsoring the 19th Annual Legislative Disability Awareness Day;

Whereas, It is the sense of this Legislative Body that Persons with Disabilities merit our recognition as they realize the goals of inclusion and equality in our communities and society at large;

It is the intent of this Legislative Body to recognize persons with disabilities, accentuating, in turn, the benefit to New York State of their contributions to our economic, educational and social growth;

Legislative Disability Awareness Day so clearly labors for the positive and salutary definition of the communities of the State of New York;

Legislative Disability Awareness Day will conclude with this Legislative Body considering legislation significant to persons with disabilities;

Legislative Disability Awareness

Day provides individuals with an opportunity to acknowledge and understand the legislative process; now, therefore, be it

Resolved, That this Legislative Body pause in its deliberations to memorialize Governor George E. Pataki to proclaim Wednesday, June 2, 1999, as Legislative Disability Awareness Day in the State of New York, fully confident that such procedures mirrors our shared commitment to the efflorescence of human dignity; and be it further

Resolved, that copies of this resolution, suitably engrossed, be transmitted to Governor George E. Pataki and selected representatives of persons with disabilities.

ACTING PRESIDENT MEIER: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President and my colleagues.

Today we celebrate in the Capital the 19th year that we have had Legislative Disability Awareness Day. And whether it's at work, sports, the arts, television or stage, people with disabilities have proven that they

can do anything that someone who does not have a disability can do.

We've had a number of special guests at our Legislative Disability Awareness Day over the years. We've had Miss Deaf New York. We've had two authors who had Downs syndrome who wrote a book. We had a U.S. Open Wheelchair Tennis Champion. We had athletes from the Special Olympics. And last year, if you recall, we had an Olympic athlete who had one leg who was a skier.

There are a number of things that we try to do on this day each year, but the biggest thing is to promote the fact that this body, working in conjunction with our colleagues in the Assembly and the Governor, have done a number of good things to help people with disabilities. But we're only scratching the surface, Mr. President. We have so many more things to do.

I'd like to thank my colleagues today and just mention some of the major pieces of legislation that have passed this house, gone on to the Assembly, and been signed into law by the Governor as we support

and help people with disabilities.

A program for traumatic brain injury in the Department of Health. At one time anyone who suffered from traumatic brain injury was sent out of the state. There were no services and no care. We moved to pass the Medicaid waiver bill several years ago, and I was told this morning that over 700 TBI victims are now serviced and treated right here in New York State, where five years ago every one of those victims were sent out of the state.

We've strengthened handicapped parking enforcement, to assure that people don't violate the law and park where they're not supposed to, that a handicapped spot is supposed to be a spot for someone with a disability, not someone who's in a hurry to run into a restaurant or to run into a department store.

We brought the Americans with Disabilities Act to New York, and we passed legislation for reasonable accommodations. Last year we provided tax credits to employers who hire people with disabilities. And we

have expanded opportunities for people with hearing impairment.

Mr. President, this body has done a lot, but we will do more. It is on this day that we celebrate and we bring awareness to people that someone who has a disability is no different than you and I in this chamber. They are people too. They deserve the same rights, the same opportunities as we do.

ACTING PRESIDENT MEIER: Senator Fuschillo.

SENATOR FUSCHILLO: Thank you very much, Mr. President.

And let me compliment my colleague, Senator Tom Libous, for sponsoring this Legislative Disability Awareness Day and his advocacy for the disabled in the state of New York.

About a year ago I had the pleasure of meeting what I characterize as truly a remarkable woman, Betty Gastelua, who is here with us in the chamber today. At the tender age of 13, from a rare virus, she was partially paralyzed from the waist down. And at that age, she was truly determined not to

allow her disability to slow her down. She worked extremely hard to gain her strength and physical ability back. She graduated from high school, earned her bachelor's degree, earned her master's degree in public administration with a specialty in health care. She has had a long and successful career in the health care industry.

Through her determination, perseverance and independence, she has been able to do and see all that she had set out to do -- world-class traveler and a bit of an adventurist as well. Her hobbies: hot-air ballooning, white-water rafting, skiing, parasailing, and horseback riding.

She's dedicated her life to community service and to her church, where she has been a member for more than 28 years. Betty recently founded a program to feed the homeless. And as a result of that, more than 100 individuals in her community are fed each month. Betty's motto: "I strongly believe that people helping people is the way to make a change."

She's an example of somebody who

has made a change in our society and our state; most recently, through the Miss Wheelchair America program, a program to select the most accomplished and articulate spokesperson for the more than 50 million individuals with disabilities. I am proud to introduce to my colleagues Ms. Wheelchair New York, Betty Gastelua.

(Applause.)

SENATOR LIBOUS: Thank you, Mr. President.

ACTING PRESIDENT MEIER: The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is unanimously adopted.

Senator Seward.

SENATOR SEWARD: Mr. President, may we please have Resolution 1642, also by Senator Libous, read in its entirety and move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: By Senator Libous, Legislative Resolution commending Henry Holden upon the occasion of his participation in Legislative Disability Awareness Day as Guest Speaker, June 2, 1999.

Whereas, Individuals devoted to improving the quality of life for others, enabling them to build lives of dignity and self-worth, are deserving of the highest praise and recognition;

This Legislative Body is justly proud to commend Henry Holden upon the occasion of his participation in Legislative Disability Awareness Day as Guest Speaker to be held at the State Capitol in Albany, New York, on Wednesday, June 2, 1999;

Actor, athlete, stand-up comic and activist Henry Holden contracted polio at the age of 4 during the 1952 national polio epidemic;

Henry Holden is the founder of Performers with disabilities for Screen Actors Guild, and has been recognized by the Screen

Actors Guild with the prestigious Joseph P. Riley Award, for always stressing the importance of including performers with Disabilities in all forms of entertainment;

Henry Holden is also the recipient of the very first America Scene Award given by both Screen Actors Guild and the American Federation of Television and Radio Artists for the rock video which he starred in entitled "I Got News For You";

Henry Holden's TV credits include T.J. Hooker, After MASH, Hill Street Blues, Knots Landing, Hunter, Dear John, Duet, Jake and the Fat Man, Kids Incorporated and Divorce Court, as well as the critically acclaimed independent film Misplaced;

Henry Holden's theater credits include Disabled Genius, Boys Next Door, The Green Turtle and his own one-man show, For Want of a Hero, which is about a young disabled boy who comes to terms with his hero worship of Franklin Roosevelt;

Henry Holden is the producer of the award-winning documentary Look Who's Laughing, which featured six comedians with

disabilities; he also has his own new comedy act called God Walks On Crutches;

Henry Holden has expressed his views on inclusion of people with disabilities on numerous talk shows such as The Phil Donahue Show, The Today Show, Entertainment Tonight, as well as local media around the country; the only state he has not presented in is Alaska;

Henry Holden's athletic accomplishments include being a certified scuba diver, riding at the National Horse Show at Madison Square Garden, bowling a 198 in league competition, taking flying lessons both in a single engine and a glider, and, lastly, skiing in Colorado, both four track and mono ski; he has also completed the Los Angeles marathon, which was 26.2 miles;

This past year, the Association for the Promotion of Campus Activities selected Henry Holden as Lecturer of the Year finalist;

Whereas, It is the sense of this Legislative Body that those who enhance the well-being and vitality of their community and have shown a long and sustained commitment to

excellence certainly have earned recognition and applause; now, therefore, be it

Resolved, That this Legislative Body pause in its deliberations to commend Henry Holden upon the occasion of his participation in Legislative Disability Awareness Day as Guest Speaker, June 2, 1999; and it be further

Resolved, That a copy of this Resolution, suitably engrossed, be transmitted to Henry Holden.

ACTING PRESIDENT MEIER: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

Henry, thank you for joining us today, and thank you for your remarks earlier today.

He gave some very moving remarks as we opened up Legislative Disability Awareness Day. Henry wears a pin that says "Attitudes are the real disability." And that's the philosophy he lives by. Because there are no disabilities, that it's all in the attitude - not only in the attitude of the individual but

in the attitude of society. And that's why we have Legislative Disability Awareness Day, and that's why Henry joined us, because we're trying to change those attitudes of society.

He also mentioned to us that he was -- as he put it, he's here today because he was fortunate enough to contract polio at age 4. And he then goes on to tell us how he has taken a disability and made it a very positive part of his life as he has talked to many groups.

And those of you who sit in this chamber and in the gallery probably recognize him. And as I said to him earlier, if he didn't have the beard we would probably recognize him even quicker. But he did star on many television shows -- as mentioned, Knots Landing, T.J. Hooker, Hill Street Blues and other shows.

Henry shares with us today, through his accomplishments as read by the Journal clerk, that having a disability in society is a very positive thing and that people with disabilities want opportunity. They want to be treated like everyone else.

Henry, we were blessed and very pleased to have you with us today. We are pleased at the work that you have done throughout your life in promoting the right attitude about people with disabilities. And we hope that we can have you back in our Capitol again. Thank you for all you've done.

(Applause.)

ACTING PRESIDENT MEIER: The question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is unanimously adopted.

Senator Seward.

SENATOR SEWARD: Yes, Mr. President. There will be an immediate meeting of the Rules Committee in Room 332.

ACTING PRESIDENT MEIER: Immediate meeting of the Rules Committee in Room 332.

SENATOR SEWARD: And at this time may we please have the noncontroversial

reading of the calendar.

ACTING PRESIDENT MEIER: The Secretary will read the noncontroversial calendar.

THE SECRETARY: Calendar Number 142, by Senator Libous, Senate Print 2102, an act to amend the Mental Hygiene Law and the Executive Law, in relation to authorizing providers of services to the mentally retarded.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR MONTGOMERY: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 204, by Senator Libous, Senate Print 2197, an act to amend the Public Health Law, in relation to requiring consent for visual observation.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Libous.

SENATOR LIBOUS: Mr. President, could I please ask that the resolutions be opened up for sponsorship by all my colleagues in this house, please.

ACTING PRESIDENT MEIER: At the request of the sponsor, the resolution will be opened up.

Senator Seward, shall we, according to our usual custom, place every member's name on unless they inform the desk to the contrary?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MEIER: Okay. Well, that's the way we'll do it, then.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 224, by Senator Libous, Senate Print 2101B, an

act to amend the Vehicle and Traffic Law, in relation to parking spaces for handicapped persons.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 4. This act shall take effect April 1st.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 609, by Senator Hoffmann, Senate Print 4265, an act to amend the Agricultural and Markets Law.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR PATERSON: Lay the bill aside.

ACTING PRESIDENT MEIER: I'm sorry, lay the bill aside.

SENATOR PATERSON: Mr. President -- last -

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Last section, Mr. President.

ACTING PRESIDENT MEIER: Okay. Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 30th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 904, by Senator Trunzo, Senate Print 3586, an act to amend the Real Property Tax Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1074, by Senator Libous, Senate Print 3531, an act to amend the Mental Hygiene Law.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1092, by Senator Maziarz, Senate Print 810, an act to amend the Penal Law.

ACTING PRESIDENT MEIER: Read the -

SENATOR LACHMAN: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 449, by Senator Padavan, Senate Print 3651, an

act to amend the Real Property Tax Law.

SENATOR LACHMAN: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 523, by Senator Stafford, Senate Print 3832, an act to amend the Executive Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 686, by Senator Bonacic, Senate Print 3905B, an act to amend Chapter 555 of the laws of 1989.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 885, by Senator Marchi, Senate Print 1180, an act to amend the Public Authorities Law.

SENATOR ONORATO: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 939, by Senator Skelos, Senate Print 982A, an

act to amend the Public Health Law and the Education Law.

ACTING PRESIDENT MEIER: Read the last -

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 958, by the Assembly Committee on Rules, Assembly Print 8072, an act to amend Chapter 521 of the laws of 1994.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1089, by Senator Alesi, Senate Print 85, an act to amend the Correction Law.

ACTING PRESIDENT MEIER: Read the last section.

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

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1090, by Senator Larkin, Senate Print 170, an act to amend the General Municipal Law.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1091, by Senator DeFrancisco, Senate Print 672, an act to authorize the New York State Urban Development Corporation.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1093, by Senator Johnson, Senate Print 812, an act to amend the Real Property Tax Law.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1094, by Senator LaValle, Senate Print 1198, an act, in relation to the Long Island Suburban Highway Improvement Program.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Read the last section.

Senator Paterson, I'm sorry. Lay the bill aside.

THE SECRETARY: Calendar Number 1095, by Senator Skelos, Senate Print 1206, an act to amend the Civil Practice Law and Rules.

SENATOR PATERSON: Lay it aside for the day.

ACTING PRESIDENT MEIER: Lay the bill aside for the day.

THE SECRETARY: Calendar Number 1096, by Senator Wright, Senate Print 1226, an act to amend the Tax Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1098, by Senator Padavan, Senate Print 1993, an act to amend the Penal Law.

SENATOR MONTGOMERY: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1099, by Senator Marchi, Senate Print 2041, an act authorizing the City of New York.

SENATOR MONTGOMERY: Lay it aside.

SENATOR LACHMAN: Lay the bill aside.

THE SECRETARY: Calendar Number 1100, by Senator Sampson, Senate Print 2348, an act authorizing the City of New York.

ACTING PRESIDENT MEIER: Read the last section.

I'm sorry. There's a home rule message at the desk.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1102, by Senator Meier, Senate Print 2825, an act to authorize the City School District of the City of Potsdam.

SENATOR PATERSON: Lay it aside for the day.

ACTING PRESIDENT MEIER: Lay it aside for the day.

THE SECRETARY: Calendar Number 1103, by Senator Seward, Senate Print 3175, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1104, by Senator Farley, Senate Print 3237, an act to amend the Social Services Law.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the

bill aside.

THE SECRETARY: Calendar Number 1105, by Senator Lack, Senate Print 3250A, an act to amend the Tax Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1106, by Senator McGee, Senate Print 3327, an act to amend the Highway Law.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1107, by Senator Maltese, Senate Print 3525, an act to amend the Election Law.

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

SENATOR SEWARD: Mr. President, please lay aside 1107 for the day, please.

ACTING PRESIDENT MEIER: Calendar

Number 1107 will be laid aside for the day.

THE SECRETARY: Calendar Number 1108, by Senator Libous, Senate Print 3589A, an act to amend the -

SENATOR MAZIARZ: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

(Laughter.)

SENATOR PATERSON: I like that bill.

ACTING PRESIDENT MEIER: Calendar Number 1110, by Senator Leibell, Senate Print 5328, an act to amend Chapter 338 of the laws of 1998.

SENATOR PATERSON: Lay it aside for the day.

ACTING PRESIDENT MEIER: Lay the bill aside for the day.

Senator Paterson, have you met Senator Maziarz?

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

SENATOR SEWARD: Mr. President, may we now have the controversial reading of the calendar.

ACTING PRESIDENT MEIER: The Secretary will read the controversial calendar.

THE SECRETARY: Calendar Number 142, by Senator Libous, Senate Print 2102, an act to amend the Mental Hygiene Law and the Executive Law.

SENATOR MONTGOMERY: Explanation, please.

ACTING PRESIDENT MEIER: Senator Libous, an explanation has been requested by Senator Montgomery of Calendar Number 142.

SENATOR LIBOUS: Thank you, Mr. President.

The bill would allow service providers for persons who are mentally retarded or developmentally disabled to check criminal backgrounds through the use of fingerprints and background checks through DCJS.

An employer wishing to receive criminal history background information will submit the written request to DCJS, along with payment of a $50 fee. DCJS will return the information directly to the employer, and all

information will be kept confidential for the employer.

Mr. President, the reason for this bill, we have been contacted by a number of service providers -- United Cerebral Palsy Association, Integrated Council, Long Island Alliance, NYSARF -- a number of groups have come to us who have had some tragic stories about employees that they have hired. And unfortunately, because they didn't have background checks available to them like we do in some other areas, there were some tragic cases.

For example, a direct care worker was hired by an agency which then had to terminate her after finding out, through the newspaper that she was an employee and had been convicted five times, including convictions for violent felonies. And another incidence where an employee was hired to drive clients to their programs. The employer subsequently saw the employee on the America's Most Wanted television show.

These are just a few examples. We could trot out many, many more, Mr. President.

But this is the bill that the providers had come to us. They're deeply concerned. Because when you're taking care of people who are disabled, both mentally and physically, we have to make sure that those people taking care of them are not people who would put their lives in danger.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Yes. Mr. President, I just have a couple of questions for the sponsor, Senator Libous.

ACTING PRESIDENT MEIER: Senator Libous, do you yield to a question?

SENATOR LIBOUS: Certainly. Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Senator Libous, in the bill you are requiring fingerprinting of new employees and prospective employees, but somehow you exempt what I believe you refer to as licensed professionals. Is there any reason for you to exempt a certain class of employees?

SENATOR LIBOUS: Mr. President, that's a good question. Senator Montgomery, those people are licensed by State Education Department. And if they had criminal backgrounds, they would lose their license through State Ed.

SENATOR MONTGOMERY: So in other words, you're saying to me that they have already been checked out with DCJS by State Education and therefore there is no need to do a fingerprinting of them?

SENATOR LIBOUS: To the best of my knowledge, Mr. President, Senator Montgomery, that the State Education Department will not license anyone with a criminal background.

SENATOR MONTGOMERY: They also do a background check of all of -- everyone who receives a license?

SENATOR LIBOUS: I would assume that that's the case. But the only direct point to the question that I can answer is that they will not license anyone with a criminal background.

SENATOR MONTGOMERY: Mr. President,

if I may.

In terms of the -- establishing as some time limit on how quickly a person can be employed vis-a-vis the return of the background-check information, does the bill indemnify the employer if they should hire someone prior to the background check? And does the bill also establish that you must receive a background check within a certain period of time so that the agency -- the provider doesn't have to wait for so long, for an extended period of time, to receive - before they can hire someone?

SENATOR LIBOUS: Let me just defer to counsel for a second because I want to get the Senator an accurate assessment of that question.

Mr. President, I think I can answer the Senator's questions. The providers have said to us that they are comfortable hiring that person as long as a background check is pending, because in most cases they need someone immediately to fill that spot.

And again, Mr. President, through you to Senator Montgomery, this is something

that we're trying to accommodate them to help them best serve the clients that they serve. So that's what they've shared with us, and I think that they seem to be comfortable with it at this time.

SENATOR MONTGOMERY: All right. One last question, Mr. President.

ACTING PRESIDENT MEIER: Senator Libous, do you yield to another question?

SENATOR LIBOUS: Certainly. Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: I have not been able to locate in the bill -- but I believe you refer to the rights of the employee to receive information or to be able to address any possible problem that they may have in terms of a DCJS record if they are able to clear up any questionable information that may arise.

What we do in the event that there is a delayed amount of time that an employee can receive information and be able to act upon it? Is there any protection? In other

words, if a person is waiting for a job and prior to them having -- being fingerprinted, they may want to access their own DCJS records, is there any provision for that in your bill, that -- can they be temporarily employed until that takes place, or do you have any provision for that?

SENATOR LIBOUS: Mr. President, I'm informed that DCJS has separate regulations that would provide for the individual to get that information.

SENATOR MONTGOMERY: So there's -- this legislation doesn't allow for any possibility of a person addressing their own DCJS record before you summarily refuse them employment?

SENATOR LIBOUS: No, it does not.

SENATOR MONTGOMERY: Okay. Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: Thank you very much, Mr. President.

Would the sponsor yield to a few questions, please?

ACTING PRESIDENT MEIER: Senator Libous, do you yield to a question from Senator Duane?

SENATOR LIBOUS: Yes, I would, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DUANE: Thank you very much.

I just was interested earlier when Senator Libous said that professional employees would be exempt from this because the Department of Education would be responsible for their background checks. I'm then curious where social workers would fall into this, since they're not licensed now. Would they be in the exempt category or would they be fingerprinted?

SENATOR LIBOUS: Mr. President, if before the end of session the LaValle-Libous bill is passed, then they would be licensed employees, Senator Duane. We're hoping that we will have that -- very seriously, we're hoping that that will be addressed and solved before we leave Albany on

the 16th.

SENATOR DUANE: Mr. President, if I may just follow up on that.

ACTING PRESIDENT MEIER: Senator Libous, do you continue to yield?

SENATOR LIBOUS: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DUANE: That means now that they would be subject to being fingerprinted or not fingerprinted as of this moment in time?

SENATOR LIBOUS: Mr. President, in direct response to Senator Duane's question, if indeed this were to become law before the licensing bill becomes law, then yes, they would. But once the licensing bill is put into place, then they would fall under the Department of Health.

SENATOR DUANE: May I -- would the sponsor yield to another question?

ACTING PRESIDENT MEIER: Senator Libous, do you continue to yield?

SENATOR LIBOUS: Certainly.

ACTING PRESIDENT MEIER: The

sponsor yields. I'm concerned about the unfunded-mandate-to-social-service-agencies aspect of the legislation. And in -- on line 41, it seems to say that the employers are responsible for paying that fee. Is that correct?

SENATOR LIBOUS: We would cap that at $5,000.

SENATOR DUANE: However, is there any -- if I may follow up on that last question.

ACTING PRESIDENT MEIER: Senator Libous, do you continue do yield?

SENATOR LIBOUS: Absolutely.

ACTING PRESIDENT MEIER: Senator yields.

SENATOR DUANE: Is the employer responsible -- is the employee responsible for reimbursing, therefore, the fee?

SENATOR LIBOUS: No, Mr. President.

SENATOR DUANE: And is there - if I could have one final question, please. Actually, I have two questions, but the first -- may I have two final questions?

SENATOR LIBOUS: Certainly.

SENATOR DUANE: The first would be whether or not in contracts which the state would be giving to social service agencies, whether that fee of up to $5,000 is envisioned to be something that would be included in state contracts.

SENATOR LIBOUS: No, it would not.

SENATOR DUANE: And my final question would be -- is I'm wondering if you could tell me the various categories prior to this where fingerprinting is being required. For instance, I know persons who are receiving public assistance are required to, and daycare and childcare workers are required to. I'm wondering if the sponsor could tell me some of the other categories where fingerprinting is being required.

SENATOR LIBOUS: Mr. President, through you to Senator Duane. I can give you the information I have available to me. Registered security guards, that falls under the Executive Law. Lottery vendors, under the Tax Law. School bus drivers. New York City

taxi drivers. And I believe there are some others, but those are just a few that I have.

SENATOR DUANE: And finally, Mr. President, I was wondering whether Senators were envisioned at some point down the line for being included in the fingerprinting provisions which we're -

SENATOR LIBOUS: Mr. President, Senator Libous would not have a problem with that, but I think that would have to be an issue that would be discussed in each conference, I believe.

SENATOR DUANE: Thank you, Senator.

THE PRESIDENT: Read the last section.

Senator Schneiderman, excuse me. I didn't see you.

SENATOR SCHNEIDERMAN: Thank you, Madam President. If the sponsor would yield to a question.

SENATOR LIBOUS: Sorry, Madam President.

THE PRESIDENT: Senator Libous, would you yield for a question?

SENATOR LIBOUS: Yes.

Absolutely, Senator.

THE PRESIDENT: Go ahead, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Senator, referring particularly to the section of the proposed legislation that says that if an employer chooses to exercise the authority under this section, such employers shall request criminal history information pursuant to this section with respect to every new and prospective employee.

My question is, is this setting up a system whereby if an employer wants to request such information for a single employee, thereafter the employer must request such information for every prospective employee?

SENATOR LIBOUS: Yes.

SENATOR SCHNEIDERMAN: And may I ask in the first instance, what's the rationale for that?

SENATOR LIBOUS: Well, Madam President, I think the rationale is when we met with the providers, who again came to us

because of their concern, I think it would be in a sense discriminatory to pick and choose.

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

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

SENATOR LIBOUS: Yes.

THE PRESIDENT: Go ahead, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. My concern with this then would be that we're essentially creating a two-tier system of agencies or providers, one tier of which asks for criminal history information on every employee and one tier of which asks for it on no employees, there being only two categories you can fall into.

And I think in spite of the effort to perhaps cap fees, I think the unfunded-mandate aspect of this is a concern. And has any thought been given to -- or how would you respond to the concern that we're setting up a two-tier system where some employers are not going to ask anyone's

criminal information, as a cost-saving or other mechanism, and the other category are going to ask on everyone?

SENATOR LIBOUS: Madam President, in direct answer to Senator Schneiderman's questions, it is not a mandate, it is optional by the agency. And certainly they can make that determination.

And again, Madam President, we came up with this legislation after sitting down with the various groups who service people with both mental and physical disabilities who have had some terrifying stories, some horrible instances that have happened. You know, very similar to the instances that have been talked about under Kendra's Law and other laws that have been brought before the media.

The only difference is these cases took place in agencies and where employees, unfortunately, because background checks were not done, did some terrible things to people with disabilities. And we're only trying to provide the proper care for them under this legislation.

THE PRESIDENT: Senator

Schneiderman.

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

I just want to say I think there is -- I realize that everyone has sat down and tried to work this out. And I think there is a real serious issue with the burden this places on agencies. And essentially, what is created is a financial incentive to opt out of the system of inquiry altogether.

And I would urge that this be taken into account and perhaps some reconsideration be given to this provision of it, because I think that there is the potential to set up a situation in which the agencies at issue - this actually creates a disincentive for agencies to make these background checks. And if the intent is to provide for more background checks, I'm not sure this gets the job done.

Thank you.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect in 90 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Montgomery, to explain your vote.

SENATOR MONTGOMERY: Yes, Madam President. I'm going to explain my vote.

I'm voting no on this legislation. I think there are a number of issues that concern me in particular; specifically, the absence of the possibility of a person to address his or her record.

And I note with great interest the most recent issue of DOCS Today where we talk about all of the wonderful things that inmates do while they are in prison. I note that they are printing Braille signs and literature in order to ensure that we're in compliance with the Americans with Disabilities Act. I note that they also build furniture. They have built furniture to supply a library in a county upstate, in a small town upstate. They were the primary people who helped during the storm and the disaster this past winter. They make furniture for schools throughout the state. They are being lauded for -- they are

being lauded for helping out the needy with sorting 1500 tons of food for needy New Yorkers. The art show that we had in The Well a few months back brought in a record amount of money for the Crime Victims Fund. They have helped to preserve a cemetery in Elmira, New York. And on and on it goes -- built playhouses for charity, and so forth and so on.

So obviously, even though some of the these people have committed heinous acts which we all abhor, there is some contribution that they can make. And we continue to put legislation -- to pass legislation which denies people, once they have completed their sentences, an opportunity to work outside of the prison.

So I think we need to examine what we do, and at least we ought to have some means of allowing people to have some kind of hearing that they can address whatever is in the DCJS record.

This doesn't do that. We haven't done it in the past. It's really caused a lot of problems in other instances. For instance,

daycare. I know of people in daycare centers that committed some -- they were arrested when they were 18, they're now 35, they're a custodian in a daycare center and they get fired because it shows up that when they were 18 they jumped a turnstile or whatever it was in that -- at that time.

So clearly there is a problem here. We have people working as inmates, doing very valuable work and service to the community while they're inside, but once they're outside we bar them from ever being able to work or to work in many jobs.

So that's -- I'm voting no on this, and I certainly hope we can begin to address that problem in our legislation as we go forward. Thank you.

THE PRESIDENT: The Secretary will announce the results.

SENATOR ONORATO: To explain my vote, Madam President.

THE PRESIDENT: Senator Onorato, to explain your vote.

SENATOR ONORATO: Yes.

Senator Libous, I am in favor of

your bill, but I am concerned that the bill only authorizes the service providers to make a background check. I believe it should be made mandatory.

Under the current bill, if a person is to be investigated by an agency, they would be required to check everybody that is currently working for that agency, and at a cost-prohibitive price, without being reimbursed at all by the state.

I think that the bill should be revisited and amended to address the concerns that we all have on this bill. But I am voting in the affirmative on the bill.

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 142 are Senators Montgomery and Schneiderman. Ayes, 57. Nays, 2.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1092, by Senator Maziarz, Senate Print 810, an act to amend the Penal Law.

THE PRESIDENT: Senator Maziarz.

Read the last section.

SENATOR DUANE: Explanation, please. Explanation, please.

THE PRESIDENT: Senator Maziarz, Senator Duane has asked for an explanation.

SENATOR DUANE: Thank you.

THE PRESIDENT: You're welcome.

SENATOR MAZIARZ: Madam President, this bill amends the sections of the Penal Law to include the crime of financial exploitation of the elderly by amending the larceny section of the Penal Law. This bill defines the terms "mentally disabled" and "mentally incapacitated" within the statute.

It also amends the Penal Law, which defines a "wrongful taking," to include theft by defendants who know or have reason to know that the victim suffers from a mental disability or incapacity.

And finally, Madam President, this bill creates an affirmative defense applicable to cases in which a defendant obtained property in the course of rendering assistance

which benefitted the elderly owner, as long as the value of the appropriated property was equal with the benefit received.

Thank you.

THE PRESIDENT: Senator Duane.

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

THE PRESIDENT: Yes, there is, Senator Duane.

SENATOR DUANE: And I would like to waive the reading of my amendment and offer an explanation.

THE PRESIDENT: The reading is waived, Senator Duane. You have the floor to explain.

SENATOR DUANE: Thank you very much, Madam President.

I believe that this is a very good piece of legislation. I would like -- and I support it. I would like to point out, however, that it singles out a class of people -- that is, persons who are mentally disabled or mentally incapacitated -- so it sets aside a certain class of people.

In addition, the legislation

speaks, I think, to motive, that motive being taking advantage of a person who may not be so able to defend themselves against being manipulated or in fact, as we would say in the '90s, ripped off.

The legislation calls for increased penalties for people who are convicted of such a crime. And I believe very strongly that bias-related legislation, which we had a motion to discharge on the floor of this body, which sadly failed by a vote of, I think, 30 to 24, is remarkably similar to this piece of legislation. Indeed, it singles out classes of people who are at risk of being victimized by bias-related violence.

And people have often raised that they are not that comfortable with the idea of motive, but indeed this piece of legislation before us today speaks to motive in a case where someone is trying to defraud a person who is mentally incapacitated.

And in bias-related - bias-motivated crimes, there is certainly the specter that the person is being attacked because of who they are perceived to be,

whether they are African-American, Latino, Asian, disabled. We've heard a lot today about how persons with disabilities in some cases as a class need to be given special consideration, whether it's in terms of parking spaces or in terms of not being discriminated against in employment.

And in fact, I think that the bias-related -- bias-crimes legislation does a very similar thing, that it sets aside groups of people who in fact do need a special protection, particularly from bias-related attacks.

The legislation speaks to increasing penalties. And in fact, the bias-crimes legislation also would increase penalties for those crimes that are motivated by hate. There are many, many similarities of things that we have debated in this body. In fact, we talked about them in the motion-to-discharge discussion.

I've heard some of my colleagues say things like a theft is a theft, an assault is an assault, a murder is a murder. Well, in fact, by Senator Maziarz's legislation it

could be said that a larceny is just a larceny, but we're saying that this kind of larceny is in fact a little bit more heinous than other forms of larceny and therefore deserves to be treated in a slightly harsher manner by the criminal justice system.

And that's what we're saying with the bias bill as well, that bias-related crimes do deserve to be treated in a harsher manner. Because, in fact, what bias crimes do are to threaten entire classes of people. And indeed, you might say that no one is safe from bias-related crimes while bias-related crimes are happening in our society at all.

So, for instance, in the district that I represent, though a person may not be gay or lesbian, they are in fact at risk of being beaten up if they are not gay or lesbian because people might come to that neighborhood and beat people up simply because they think that they're gay or lesbian.

And so when someone tries to pull something over on a mentally incapacitated person or a mentally disabled person, I think one of the things that this legislation seeks

to do is to deter people from trying to take advantage of people who are perhaps mentally incapacitated or mentally disabled.

And so a large part of this legislation is actually deterrence. And so its reason for being put into law is to try to deter bad people from taking advantage of people who are mentally disabled or who are perceived to be mentally disabled.

So the list of similarities goes on and on as to why it is that we both need this legislation to protect persons who may be mentally incapacitated, but that we also need legislation to protect people from bias-related attacks.

Now, I believe that it is a terrible, terrible thing to try to steal from people -- to steal their property, to steal their money, to steal their hard-earned income. That is a terrible, terrible thing. But I think we also have to acknowledge that it is a terrible thing to physically assault people because of who you perceive them to be.

And we can't just say on the one hand that it's a bad thing to try to steal a

person's property when on the other hand we're unwilling to say that it's a bad thing to physically hurt someone because of who you perceive them to be.

And so for those reasons, I would urge all of my colleagues in the Senate to vote to make bias crimes a part of the legislation which we are about to vote on having to do with larceny against mentally disabled and mentally incapacitated persons.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. I'd also just like to address the amendment that Senator Duane has put on the floor.

We have created a series of crimes against property, not just against people, as this bill says. This bill says that there are a category of people for whom a specific crime will be more severely punished because of the nature of who the victim is. And your amendment, as I understand it, Senator Duane, says let's look at the bias, the intention to injure a particular class of people when

considering something as simple as assault.

My point in rising is to simply remind everyone in this chamber that we in this chamber in the last ten years have looked at the issue of property damage. That is, vandalism in a cemetery is punished more egregiously than vandalism in a house. Vandalism against a religious institution is punished more severely than vandalism that's printed on a wall of a commercial building.

So we have not only created a specific -- as this bill does, a class of victims of personal assault or larceny, a crime against a specific person, and said that we will increase the penalty for that, but we've also done it in crimes against property.

And Senator Duane's amendment simply says that since we have this trend in New York, this way that we look at the nature of the victim or we look at the nature of the property that's being defaced or vandalized, we will create more egregious penalties -- it seems to me that the bias crime bill that he is talking about flows from that exact same premise. And it seems to me that once we

begin to make those distinctions, we should make them for a class, a group of people for whom we know that bias is the motivating factor in their attack.

I would remind everyone that we have -- that since we've carved out a part of property and crimes against property, we have also, by this proposed legislation, created a particular class of people for whom violence will be more severely punished. It seems to me the logical corollary is to carry that to its logical conclusion: adopt the bias-crimes people. Say that there are a group of people -- many groups of people for whom specific bias motivation is a reason to increase the penalties.

It's logical, it's consistent, we do it in so many other areas. We now have an opportunity to do it by virtue of the amendment, and it ought to be done.

Thank you, Madam President.

THE PRESIDENT: Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President. I rise in support of both Senator -- I rise in support of both Senator

Maziarz's bill and the amendment being offered up by Senator Duane.

And let me just say here that this is not the smoking-gun evidence that we needed to prove that the arguments against bias crimes, as they particularly pertain to not creating special categories of people we want to protect, is nonsense. It's all nonsense. It's not true.

We knew it wasn't true because when we had the debate in this chamber not too long ago on a motion to discharge on the hate-crimes legislation, it was listed the numerous categories that exist in current law which provide special protection to certain individuals because those protections are necessary for a variety of societal reasons, including for police officers.

And so this bill today is a terrific bill. And, Senator Maziarz, I commend you on this legislation. It really is -- it's well-intended, and I believe it will be effective. And its effectiveness means that when you translate, as logically we can now translate the specific prohibitions of

this legislation, the concept behind it, to the necessity to apply those provisions to hate-crimes legislation, that we can also make that logical conclusion, that jump, that hate-crimes legislation will work.

What does that mean? It means that people out there who will in the future be victimized because of somebody else's ignorance, stupidity, might not be victimized if we are able to establish and codify in law a set of penalties for individuals who act upon their stupidity and their ignorance. And the message that we send out when we take that action, that courageous action, will resonate throughout the state. And I know it in my heart, there are people out there who will get the message.

That right now, when the state refuses to act, although the state knows very well that bias crimes are on the rise, that crimes against homosexuals are on the rise, that crimes against other individuals with special characteristics about them are on the rise, and these individuals sit back and they recognize that the state has failed to act on

this. And they hear our cries, those who are calling out for hate-crimes legislation, they hear it, and they hear the deafening silence of no response on the part of government.

And for the warped mind that is attacking somebody or perpetrating hostility against somebody based on the color of their skin or their age or a disability or their sexual orientation, the warped mind that's doing that is also likely to portray our inaction as a tacit permissiveness. The state is saying, Okay, we're not going to respond to this, we're not going to do anything about this. And so I believe as a result of that inaction, there are individuals out there right now, today, who will perpetrate crimes -- harassment, threats and violence, unfortunately -- against other people as a result of our inaction.

We cannot sit back time after time after time and fail to act on this. And let me -- I must address another issue here, because nothing's changed, and I still haven't heard anybody get up and make the case that we all -- we all know it to be true, that if

homosexuals were stricken from this legislation, it would pass. And I'm yet to hear somebody stand up and really go after that issue and explain why it is that we should not provide this protection to a category of people who are being victimized solely on the basis of their sexual preference. That's it. That's the basis for it.

I'll tell you something. If people had six fingers on one of their hands and that additional finger meant that violence would be perpetrated against them, I would want six-fingered people in this legislation.

And this whole notion that we're condoning homosexuality if we provide protection to individuals who are the victims of violence as a result of that homosexuality is silly. You're not condoning anything. As if that was a crime in and of itself, which it's not. You're not condoning anything. You're not creating somebody else who - who -- to become a homosexual who was not going to be homosexual, as if that was a problem anyway. You're not doing that.

This is ridiculous. And I'm constantly frustrated as I hear these debates day in and day out and we're met with silence here. We hear that Cardinal O'Connor is spoken to about this. We hear that momentum is building. Well, it's been years. And we're getting frustrated and angry here.

Every single day we know that there are bias crimes being perpetrated. The last time I stood up on the floor of this institution and I told you, everyone here, what those crimes were and how many there were in the City of New York. There are more than ten every week in New York City. And Senator Duane pointed out last time, if memory serves, that we don't have reporting requirements so we don't know the true extent of this problem. Why are we turning our backs on people who need help here? I don't understand it.

So, Senator Maziarz, your bill is terrific. There are people who are mentally disabled or who might be mentally incapacitated who might be taken advantage of based on that mental disability or mental incapacitation. You're doing the right thing

by recognizing that they should not be victimized as a result of it. And if we have additional penalties which will penalize individuals who do victimize individuals on that basis, then maybe that's going to deter somebody from doing it.

It is perfectly analogous to extend this argument to hate crimes. And I must also say that I know that there are colleagues on the other side of the aisle who believe that hate-crimes legislation should be enacted. And by the way, I make no contention that this is a panacea. But that's not a reason not to act on it anyway. But I say to my colleagues who are on the other side of the aisle who I know in their hearts if this legislation was to come before us they'd have to vote for it because there's really no logical way to argue against it, I say to you, please do some of the heavy lifting for us and please do the right thing on this and put pressure on those who can move this legislation to the floor of the Senate.

I don't want to continually stand up and have to argue this point over and over

and over again when I know that today and tomorrow, this week and next week and next month and next year, people will be discriminated against, people will have violence perpetrated against them based on some characteristic that they cannot control.

And we're not talking just about homosexuals here. We're talking also about the elderly. We're talking about people who are disabled. That's in the legislation. We're talking about Mr. Rishi Maharaj, who was victimized in South Ozone Park last year because he is of Indian descent. All those people don't get the protections who I believe should get them -- and I believe would be afforded those protections if we take homosexuals out of the legislation. Well, we won't do it. We will not compromise on our principles. This is too important.

So I implore all of my colleagues here again to please do the right thing on this one, put pressure on those who need to have pressure brought to bear on them, and really, really move this forward. It's about time. We cannot have any more excuses.

So, Senator Duane, I support your amendment. Senator Maziarz, I thank you for bringing your legislation to the floor today. I'm going to vote in favor of it. And I appreciate that your legislation is the vehicle, the logical vehicle with which we can facilitate all of the arguments for hate-crimes legislation. It was very convenient and appropriate that your bill did that.

Thank you, Madam President.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR SCHNEIDERMAN: I strongly concur in the comments of my colleague, Senator Hevesi, and the other comments that have been made. I think this amendment is extremely important, and I think that it's very important that we act on the bias-related-violence issue now.

We're coming to the end of another legislative session. I don't know what you're

telling your constituents we've been doing up here this year, but too many people say to me they believe they're getting what they're paying for, and we know they're not paying us anything, so that's not a very high compliment.

I cannot think of a clearer area in which the law needs to be adjusted to reflect the realities of what's going on all around us than the area that is addressed by Senator Maziarz's fine bill, except possibly the area of violence-related bias. The law evolves, and it's our job to develop the law to respond to the real concerns of society. We didn't used to have civil rights laws in this country. They were not created just because someone thought it was a good idea. They were created in response to real acts of violence, to real acts of discrimination, to real areas of concern. And they were created when legislators had the courage to lead, to step up and lead. In some cases, after great popular outcries, some people were motivated who hadn't been motivated before.

But in all cases, when the law has

developed -- this is true throughout the history of the criminal law, when we've adjusted the law to reflect things that science has opened up to us, we've adjusted the law to reflect changes in social conduct. Our efforts to pass a stalking bill this year reflects a new awareness of what is going on in society, the need to adjust the criminal law to reflect the realities all around us.

And I don't think anyone can really argue with what Senator Hevesi was just saying. It is absolutely undisputable that in a period when crime is falling in almost every category, bias-related violence is going up. I know that in my district and in several other areas around the City there's a serious increase in acts of anti-Semitic vandalism. This is not an area that should go unreported. This is an area in which it's important to adjust the law, it's easy to adjust the law.

And I urge all of you that, with a couple of weeks left in this session, it's time that we stand up for something that is so clearly within our reach, within our grasp, that I know many members of the Majority would

vote for, have said they would like to vote for if it gets to the floor. This is a great opportunity for us to amend the law of the State of New York to deal with the reality we are facing to make the law better, to protect people who need protection. Just as Senator Maziarz is advancing the law in a way that probably 20 years ago would have been too controversial to even consider, with definitions of mentally disabled and mentally incapacitated. I don't think they were prepared to deal with that then.

Let's move forward on something that has been enacted in other states. We know how it works in other states, it's very clear. And I commend Senator Duane for bringing us this opportunity today to pass two fine pieces of legislation linked together with the central concept that some people need special protection in special circumstances and that the criminal law is an appropriate vehicle for that.

I urge everyone to vote yes on the amendment and to support this fine bill.

THE PRESIDENT: The question is

on the amendment.

Senator Paterson.

SENATOR PATERSON: Thank you very much, Madam President.

What Senator Maziarz has done in this legislation I think is very interesting, and it bears a lot of consequence with the amendment that Senator Duane has brought up. What Senator Maziarz has done -- incidentally, this is the one-week anniversary of Senator Maziarz's 30th birthday. And on that occasion, I just wanted to point out that what he has done is carved a protected class into the legislation.

Now, we've had pieces of legislation here before -- I believe Senator Padavan may have had one -- where we would increase crimes for a particular act; for instance, increasing the penalty for committing a crime near a subway or near a schoolyard or something like that. We have in the law an increase in penalty if one commits a crime, say, against a police officer. That's where we first started the aggravated harassment standard. Crimes committed at a

cemetery, defacing or defiling religious memorials.

So we have, as a legislative body, addressed issues where we felt that by attacking what we would consider to be pillars of society, meaning the understanding of people's worship, or police officers, who are sworn to uphold our Constitution and have a special relationship with the public -- we've done that before.

But what's kind of unique about this legislation is here we're carving the protected class into the legislation itself, by saying that this type of action, when committed against the disabled, really constitutes a very serious offense, it constitutes practically an embezzlement. And the reason is because we understand as a society that there are certain members of the society who need a special protection against harm that could be caused by others. We cannot legislate morality, as President Eisenhower once said, but we can protect those against the immorality of others.

And so this is why I found Senator

Duane's amendment to be quite germane. And although we have discussed it before -- and we did have a hate-crimes amendment earlier this year, and we did discuss it. But the reason that we continue to bring it up is that we feel that it's not totally understood that anybody in this chamber is eligible to be protected under this legislation because they would be violated through violence against them because of their race, religion, their national origin, their age or disability, their sex or their sexual orientation.

And so in that regard, the amendment is very a propos, coming at this particular time at a point in history when in the last two years we've had these very celebrated incidents of brutality committed out of hate against the gay and lesbian community and against an African-American in Jasper, Texas. And we have also come here many times under this legislation to unfortunately abhor the actions such as were taken Yankel Rosenbaum on August 18, 1991, who but for the fact that he was Jewish and wore the religious garb that identified him as

Jewish, was killed in Crown Heights.

And there are many, many other cases. The list goes on and on. And although they constitute a very few number of the murders that have been committed in our society, they strike such a fear into the cord and the consciousness of the communities from which they are indigenous that we as an entire society have to pause in our deliberations to recognize the severity of what these offenses cause the totality of our society.

And so at this time when there's a lot of discussion and a lot of effort being waged -- certainly, the Governor has lent his voice to those who are calling for a significant hate-crimes legislation -- we think it's important to bring the issue up time after time. And without any criticism of Senator Maziarz's good work, but really just an opportunity for us to raise the issue again.

The fact is that the numbers of crimes committed out of hate continue to rise in this country. The numbers of crimes committed against the gay and lesbian

community tripled from 1985 to 1995, doubled in the Jewish community between 1985 to 1995. And so we want to send a message to those who would violate the rights of others through violence based on any of these protected classes that we as a society don't tolerate it.

In 1989, a reporter from the New York Post, whose name is Joel Nicholson, did a survey right here in the New York Senate and found that 57 of the 61 Senators at that particular time favored significant hate-crimes legislation. And it is somewhat alarming that with that overwhelming a majority of the house in favor, that we were unable to pass significant legislation to that end at that particular time.

And so this is just a further call, a clarion call to anyone who might be out there who is in the decision-making capacity that could bring relevant legislation that would be synthesized with the work that has been done in the Assembly to bring us all to that point where we could vote for this legislation and provide the minimal protection

against violence to those in our society who often fear that if they can't be protected against violence, that they are aptly discriminated in the areas of housing and health care and education and employment.

And so this is the reason that I rise so admirably to support Senator Hevesi and Senator Schneiderman and Senator Dollinger and all of those who are in support of the amendment offered by Senator Duane. This is no -- not in any way intended to limit or curtail the possibility of passage of hate-crimes legislation, but simply to emit the anguish that all of us feel that this amount of period has gone by -- that this period has gone by and that we as a Legislature, as lawmakers, as public servants, have not addressed an issue when unfortunately every year and a half or every two years, we hear another startling incident such as what happened to Matthew Shepard or what happened in Jasper, Texas. And we all feel the pain, we all feel the anguish, we all feel almost a hostility toward those who would commit those crimes, but somehow cannot sit down and

reconcile some legislation that would add protections to those who have been victimized.

So I gladly support Senator Duane's amendment, and I would like to ask for a slow roll call on this issue.

THE PRESIDENT: Do we see five Senators standing?

The Secretary will call the roll slowly.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: No.

THE SECRETARY: Senator Balboni.

(No response.)

THE SECRETARY: Senator Bonacic.

SENATOR BONACIC: No.

THE SECRETARY: Senator Breslin.

SENATOR BRESLIN: Yes.

THE SECRETARY: Senator Bruno.

(Senator Bruno was recorded as voting in the negative.)

THE SECRETARY: Senator Connor.

(Senator Connor was recorded as voting in the affirmative.)

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: No.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: Yes.

THE SECRETARY: Senator Duane.

SENATOR DUANE: Yes.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Yes -- no. I vote no.

He advised me to vote yes.

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: No.

THE SECRETARY: Senator Gentile.

SENATOR GENTILE: Yes.

THE SECRETARY: Senator Gonzalez.

(No response.)

THE SECRETARY: Senator Goodman.

(No response.)

THE SECRETARY: Senator Hannon.

SENATOR HANNON: No.

THE SECRETARY: Senator Hevesi.

SENATOR HEVESI: Yes.

THE SECRETARY: Senator Hoffmann excused.

Senator Johnson.

SENATOR JOHNSON: No.

THE SECRETARY: Senator Kruger.

(No response.)

THE SECRETARY: Senator Kuhl.

(No response.)

THE SECRETARY: Senator Lachman.

(No response.)

THE SECRETARY: Senator Lack.

(No response.)

THE SECRETARY: Senator Larkin.

Senator Larkin.

SENATOR LARKIN: No.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: No.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: No.

THE SECRETARY: Senator Libous.

(No response.)

THE SECRETARY: Senator Maltese.

(No response.)

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: No.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: No.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: Yes.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: No.

THE SECRETARY: Senator McGee.

SENATOR McGEE: No.

THE SECRETARY: Senator Meier.

SENATOR MEIER: No.

THE SECRETARY: Senator Mendez.

(No response.)

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: Yes.

THE SECRETARY: Senator Morahan.

(No response.)

THE SECRETARY: Senator Nanula.

(No response.)

THE SECRETARY: Senator Nozzolio.

(No response.)

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: Aye.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: Aye.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: No.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: Yes.

THE SECRETARY: Senator Rath.

SENATOR RATH: No.

THE SECRETARY: Senator Rosado.

(No response.)

THE SECRETARY: Senator Saland.

SENATOR SALAND: No.

THE SECRETARY: Senator Sampson.

(No response.)

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: Yes.

THE SECRETARY: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes.

THE SECRETARY: Senator Seabrook.

SENATOR SEABROOK: Yes.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: No.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: No.

THE SECRETARY: Senator Smith.

SENATOR SMITH: Yes.

THE SECRETARY: Senator Spano.

SENATOR SPANO: No.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: No.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: No.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: Yes.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: No.

THE SECRETARY: Senator Velella.

(No response.)

THE SECRETARY: Senator Waldon.

SENATOR WALDON: Yes.

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: No.

THE PRESIDENT: The Secretary will call the absentees.

Senator Volker.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: No.

THE SECRETARY: Senator Balboni.

SENATOR BALBONI: Nay.

THE PRESIDENT: The Secretary will call the absentees.

THE SECRETARY: Senator Gonzalez.

(No response.)

THE SECRETARY: Senator Goodman.

(No response.)

THE SECRETARY: Senator Kruger.

(No response.)

THE SECRETARY: Senator Kuhl.

(No response.)

THE SECRETARY: Senator Lachman.

(No response.)

THE SECRETARY: Senator Lack.

SENATOR LACK: No.

THE SECRETARY: Senator Libous.

(No response.)

THE SECRETARY: Senator Maltese.

(No response.)

THE SECRETARY: Senator Mendez.

(No response.)

THE SECRETARY: Senator Morahan.

(No response.)

THE SECRETARY: Senator Nanula.

(No response.)

THE SECRETARY: Senator Nozzolio.

(No response.)

THE SECRETARY: Senator Rosado.

(No response.)

THE SECRETARY: Senator Sampson.

SENATOR SAMPSON: (No response.)

THE SECRETARY: Senator Velella.

(No response.)

THE PRESIDENT: Senator Maltese.

SENATOR MALTESE: No.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: No.

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Ayes, 17. Nays, 31.

THE PRESIDENT: The amendment is defeated.

Senator Waldon.

SENATOR WALDON: Would the gentleman yield to a question or two, Madam President? I'll be very quick.

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

SENATOR MAZIARZ: Certainly, Madam President.

THE PRESIDENT: Go ahead, Senator Waldon.

SENATOR WALDON: Thank you, Madam President.

Senator Maziarz, before we begin with the questions -- and they'll be brief - the area I represent, I'm told, has the largest concentration of nursing homes of any county in the state of New York. That's Queens County in the areas of the Rockaways. This is not a convoluted question thing.

I think what you're driving at with your legislation is to protect those people who are most unable to protect themselves in dealing with the relationship of caregivers who they sometimes take on as family or even closer than family. Is that fairly accurate?

SENATOR MAZIARZ: Yes.

SENATOR WALDON: And is what you're trying to do to help us, as a society, deal with those who would take advantage of this special relationship and then abuse the seniors and the others who are incapacitated or disabled in terms of ripping them off in terms of their money?

SENATOR MAZIARZ: That is correct, Senator.

SENATOR WALDON: Thank you very much.

SENATOR MAZIARZ: Thank you.

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

I think this is commendable, as my other colleagues have said. I'm glad that Senator Maziarz has the sensitivity to help those people whom I represent in the Rockaway area.

My mother-in-law was in a nursing home for many, many years, and when I would go there I would see the seniors almost hopeless, those who had no family members ever visiting them. We religiously visited my mother-in-law. But at Thanksgiving and Christmas and other holidays, high holidays, people would actually cling to me because I was the surrogate or substitute relative for the moment. And so I think what you've done today is tremendous and we should have done this a long time ago.

Thank you, Madam President.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

THE PRESIDENT: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 449, by Senator Padavan, Senate Print 3651, an act to amend the Real Property Tax Law.

SENATOR DUANE: Explanation.

THE PRESIDENT: Senator Padavan, an explanation has been requested by Senator Duane.

SENATOR PADAVAN: This would extend the Commercial Incentive -- Commercial and Industrial Incentive Act for four more years.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Madam President, would the sponsor yield for a couple of

questions?

THE PRESIDENT: Senator Padavan, do you yield for a few questions?

SENATOR PADAVAN: Yes.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: I was hoping the Senator could give a description of the areas which will be included in the extension of the ICIP.

SENATOR PADAVAN: Senator, you serve on the City Council for an extended period of time. Obviously you know what this bill did for the City of New York. It's throughout the city. Every borough, in varying degrees, is covered by this legislation.

SENATOR DUANE: Madam President, if the sponsor would yield to a couple of questions, additional questions.

SENATOR PADAVAN: Yes.

THE PRESIDENT: Senator Padavan -- you do yield.

Go ahead, Senator Duane.

SENATOR DUANE: Then through you,

Madam President, I'm to assume that the legislation includes the area in Manhattan which is south of 96th Street?

SENATOR PADAVAN: Is what, is it? South of 96th Street? No.

SENATOR DUANE: In Manhattan.

SENATOR PADAVAN: No.

SENATOR DUANE: And I am wondering whether the -

SENATOR PADAVAN: Unless it's a smart building. Unless it's a smart building.

SENATOR DUANE: Madam President, if the sponsor would be so kind as to describe what a smart building is, for those who may not know.

SENATOR PADAVAN: But you know, though, don't you, Senator?

SENATOR DUANE: I do, because I'm a smart person.

(Laughter.)

SENATOR PADAVAN: That's good. That's why I assumed you knew.

THE PRESIDENT: Senator Padavan, do you yield?

SENATOR PADAVAN: It's a building

that's designed to enhance advanced technology, particularly in the communications field.

SENATOR DUANE: And finally, I'm -- before I speak on the bill, I have one final question, whether or not there are any job retention provisions included in the ICIP legislation.

SENATOR PADAVAN: Any job retention? To the extent that these buildings provide economic opportunities, including employment of a permanent nature, obviously they are retained. Also, obviously, a great deal of work is generated in the construction and renovation of the buildings. This has been a major factor in the economic revitalization of the city of New York over an extended period of time, both in terms of construction work and permanent employment.

SENATOR DUANE: Madam President, on the bill.

THE PRESIDENT: Senator Duane, on the bill.

SENATOR DUANE: Thank you. Consistently since I've been on the City

Council I have taken issue with provisions of the ICIP program. First and foremost, I think that probably the most important issue facing the city of New York and the state of New York is the issue of job creation and job retention.

And I think that it's critically important for us to make sure that when we look at incentives for businesses or for, for instance in this case, landowners and developers, that what we look towards is to make sure that these programs actually ensure that they lead to greater employment for the citizens of the state of New York as well as for retention of jobs in the state of New York.

So, for instance, we have to look very carefully at whether or not buildings are being converted from manufacturing use to uses for commercial uses and office uses, and whether or not that's in the best economic interests of the state of New York and particularly the city of New York.

In addition, if you look at what has been happening in Manhattan south of 96th

Street, real estate is booming right now. Land values are incredibly high. Rent for office space is at a premium. I would argue that we don't need to incentivize the making of better buildings or smart buildings through this program. Indeed, owners and developers of these buildings are doing that because they can get a better return on their property by doing so. It's happening on its own. They do not need these kinds of tax incentives in order to improve their buildings to make them more attractive for people to rent them. Because at this point, people are willing to pay whatever it takes to be able to rent space in these buildings. Landlords are making a terrific return on their investment, and we don't need to forgive them from taxes which frankly we need to provide for services, including job creation programs that we have in the state of New York.

So I think that we should look at this piece of legislation and what it is that our economic development philosophy should be for the state of New York. And I would say that the most important thing we could be

doing is to be creating jobs for people. This legislation does nothing, in fact, to guarantee that we will be increasing jobs for people in New York or, for that matter, to retain jobs, particularly in the manufacturing sector, for people who are already living and working in the state of New York. And I also believe that we don't need to provide these incentives particularly for people who are building -- or renovating buildings south of 96th Street. It's happening without this help, and we need the tax revenue. I would urge my colleagues to vote no.

Thank you, Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, I agree with Senator Duane. My district once went down as far as 72nd Street. And certainly the issue of overdevelopment as opposed to renovation was one of the greater problems on the Upper West Side, which I'm sure Senator Schneiderman, who now represents that area, would be more than willing to comment on.

But I have a question for Senator

Padavan relating to process, if he's willing to yield.

SENATOR PADAVAN: Willing to what, Senator?

THE PRESIDENT: Senator Padavan, will you yield?

SENATOR PADAVAN: Yes, I will yield.

SENATOR PATERSON: If you're willing to yield.

SENATOR PADAVAN: Yes, I am willing to yield.

THE PRESIDENT: Senator Paterson, you may proceed.

SENATOR PATERSON: Senator, I see that the date for public hearings has been moved up from October 1st to September 15th, but the -

SENATOR PADAVAN: I'm sorry, Senator, I'm having trouble hearing you.

SENATOR PATERSON: I'm sorry.

THE PRESIDENT: Senator Paterson, could you speak up?

SENATOR PATERSON: I notice that the date for public hearings has been pushed

back to September 15th from October 1st. But more importantly, the time period allotment for notice seems to be implying that we're going to speed up the process a little bit. It was 10 to 30 days, but your bill shortens it to 5 to 15 days.

And particularly, it's such a short period of time, I was wondering why we would want to truncate the process even as minimally as we are. Why did you feel that we needed to have this shortened period of time for a public hearing?

SENATOR PADAVAN: This was requested by the City of New York and the members of the Commission and the Commission itself to expedite the process and the approval of applications.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Yes, thank you, Madam President.

Senator Padavan, this was the Commission's request of us that we speed up this time period?

SENATOR PADAVAN: The City of New York specifically. We have a memo in support

from the Mayor outlining the provisions of the bill, the minor changes that were made, fundamentally extending it for four years. These requests were made by the City.

SENATOR PATERSON: Okay. Thank you very much, Senator Padavan.

Madam President, on the bill.

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

SENATOR PATERSON: I think that my sentiments are best expressed by Senator Duane. I think that the process, particularly south of 96th Street, the area he covers and the area Senator Schneiderman covers, is moving toward the type of enhancement. And the type of technological readiness of the capacities of the buildings to receive that kind of new equipment on their own does not necessarily need to be enhanced or in any way assisted through this legislation. And I would actually urge my colleagues that we not comply with the request of the City of New York.

THE PRESIDENT: Read the last section.

Senator Schneiderman. Excuse me.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

If the sponsor will yield to a question.

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

SENATOR PADAVAN: Yes.

THE PRESIDENT: Go ahead, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

I'm wondering, in the third paragraph of the proposed legislation there are some areas in Manhattan, including significant -

SENATOR PADAVAN: What paragraph? I'm sorry.

SENATOR SCHNEIDERMAN: Paragraph 3.

SENATOR PADAVAN: What page?

THE SECRETARY: Section 3, paragraph D, excuse me, of subdivision 5. It's on the second page, beginning on line 32.

SENATOR PADAVAN: Yes.

SENATOR SCHNEIDERMAN: It's the reference to several areas in the Borough of Manhattan that will be renovation-exemption areas. And I was just wondering how -- if you know, how was it determined that those particular areas would be classified as renovation-exemption areas?

SENATOR PADAVAN: Senator, the basic thrust, contrary to what one of the speakers said, is to attempt to focus this legislation on areas where economic incentives for property tax abatement for new construction as well as renovation would be enhanced through this mechanism. There are some parts of the city that really don't need it, and that's why this exemption area is in the bill.

This has been going on since 1980. This is almost twenty years in its application.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

If the sponsor will continue to yield.

THE PRESIDENT: Senator, do you continue to yield?

SENATOR PADAVAN: Yes.

THE PRESIDENT: Go ahead, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Then if that is, as I believe it is, the expressed intent of this legislation, would it not be appropriate for the City, if that is who we're trying to accommodate with this bill, to come forward with some evidence that the program as it has been operated has in fact had that result?

And I wonder, is there any backup that the City has provided to show that we're not giving away money in areas where development would be taking place without the incentive?

SENATOR PADAVAN: That information has been provided over a period of almost twenty years, Senator, as I said broadly earlier.

This act, that was originally sponsored by me in 1976 and then refined in 1980, has produced tens of thousands of

permanent jobs in the city of New York. It was a major factor in stemming the exodus of business from the city of New York, including manufacturing, as a stimulant to areas such as the Brooklyn Army Terminal area, for Long Island City, many of the outer borough areas which were blighted in terms of business opportunity and economic development.

There is a twenty-year history of success with regard to this legislation and its implementation.

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

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

SENATOR SCHNEIDERMAN: I appreciate what the sponsor is saying about the intent. I have inherited with my office some reports of Senator Leichter's that appear to document fairly carefully the fact that the intent has not been realized in practice. And I know from my own experience in my own district and as a long-time, essentially lifelong resident of Manhattan, that there have been numerous buildings that have gone up

where developers have received incentives, received benefits, we have lost tax revenues under this bill, where it's clear from the market circumstances that they were going to build there anyway.

There are numerous examples in the history of the City over the last twenty years of the life of this program of situations in which we've essentially taken money which we could have used, tax revenues we could have used for our schools, put it in the pockets of developers.

And as Senator Duane so correctly pointed out, we have yet to take the very simple step that has been done in economic development programs all over the country of putting in a job-retention provision to make sure we don't have happen what has happened in several cases in the last couple of years in midtown Manhattan and lower Manhattan, where benefits have been conferred and immediately thereafter there have been layoffs, there have been job transfers, there have been shifts of businesses out of state.

And I think that there is a growing

sense among many of my constituents that we're being taken for a ride with this program, that we are being ripped off with this program, that there are not enough protections for the citizens and it is all too easy for people who are going to go and build anyway, because the market forces and the amounts of money that are at play in the market are really so much greater than what we're able to provide by way of an incentive with our tax revenues, that we are just being taken advantage of.

And I think this really, upon the occasion of the need for renewal, it really is an appropriate time for us to revisit these issues. We can make this a better program. We can make this a program that does ensure that we're not ripped off, that we're not throwing money away that we don't need, because we do need money for schools and for housing and for other programs.

And I would urge that we take this time to reconsider this program, where there's such a pressing need in so many areas that's just going to grow over the next few years, as we know from the projections in the state

budget. This is a well-intentioned program that is not performing as it was intentioned -- intended to perform. And I'd urge everyone that it's time now to reconsider, revisit it, and come up with a better bill and not just renew a flawed program.

Thank you.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR PATERSON: Slow roll call.

ACTING PRESIDENT McGEE: Do I see five Senators standing, please? Oh, my goodness, yes, there are five standing.

The Secretary will call a slow roll call, please.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Balboni.

SENATOR BALBONI: Yes.

THE SECRETARY: Senator Bonacic.

SENATOR BONACIC: Yes.

THE SECRETARY: Senator Breslin.

SENATOR BRESLIN: No.

THE SECRETARY: Senator Bruno.

(Senator Bruno was recorded as voting in the affirmative.)

THE SECRETARY: Senator Connor.

(Senator Connor was recorded as voting in the affirmative.)

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: No.

THE SECRETARY: Senator Duane.

SENATOR DUANE: No.

THE SECRETARY: Senator Farley.

(No response.)

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: Yes.

THE SECRETARY: Senator Gentile.

SENATOR GENTILE: Yes.

THE SECRETARY: Senator Gonzalez.

(No response.)

THE SECRETARY: Senator Goodman.

(No response.)

THE SECRETARY: Senator Hannon.

(No response.)

THE SECRETARY: Senator Hevesi.

SENATOR HEVESI: Yes.

THE SECRETARY: Senator Hoffmann excused.

Senator Johnson.

(No response.)

THE SECRETARY: Senator Kruger.

SENATOR KRUGER: No.

THE SECRETARY: Senator Kuhl.

(No response.)

THE SECRETARY: Senator Lachman.

SENATOR LACHMAN: Yes.

THE SECRETARY: Senator Lack.

SENATOR LACK: Yes.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Yes.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leibell.

(No response.)

THE SECRETARY: Senator Libous.

(No response.)

THE SECRETARY: Senator Maltese.

(No response.)

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: Yes.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Yes.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: Yes.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: Yes.

THE SECRETARY: Senator McGee.

SENATOR McGEE: Yes.

THE SECRETARY: Senator Meier.

SENATOR MEIER: Yes.

THE SECRETARY: Senator Mendez.

(No response.)

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: No.

THE SECRETARY: Senator Morahan.

SENATOR MORAHAN: Yes.

THE SECRETARY: Senator Nanula.

(No response.)

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: Aye.

THE SECRETARY: Senator Oppenheimer.

(No response.)

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Aye.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: Mr. President - Madam President.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Yes. I vote no.

ACTING PRESIDENT McGEE: Senator Paterson, I'm sorry.

SENATOR PATERSON: No.

ACTING PRESIDENT McGEE: Senator Paterson will be recorded in the negative.

THE SECRETARY: Senator Rath.

SENATOR RATH: Aye.

THE SECRETARY: Senator Rosado.

(No response.)

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Sampson.

(No response.)

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: No.

THE SECRETARY: Senator Schneiderman.

SENATOR SCHNEIDERMAN: No.

THE SECRETARY: Senator Seabrook.

SENATOR SEABROOK: Yes.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Yes.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Yes.

THE SECRETARY: Senator Smith.

SENATOR SMITH: Yes.

THE SECRETARY: Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: Yes.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: No.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Aye.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Waldon.

(No response.)

THE SECRETARY: Senator Wright.

(No response.)

ACTING PRESIDENT McGEE: The Secretary will call the absentees.

THE SECRETARY: Senator Farley.

(No response.)

THE SECRETARY: Senator Gonzalez.

(No response.)

THE SECRETARY: Senator Goodman.

(No response.)

THE SECRETARY: Senator Hannon.

(No response.)

THE SECRETARY: Senator Johnson.

(No response.)

THE SECRETARY: Senator Kuhl.

(No response.)

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Yes.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Yes.

THE SECRETARY: Senator Maltese.

(No response.)

THE SECRETARY: Senator Mendez.

(No response.)

THE SECRETARY: Senator Nanula.

(No response.)

THE SECRETARY: Senator Oppenheimer.

(No response.)

THE SECRETARY: Senator Rosado.

(No response.)

THE SECRETARY: Senator Sampson.

(No response.)

THE SECRETARY: Senator Waldon.

SENATOR WALDON: Yes.

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: Aye.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Yes.

ACTING PRESIDENT McGEE: Results, please.

THE SECRETARY: Ayes, 40. Nays,

9.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could return to reports of standing committees, I believe there is a report of the Rules Committee at the desk. I ask that it be read.

ACTING PRESIDENT McGEE: We will return to the report of standing committees.

The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, offers up the following bills directly for third reading:

Senate Print 182, by Senator Alesi, an act to amend the Correction Law;

1763, by Senator Rosado, an act to authorize the City of New York;

2079, by Senator LaValle, an act to amend the State Finance Law;

2294A, by Senator Skelos, an act to amend the Insurance Law;

2315A, by Senator Maziarz, an act to amend the Parks, Recreation and Historic

Preservation Law;

2413, by Senator Velella, an act to amend the Penal Law;

3212, by Senator Johnson, an act to amend the General Business Law;

3607, by Senator Marchi, an act to amend the Business Corporation Law;

3652A, by Senator Wright, an act to amend the Vehicle and Traffic Law;

3886, by Senator Rath, an act to amend the Tax Law;

4001, by Senator Seabrook, an act to authorize the City of New York;

4313, by Senator McGee, an act to amend the General Municipal Law;

4332, by Senator Saland, an act to amend the Penal Law;

4337, by Senator Skelos, an act to authorize;

4368, by Senator Hoffmann, an act to amend the Agricultural and Markets Law;

4375A, by Senator Volker, an act to amend the Penal Law;

4552, by Senator Wright, an act to amend the Vehicle and Traffic Law;

4613, by Senator Maziarz, an act to amend the Vehicle and Traffic Law;

4632, by Senator Kuhl, an act to amend Chapter 78 of the laws of 1989;

4695, by Senator Hannon, an act to amend Chapter 165 of the laws of 1991;

4871, by Senator Hannon, an act to amend Chapter 804 of the laws of 1992;

4974A, by Senator Fuschillo, an act in relation to authorizing;

4984, by Senator Balboni, an act authorizing the assessor;

5021A, by Senator Trunzo, an act authorizing;

5083, by Senator DeFrancisco, an act to amend the Town Law;

5101, by Senator Nozzolio, an act to authorize the State of New York;

5259, by Senator Rath, an act to amend the Town Law;

5568A, by Senator Stafford, an act to in relation to legalizing;

5582, by Senator Wright, an act to amend the Alcoholic Beverage Control Law;

5727, by Senator Bruno and others,

an act to amend the Vehicle and Traffic Law.

All bills directly for third reading.

ACTING PRESIDENT McGEE: Senator Skelos.

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

ACTING PRESIDENT McGEE: All in favor of accepting the report of the Rules Committee signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The report is accepted.

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

ACTING PRESIDENT McGEE: I recognize Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

Madam President, I wish to call up Calendar Number 241, Assembly Print Number 3089.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Spano, Senate Print 1453, an act to amend the Labor Law.

SENATOR MARCELLINO: Madam President, I now move to reconsider the vote by which this Assembly bill was substituted for Senator Spano's bill, Senate Print Number 1453, on 3/24.

ACTING PRESIDENT McGEE: The Secretary will call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

SENATOR MARCELLINO: I now move that Assembly Bill Number 3089 be recommitted to the Committee on Labor and Senator Spano's Senate bill be restored to the order of Third Reading Calendar.

ACTING PRESIDENT McGEE: So ordered.

SENATOR MARCELLINO: I now offer the following amendments.

ACTING PRESIDENT McGEE: Amendments

received.

SENATOR MARCELLINO: Thank you, Madam President.

On behalf of Senator Volker, on page number 47, I offer the following amendments to Calendar Number 972, Senate Print Number 4193, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT McGEE: The amendments are received and the bill will retain its place on the Third Reading Calendar.

SENATOR MARCELLINO: Thank you, Madam President.

On behalf of Senator Skelos, on page number 55, I offer the following amendments to Calendar Number 1095, Senate Print 1206, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT McGEE: The amendment is received and the bill will retain its place on the Third Reading Calendar.

SENATOR MARCELLINO: Thank you, Madam President.

On behalf of Senator Maltese, on page 56, I offer the following amendments to Calendar Number 1107, Senate Print Number 3525, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT McGEE: The amendment is received and the bill will retain its place on the Third Reading Calendar.

SENATOR MARCELLINO: Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: On behalf of Senator Bruno, I hand up the following committee changes and ask that they be filed in the Journal.

ACTING PRESIDENT McGEE: Notice will be filed in the Journal.

SENATOR SKELOS: Madam President, there being no further business, I move we adjourn until -- I'm sorry.

SENATOR GENTILE: Madam President.

ACTING PRESIDENT McGEE: Senator Gentile.

SENATOR GENTILE: I'll go back to my seat.

I'd ask unanimous consent to be recorded in the negative on Calendar Number 1108.

ACTING PRESIDENT McGEE: Without objection.

SENATOR MONTGOMERY: Madam President.

ACTING PRESIDENT McGEE: Senator Montgomery.

SENATOR MONTGOMERY: Yes. Madam President -

ACTING PRESIDENT McGEE: Senator Gentile, 1108 was laid aside.

SENATOR GENTILE: Okay.

ACTING PRESIDENT McGEE: Thank you.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. Unfortunately I was absent on 5/17, when Calendar Number 1080 was voted on, Senate Bill Number 5594B. Had I been present, I would have voted no. I would like the record to show that.

ACTING PRESIDENT McGEE: The record will so indicate.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President. On this, the day that not only commemorates the one week anniversary of Senator Maziarz's -- I now understand I'm corrected, it was his 40th birthday. I'd just like the chamber to be aware that this is also the birthday of Henry the VIII. That might bring greater clarity to this afternoon's proceedings.

There will be an immediate meeting of the Minority in Room -- Conference Room 314, right at the end of session.

ACTING PRESIDENT McGEE: There will be an immediate meeting in the Minority Conference Room, 314, following session.

Senator Skelos.

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

ACTING PRESIDENT McGEE: On motion, Senate stands adjourned until Thursday, June 3rd, at 11 a.m.

(Whereupon, at 5:36 p.m., the Senate adjourned.)