NEW YORK STATE SENATE

THE

STENOGRAPHIC RECORD

ALBANY, NEW YORK

June 8, 1999

11:03 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEVEN M. BOGGESS, Secretary

ACTING PRESIDENT KUHL: The Senate will come to order and members take their chairs, staff find their places.

I'd ask everybody in the chamber to rise and join with me in saying the Pledge of Allegiance to the Flag.

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

ACTING PRESIDENT KUHL: You may be seated.

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

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

ACTING PRESIDENT KUHL: Reading of the Journal.

THE SECRETARY: In Senate, Monday, June 7th, the Senate met pursuant to adjournment. The Journal of Sunday, June 6th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT KUHL: Hearing no objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Bruno.

SENATOR BRUNO: Mr. President, I believe that there is a privileged resolution at the desk that I have sponsored. I would ask that it be read in its entirety and move for its immediate adoption.

ACTING PRESIDENT KUHL: The Secretary will read the privileged resolution by Senator Bruno in its entirety.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 1708, honoring Marilyn R. Lance, an elementary teacher at West Sand Lake Elementary School of the Averill Park Central School District, upon the occasion of her selection as New York State Teacher of the Year.

WHEREAS, New York State's commitment to education is unparalleled, its

history and stature is secured by the superlative caliber of its educational professionals and the students they inspire;

It is the practice of this Legislative Body to take note of and publicly acknowledge individuals of remarkable integrity and character whose endeavors have enhanced the growth of education in the great Empire State;

State Education Commissioner Richard P. Mills announced that Marilyn Lance, an elementary teacher at West Sand Lake Elementary School of the Averill Park Central School District, Averill Park, New York, has been selected the New York State Teacher of the Year; she was presented with a certificate of recognition by Regents Chancellor Carl T. Hayden in a ceremony before the Board of Regents; Marilyn Lance is the 30th recipient of this award;

This award is highly selective and is a testimony to Mrs. Lance's educational philosophy, her vision for the future, her performance in the classroom, and her tireless efforts to help each student succeed.

Marilyn Lance has served as an elementary teacher at West Sand Lake Elementary School since 1972, teaching first and second grades, and for a last four years, an innovative two-room, combination grade 1/2 with inclusion of special needs students;

Marilyn Lance received her bachelor's degree in elementary education from The Ohio State University, Columbus, Ohio, in 1969, and is known as an exemplary educator who uses innovative, hands-on methods to enhance students' educational experience;

The New York State Teacher of the Year is chosen by a screening committee which reviews all nominations and selects ten semifinalists; five finalists are then chosen by a selection committee and interviewed prior to the final selection; both the screening and selection committee decisions are made through a process that involves parents, students, teachers, administrators, community members and business representatives;

The Teacher of the Year program is affiliated with the National Teachers of the Year program and is sponsored by a consortium

of leading educational associations under the direction of the Council of Chief State School Officers; the program is the oldest and most prestigious teacher recognition in the United States; corporate sponsorship for the National Teacher of the Year program is provided by the Bell Atlantic Foundation, AETNA, and Scholastic, Inc.;

WHEREAS, Throughout her career, Marilyn Lance has served as an unfailing advocate for children's education, her distinguished career has been characterized by an impressive commitment, an unbridled enthusiasm, and an uncompromising standard of excellence in all her endeavors; now, therefore, be it

RESOLVED, That this Legislative Body pause in its deliberations to honor Marilyn R. Lance upon the occasion of her designation as "New York State Teacher of the Year"; and be it further

RESOLVED, That a copy of this Resolution, suitably engrossed, be transmitted to Marilyn R. Lance.

ACTING PRESIDENT KUHL: The Chair

recognizes Senator Bruno on the resolution.

SENATOR BRUNO: Thank you, Mr. President, my colleagues.

I am proud to join with the State Education Department and the New York State Teachers in recognizing Marilyn Lance as Teacher of the Year. This is an honor that is not designated easily. We've heard in the resolution many of the accomplishments in Marilyn Lance's life, when she has dedicated her life to teaching young people.

In her class, she uses an innovative approach combining first and second grades with children with special needs integrated in the classroom. And she has competed against every teacher in this state, and we have excellence in teaching in this state, so this is a designation and an honor that doesn't come easily.

I am proud that Marilyn Lance is a neighbor in the 43rd Senatorial District, living with her husband, David, in Averill Park and has been there, as we heard, for 27 years. So all of us can be proud that we have an individual that has made a lifetime

commitment to helping youngsters achieve their greatest potential in life.

So we're indebted to Marilyn for all of her good works presently that take her to this honor, and we wish her well as she goes on now to compete nationally. And we are confident that Marilyn will be designated the National Teacher of the Year, and she will be, in our minds and in our hearts, the best in the United States as well as in New York State.

So, Marilyn, and to your husband, Dave, and to all of those that support you, we congratulate you in this chamber and wish you well in the rest of your life.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Any other member wishing to speak on the resolution?

Hearing none, the question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The resolution is unanimously adopted.

(Applause.)

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Mr. President, at this time if we could adopt the Resolution Calendar in its entirety.

ACTING PRESIDENT KUHL: The question is on the adoption of the Resolution Calendar. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The Resolution Calendar is adopted.

SENATOR SKELOS: Mr. President, are there any other motions?

ACTING PRESIDENT KUHL: Senator McGee.

SENATOR McGEE: Thank you, Mr. President. Amendments are offered to the following Third Reading Calendar.

On behalf of Senator Goodman, page number 17, Calendar Number 472, Senate Print 1105.

On behalf of Senator Trunzo, page number 20, Calendar Number 568, Senate Print 4250.

On behalf of Senator Goodman, page number 47, Calendar Number 1025, Senate Print 4282.

On behalf of Senator Farley, page number 49, Calendar Number 1040, Senate Print 3551.

On behalf of Senator Skelos, page number 52, Calendar Number 1124, Senate Print 4337.

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

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

Senator McGee.

SENATOR SKELOS: Mr. President - I'm sorry.

ACTING PRESIDENT KUHL: We have one more motion, I believe, Senator Skelos.

SENATOR McGEE: Yes.

ACTING PRESIDENT KUHL: Senator McGee.

SENATOR McGEE: Mr. President, I wish to call up bill Print Number 2542, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: By Senator Lack, Senate Print 2542, an act to amend the Insurance Law.

ACTING PRESIDENT KUHL: Senator McGee.

SENATOR McGEE: Mr. President, I now move to reconsider the vote by which this bill was passed.

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT KUHL: Senator

McGee.

SENATOR McGEE: Mr. President, on behalf of Senator Lack, I now offer the following amendments.

ACTING PRESIDENT KUHL: Amendments are received and adopted.

Senator Skelos.

SENATOR SKELOS: Are there any substitutions to be made?

ACTING PRESIDENT KUHL: There are.

SENATOR SKELOS: Please make them, Mr. President.

ACTING PRESIDENT KUHL: The Secretary will read the substitutions.

THE SECRETARY: On page 14, Senator Marcellino moves to discharge, from the Committee on Rules, Assembly Bill 8113, and substitute it for the identical third reading, 408.

On page 33, Senator Leibell moves to discharge, from the Committee on Rules, Assembly Bill 6676A, and substitute it for the identical third reading, 814.

On page 53, Senator Goodman moves

to discharge, from the Committee on Finance, Assembly Bill 7954, and substitute it for the identical third reading, 1186.

On page 54, Senator Bonacic moves to discharge, from the Committee on Rules, Assembly Bill 7157A, and substitute it for the identical third reading, 1192.

ACTING PRESIDENT KUHL: The substitutions are ordered.

Senator Skelos, that brings us to the calendar.

SENATOR SKELOS: If we could proceed with the noncontroversial calendar.

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

THE SECRETARY: Calendar Number 82, by Senator Volker, Senate Print 1592A, an act to amend the Penal Law, the Criminal Procedure Law, the Executive Law, the Correction Law, and the Public Health Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 223, by Senator Libous, Senate Print 2094A, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on January 1st.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 293, by Member of the Assembly Vitaliano, Assembly Print 2333, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 387, by Senator Bonacic, Senate Print 3304A, an act to amend the Tax Law, in relation to extending.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 481, by Senator Lack, Senate Print 1196, an act to amend the Election Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

491, by Senator Bonacic, Senate Print 4438, an act to amend the Private Housing Finance Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 505, by Senator Volker, Senate Print 745, an act to amend the Real Property Tax Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 592, by Senator Spano, Senate Print 1656A, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 597, by Senator Leibell, Senate Print 3158B, an act to amend the General Municipal Law and the Retirement and Social Security Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect July 1st.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 598, by Senator Spano, Senate Print 4114, an act to amend Chapter 666 of the Laws of 1990.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect September 1st.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 607, by Senator Trunzo, Senate Print 3923, an act to amend the Civil Service Law, in relation to deputy sheriffs.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 643, by Senator Rath, Senate Print 674A, an act to amend the Family Court Act.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 666, by Senator Larkin, Senate Print 4287A, an act to amend the General Municipal Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 60th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 706, by Senator Spano, Senate Print 4603 -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 766, by Senator Lachman, Senate Print 2966A, an act to amend the Railroad Law and the Public Authorities Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 5. This act shall take effect on the first day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 801, by Senator Kuhl, Senate Print 1839, an act to amend the Education Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 802, by Senator Maltese, Senate Print 2612, an act to amend the Retirement and Social Security Law and Chapter 511 of the Laws of 1988.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 813, by Senator Leibell, Senate Print 5028, an

act to amend the Civil Service Law, in relation to the payment of a hazardous duty.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 815, by Senator Leibell, Senate Print 5446A, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 816, by Senator Libous, Senate Print 5511, an act to authorize employees of the Police Department and the Fire Department of the City of Norwich.

ACTING PRESIDENT KUHL: There is

a home rule message at the desk.

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 820, by Senator Seward, Senate Print 4175A, an act to amend the Insurance Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

824, by Member of the Assembly Magee, Assembly Print 6547A, an act to amend the Agricultural and Markets Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 930, by Senator DeFrancisco, Senate Print 4665A, an act to amend the Domestic Relations Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: If I could interrupt, there will be a meeting of the Finance Committee in the Majority Conference Room.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Senate Finance Committee, immediate meeting of the Senate Finance Committee in the Majority Conference Room, Room 332. Immediate meeting of the Senate Finance Committee in the Majority Conference Room, Room 332.

The Secretary will continue to read the noncontroversial calendar.

THE SECRETARY: Calendar Number 1004, by Member of the Assembly Sanders, Assembly Print 741, an act to amend the Alcoholic Beverage Control Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 3. This

act shall take effect September 1st.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Excuse me. On Calendar Number 1004, Senator Wright recorded in the negative. Ayes, 51. Nays, 1.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1006, by Senator Wright, Senate Print 1231B, an act to amend the Tax Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1037, by Senator Bonacic, Senate Print 5193, an act to create the Heermance Memorial Library District.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 8. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1072, by Senator Marchi, Senate Print 2040, an act to amend the Mental Hygiene Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1127, by Senator Wright, Senate Print 4552, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 9. This act shall take effect on the first day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 1138, by Senator Stafford, Senate Print 5568A, an act in relation to legalizing and validating action of the Town of Bolton.

ACTING PRESIDENT KUHL: There is a home rule message at the desk.

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1141, by Senator Stafford, Senate Print 733, an act to amend -

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number

1150, by Senator Bonacic, Senate Print 4471A, an act in relation to enacting the Christopher Gardner Memorial Act.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1162, by Senator Rath, Senate -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: There is a home rule message at the desk.

The bill will be laid aside.

THE SECRETARY: Calendar Number 1166, by Senator Volker, Senate Print 5567, an act to amend the Executive Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1171, by Senator Maziarz, Senate Print 5632, an act to authorize the Town of Gates.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: There is a home rule message at the desk.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1179, by Senator Volker, Senate Print 726, an act to amend the Criminal Procedure Law, the Public Health Law, and the Family Court Act.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 5. This act shall take effect on the first day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1180, by Senator Nozzolio, Senate Print 937, an act to amend the Correction Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1181, by Senator Bonacic, Senate Print 3906, an act to amend the Public Authorities Law, in relation to the powers of the State of New York Mortgage Agency.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1182, by Senator Bonacic, Senate Print 3907A, an act to amend the Public Authorities Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1183, by the Committee on Rules, Senate Print 3922B, an act to amend Chapter 272 of the Laws of 1991.

ACTING PRESIDENT KUHL: There is a home rule message at the desk.

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

1184, by Senator Seward, Senate Print 4010A, an act to amend the Tax Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1185, by Senator Velella, Senate Print 4018, an act to amend the Education Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1186, substituted earlier today by the Assembly Committee on Rules, Assembly Print 7954, an act to amend the Tax Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1187, by Senator Seward, Senate Print 4154A, an act to amend the Insurance Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1188, by Senator Marchi, Senate Print 4622, an act to amend the Public Authorities Law and the Environmental Conservation Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1189, by Senator Skelos, Senate Print 46 -

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 1190, by Senator Johnson, Senate Print 4714, an act to amend the Vehicle and Traffic Law.

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 1191, by Senator Volker, Senate Print 4724, an

act to amend the Civil Practice Law and Rules.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51. Nays, 1. Senator DeFrancisco recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1192, substituted earlier today -

SENATOR PATERSON: Lay it aside.

THE SECRETARY: -- by Member of the Assembly Lopez, Assembly Print 7157A, an act to amend the Private Housing Finance Law.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1193, by Senator McGee, Senate Print 5073, an act in relation to requiring the Department of Motor Vehicles.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 90th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1194, by Senator Marcellino, Senate Print 5401, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1195, by Senator Lack, Senate Print 5552, an act to amend the Court of Claims Act.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1196, by Senator Maltese, Senate Print 5572, an act to amend the Election Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1197, by Senator Volker, Senate Print 5604, an act to amend the Education Law.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1198, by Senator Alesi, Senate Print 5623A, an act to authorize approval of certain transportation contracts.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1199, by Senator Libous, Senate Print 5633, an act to amend the Penal Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1200, by Senator Seward, Senate Print 5641, an act to amend the Real Property Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1201, by Senator Lack, Senate Print 5663, an act to authorize the Lubavitch Center to file an application for a real property tax exemption.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1202, by Senator Bruno, Senate Print 5682, an act authorizing the conveyance of land by the South Glens Falls Central School District.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1203, by Senator DeFrancisco, Senate Print 5688, an act to amend the Vehicle and Traffic Law, in relation to the distribution of fines.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 6. This

act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1204, by Senator Bonacic, Senate Print 5706, an act to amend the Penal Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR SKELOS: Mr. President, if we could go to the controversial calendar

and start with Calendar Number 1171, by Senator Maziarz.

ACTING PRESIDENT KUHL: Senator Duane, why do you rise?

SENATOR DUANE: I was hoping to get unanimous consent to vote in the negative on Number 1204, Senate 5706.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Duane will be recorded in the negative on Calendar Number 1204.

The Secretary will read Calendar Number 1171 of the controversial calendar.

THE SECRETARY: Calendar Number 1171, by Senator Maziarz, Senate Print 5632, an act to authorize the Town of Gates to discontinue the use of certain lands as park lands.

ACTING PRESIDENT KUHL: Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, Senator Dollinger has a question on this bill. He's in the Finance Committee. We're attempting to get him out. Maybe if we, with the consent of the Majority, could call up

another bill and come back to this in a second.

ACTING PRESIDENT KUHL: Senator Skelos, what's your pleasure?

Lay the bill aside temporarily.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 387, by Senator Bonacic.

ACTING PRESIDENT KUHL: The Secretary will read Calendar Number 387, by Senator Bonacic.

THE SECRETARY: Calendar Number 387, by Senator Bonacic, Senate Print 3304A, an act to amend the Tax Law, in relation to extending the authorization granted to the County of Greene.

ACTING PRESIDENT KUHL: Senator Breslin.

SENATOR BRESLIN: Through you, Mr. President. Will the sponsor yield for a question?

ACTING PRESIDENT KUHL: Do you yield to a question, Senator Bonacic?

SENATOR BONACIC: I do, Mr.

President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR BRESLIN: Senator Bonacic, can you tell us whether or not there's a home rule message attached to this legislation?

SENATOR BONACIC: Senator, I would never put a bill on this floor unless there was a home rule message. There was. It was received in May of '99.

SENATOR BRESLIN: What date in May?

SENATOR BONACIC: What date? It was dated May 21, '99, but I don't know when it was actually -- it's been received here.

SENATOR BRESLIN: Thank you very much, Senator Bonacic.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51. Nays, 1. Senator Gentile recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Senator Dollinger is here, so if we could call up Senator Maziarz's bill, 1171.

ACTING PRESIDENT KUHL: The Secretary will read Calendar Number 1171, by Senator Maziarz.

THE SECRETARY: Calendar Number 1171, by Senator Maziarz, Senate Print 5632, an act to authorize the Town of Gates to discontinue the use of certain lands as park lands.

ACTING PRESIDENT KUHL: There is a home rule message at the desk.

Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Thank you, Mr. President. I appreciate it. I've had a conversation with Senator Maziarz. I understand the terms of this bill. I'm going to vote against it, largely for reasons it affects part of the community. I've discussed

it with Senator Maziarz, and I appreciate his concern in discussing the bill with me.

I think there are always concerns when you swap park land, and this is one of those cases where for, I think, a number of reasons, I'm just going to vote against the bill. So I appreciate that opportunity.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negative and announce the results.

THE SECRETARY: Ayes, 51. Nays, 1. Senator Dollinger recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Mr. President, while I was out of the chamber in the Finance Committee, Number 387 was

considered by the house. I would ask unanimous consent to be recorded in the negative on that bill.

ACTING PRESIDENT KUHL: Without objection -

SENATOR DOLLINGER: Thank you.

ACTING PRESIDENT KUHL: - hearing no objection, Senator Dollinger will be recorded in the negative on Calendar Number 387.

Senator Duane, why do you rise?

SENATOR DUANE: Mr. President, I was hoping I could get unanimous consent to also be recorded in the negative on Numbers 1185 and 1200.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Duane will be recorded in the negative on Calendar Number 1185 and 1200.

But 1200 was laid aside, Senator Duane. And so was Calendar Number 1185.

SENATOR SKELOS: Mr. President, would you call up Calendar Number 1192, by Senator Bonacic.

ACTING PRESIDENT KUHL: The

Secretary will read Calendar Number 1192, by Senator Bonacic.

THE SECRETARY: Calendar Number 1192, substituted earlier today by Member of the Assembly Lopez, Assembly Print 7157A, an act to amend the Private Housing Finance Law.

ACTING PRESIDENT KUHL: Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, after rereading this bill, I've decided this is an excellent bill.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Would you please call up Calendar Number 1184, by Senator Seward.

ACTING PRESIDENT KUHL: The Secretary will read Calendar Number 1184 on the controversial calendar, by Senator Seward.

THE SECRETARY: Calendar Number 1184, by Senator Seward, Senate Print 4010A, an act to amend the Tax Law, in relation to hotel and motel taxes.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Seward, an explanation has been requested, I believe.

Who requested the explanation?

SENATOR PATERSON: I did.

ACTING PRESIDENT KUHL: Senator Paterson. By Senator Paterson.

SENATOR SEWARD: Yes, Mr. President, this -

ACTING PRESIDENT KUHL: Senator Seward, if you'd wait just a minute, we have a number of members who are entering the chamber. It appears to be getting a little noisy. So that we can have the benefit of

your explanation, we'll let the members take their seats and staff take their places.

Can we have a little order in the chamber, please? Members take their seats.

Sergeant, would you make sure the door is closed, please. Thank you.

Senator Seward, for an explanation.

SENATOR SEWARD: Yes, Mr. President, this legislation before us has been requested by the Otsego County Board of Representatives. We have a home rule request. And it extends the -- their authority to impose an occupancy tax, which they have had since 1989.

ACTING PRESIDENT KUHL: Senator Paterson, the floor is yours.

SENATOR PATERSON: If Senator Seward would yield for a question.

ACTING PRESIDENT KUHL: Senator Seward, do you yield to a question from Senator Paterson?

SENATOR SEWARD: Yes, certainly.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: We're doing

these extenders and we're extending this every year, Senator Seward. I was just wondering, was there any thought to making this just a permanent -- I'm sorry, this is a permanent situation. But I'm wondering if we would just extend it temporarily rather than making it permanent, as we have done in the past.

SENATOR SEWARD: Well, Mr. President, the bill has been amended to extend this taxing authority for Otsego County for a period of three years.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. I just observed -- and I said it in reverse -- that we have a number of these types of taxes that we impose. And in all other cases, we've done them in a temporary fashion. I just found it a little unique that we're making this permanent.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

Before we do that, Senator Morahan, why do you rise?

SENATOR MORAHAN: Mr. President, I'd like unanimous consent to have my vote cast in the negative on Calendar Number 1171.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Morahan will be recorded in the negative on Calendar Number 1171.

SENATOR MORAHAN: Thank you.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up, on the first page of the active list, Calendar Number 643, by Senator Rath.

ACTING PRESIDENT KUHL: The Secretary will read the last section of

Calendar Number 643, by Senator Rath, on the controversial calendar.

THE SECRETARY: Calendar Number 643, by Senator Rath, Senate Print 674A, an act to amend the Family Court Act, in relation to definition of a person in need of supervision.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Paterson has asked for an explanation, Senator Rath.

SENATOR RATH: Mr. President, Senator Paterson. This bill is one that has had a very strange odyssey through the years. It has been around for longer than some people can remember, as an attempt has been made to correct a constitutional infirmity that provides different age limitations for males and females in connection with PINS petitions.

Under this bill, any person under 18 would be subject to a PINS petition if the person does not attend school until age 18, a person who's incorrigible or ungovernable, or violated the Penal Law in relation to unlawful possession of marijuana.

The current law, as applied, allows for PINS petitions for those under 16. But parents of course have the responsibility for those children until they are age 18. There has been a huge movement of parents that has come together in New York State. It's an item that I've received more mail on than almost anything else that I can refer to.

And I would point to you the fact that maybe six or eight weeks ago, the group of advocates, the parents who are taking an interest in this bill, were in Albany and brought to our attention, in one case, a young daughter, who was age 18 or 19 by then, and it was the first night she had spent in her parents' house in over two years, and couldn't say enough about the need for her parents having been able to bring her back to them through some measure other than persuasion.

Parents at this point have no recourse, no one to go to when their child is incorrigible and refusing to come home, although of course the parents still have responsibility for them. This gives the parents and the courts a tool to use when

children are at their most impressionable age.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: I just have one brief question, Mr. President, if Senator Rath would -

ACTING PRESIDENT KUHL: Senator Rath, do you yield to a question from Senator Paterson?

SENATOR RATH: Sure.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator, yesterday we passed a piece of legislation authorizing the Department of Criminal Justice Services to do a study as to whether or not we should raise the age of persons in need of supervision. And then here today, we're sort of consenting to raise the age without reference to the study.

I just wanted to know if this was in order or if you had a suggestion as to how we're going to work this out in the end.

SENATOR RATH: Senator Paterson, last year this bill passed this house and it

did not pass the Assembly. We do have an Assembly sponsor for this bill, Assemblyman Kaufman.

What passed yesterday was a piece that when people can't quite get behind this bill by saying there's -- it's going to be too costly, that we're not going to be able to afford it in New York State, we put the pilot bill in place. And I believe, frankly, if we pass both bills, I don't know that we will see that both bills will get signed. I think we've got to do everything we can to offer assistance and to take down any roadblocks.

And the fact that the question of cost was there, we put the pilot bill in to say, okay, if you still have a roadblock and you can't support Rath-Kaufman, then support the pilot bill, let's get some information back and then get this one back. If you can support this one, as all the parents and advocates and all the police agencies, the court officers -- there isn't anyone in that grouping of people that is not behind this bill except, quote, for the cost, unquote.

But we heard from an advocate at

Assemblyman Green's hearing the other day, and it was from Staten Island. It was the head of the Tough Love organization from Staten Island, who indicated -- and I have to call this person -- that in their discussions with the Governor, that this was something very high on his priority list and if this bill passes, the money will be there to implement the court and the other kinds of social programs that need to fill in in order to help the parents and the law enforcement agencies get to these children.

Because, you know, it's "pay me now or pay me later." I mean, if we don't take care of the prevention efforts and the best efforts that we can for these young people between age 16 or 18, we're going to have them in the prison system, and in some cases there for the rest of their lives. So it's "pay me now or pay me later."

ACTING PRESIDENT KUHL: Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Mr. President, I would just like to ask one question of Senator Rath.

ACTING PRESIDENT KUHL: Senator Rath, do you yield to a question?

SENATOR RATH: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MONTGOMERY: Senator Rath, I note that -- I believe it was last week or maybe a couple of weeks ago, two of the Assembly members had a hearing on the whole issue of the child welfare and where that stands. Are we moving to correct the block grant, the problem with the underfunding vis-a-vis the block grant in -- or the child welfare block grant, so that in the event this legislation passes, we're better able to address the funding problem?

SENATOR RATH: Yes, Senator Montgomery. Your question refers to, I believe, Assemblyman Green's hearing last week.

SENATOR MONTGOMERY: Yes, that's -

SENATOR RATH: And I believe he has a price tag on that of $50 million or $55 million. I'm not sure that's how much it

is. We've had some indications from some of the smaller counties who are able to get ahold of their demographic information in relation to how many young people are already in PINS programs, how many young people they have, what the court costs, what the police costs, what the additional agency costs would be to process these young people through their systems.

It has been way below what we could have anticipated ourselves. But that's not as -- as clear as what the information will be as this pilot that we passed yesterday.

And so in my opinion, if we pass everything that we can and we say to the powers that be, in relation to signing legislation and implementing legislation, we want this taken care of, we want you to find out where the money is, we want you to use the best uses of money -- and if we have to indeed put some new dollars into it after this pilot has shown us how much, then let's put it there, because we don't want to lose these young people.

We want every resource that we can

bring to bear -- and that their families and that the police agencies and the courts want to bring to bear. We want those brought to bear so that by the time some headstrong, irresponsible, dazed or crazed young person between age 16 and 18 comes to their senses, hopefully, at age 18, we've given them every chance that the system can give them to straighten up and make the best of their lives that they can.

SENATOR MONTGOMERY: Thank you. Thank you, Senator Rath.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President,

with the consent of the Minority, Calendar Number 206, by Senator Hannon, was inadvertently kept off the active list for today. If you could call that up at this time.

ACTING PRESIDENT KUHL: The Secretary will read Calendar Number 206. It's on the members' Third Reading Calendar, page 9.

THE SECRETARY: Calendar Number 206, by Senator Hannon, Senate Print 2937A, an act to amend the Public Health Law and the Insurance Law, in relation to access to end-of-life care.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Montgomery, why do you

rise?

SENATOR MONTGOMERY: Yes, Mr. President, I would like unanimous consent to be recorded in the negative on Calendar 1098. Thank you.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Montgomery will be recorded in the negative on Calendar Number 1098.

Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Mr. President, if I could also have unanimous consent to be recorded in the negative, on Calendar Number 1184.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Dollinger will be recorded in the negative on Calendar Number 1184.

SENATOR DOLLINGER: Thank you.

ACTING PRESIDENT KUHL: Senator Gentile, why do you rise?

SENATOR GENTILE: Yes, Mr. President, I too ask for unanimous consent to be recorded in the negative on Calendar Number 1184.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Gentile will be recorded in the negative on Calendar Number 1184.

Senator Skelos.

SENATOR SKELOS: Mr. President, would Calendar Number 706 and Calendar Number 813, would you lay them aside for the day, please?

ACTING PRESIDENT KUHL: Calendar Number 706 is laid aside for the day. Calendar Number 813 is laid aside for the day.

Senator Skelos.

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

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Rules Committee, immediate meeting of the Rules Committee in the Majority Conference Room, Room 332. Immediate meeting of the Rules Committee in the Majority Conference Room, Room 332.

Senator Skelos.

SENATOR SKELOS: Mr. President,

would you please call up Calendar Number 1196, by Senator Maltese.

ACTING PRESIDENT KUHL: The Secretary will read Calendar Number 1196.

THE SECRETARY: Calendar Number 1196, by Senator Maltese, Senate Print 5572, an act to amend the Election Law, in relation to the term of the chairman of the State Board of Elections.

SENATOR PATERSON: Explanation, please.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT KUHL: Senator Maltese, an explanation of Calendar Number 1196 has been requested by Senator Paterson.

SENATOR MALTESE: Mr. President, this legislation relates to the term of the chairman of the State Board of Elections and provides that on the first day of December of each year, the commissioner who has been serving as the vice chairman of the state board shall become the chairman, and the chairman shall become the vice chairman. Therefore, they would switch places.

The existing law is that it was

intended to provide for equal terms as chairman for the two commissioners appointed by the Governor upon the recommendation of the Legislature.

Now, one commissioner is appointed by the Governor on the recommendation of the Majority Leader; the other commissioner is appointed by the Governor on the recommendation of the Speaker. The two other members are appointed by the two major -- the chairmen of the two major political parties.

The original intention in 1974, when this was adopted, was for the two terms to rotate and each party having an opportunity for their respective recommendation to serve a full year. I don't know who negotiated this in 1974, but they didn't take a close look at it, and as a result, the Democratic member has in the past, for the past 24 years, served 17 months, and the Republican member has served 7 months. And this situation has continued for 24 years.

And what this legislation seeks to do is to correct that inequity.

ACTING PRESIDENT KUHL: Senator

Connor.

SENATOR CONNOR: Mr. President, first, let me correct my esteemed colleague.

One of the members is appointed on the recommendation of the leaders of one party. In other words, someone is appointed on the joint recommendation of Senator Bruno and Mr. Faso, and another is appointed on the joint recommendation of Speaker Silver and myself.

And that's not without its significance. There have been times when vacancies have persisted because the two leaders from the same party in different houses did not agree.

And I felt really constrained to correct that, because I do have an appointment.

The -- this bill has been up many times over the years. It was passed originally -- the mistake was made when the Republican party controlled both houses and the governorship. And the Republican drafters made an error that seems to have favored the Democrats on the board. It's probably the

only drafting error that Jim Cantwell ever made. But for obvious reasons, the law persisted because, subsequently thereto, the Democrats won the Assembly.

Mr. President, I have an amendment at the desk I'd like to call up, waive its reading, and explain.

ACTING PRESIDENT KUHL: Senator Connor, just give me a moment to take a look at it.

SENATOR CONNOR: Certainly.

ACTING PRESIDENT KUHL: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

It's time, I think, to end this charade time, it's time to forgive Jim Cantwell his drafting error, and it's time to make the Board of Elections function in several ways in which it doesn't.

Another quirk -- another quirk in the original law is that the appointees of the two state party chairs -- in other words, the two members appointed by the Governor on the recommendation of the party chair of each of

the two major parties, hold over when their term expires, as do members of many boards, commissions, et cetera.

For whatever reason, the two members appointed by the Governor on the recommendation of the party leaders in the Legislature do not hold over. So if we go back three years ago, four years ago, I believe both the Republican member appointed on the recommendation of the Republican leaders of the Legislature and the member appointed by the Governor on the recommendation of the two Democratic leaders in the Legislature found themselves out of office for a few months because the second floor didn't act on their recommendations.

Currently we are in the same situation. And I made entreaties on behalf of Commissioner Berman to the second floor months before her term expired. The only issue -- by the way, so there's a Democratic vacancy in the State Board of elections. It doesn't mean the two Republican members can outvote the one Democratic member two to one, since the board can only act on a bipartisan basis with at

least three votes for any action.

So the whole effect of the second floor not acting on the recommendation of the Speaker and myself to reappoint Carol Berman is former State Senator Carol Berman loses her health insurance for a few months. Isn't that a wonderful way, Mr. President, to do business in this government in this capital? Let's punish people, let's take their health insurance away. Or maybe take their paychecks away. We've seen that. We certainly feel that. That's what the second floor has accomplished in not acting on this recommendation.

Understand, Mr. President, the Governor cannot appoint someone else and he must act on this recommendation, according to the statute. But they can drag their feet and leave somebody out for three, four, five months without health insurance. It's just absurd.

Now we get the word, "Well, but you guys have never cleared up this Cantwell drafting error from 1974." Well, Mr. President, my amendment, which I would

urge upon Senator Maltese -- because I really don't think we're going to act on his bill today, because the effective date of the bill is June 1, 1999. And I think Senator Maltese will recognize he better withdraw the bill and amend it to change the effective date. Otherwise, it will be ex post facto, because it is after June 1st, 1999.

My amendment would do the following. Let's rotate the chairs between the parties every six months. Let's rotate the chairs. We'll give up the point, so we won't have a Democratic chair for 17 months and a Republican chair for 7 months. Let's rotate it -- not on an annual basis. It's more an honorific anyway, because the whole board has to act to do anything. Let's rotate the chair every six months. Let's eliminate the non-holdover status for both parties' members who are appointed by the Legislative leaders. In fact, I would think -- let's leave aside who the Governor is now. The fact of the matter, it's in both parties' interest in this Legislature to have the leaders' recommendation hold over if you have a second

floor that won't act on the recommendation. Why not? What's bad for Senator Bruno and Mr. Faso in that? It's only good for them. It's good for the Speaker and myself, it's good for both parties, it's good for the Legislature.

Why let the second floor -- now, understand, we already do this. The person recommended by the Republican state chair and the Democratic state chair holds over if the Governor won't act. But the one recommended by the Legislative leaders doesn't -- the two recommended by the Legislative leaders don't hold over.

So my statute would eliminate that, provide that all the members of the board hold over until their replacement has been acted upon. And in fact, why have the Governor involved anyway? This bill makes it a direct appointment of Senator Bruno and Mr. Faso and a direct appointment of the Speaker and the Minority Leader of the Senate. Or, let's put it this way, we may not always be in that position. It makes it a direct appointment of the party leaders from one party in both

houses and the party leaders from different parties in both houses.

So let's eliminate the Governor's role in this. There's no reason for it. He cannot appoint someone else, he cannot reject the recommendation under present law. All they can do on the second floor is what they've just done to Senator Berman, deny her for health insurance for four or five months, force people to go out and get COBRA coverage or whatever, which is just absurd.

So, Mr. President, I give on the point that I've heard from my Republican colleagues for the last twenty years. We'll rotate the chairmanship every six months. Let's give the same status to the Legislative leaders' appointment as we give the party chairs' appointment, have them hold over. Let's just take the Governor out of the process, since they don't seem to care.

And three years ago, they allowed the Republican choice of the Legislative leaders to languish in a non-holdover status for three or four months, just as they did the Democratic choice. So it's bitten both

parties in this Legislature to have the Governor have a role. Why we would as a Legislature accord to the state committee chairs of both parties a prerogative we don't give to our own leaders is beyond me.

Mr. President, I urge my amendment. I think it's fair. I daresay I don't think anyone on the other side of the aisle can stand up and say there's anything wrong with it, that it's unfair and, in fact, that it doesn't enhance the Majority Leader's role in this house.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Any other member wishing to speak on the amendment?

The question is on the amendment. All those in favor signify by saying aye.

SENATOR CONNOR: Party vote in the affirmative.

ACTING PRESIDENT KUHL: The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 22. Nays, 36. Party vote.

ACTING PRESIDENT KUHL: The

amendment is lost.

Any member wishing to speak on the main bill?

SENATOR MALTESE: Mr. President.

ACTING PRESIDENT KUHL: Senator Maltese, on the bill.

SENATOR MALTESE: Mr. President, as my good colleague Senator Connor well knows, the effective date of this legislation is not of paramount importance at this particular time. The -- this is a subject of negotiation between the respective leaders of both houses. To point an accusing finger at the Governor or any other person as individually responsible for the termination of health insurance I think is ingenuous at best.

The fact of the matter is that for 24 years, this inequity has existed and persisted. This inequity has not been corrected by any altruistic member of either this house or the other house or either political party. It stands uncorrected. I think most of the members familiar with this issue realize that this is a matter for

negotiation between the respective leaders. And hopefully, former Senator Berman's health insurance will be addressed and addressed correctly in as expeditious a manner as possible.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect June 1st.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

SENATOR CONNOR: Party vote in the negative.

ACTING PRESIDENT KUHL: The Secretary will record the party-line vote and announce the results.

THE SECRETARY: Ayes, 36. Nays, 22. Party vote.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please lay aside for the day Calendar Number 1197, by Senator Volker.

ACTING PRESIDENT KUHL: Calendar Number 1197 is laid aside for the day.

SENATOR SKELOS: And would you please call up Calendar Number 1200, by Senator Seward.

ACTING PRESIDENT KUHL: The Secretary will read Calendar Number 1200.

THE SECRETARY: Calendar Number 1200, by Senator Seward, Senate Print 5641, an act to amend the Real Property Law, in relation to eviction.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Seward, an explanation of Calendar Number 1200 has been requested by Senator Paterson.

SENATOR SEWARD: Certainly, Mr. President.

This bill amends the Real Property Law by reinstating the three-day notice of nonpayment of rent as the basis of eviction of tenants who rent manufactured homes from owners or operators of manufactured home parts.

Now, the background here is that as part of Chapter 502 of the Laws of 1994, which

was part of the Mobile Home Bill of Rights, back at that time Chapter 502 of the Laws of 1994 provided, among other things, the requirement of a 30-day notice as a basis for eviction on the grounds of nonpayment of rent by manufactured-home tenants. Now, the law defined a tenant as one who either rents a lot in a manufactured home park or one who rents a manufactured home from the park owner or operator.

Now, this was a significant expansion of the previous three-day notice requirement and was intended -- and I certainly support this -- to afford greater protection to lot renters who needed more time to make arrangements to have their manufactured home detached from the lot and moved to another location. But no rationale was put forth for the expansion of the additional 27 days' notice to those who merely rented a manufactured home from the park owner or operator.

Now, these defaulting tenants, it seems to me, face no more of a burden than the tenants of apartments or houses who, under

existing law, require only the three-day notice.

ACTING PRESIDENT KUHL: Senator Paterson.

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

ACTING PRESIDENT KUHL: Senator Paterson on the bill.

SENATOR PATERSON: I'm a little surprised that the mobile-home owners didn't make any type of request for something less than the additional 27 days that's being cut by this bill. Because the reason I would distinguish their situation from those of normal tenants is the fact that they have to engage in actually moving their -- what really amounts to their entire household.

The three-day notice is one that is difficult because individuals might be away for a few days or something like that and wouldn't know anything about it.

The encumbrance that's caused by moving the entire motor home is a little more difficult than -- I would assume, than the average tenant. So although we can understand

Senator Seward's point in lessening the time from 30 days, we just thought that three days was a little excessive and might even turn out to be punitive for the individual that's affected.

SENATOR SEWARD: Mr. President.

ACTING PRESIDENT KUHL: Senator Seward.

SENATOR SEWARD: Yes, just a point of clarification. Perhaps I didn't make myself clear in my earlier remarks.

The individual who owns their own mobile home and merely rents a lot in a mobile-home park, they are not affected by this bill. They will continue to have the full 30-day period of time before they can receive a notice of eviction.

And so we're merely, under this bill, conforming the tenant who rents a mobile home from the mobile-home-park owner -- we're merely putting them in the same category as a tenant who rents an apartment or a house. And so it seems to me this is a matter of simply putting those individuals on par with those others who merely rent an apartment or a full

house.

And I would also point out, Mr. President, that nothing in this bill alters the existing due process and all of the procedures that are correctly in place to provide due process for all concerned in these situations.

ACTING PRESIDENT KUHL: Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, on the bill.

I think that there are times that we come to this chamber and wonder why we're even coming here. But here's a very good example of why we should.

Because after that explanation that Senator Seward has just provided -- it wasn't clear from just the memorandum, or maybe it was and we just misunderstood -- here I really can't distinguish between the tenant of a mobile home and just a tenant in a regular dwelling.

And because of that, we find Senator Seward's explanation quite satisfactory. And at this point, I can

support the bill.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1200 are Senators Duane, Montgomery, Morahan, and Schneiderman.

Excuse me. Senator Montgomery in the affirmative.

Ayes, 55. Nays, 3.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 1072, by Senator Marchi.

ACTING PRESIDENT KUHL: The

Secretary will read Calendar Number 1072, by Senator Marchi.

THE SECRETARY: Calendar Number 1072, by Senator Marchi, Senate Print 2040, an act to amend the Mental Hygiene Law, in relation to prohibiting.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Marchi, an explanation has been requested by Senator Paterson.

SENATOR MARCHI: In present public policy, Mr. President, we have operating separately and under their own responsibility the Nathan S. Kline Institute for Psychiatric Research, the New York State Institute for Basic Research in Developmental Disabilities, and the Research Institute on Addictions, with other research facilities.

They are, in each and every case, performing valuable services. I am most familiar with the Basic Research Institute, which is undoubtedly in my mind -- and in the mind of many people who have been watching them over the years and the developments and dramatic breakthroughs that they have been

responsible for -- is undoubtedly the best research center for basic developmental disability investigation and research.

This bill would bar the collocation of these three facilities into one facility. There is that third institute on addiction. So one deals a great deal -- does admirably the work of actual hands-on treatment, another one doing basic research, raw research, culminating in many historic breakthroughs.

I know of no known opposition to this legislation. We did pass it last year, unanimously. And I would hope that we pass it this year with a better result in the other house when it reaches them.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

Before that, Senator Paterson.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT KUHL: You're standing up so you can hear the last section read better?

SENATOR PATERSON: Yeah, among other things.

Senator, if Senator Marchi would

yield for just a quick question.

ACTING PRESIDENT KUHL: Senator Marchi, do you yield to a question from Senator Paterson?

SENATOR MARCHI: Yes, Senator.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Thank you. Would my distinguished and favorite Senator from Staten Island just want to comment on whether or not the merging of facilities would encourage almost a free and open exchange of ideas and opinions between researchers and their colleagues, perhaps foster a better interaction, and might even be a cost savings for us by having that? I just wondered if you considered that or if it has any value.

SENATOR MARCHI: Well, PATH obviously is in favor of the legislation. So that perhaps the cost savings might be at the expense of people who are presently employed in either of those facilities. And there are some operational advantages, in theory, that those who are giving the treatment are also involved in the research.

Nevertheless, I believe, Mr. President, that the accomplishments of the Research Institute, concentrating and being devoted in a singular fashion to the development of remedial and new ways of approaching developmental problems, certainly carries with it a very heavy presumption that certainly no one has seriously overcome.

And in my speaking to people who are concerned in the area of mental disability, they do feel that there is an advantage in having research of this nature - which is preeminent in the Northern Hemisphere. I don't think there's another research unit that can equal them, notwithstanding the capabilities in the - this companion organization in the hands-on treatment.

So I think it's just based on experience. And hopefully the argument has been made by the very agency itself, by the proficiency and the excellent repute with which it's held in professional circles.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Paterson, on the bill.

SENATOR PATERSON: Looking at this from a policy perspective, Mr. President, the option of recognition that there are times when, because of fiscal insolvency, there might be areas that we might condense and in many ways truncate some of the processes, would be something that we might revisit at some point when our state is not as economically sound and fiscally strong as it is right now.

And so just to set up a situation where there's a permanent bar to condensing some of these facilities, in my opinion right now is something that might not be as discernible as it would be if we were in the situation of fighting through some of the budget gaps that we did in the past decade, particularly in the early part of this decade.

So for that reason, I'm really going to consider voting against this legislation. I'd like to do the same thing

that Senator Marchi would like to do, but the fact is that sometimes you have to really look at these things in terms of the permanence of what we're actually doing here and weighing it as a value against what would be the possibilities or the options we might explore at some point where we might want to have a cost savings.

Also, the fact that just putting people in the research area together probably encourages greater research would almost be an enhancement. So it's not as if this is something that we would be losing during the time that we would make that decision; we might actually gain from it.

So I appreciate what Senator Marchi is trying to do. It certainly would be something that on a temporary basis might be interesting. But to permanently bar the merging of these facilities in my opinion might be something that we might wish sometime in the future that we had rethought.

ACTING PRESIDENT KUHL: Senator Morahan.

SENATOR MORAHAN: Mr. President,

I rise in support of this bill. The Nathan Kline Institute, which is located in my Senatorial district, is a very unique facility with hands-on experimental treatment that is making progress as we speak. I have visited the institute several times. I've spoken to the leadership of that institute and that research center, and it's their considered opinion that the commingling of the various researches that are done in this area and this sort of consolidation may imbalance the focus of the research now being conducted. And I believe the research that they're conducting is leading-edge technology in this area and ought to be preserved, and I speak in support of the bill.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record

the negatives and announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 1072 are Senators Connor, Dollinger, Paterson, and Schneiderman. Ayes, 54. Nays, 4.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Would you please call up Calendar Number 1185, by Senator Velella.

ACTING PRESIDENT KUHL: The Secretary will read Calendar Number 1185. It's on page 53 of the calendar.

THE SECRETARY: Calendar Number 1185, by Senator Velella, Senate Print 4018, an act to amend the Education Law.

SENATOR MONTGOMERY: Explanation.

ACTING PRESIDENT KUHL: Senator Velella, an explanation has been requested by Senator Montgomery.

SENATOR VELELLA: Yes, Mr. President. This is a bill which deals with our libraries and the young people of New

York State and our country; their ever-expanding minds have managed in the new technological world to find ways to do things that cause some problems.

In my own district, Assemblyman Klein and myself had some problems in our libraries with the use of computers by our young people getting access to what we might call X-rated materials. They've suddenly had a new surge of interest in going to the library and working on the computers, and the library technicians found that the materials they were looking at were not necessarily the ones that related to their academic studies.

Therefore, we came together and put this bill together. And what it does is say that libraries must establish some type of program, some type of requirements and regulations that will include as part of their services guidelines for their member libraries to address the issue of restricting access to minors for obscene materials during the computer use in the library. Each library facility will establish their own management program as to how to relate to this and put a

handle on it.

There is no attempt to deny it. It's just a notification to the parents that these materials are available and they ought to be counseling their kids about the fact that this is not the proper material to be looking at in the public libraries.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, if I may. I understand that - the intent of Senator Velella's legislation. And certainly I know that you are opposed to obscene language, and so am I.

But if I may ask him to yield for a question, Mr. President.

ACTING PRESIDENT KUHL: Senator Velella, do you yield to a question?

SENATOR VELELLA: Certainly.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MONTGOMERY: Yes. Senator Velella, I -- this bill, your bill seems to place a lot of, one, discretion and, two, responsibility at the level of the

library.

And I'm just wondering, one, how is this going to be enforced and what is the definition of obscenity or inappropriate materials, how is that to be determined uniformly statewide? Because what I may consider to be obscene, you may not, and vice versa.

SENATOR VELELLA: Senator, we have, under the Penal Law, Section 235.00, Subdivision 1, which defines obscenity in the New York State law. We also have case histories of the various courts in this state that have interpreted what is inappropriate materials and appeals to just certain types of interest. So that the question of obscenity has been clearly outlined in the law.

The reason why we put a burden on the libraries is that it is their equipment, their machinery, their access to the Internet. And they are allowing our children or asking our children, allowing them to come in, and they ought to have a policy so that when a parent lets their child go to the library, that most of us think they're doing their

academic research work or looking into new things. Unfortunately, a lot of them are looking at things that would be inappropriate in terms of anyone in this room making that decision, or their parents. That we can't deny them that access, but we can say their parents ought to be made aware and the librarian ought to be following a policy that makes us aware that the children are using the machines to look at pornography or obscene materials rather than doing academic research.

SENATOR MONTGOMERY: All right. Mr. President, if I may pursue my questioning of Senator Velella.

ACTING PRESIDENT KUHL: Senator Velella, do you yield to another question?

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: The Senator yields to a question.

SENATOR MONTGOMERY: Senator Velella, I understand that the librarian or the library -- you want the library to inform the parents. But the fact of the matter is it would require, it seems to me, that the -- a librarian or a staff at the library be

knowledgeable of every single person using that equipment and where they have plugged into on the Internet, which requires them to follow up after each individual to see where they've been looking, which materials they've been observing, using, in the Internet.

So who's going to do that, and how are we paying for this?

SENATOR VELELLA: Well, let me explain. I think your impression of the bill is wrong. We're not requiring every librarian to follow every child around the library and watch them.

We're requiring that the libraries set some type of standard at their own discretion, which is reasonable, to try and control this access. My own personal feeling, what I've suggested to the libraries in the Bronx that had this problem, and Assemblyman Klein and I visited them, where the screens are up and the children are sitting in the back of the library looking up these inappropriate materials, I thought a very simple solution might be there. Put a big mirror up behind them so that anybody looking

in can see what's on their screen, and then you'd know exactly what they're looking at on the computer. That was something that's being looked into.

I just think that we need to establish a policy. We don't try to do it in the state laws here. We're saying libraries ought to be aware this is a problem, ought to be aware that parents ought to realize these things exist on the Internet, the availability is there for their children, and they ought to have a policy to try and minimize it. We don't set standards and require that the librarian loses her job if the kid is found looking at something. No. I mean, that would be silly.

We're just saying there should be an establishment of some type of standards by the library to realize this is a problem, it's inappropriate, and try to deal with it as best as possible.

SENATOR MONTGOMERY: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: I appreciate the explanation that Senator Velella has given. However, I just have a concern that the libraries -- I'm talking now certainly about Brooklyn, the central library of Brooklyn and all of its branches. We're hopeful that the library can become connected to all of the schools in the district. We would like to see more access to the Internet by more and more young people, more and more citizens. We would like to see access to the Internet in communities.

So I don't want to burden that library system further by having them become police of the Internet and of the technology. I think that with appropriate interaction and supervision and planning between the library staff, school staff, we can begin to create a lot of meaningful interchange and curriculum development with the cultural institutions and what have you.

So rather than attempt to create some system of policing, I would like to see us invest more in the process of building a coalition and joint planning strategies

between schools, libraries, cultural institutions, as it relates to helping young people broadening the access and helping young people as well as teachers be able to utilize technology effectively in their -- in teaching.

So I'm going to vote against this. And as I said before, I fully understand Senator Velella's point of view as a parent. I certainly am concerned. I don't want my son to be engaging in these -- looking at these kinds of things, necessarily. But I would hope that his work in school is exciting enough that he is -- it's enough to keep him engaged in very positive and constructive and meaningful use of the technology, as opposed to going into this kind of obscenity.

So I'm going to vote no on this. And I hope that we can do more to strength what I consider to be access to technology.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the bill?

Senator Duane.

SENATOR DUANE: Thank you, Mr.

President. Would the sponsor yield to a couple of questions?

ACTING PRESIDENT KUHL: Senator Velella, do you yield to a question from Senator Duane?

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DUANE: Thank you very much.

I'm wondering whether or not you know if the American Library Association has weighed in on this legislation.

SENATOR VELELLA: I haven't heard anything from them that they're opposed to it. I doubt very seriously if they would be in favor of allowing access to what might be obscene materials in their libraries by young people. But I have not heard any complaint from them or any opposition, no.

SENATOR DUANE: If I could continue along that line.

ACTING PRESIDENT KUHL: Senator Velella, do you continue to yield?

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DUANE: In fact, the American Library Association has done a tremendous amount of work on Internet access and has some very strong positions on this. And I was wondering if you had reached out to them about your legislation.

SENATOR VELELLA: No. But when the libraries start to formulate -- this doesn't mandate any fixed policy. It says "establish a policy to deal with this issue." And I certainly know that the libraries would welcome -- at least in Bronx County and I assume throughout the state would welcome the input of anyone as to how they might manage this.

It's a very, very thin line you walk when you're trying to protect Constitutional rights to access to information, even for minors, but yet deal with the issue of looking at obscene materials in a public-provided facility. So that we don't ban anything, we just say establish a policy so that parents will be notified that

this is something that will have access - that children will have access to. And thereby hopefully the parent will instruct their child and help guide them through.

SENATOR DUANE: Mr. President, if I may continue.

ACTING PRESIDENT KUHL: Senator Velella, do you continue to yield?

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DUANE: I think that the point being made that this legislation doesn't seek to ban anything is not really accurate, in that the bill does talk about restricting.

Restricting, in my mind, means that a certain amount of information would be unavailable for young people to look at. And while I certainly applaud that young people shouldn't be able to -- as they shouldn't be able to go see movies that are too adult or watch television shows that are too adult for them.

But the Internet is a different - is a different and a totally new technological

field. And is it the sponsor's thought that one of the ways that the restriction of the information would be through the use of filters?

SENATOR VELELLA: Again, I have not prescribed any means of doing this. What I've said is let's let the minds of the library facilities sit down, look at this, recognize it as a problem -- that was brought to my attention by parents and librarians in my district. And I think it's a problem that probably is a little bit more pronounced than we had originally thought, because in asking people in the library system, workers, yes, they've had these problems and they've had to reprimand people for putting things on screens and showing them to their friends in the library. And it does cause some kind of commotion and discipline problem within the libraries.

So that they need to deal with this. And what I've said is the professionals will decide what is the proper way to deal with the problem in the library setting. And let them come forward with the plan. And if

it's improper or violates Constitutional provisions, then we may step in, the courts may step in, or people whose rights are violated would step in.

SENATOR DUANE: Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Duane, on the bill.

SENATOR DUANE: I think that we can't pretend that this isn't an issue which has already created enormous public debate and discussion. And just by sort of punting and saying that requiring compliance with regulations restricting minors is in some way a new idea or something which hasn't been looked at extensively by library systems, librarians, consumers, users, people in the academic field, civil libertarians, in fact there is enormous discussion about this issue going on every day in all of the media.

Just saying restricting minors' access to obscene and pornographic materials raises a whole host of very complicated issues. For instance, the way that that's being accomplished in places is through the

use of filters. That's the most widely used method of restricting access to certain areas on the Internet. But the debate has gotten very hot and heavy, frankly, on issues of access to information on reproductive information, reproductive health care information, health care information that has nothing to do with reproduction, lesbian, gay, bisexual, transgendered issues, whether or not that's considered to be obscene or pornographic, at what level it becomes obscene or pornographic.

So there's a whole range of issues which I believe, by the language of the legislation which would restrict minors' ability to go to certain areas on the Internet, makes it very, very troublesome. And I think that this is way too broad. I also think that we don't need to legislate that. If we need to have a discussion about the best way to protect young people and at the same time to allow them information, I don't think that's something we should be doing legislatively. Far better for there to be, in addition to involvement in the

discussion that's already happening in the world, perhaps the Governor could set up a task force or the legislative bodies could set up a task force and include people from the health care profession, librarians, consumers of library services, civil libertarians and others, to find out what might be the best way to make sure that young people get as much access to information as they need, as well as protect them from things which we all agree they should not be exposed to.

And I encourage my colleagues to vote no on that. Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives. Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1185 are Senators Duane, Montgomery, Paterson, and

Schneiderman. Ayes, 54. Nays, 4.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Rath, why do you rise?

SENATOR RATH: Mr. President, I'd like to place a sponsor's star on Calendar 1162.

ACTING PRESIDENT KUHL: Calendar Number 1162 will be starred at the request of the sponsor.

Senator McGee.

SENATOR McGEE: Mr. President, there will be an immediate meeting of the Commerce and Economic Development Committee in the Majority Conference Room, an immediate meeting.

ACTING PRESIDENT KUHL: Immediate meeting of the Commerce and Economic Development Committee. Immediate meeting of the Commerce and Economic Development Committee in Room 332, the Majority Conference Room.

Senator McGee.

SENATOR McGEE: Thank you, Mr. President. Will you please call Calendar

Number 82.

ACTING PRESIDENT KUHL: The Secretary will read Calendar Number 82.

THE SECRETARY: Calendar Number 82, by Senator Volker, Senate Print 1592A, an act to amend the Penal Law, the Criminal Procedure Law, the Executive Law, the Correction Law, and the Public Health Law.

SENATOR MONTGOMERY: Explanation.

ACTING PRESIDENT KUHL: Senator Volker, an explanation has been requested by Senator Montgomery.

SENATOR VOLKER: Yes, Mr. President. This bill, which is the Volker-Paterson bill, among others, passed this house, I believe it was February 11th - I believe it was -- of this year. And at the time that it passed the house, there was some discussion at the time about one provision of this bill, to improve it.

Very honestly, we've discussed this for now several months, and the -- at that point we thought we were going to have a compromise with the Assembly by now. Unfortunately, that hasn't occurred. So the

decision was made in the last week or so to include one single provision of the bill that was left out of the original Governor's Program bill, with Senate approval.

That one section, 18(A)13, what it really does is give people who are the victims of sex offenses much more access to the Crime Victims Compensation Board by allowing to, in effect, waive the rule of prompt notification to the board and enables a person who is a victim of a sex offense to comply with a good-cause application to the Crime Victims Compensation Board. At the same time, what this does is -- is, very honestly, access federal money which is available for sex offense victims also. And the state, of course, in turn is able to get some of that money to reimburse us for the Crime Victims Board.

That is the only change in this bill from the bill that passed, as I said, back in February. And I think there were only a couple of members of the Legislature that I think voted against it.

ACTING PRESIDENT KUHL: Senator

Montgomery.

SENATOR MONTGOMERY: Yes. I just wanted to ask a question. I probably have an outdated memo. I have a memo from -- the Governor's Program bill memo.

SENATOR VOLKER: Yes. Yes. As I said, that memo -- it was the Governor's Program memo. That memo is correct except for that one piece that I just gave you. Everything else is the same.

In other words, that memo would be exactly correct except for the page 12, that section of the bill that allows sex offense victims to access more easily to the Crime Victims Compensation Board and to access, in effect, the federal money.

So all the advocates and everybody is in favor of this. There's really no opposition from anybody. And I don't -- by the way, the Assembly is in favor of this too. I mean, I -- in other words, the Assembly will not object to this provision, if you know what I mean. They may object -- they'll object maybe to some other things, but they're not going to object to this one. Okay?

SENATOR MONTGOMERY: To this one, okay. Just one question.

SENATOR VOLKER: Sure.

SENATOR MONTGOMERY: The bill refers to deviate sexual intercourse, and it defines that and so forth and so on. That's just specifically related to a criminal act, or how does that -

SENATOR VOLKER: Yes, specifically related to a criminal act. Absolutely. Absolutely. It doesn't -- I know what you're leading to. It does not affect any other provisions of the law except the criminal act involved.

SENATOR MONTGOMERY: Involved in a case that is -

SENATOR VOLKER: In a case. In a sexual assault, absolutely.

SENATOR MONTGOMERY: And it can't be interpreted as -- you know, you can't interpret a relationship that is outside of this under that, then?

SENATOR VOLKER: No. No. Absolutely not.

SENATOR MONTGOMERY: Very good.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 46. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT KUHL: The bill is passed.

Senator McGee.

SENATOR McGEE: Mr. President, will you call, please, Calendar Number 1150.

ACTING PRESIDENT KUHL: The Secretary will read Calendar Number 1150, by Senator Bonacic.

THE SECRETARY: Calendar Number 1150, by Senator Bonacic, Senate Print 4471A, an act in relation to enacting the Christopher Gardner Memorial Act.

SENATOR MONTGOMERY: Explanation.

ACTING PRESIDENT KUHL: Senator Bonacic, an explanation of Calendar Number 1150 has been requested by Senator Montgomery.

SENATOR BONACIC: Thank you, Mr. President.

This is legislation that amends the Social Services Law, the Family Court Act in relation to definitions of neglected and maltreated children and child abuse. It amends the Social Service Law, the Civil Rights Law, the County Law, and the Mental Hygiene Law, in relation to establishing local and regional fatality review teams to amend the Penal Law in relation to endangering the welfare of a child. And also to repeal certain provisions of the Social Services Law relating to access to certain records of state and local agencies.

This basically is an omnibus bill that takes into consideration the best interest of the child in certain court proceedings. Under existing law, there is a failure to provide a statutory presumption that a child is abused when he or she as a newborn tests positive for drugs. Also, current law fails to provide for an expedited way to remove a child from the home when that child is catastrophically maltreated.

In addition, current law also fails to treat seriously the repeated endangerment of a child. And the current law fails to establish fatality review teams to review the death of a child and take preventative steps. Current law fails to take into consideration the best interest of a child.

This legislation was spurred by the death of Christopher Gardner. He was a three-year-old boy from Sullivan County, and he lived with his mother and two roommates. This boy took a bowl of candy when he wasn't supposed to. What then happened to this little boy in the next three or four hours was many acts that were acts of torture. He was beaten profusely, had bruises all over his body. He was scalded with hot water. He was kicked in the stomach repeatedly. He was punched all over his body, was thrown down a flight of stairs. A few hours later, he died. He died with broken bones all over his body, a concussion to his head. He had a collapsed lung. He had a punctured liver. And this was the home environment.

Unfortunately, in today's day and

age, child abuse has escalated. I quote from a report entitled "Prevent Child Abuse America," dated December of '96, that was report Number 9, when they started taking statistics of child abuse, that 1,215 child maltreatment deaths were confirmed by Child Protective Services. I only gave you an instance in 1998 that happened in Sullivan County.

So we are now trying to put legislation in place that will make child protective agencies, social services, family court, district attorney's offices, give them more power and put a statutory standard in watching as to what is the best interest of the child.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President. If Senator Bonacic will yield to a couple of questions.

ACTING PRESIDENT KUHL: Senator Bonacic, do you yield?

SENATOR BONACIC: I do, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MONTGOMERY: Yes. Senator, your bill, you say that this -- you name this the Christopher Gardner Memorial Act. Are you -- is the implication that Christopher Gardner's mother tested positive for drugs when he was born and therefore - and you didn't take the baby, and therefore this bill?

SENATOR BONACIC: No. The Christopher Gardner incident is not relevant to the section of this legislation that talked about the positive testing for drugs. Because this was a three-year-old boy when this incident occurred.

SENATOR MONTGOMERY: Okay, thank you.

Now, if you would continue -

ACTING PRESIDENT KUHL: Senator Bonacic, do you continue to yield?

SENATOR BONACIC: I do.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR MONTGOMERY: The legislation says that -- correct me if I'm wrong -- that if -- in the event a child is born to a parent who tests positive for drugs, that child is automatically removed. There are no extenuating circumstances in that instance. The child is immediately removed, and in order to get the child back, my assumption is that it's up to that parent to prove that that was an error in removing that child from the parent. Is that correct?

SENATOR BONACIC: Your answer is correct. And in your question I'll presume two sets of facts. One is let's assume the test was false-positive. Normally, if the mother is on Medicaid, there could be an immediate test, a second test that would be paid for by the state.

And now let's assume further that it's -- there is a positive finding for drugs. Okay? It creates a rebuttable presumption that the burden is now on the mother to go forward, to say that the child should be reunited with the mother in a home that's safe and that there is no imminent danger of harm

to that child.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Okay. Senator Bonacic, you are aware that there is a program that we currently have going at Bedford Hills where the infant born to a mother in the facility, I believe, is allowed -- that mother is allowed to keep that infant for a year.

SENATOR BONACIC: When the infant tested positive for drugs?

SENATOR MONTGOMERY: Well, it's just a matter of many of the women who are in the facility there are there because of drug-related crime. So the assumption being that there was some involvement with drugs, probably, before the woman got there.

The program allows that mother to stay with the child until that -- for at least one year, I believe.

SENATOR BONACIC: If that is a good program and it's working well with the mother and the child, I do believe that this legislation will not change what's been

happening.

What the legislation will do is there would be a hearing before a family court judge in that instance where -- let's assume the baby was tested positive for drugs -- a family court judge would have to say it's okay for that child to stay with that mother in that program that you described.

SENATOR MONTGOMERY: Now, Senator Bonacic, does the bill then presume that - let me just ask a question.

ACTING PRESIDENT KUHL: Senator Montgomery, are you asking Senator Bonacic to yield to another question?

SENATOR MONTGOMERY: Yes, if he would continue to yield.

ACTING PRESIDENT KUHL: Senator -

SENATOR BONACIC: I will continue to yield to all of the Senator's questions.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MONTGOMERY: What then happens, what is the presumption of the status of the parent that is tested and is -- where

the child has tested positive? Is there a presumption that the parent has engaged in criminal activity, therefore?

SENATOR BONACIC: The test is what is the best environment and the safest environment to return the child. And all of the focus is not on whether or not you're going to arrest a parent for criminal activity, it's where you're going to place the child.

And it's a rebuttable presumption on behalf of the parent -- the mother, in most cases, that she will have to make an argument that satisfies the judge that that baby should stay with her and that the baby will be safe and no increased risk of harm.

SENATOR MONTGOMERY: Okay. I guess my last question to you, Senator, is who -- what happens to the babies and who pays for that? My assumption is that these babies are put into foster care as infants. And who pays -- who pays? How does that get paid for?

SENATOR BONACIC: First of all, a lot of things could happen. The judge could say, I'm going to return the baby back to the

home but I require counseling on behalf of the mother or father in a household setting. Perhaps social services will visit the house more frequently to make sure that the activity in the house is monitored, not increasing the risk of harm to the baby. That's one scenario.

Another scenario is this house isn't safe to go back to -- or to go back to this mother, for -- that there's an increased risk of harm. In that case, the baby could be placed with another family member -- an aunt, an uncle, someone who knows the child and has a relationship. Or it could be put in a foster home as another alternative. And these would be paid for by the state.

SENATOR MONTGOMERY: Thank you. Thank you, Senator Bonacic.

SENATOR BONACIC: You're welcome.

SENATOR MONTGOMERY: Mr.President, on the bill, briefly.

Senator Bonacic has indicated to us, and I think correctly, that the major part of this legislation, which is the positive toxicology, as I see it, is really -- has

nothing to do with Christopher Gardner. So we want to clarify that, that we're using Christopher Gardner, it's a convenient handle for a bill, but this really is not a Christopher Gardner bill.

The bill will eventually cost the state an enormous amount of money without even a promise that we're going to in fact address the issue at hand. And the issue at hand, it seems to me, is what do we do about the fact that we have infants who are born to parents who have obviously been using drugs.

And there are models, even within our own state, for addressing this issue in a positive way which has a good outcome. One of them is in Bedford Hills, and others are in our communities where we have programs where mother and infant are treated together. We have funded those programs through this budget, through our own state budget. Those programs were developed because we understood there was a problem.

And why are we not enhancing those programs and expanding our capacity to treat these situations more appropriately than

grabbing babies when they're born from mothers because those mothers have a problem? And drug abuse is perhaps only one kind of problem that women come in with who are going to be - whose babies are going to be born and we're going to be sending those babies back with them.

I would suggest that, with all due respect to Senator Bonacic's intentions to address this, I think that this is just the wrong way to go. I want to address this issue, but not like this, not by snatching those babies. I know in my own district, I have visited hospitals that were overrun with boarder babies. These are babies that are just left, and it's up to the hospital and everybody else to assume the responsibility of those babies.

I do not want to create a situation where we're going to have this kind of a problem on our hands. We need to be addressing this issue. I want to see it done, but certainly not in a way that's going to cause more problems than we already have.

So, Mr. President, I would urge my

colleagues to vote no on this. And I certainly hope that Senator Bonacic will consider addressing this toxicology issue separate and apart from whatever this Christopher Gardner situation is. It is not the same thing, and this bill has nothing to do with Christopher Gardner.

Thank you.

ACTING PRESIDENT KUHL: Senator Oppenheimer, why do you rise?

SENATOR OPPENHEIMER: I would like to ask a question of the sponsor.

ACTING PRESIDENT KUHL: Senator Bonacic, do you yield to a question from Senator Oppenheimer?

SENATOR BONACIC: I do.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR OPPENHEIMER: I was out of chamber at the beginning of the discussion on this bill. And in looking up the information on Christopher Gardner, I see that the problem probably lay elsewhere, in that our state central registry, the agency rejected two calls on the subject of this

child, this issue.

I think we have to question what is happening with our state central agency, our registry. Because if they had accepted those two calls, this issue would not be before us.

SENATOR BONACIC: Are you asking a question, Senator?

SENATOR OPPENHEIMER: I'm asking the question have we addressed the issue of what's happening at the agency? Because if the agency was doing its job, we wouldn't have this before us.

SENATOR BONACIC: The legislation that is before us today is much broader, in that it puts into law a statutory presumption that the best interests of the child shall be the standard. It also toughens penalties for the endangerment of a child through child abuse.

Now, as to the Christopher Gardner incident, you brought up that perhaps the state agency didn't respond in an efficient way or was unresponsive. And that -- you know, I'm not going to say whether or not it would have saved his life. I would have

rather had that they respond as soon as they got those two calls. But there is another piece of legislation pending that's not a part of this bill that would require the family and child services to record the calls and to respond to every call. That's pending before the Legislature, but that's not part of this bill.

And I -- you know Senator, I wish -- he's gone, but -- but we don't want to forget him. But this legislation still has merit on its own right. And I still think it's necessary, whether Christopher Gardner is still alive or not -- would have been alive today.

SENATOR OPPENHEIMER: Okay, thank you. I'd like to just speak on the bill briefly.

ACTING PRESIDENT KUHL: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: I think, you know, much of what's in here, I think we all could agree with what Senator Bonacic is trying to move with this legislation. And certainly I think for too many years we have

not put the needs of the child first, and rather it's been the reunification of the family and a variety of other considerations.

But now I think it is appropriate -- the one piece that is causing me such distress is the rebuttable presumption that the mother is automatically incapable of taking care of a child because she has trust -- been tested -- thank you, that's the word -- as positive for drugs. The bill actually fails to mention a possible double-checking of the accuracy of the newborn's drug test. And that's important, because these tests have been shown to be inaccurate from 10 to 15 percent of the time.

And to have a baby literally snatched from its mother within 24 hours of delivery and holding the woman criminally liable, it just seems to be such a severe and really unnecessary step, particularly in light of the fact that there isn't even a second test to see if the first test was correct.

As I said, most of this bill, it's very easy to support, it's a good bill. This one feature is very, very disturbing. And I

think we -- I will be voting no, and I would urge my fellow Senators to vote similarly.

ACTING PRESIDENT KUHL: Senator Sampson, did you wish to speak on the bill?

SENATOR SAMPSON: Yes, Mr. President. Would the sponsor yield just for a couple of questions?

ACTING PRESIDENT KUHL: Senator Bonacic, do you yield to a question from Senator Sampson?

SENATOR BONACIC: Yes, I do.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR SAMPSON: Yes, Senator Bonacic. Under this legislation, how are we going to deal with those incidents where we have false-positive test results?

SENATOR BONACIC: Right, yes. Just -- let me just put on the record, we - this -- there was a Senate Bill, 1075, which we passed early in the year, by Senator Skelos, that talked about the false-positive. And a lot of that legislation is inclusive in the Christopher Gardner Memorial Act legislation that's before us today.

But within 24 hours, a second test could be taken. And if it was shown to be a false positive, there would be no need for any hearing and the baby would be returned to the mother. At the state's expense, by the way.

SENATOR SAMPSON: Through you, Mr. President.

ACTING PRESIDENT KUHL: Senator Sampson.

SENATOR SAMPSON: Would the sponsor continue to yield?

ACTING PRESIDENT KUHL: Senator Bonacic, do you continue to yield?

SENATOR BONACIC: I do.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR SAMPSON: You said the state would pick up the expenditure on that?

SENATOR BONACIC: Yes, sir.

SENATOR SAMPSON: And that's if the person is covered by Medicaid or -

SENATOR BONACIC: Medicaid.

SENATOR SAMPSON: What about those individuals who are not covered by any insurance?

SENATOR BONACIC: But not -- not on -

SENATOR SAMPSON: Not on Medicaid.

SENATOR BONACIC: Not on any kind of public assistance?

SENATOR SAMPSON: Yeah. Such as maybe, possibly, immigrants.

SENATOR BONACIC: Well, if they don't qualify for public assistance -- I'm not clear on the second cost. But we would - it's our intent that the state pay for it.

SENATOR SAMPSON: Through you, Mr. President, if the sponsor will yield.

ACTING PRESIDENT KUHL: Senator Bonacic, do you continue to yield?

SENATOR BONACIC: I do.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR SAMPSON: And during this period of time when the child taken away from the parent, the child is placed into a foster home or -

SENATOR BONACIC: No -

SENATOR SAMPSON: What happens to

the child at that point in time, the newborn?

SENATOR BONACIC: Well, if this has taken place while the baby is in the hospital, the baby will probably stay in the hospital for the second test. We're talking of a 24-hour period.

But let's assume that the mother is released from the hospital. The baby would be -- could be put in a foster home or it could be left in the hospital till there's a determination. There has to be -- under the legislation, it has to go to the family court judge, an application, within 24 hours, and he has to make a decision in 72 hours.

So the whole thrust is an expedited decision on what to do with the child. And the family court judge could say reunite the child back with the mother, but we want counseling and we want frequent monitoring by family and child services. That's a possibility.

SENATOR SAMPSON: Thank you.

ACTING PRESIDENT KUHL: Senator Dollinger. Do you wish to be recognized, Senator Dollinger?

SENATOR DOLLINGER: Mr. President, would you recognize Senator Oppenheimer if she has any further questions and comments or -

ACTING PRESIDENT KUHL: I appreciate your assistance in directing the traffic up here, Senator Dollinger. But you had the floor next. If you wish to exercise that option. If you don't, if you wish to pass, then I'll take the next Senator in line.

SENATOR DOLLINGER: Well, are there other Senators in line, Mr. President? If there are, I'd be glad -

ACTING PRESIDENT KUHL: I believe that Senator Oppenheimer is behind you.

SENATOR DOLLINGER: I would pass up my opportunity and yield to the floor to Senator Oppenheimer, and I'll continue discussions with others on the floor.

ACTING PRESIDENT KUHL: Senator Dollinger waives.

Senator Oppenheimer, why do you rise?

SENATOR OPPENHEIMER: Thank you, Senator Dollinger, Mr. President. I was

just -- I have a question for Senator Bonacic.

ACTING PRESIDENT KUHL: Senator Bonacic, do you yield to a question from Senator Oppenheimer?

SENATOR BONACIC: I certainly do.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR OPPENHEIMER: Well, Senator Bonacic just said something that I found very interesting, and that was that what might be provided is some counseling for the mother and her newborn.

The "might" is what concerned me. I wonder if this bill, it just is up to discretion -- it is not that this mother and her newborn really could utilize -- in fact, must have some assistance. What's your opinion on that?

SENATOR BONACIC: Yes. These questions were asked earlier, and this would be up to the discretion of a family court judge as to what he thinks is in the best interests and safety of the child.

And I would think, and the practical aspect, is that the child would be

returned to the home and counseling would be a requirement for the mother and maybe other members of the household, and there might be more frequent visits to see how the child and the family are getting along. But it's a family court decision based on the facts of each circumstance. That's how it would work.

SENATOR OPPENHEIMER: Thank you very much. Again, on the bill.

I think if there were more mandatory counseling written in, if there were more direction to programs -- which do exist. I know we have them in Westchester County, where we take the mother and the child, the newborn or the small child, into counseling together. We even actually have it in our women's prison, where we have the child stay with the mother while she's going through detox. There are programs out there that are available for the young mother, either of a newborn or of a young child, to help them overcome addiction and to better understand what the role is of the mother in caring for the child.

So I just would have been much more

comfortable if this had been written into law.

Thank you.

ACTING PRESIDENT KUHL: Thank you, Senator Oppenheimer.

The Secretary will read the last section.

SENATOR DOLLINGER: Excuse me, Mr. President. Can we ask the bill to be laid aside, Mr. President?

ACTING PRESIDENT KUHL: Senator Bonacic, do you mind laying the bill aside temporarily?

SENATOR BONACIC: I do not.

ACTING PRESIDENT KUHL: The bill will be laid aside temporarily.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time return to reports of standing committees? I believe there's a report at the desk, and I ask that it be read.

ACTING PRESIDENT KUHL: We will return to the order of reports of standing committees.

There is a report of the Finance Committee which is at the desk. I'll ask the

Secretary to read.

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

1602B, Budget Bill, making appropriations for the support of government;

Senate 1603B, Budget Bill, an act to amend the Insurance Law, in relation to property casualty insurance;

Senate 3286A, Budget Bill, an act making appropriations for the support of government;

Senate 5808, by the Committee on Rules, an act to amend the Real Property Tax Law, in relation to state reimbursement;

Senate 3287A, Budget Bill, an act making appropriations for the support of government;

Senate 5810, by the Committee on Rules, an act to amend the Executive Law, in relation to reimbursement;

Senate 3288A, Budget Bill, an act making appropriations for the support of government;

Senate 5809, by the Committee on

Rules, an act to amend the Education Law, the Local Finance Law, and Chapter 58 of the Laws of 1998;

Senate 1A, by Senator Bruno, an act to amend the Tax Law;

Senate 2A, by Senator Bruno, an act to amend the Tax Law;

Senate 3A, by Senator Bruno, an act in relation to enacting the Jobs 2000 for the State of New York;

And Senate 5, by Senator Bruno, an act to amend the State Finance Law.

All bills directly for third reading.

ACTING PRESIDENT KUHL: All bills ordered directly to third reading.

Senator Bruno. Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 1205, Senate 1602B?

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 1205, Budget Bill, Senate 1602B, an act making appropriations for the support of government

on General Government Budget.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT KUHL: Senator Bruno, an explanation has been requested.

SENATOR BRUNO: Mr. President, we have on the desk the appropriation bills to begin the passage of the budget for the people of this state. And this budget, when we complete passage, which we expect to do by tomorrow, will add about a billion 100 million, net, to the governor's budget proposal.

This is a real budget. It is a complete budget. It has record increases for education -- I think 865 million in education. It has over a billion dollars, all funds, in Medicaid and health care restorations, restores about 160 million to TAP, about 160 to 70 million overall in higher education, 200 million in transportation, on top of the Governor's proposal, for roads and for bridges. It has about 93 million in additional revenue sharing in municipalities, with a 2 percent cost of living increase built in. 5 million in Bundy aid.

It does all of the kinds of things that are necessary for people to maintain a quality of life here in New York State. We will be adding 1,100,000,000 in tax cuts. We have our J2K program that is $782 million worth of job creation, economic development, as we partner with the Governor in continuing to move this state forward to create more jobs and to keep the people of this state moving forward in the economic recovery that started five years ago.

So, Mr. President, I'm asking my colleagues to join us. And I know that there will be some in the chamber that have differences of opinion, that have some offerings that they will be submitting. And we will debate those and we will discuss those. But when the day is done, we are going to put a budget in place that will be the Senate's response. We will invite the Assembly to join with us in passing this budget.

We have last year established a conference committee concept. We are asking the Speaker and the Assembly to initiate the

conference committee today, tonight, tomorrow, so that we can engage in open public discussion the differences that we have, if we have differences -- and we do -- and we can have a budget when this session closes in place for the people of this state Wednesday next, on June 16th.

There is no reason why we can't have this budget or something very similar to this in place. As all of you know, you are enjoying life without paychecks. You don't have paychecks because we can't get the Speaker engaged in the conference committee discussion which we have asked to take place yesterday, today, late last week. And as you all know, the Speaker in their resolution in the Assembly added over 4 billion to the governor's budget. It was a nonstarter.

We had indicated that if we could get together on avails, that we would go forward. Somewhere in the neighborhood of the billion, we thought we could engage the Governor. The Speaker last week said that he would be at a billion one to a billion five. We said close enough, let us initiate the

conference committee general committee - yesterday, today -- and if we do that, we'll have an open discussion on our differences.

We have had no response from the Speaker, representing the Majority in the Assembly, other than that they are now thinking that they are back at their 4 million plus, not the billion one to five.

Now, I share that with you because time's passing and when we close regular session, which we will do on the 16th, we're going to leave here. Then we will stay focused on the budget, and all of you will be on call within hours from returning to this chamber to go in the conference committees and to ultimately pass a budget, and we can go on with governing on behalf of the constituency that elects us to represent their best interests.

So, Mr. President, I ask my colleagues for their support in moving this budget process forward towards a successful conclusion.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

SENATOR DOLLINGER: Just one question.

ACTING PRESIDENT KUHL: Senator Dollinger, why do you rise?

SENATOR DOLLINGER: I have a question for the sponsor, if I could.

ACTING PRESIDENT KUHL: Senator Bruno, do you yield to a question?

SENATOR BRUNO: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Thank you, Mr. President.

Is there anything, Senator Bruno - and I appreciate that this has been a difficult and long process. But there is anything that we're doing today that we couldn't have done March 15th or March 20th or April 15th or April 20th or at any time before -- I know that there's a disparity, as you've described it -- I think properly so - between the Assembly position, whatever that is, and the budget that we're going to do today.

But what is it about today -- I mean, today certainly is a day we should start. But why couldn't we have done this back in March or in April, since the positions don't appear to have changed?

SENATOR BRUNO: Well, Senator, as you know, we had agreed with the Speaker that we would do resolutions representing the desires of our individual chambers. We did our resolution that added a billion one to the Governor's budget. And we were not specific, but we were general. The Assembly did their resolution, and that was approximately 4 billion over the Governor's budget. Generally, not specifically.

We had agreed to do it generally because when you print a budget, we're talking about hundreds of pages and thousands of pages. And we thought that it would be more efficient, more prudent to speak generally in the hopes that we would then get the conference committees, when we came together on avails, with the money that was available for the conference committees to budget, and then do a final budget and send it to the

governor. That has not happened.

So rather than leave the people of this state wondering what we specifically meant with our budget resolution, we are now very specific, when you look at the hundreds and hundreds of pages that are represented in these appropriation bills before you, very specific to the detail. And it's now time to do that because we're going to leave next week and we didn't want to leave in the Senate without having completed a budget that we would be proud to stand with and behind for the people of this state.

So that's why now. We did do it in the middle of March generally. We are now doing it specifically. And we're inviting the Assembly to be specific with their general resolution that they passed, and the response that we have is that they are prepared to do the easy parts of the budget, 30 percent of the budget, and save the hard parts for some distant future time. We don't think that's the response that the people of this state deserve.

SENATOR DOLLINGER: Thank you

very much, Mr. President. Just on the bill.

I understand Senator Bruno's explanation, and I appreciate it. But I still think the broader question of whether we could have done today -- or done on March 15th what we're doing today, I think the answer to that question is yes. And I think we could have put together a budget that would have reflected the views of this body to pave the way for discussions in conference committees with the Assembly.

The issue that was supposedly preventing us from doing it back in March, which is the inability to agree on avails, is the issue that still exists today. Nothing has changed, except we're three months later than we should be. And I really think that's the point that needs to be driven home.

There have been times in this chamber in the past where we had done a budget by March 31st, even though there was no fundamental agreement with the Assembly on avails and that there had been no negotiations about working out the details. So we have done in the past -- in the years that I've

been here, certainly, we have done full budgets by the March 31st deadline and then taken time over time -- sometimes a month, sometimes five months -- to work out those details.

And the only reason why I stand, Mr. President, I'm not sure what I'm going to do on this bill, but it seems to me we have waited an awful long period of time to get the job done, that we should have jumped on this job and gotten it done in early March. Nothing has changed. Nothing has changed.

And I would just suggest that we're doing it now that we have our self-imposed deadline of next week when we're not going to be in session. And it seems to me that we've already passed up a number of deadlines before, including that deadline of April 1st, which we seem to have forgotten a long time ago. And what's happened here is unfortunately, however it's accounted for, the state Legislature has dragged its heels, its collective heels, in getting the job done that the people want done and the people needed done.

And I hope that we can reach a resolution. I hope this budget passage triggers a conference committee with the Assembly and a conference committee, if nothing else, on how much revenue is available, the one spot that seems to be needed most to begin to get this process moving along.

Therefore, under those circumstances, Mr. President, I would just - I'm probably going to end up voting against this bill. And I think the time has come to do something, but I'd just remind everybody we've already waited way too long.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

THE SECRETARY: Ayes, 57. Nays, 1. Senator Dollinger recorded in the

negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, may we please take up Calendar Number 1206, Senate Print 1603B.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 1206, Budget Bill, Senate Print 1603B, an act to amend the Insurance Law, in relation to the Property Casualty Insurance Security Fund.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 1. Senator Dollinger recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, will you please call up Calendar Number 1207, Senate 3286A.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 1207, Budget Bill, Senate Print 3286A, an act making appropriations for the support of government, transportation, economic development, and environmental conservation budget.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

SENATOR DOLLINGER: Explanation, Mr. President.

ACTING PRESIDENT KUHL: Senator Stafford, an explanation of Calendar Number 1207 has been requested.

SENATOR STAFFORD: Mr. President, I try not to stand anymore than I have to. But since -- not have to, but that I'm asked to. But since I've been asked to stand, I

would appreciate in answering the question if I couldn't make a -- kind of make a broad stroke with a conceptual brush here to explain where we are.

It's been explained very well by the Majority Leader. I certainly can't improve on it, just join with him. Much of what Senator Dollinger says was not in error, but I'd like to explain from our point of view why we are where we are. I will be brief because I don't want it to empty out completely here.

Mr. President -- Mr. President, with the Majority Leader, Joe Bruno, with the staff of the Senate Finance Committee, with the staffs of all the Senators, with all the Senators, and with the Governor and his people, we no longer, Mr. President, have a $5 billion deficit.

Now, I remember -- I haven't been here as long as Senator Dollinger -- he's gone. Oh, there he is. And he was, you know, bringing up some history. But, Mr. President, I remember when this state was in a position whereby we weren't competitive with the rest

of the country, or the other states, and where this state was going in the wrong direction. And to use language that we all understand, the state was going down, for many reasons. But one of the main reasons was we were spending too much money.

Now, to bring up some of the areas we were spending too much, I always say this because I try to emphasize it. I like to think that I understand the necessity for social services as well as anybody in this chamber, from a personal point of view, and would be pleased to discuss that with anybody individually. On the other hand, we were spending in that area and we were spending in other areas whereby we ended up with $5 billion that we didn't have that we had spent. Deficit.

With Governor Pataki and with our Majority Leader, Joe Bruno, and with our group here, we do now have a surplus. But, Mr. President, we cannot go back to where we were five years ago. If we do, we are not going to be able to provide any services, or we're not -- and we're not going to be able to

support this state. Please forgive me for saying this, but I've been there. I've seen it. And I also see what's been done in the last five years.

One thing I try never to do is to be personal. And I have friends in all parts of this Legislature. But I disagree with some of my friends who are insisting that we go back to where we were five years ago and spend and end up losing jobs, end up not being able to provide the services and to provide the necessary funds for this state.

I only say that, Mr. President, because that's where we are. That's where we are. I'm not going to repeat it, but you heard the Majority Leader. He said it much better than I can. And if there's anybody who wants a budget, it's the Majority Leader. One thing about it, there's not a better negotiator, but he wants to get it done. And we are willing to do so within the framework of fiscal prudence.

The transportation, economic development, environmental conservation bill here provides appropriations for the support

of these agencies involved in the functional area of transportation and the ones that I've mentioned. And I would be glad to answer any specific questions that anyone has.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, would you recognize Senator Smith for purposes of an amendment.

ACTING PRESIDENT KUHL: Senator Smith.

SENATOR SMITH: Thank you, Mr. President. I believe there's an amendment at the desk. I request that the reading of the amendment be waived, and I would like to be heard on the amendment.

ACTING PRESIDENT KUHL: We have received the amendment, Senator Smith. And your request for having the reading waived is granted, and you are now afforded the opportunity to explain the amendment.

SENATOR SMITH: Thank you very much, Mr. President. As when we were doing the original budget proposals, I will be extremely brief and to the point.

The amendments would offer an additional revenue for mass transit in the amount of $25 million for upstate and $50 million for downstate. These increases would come from the expected mass transit operating reserve fund surpluses.

Also, we would request an addition of $35 million to be added to ensure that every train in the city of New York has a conductor on it. And it has been seen in the recent months that it is necessary to ensure that we have an additional person on those trains in the City, and that is exactly what the amendment requests.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the amendment?

The question is on the amendment. All those in favor signify by saying aye.

SENATOR DOLLINGER: Party vote in the affirmative.

ACTING PRESIDENT KUHL: The Secretary will call the roll.

SENATOR SKELOS: Party vote in the negative.

ACTING PRESIDENT KUHL: Record

the party line votes and announce the results.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 22. Nays, 36. Party vote.

ACTING PRESIDENT KUHL: The amendment fails.

Senator Seabrook.

SENATOR SEABROOK: Yes, there's an amendment at the desk, Mr. President. And I would like to -

ACTING PRESIDENT KUHL: There is an amendment at the desk. Are you asking that its reading be waived and you have an opportunity to explain it?

Senator Seabrook, the reading is waived and you now have the opportunity to explain the amendment.

SENATOR SEABROOK: Yes. On this bill, we'd like to amend it where there is a section that we'd like stricken from the Jobs Now program. Where there's $45 million, we'd like to have that new line inserted that it would have $41,500,000 into the new jobs program and that $3,500,000 be inserted for women- and minority-owned business programs in

this state.

And if we are about the business of expanding and developing job creation and job development, that we're also interested in giving opportunities to minorities and to women-owned businesses. So therefore, we're asking that $3.5 million be placed into the minority -- -- women-owned business program.

SENATOR DOLLINGER: Move the amendment.

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

SENATOR DOLLINGER: Party vote in the affirmative.

SENATOR SKELOS: Negative.

ACTING PRESIDENT KUHL: The Secretary will call the roll, record the party line vote, and announce the results.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 22. Nays, 36. Party vote.

ACTING PRESIDENT KUHL: The amendment fails.

Any other member wishing to speak

on the main bill?

SENATOR DOLLINGER: Would you recognize Senator Seabrook?

Do we have a second amendment? Oh, excuse me.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

THE SECRETARY: Ayes, 58. Nays, 1. Senator Dollinger recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 1280, Senate 5808.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 1208, by the Committee on Rules, Senate Print 5808, an act to amend the Real Property Tax Law, in relation to state reimbursement.

SENATOR DOLLINGER: Explanation.

SENATOR STAFFORD: This is 5808, Mr. President?

This bill is an act to amend Article 7 in implementing language provisions relating to transportation. And we all know, due to the Court of Appeals decision a number of years ago -- I believe it was the bank's decision -- we now go through this procedure. And I think everyone understands why we now have, in effect, language bills.

SENATOR DOLLINGER: Explanation sufficient.

ACTING PRESIDENT KUHL: Senator Seabrook.

SENATOR SEABROOK: Yes, Mr. president. There's an amendment at the desk, and I'd ask that the reading of it be waived, with an explanation of the amendment.

ACTING PRESIDENT KUHL: There is an amendment at the desk, Senator Seabrook.

We will waive the reading of the amendment, and you now are afforded the opportunity to explain the amendment.

SENATOR SEABROOK: Well, we'd like to -- this amendment would remove Section 19, which would basically strike out the language that -- also make it inclusive but also with a focus on minority groups and women, so that they can have this opportunity to participate in all of these five-year periods that we're talking about the state has really moved and progressed economically and financially.

So therefore, we are asking that an emphasis and focus be given to minority- and women-owned businesses, as it has been in the past. So if we removed the Section 19 from this amendment, it would certainly afford them the opportunity to participate in this flourishing development and growth for the last five years.

ACTING PRESIDENT KUHL: Any other member wishing to speak on the amendment?

The question is on the amendment. All those in favor signify by saying aye.

SENATOR DOLLINGER: Party vote in the affirmative.

SENATOR SKELOS: Party vote in the negative.

ACTING PRESIDENT KUHL: The Secretary will call the roll and record the party line vote and announce the results.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 22. Nays, 36. Party vote.

ACTING PRESIDENT KUHL: The amendment fails.

The Secretary will read the last section.

THE SECRETARY: Section 9. This act shall take effect April 1st.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1208 are Senators Dollinger, Duane, and Seabrook. Ayes, 55. Nays, 3.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

Senator Duane, why do you rise?

SENATOR DUANE: Mr. President, I'd like unanimous consent to be recorded in the negative on 3286 as well.

ACTING PRESIDENT KUHL: Calendar Number 1208, Senator? Or, excuse me, 1207?

SENATOR DUANE: Yes, Mr. President. Thank you.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Duane will be recorded in the negative on Calendar Number 1207.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 1209, Senate 3287A.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 1209, Budget Bill, Senate Print 3287A, an act making appropriations for the support of government, public protection, health and

mental hygiene budget.

ACTING PRESIDENT KUHL: Senator Duane, why do you rise?

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

ACTING PRESIDENT KUHL: Senator Duane, the amendment is at the desk. You are now asking for the reading to be waived and for an opportunity to explain it?

SENATOR DUANE: I would request that.

ACTING PRESIDENT KUHL: Your request is granted. You are now afforded the opportunity to explain the amendment.

SENATOR DUANE: Thank you very much, Mr. President. This amendment provides for additional funding for, for instance, senior programs, a nutritional program, the naturally occurring retirement community to support them, the congregate services, services for community-based organizations providing programs for older New Yorkers.

In addition, money would be provided to the AIDS Institute to provide

treatment compliance for persons with AIDS. As I'm sure many of you are aware, that has worked very well in virtually eliminating tuberculosis from our cities. This would help people with AIDS to take the difficult regimen of drugs which will keep them alive.

In addition, there's money for community health programs, providing family planning services, maternal and child health programs, school-based clinics, all of which will help provide for a healthier next generation in our state. And there's also a million dollars for protection of our reproductive services clinics. And I would like to give a thank you to Senator Schneiderman for that particular part of this amendment.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the amendment?

The question is on the amendment. All those in favor signify by saying aye.

SENATOR DOLLINGER: Party vote in the affirmative.

SENATOR SKELOS: Party vote in

the negative.

ACTING PRESIDENT KUHL: The Secretary will call the roll, record the party line votes, announce the results.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 22. Nays, 36, party vote.

ACTING PRESIDENT KUHL: The amendment fails.

Senator Gentile, why do you rise?

THE SECRETARY: Yes, Mr. President. I believe there's an amendment at the desk.

ACTING PRESIDENT KUHL: There is, Senator Gentile.

SENATOR GENTILE: I'd ask that the reading be waived and allow me to explain.

ACTING PRESIDENT KUHL: Your question is granted.

SENATOR GENTILE: Great. Thank you, Mr. President.

This amendment would add monies to the aid to localities for the EPIC program so that the income limits will be raised for our senior citizens to participate in the EPIC

prescription drug program.

I've said it before on this floor and I'll say it again. As of January 1st of this year, we have a new set of refugees here in the state of New York, and those refugees are the HMO refugees. Those are the 55,000 seniors across the state of New York who were dropped by their HMOs as of January 1, 1999. And as a result of being dropped by their HMOs, many of them, many of those 55,000 cannot afford to get another health policy or Medigap policy that will cover prescription drug use. As a result, we have many, many, many seniors without coverage for prescription drugs.

This amendment will increase the EPIC program, the eligibility limits so that more seniors can participate and more of those seniors would be covered. Today's New York Times, the first page of the New York Times talks about how this is an issue across this country and how the Republicans and the Democrats in Congress are putting together legislation to help the seniors across this country with prescription drug coverage.

We need to do that in this state. We are a compassionate state. And when I hear stories about seniors not able to afford food and clothing because they have to spend full amounts on prescription drugs, it hurts. When I hear particularly a woman who in this state had to spend $300 a month for prescription drugs and then use the rest of her fixed income for food and had to buy cat food on a monthly basis because that's all she could afford, that's outrageous in the state of New York.

We are a compassionate state. And I've spoken to many of my members -- many of the members on the other side, and many of the members on the other side of the aisle agree that something needs to be done in this area. So I'm asking for the compassion of this body and for the compassion of the state of New York to show through with this amendment.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the amendment?

Senator Maziarz.

SENATOR MAZIARZ: Thank you very

much, Mr. President.

Just for the record, I'd like to state that in the Senate Majority's budget proposal, there is $4 million, an additional $4 million for the EPIC program. And last year -- in last year's budget, for the first time in many years, the EPIC program was expanded to the extent of I think around $12 million additional going into the EPIC program, which has greatly enhanced the program.

More seniors can -- the income eligibility, I say, was dramatically decreased and the results were immediate, Mr. President. There are today more seniors enrolled in EPIC than there have been since the program's inception. And December of 1998 marked the first month that there were more seniors added to the EPIC rolls than were taken off of the enrollment figures for EPIC.

So the Senate Majority is concentrating on the EPIC program. We made - we took a very large step towards ensuring that more seniors would be eligible for the EPIC program last year to the tune of

$12 million, and the Senate Majority has put an additional $4 million in this year's budget. And the EPIC program is expanding and covering more and more seniors.

Thank you, Mr. President.

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

SENATOR DOLLINGER: Party vote in the affirmative.

SENATOR SKELOS: Party vote in the negative.

ACTING PRESIDENT KUHL: The Secretary will call the roll, record the party line votes, announce the results.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 22. Nays, 36. Party vote.

ACTING PRESIDENT KUHL: The amendment fails.

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

THE SECRETARY: Those recorded in the negative are Senators Dollinger and Duane. Ayes, 56. Nays, 2.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 1210, Senate 5810.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 1210, by the Committee on Rules, Senate Print 5810, an act to amend the Executive Law, in relation to reimbursement.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT KUHL: Senator Stafford, an explanation of Calendar Number 1210 has been requested by Senator Dollinger.

SENATOR STAFFORD: Thank you, Mr. President.

Mr. President, this bill again is implementing language relating to the public protection budget. There was a time when we didn't find this necessary. Again, due to the Court of Appeals decision, we have these two separate bills.

SENATOR DOLLINGER: Explanation satisfactory.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1210 are Senators Dollinger, Duane, and Seabrook. Ayes, 55. Nays, 3.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 1211, Senate 3288A.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 1211, Budget Bill, Senate Print 3288A, an act making appropriations for the support of government, education, labor, and family assistance budget.

ACTING PRESIDENT KUHL: Senator Dollinger, why do you rise?

SENATOR DOLLINGER: No reason, Mr. President. Just changing seats.

ACTING PRESIDENT KUHL: Thank you for changing seats.

Senator Paterson, thank you for showing up.

(Laughter.)

SENATOR PATERSON: I'm back.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

Excuse me. Senator Hevesi, why do you rise?

SENATOR HEVESI: Mr. President, I

believe there's an amendment at the desk.

ACTING PRESIDENT KUHL: There is an amendment at the desk, Senator Hevesi.

SENATOR HEVESI: Thank you. I ask that its reading be waived, and I wish to be heard on the amendment.

ACTING PRESIDENT KUHL: The reading of the amendment is waived, and you're now afforded the opportunity to explain the amendment.

SENATOR HEVESI: Thank you. Mr. President, this amendment that's before us would add $600 million to the state budget in recognition of prior year school aid claims.

I've spoken on this floor numerous times this session on this issue, and I'm much dismayed that we have not yet addressed the issue. And it now joins a long litany of issues, including hate crimes, including clinic access, that we have just failed to address.

And it's really tragic. It's tragic for all the children in the state of New York and particularly the children in the city of New York, because the city of New York

is currently owed $725 million in prior year school aid claims. All of the school districts -- or not all of them, many of the school districts throughout the rest of the state in the aggregate are owed in excess of $95 million in prior year school aid claims which have not been addressed.

And the city of New York, as a result of a lack of payment, has not submitted additional claims in excess of $400 million, meaning that the state's outstanding obligation to the entire state, and particularly the City, exceeds $1.1 billion. And 88 percent of that is owed to the City of New York, with the remaining 12 percent owed to the other school districts throughout the state, which is -- makes particularly ironic the terrible situation whereby a section of the State Education Law currently precludes any one school district from receiving in excess of 40 percent of whatever aid is allocated in recognition of prior year claims this year or in any year. Which means that since the Executive budget includes $36 million, the City of New York will only

get $14.4 million this year, though we are owed $1.1 billion. It is outrageous and tragic.

The amendment that's before us will go somewhere in terms of finding the right direction in order to finally address this problem. And I must say, Mr. President, that at a time when we have crumbling school buildings in the city of New York and we have educational problems throughout the entire state, we're trying to reduce class sizes, we're trying to implement universal pre-K, not to address this issue -- maybe because we have some kind of institutional inertia which says, kind of analogous to what's going on with the budget, "Well, we haven't adopted a budget on time in 15 years, so I guess we don't have to do it this year -- "We haven't addressed this prior year school aid problem in over 10 years, so I guess we don't have to address it -- it's disgraceful.

And to highlight the disgrace, this year, if by the end of this month the City of New York does not receive $39 million, the City of New York will forfeit $39 million

because those claims are in excess of 10 years and because of accounting procedures, the money has to be written off. So the schoolkids in the City of New York lose $39 million this year if we fail to act. And we're cheating them and the kids in every other school district that's owed money under prior year claims every single year we fail to act.

Let's do something about this eventually, and maybe we will have left here at some point saying that this was a productive legislative session. I urge all of my colleagues to support this amendment. And in the unlikely event that it does not pass, I would request that in the conference committee process, should we ever get to it, that this issue receive the highest consideration.

ACTING PRESIDENT KUHL: Senator Dollinger, on the amendment.

SENATOR DOLLINGER: Mr. President, I just want to rise and second my colleague, Senator Hevesi, on this amendment.

I can remember, Mr. President, when I was coming of political age in the late

1960s, I kept reading all these stories about the debtor nations. These were nations that owed debts -- they were mostly Third World nations, and they owed debts to First World countries, hundreds of millions of dollars of debtor nations. And they were strange places like Paraguay and Uruguay and Costa Rica and Honduras. And they were these terrible debtor nations.

And now we're running this debtor state that owes a billion one in back school claims, $900 million to the City of New York, money to my school districts, both Brighton and Greece and the City of Rochester. And now I find out -- I get elected in the great state of New York and I find out we're one of those debtor states. We owe a billion one and we don't pay our bills.

Senator Hevesi seems to me to be doing exactly what a good conservative would do. Before you start spending the money to do new things, let's take care of the old debts, let's get them paid. This makes so much eminent sense. It would be such a good message to send to our school districts. It

would be a wonderful message to send to people like bond traders. They might even raise our bond ratings, scuttled down near the bottom of our bond rating, if we began to pay some of our outstanding bills.

It's a shame that 39 million's going to fall off the table, Senator Hevesi, while we continue to wait for these bills to be paid. But my guess is that that's the first $39 million, an installment, of a debt that's going to continue to shrink not because we're paying it off but because it's lapsing through accounting practices. I agree with you, it's a disgrace.

Let's stop being a debtor state. Let's be a creditor state in favor of our school districts. It starts with passing this amendment.

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

SENATOR DOLLINGER: Party vote in the affirmative.

SENATOR SKELOS: Party vote in the negative.

ACTING PRESIDENT KUHL: The Secretary will call the roll, record the party line vote, announce the results.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 22. Nays, 36. Party vote.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Lachman.

SENATOR LACHMAN: Yes, I believe there's an amendment at the chair, Mr. President.

ACTING PRESIDENT KUHL: The amendment was defeated, the previous amendment.

Senator Lachman, there is an amendment under -- yes, at the desk. You want to waive reading -

SENATOR LACHMAN: I'd like to waive the reading.

ACTING PRESIDENT KUHL: You're afforded the opportunity to explain it at the this moment.

SENATOR LACHMAN: Fine. Thank you kindly.

Whether we're from north, east,

south, west New York State, all of us are justly proud of the State University of New York. The State University of New York is the largest public university in the United States. It has four crown jewels, as we know: Stony Brook, Albany, Buffalo, and Binghamton. But it also has some of the finest community colleges in the nation. And these community colleges are hurting. The tuition for community colleges in the State University of New York are the highest of any state university in the United States.

Now, my amendment, Mr. President, increases the community college base aid by $75 per full-time tuition, FTEs. Now, if we don't vote affirmatively on this, the State University of New York will have to increase tuition at the community colleges in the State University of New York. It impacts upon all our communities. It also will of course impact on the City University of New York.

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

SENATOR PATERSON: Party vote in

the affirmative.

SENATOR SKELOS: Negative.

ACTING PRESIDENT KUHL: The Secretary will call the roll, record the party line votes, announce the results.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 22. Nays, 36. Party vote.

ACTING PRESIDENT KUHL: The amendment is lost.

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negative vote and announce the results.

THE SECRETARY: Ayes, 56. Nays, 2. Senators Dollinger and Duane recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 1212, Senate Print 5809.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 1212, by the Committee on Rules, Senate Print 5809, an act to amend the Education Law, the Local Finance Law, and Chapter 58 of the Laws of 1998.

ACTING PRESIDENT KUHL: Senator Padavan, why do you rise?

SENATOR PADAVAN: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Padavan, on the bill.

SENATOR PADAVAN: Mr. President, there's a portion of this bill, regrettably - because there's so much in this bill that's desirable and worthwhile to the people of this state. But a section of it on page 36 and 37 relates to the resurrection of a casino game which has been labeled Quick Draw.

Those of you who were here in 1995 will recall that the way it got through, in my

view, was because it was coupled with a bill that also had some very significant positive aspects, primarily a tax cut. There was a great deal of resistance throughout the Legislature for initiating this form of gambling in New York State, so many things were done to try and placate those who were in opposition.

One of the things that was required in that enacting law was a study to determine the impact that Quick Draw would have upon the people of this state, particularly as it related to the social impact with regard to those who are prone to problem gambling and those who are compulsive gamblers.

That study has never been done. At least I've not seen it. A firm was contracted for, with, to do it, Goldfarb Associates, a marketing firm that has done work for lotteries. And we were certainly prone to criticize that initiative because we felt, as many others would feel, that if a study were to be done, it should be done by experts in the fields of problem gambling and related areas.

So there is no study, so that legislative requirement has not been met. If there were no other reason, certainly that one would stand out as why we should not be including a resurrection of Quick Draw in the budget bill now before us. But there are many other reasons.

While the State Lottery Division and OMH, which in the statute was charged with the responsibility -- the Office of Mental Health -- in conjunction with our State Council on Problem Gambling to do this, have not met that requirement, others have.

Our State Council on Problem Gambling did studies, there were two of them. And in one of those studies, and I will quote the director. She said, "The only data available at this time is the Council's prevalent studies and reports to its 24-hour help line." That's an 800 number that people call if they are in trouble or feel they are in trouble, and obviously those who do are quite desperate. This research documents the adverse impacts from Quick Draw and the pervasiveness of alcohol use among New York

State's problem gambling population. I repeat, this research documents the adverse impacts from Quick Draw.

And if you read that entire study, we see that thousands and thousands of people have now been drawn into the problems related to gambling in this state because of something we did in 1995. Shame on us. But more shame because we're going to do it again if this prevails.

Now, there's another, broader study that's just been completed, and I'm sure you're all aware of the fact that there is a national federal commission that's been traveling throughout the country dealing with all of the aspects of gambling. And they published their preliminary report, and their final report will be in a couple of weeks. And in this study, they have come up with pages after pages of recommendations of what should be done at the state level, at the federal level, in every area of gambling you can think of.

But I would like to focus on what their recommendations are with regard to this

issue. The commission received testimony that convenience gambling, such as electronic devices -- and that's what Quick Draw is. A screen, every five minutes you fill out a card, pick out numbers. You can bet up to a hundred dollars on that card, depending on how fast you are. You can let them pick the numbers and do it in an instant. The commission received testimony that convenience gambling such as electronic devices in neighborhood outlets provides fewer economic benefits and creates potentially greater social costs by making gambling more available and accessible. The commission recommends that states should not authorize any further convenience gambling operations and should cease and roll back existing operations.

And obviously we're sticking our thumb right in their eye because we're doing just the reverse.

One other recommendation that I would like to bring to your attention indicates their recommendation that states with lotteries reduce their sales dependence on low-income, less educated minorities and

heavy players in a variety of ways, including limiting advertising and the number of outlets in low-income areas.

The fact remains that of the almost 3,000 Quick Draw outlets, the majority of them are in low-to-middle-income communities, the very people that the federal commission is citing in this recommendation. And we're sucking a half a billion dollars out of their pockets with Quick Draw alone, a half a billion dollars that would be going into the economy in true economic development.

Proponents of Quick Draw have cited the loss of jobs to those outlets that provide Quick Draw. Well, I don't know. We've been out of Quick Draw now for a little over two months, and I don't see these places closing and I don't see any mass unemployment and I don't see any negative impact. But what I do see is a positive impact, fewer people getting hooked. Fewer families getting hurt when daddy loses his paycheck because he stopped at a neighborhood bar and blew it on a Quick Draw terminal.

And so, Mr. President, without

belaboring the issue much further, I would like to say that I find this inclusion of resurrecting Quick Draw, for all the reasons I've stated and many more that we could talk about, to be a major mistake.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Mr.President, I just rise -- I've shared Senator Padavan's view about this, the question of New York State and not only the loss of Quick Draw but the loss of the lottery. And I agree with everything he said. Which is unusual, I think, Senator Padavan, that we'd be in that position.

But certainly the Quick Draw problem continues to be, in my judgment, purely and simply a poor people's tax. And we're removing $500 million worth of income, disposable income, to families that just don't have it. The poorest people in this state are contributing $500 million to Quick Draw.

I would suggest that if we sat here and said the poorest people in this state are taking $500 million of their money and

virtually throwing it away, virtually burning it, we would sit here and say that's a tragedy, that's an absolute tragedy. Instead, they're trying to get them using the Lottery's famous "Dollar in a Dream," "$5 in a Dream," "$20 in a Dream," "$10,000 in a Dream." We have hooked them through our own advertising efforts. We have created this problem, and it's time to end it.

And I would just concur with him as well with respect to the advertising in the lottery. I would hope someday that we might take a look at the advertising right here in New York and find that it is terribly misleading. They recently changed the nature of the games in the lottery. They said more prizes, more opportunities to win. And what in actual fact they did was reduce the overall prize money to increase the take from the lottery. I think it's a disgrace. I continue to think of it as a disgrace. And yet we move down this road of state-sponsored gambling with no end in sight.

I concur with Senator Padavan. I've voted against other parts of the budget.

I'm going to vote against this piece because of this plank right here. It's a huge, huge mistake.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 81. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 1212 are Senators Dollinger, Duane, Montgomery, Onorato, Padavan, Paterson, Schneiderman, and Stachowski. Ayes, 50. Nays, 8.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Alesi, why do you rise?

SENATOR ALESI: Mr. President, may I ask unanimous consent to be recorded in the negative on Calendar Number 1200.

ACTING PRESIDENT KUHL: Without

objection, hearing no objection, Senator Alesi will be recorded in the negative on Calendar Number 1200.

Senator Maziarz, why do you rise?

SENATOR MAZIARZ: Thank you very much, Mr. President. Mr. President, I'd like unanimous consent to be recorded in the negative on Calendar Number 1200.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Maziarz will be recorded in the negative on Calendar Number 1200.

Senator Schneiderman, why do you do rise?

SENATOR SCHNEIDERMAN: Mr. President, I ask unanimous consent to be recorded in the negative on Calendar Number 1098.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Schneiderman will be recorded in the negative on Calendar Number 1098.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of -- motions

and resolutions, there's a privileged resolution at the desk, 1711, by Senator Fuschillo. I ask that the title be read and move for its immediate adoption.

ACTING PRESIDENT KUHL: Return to the order of motions and resolutions.

There is a privileged resolution by Fuschillo at the desk. The Secretary will read the title.

THE SECRETARY: By Senator Fuschillo, Legislative Resolution Number 1711, honoring Edward P. Mavragis for his dedicated service as Superintendent of the Seaford Union Free School District.

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

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The resolution is adopted.

Senator Stachowski, why do you rise?

SENATOR STACHOWSKI: Mr.President, I'd like unanimous consent to be recorded in the negative on Calendar Number 1072 and Calendar Number 1200.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Stachowski will be recorded in the negative on Calendar Number 1072 and Calendar Number 1200.

Senator Skelos.

SENATOR SKELOS: Mr. President, before we go back to reports of standing committees, I just want to remind the members that we still have Senator Bonacic's bill to complete and then Senator Volker also has a bill.

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

ACTING PRESIDENT KUHL: Return to the order of reports of standing committees.

The Secretary will read the report of the Rules Committee.

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

following bills directly for third reading:

Senate Print 4, by Senator Bruno, concurrent resolution of the Senate and Assembly;

Senate 236A, by Senator Kruger, an act authorizing the City of New York;

961, by Senator Alesi, an act in relation in permitting;

1534, by Senator Goodman, an act to amend the Public Health Law;

1557, by Senator LaValle, an act to amend the Vehicle and Traffic Law;

1838, by Senator Johnson, an act to amend the Tax Law;

1969, by Senator LaValle, an act to amend the Public Health Law;

3069, by Senator Skelos, an act to amend the Civil Practice Law and Rules;

3245, by Senator Kuhl, an act to amend the Vehicle and Traffic Law;

3683A, by Senator Lack, an act to amend Chapter 69 of the Laws of 1992;

3896, by Senator Saland, an act to amend the State Finance Law;

4134A, by Senator Marcellino, an

act to amend the Environmental Conservation Law;

4162A, by Senator Wright, an act to amend the Public Service Law;

4207, by Senator Stafford, an act to amend the State Finance Law;

4298, by Senator Bruno, an act in relation to the timeliness of the election of the Village of Castleton-on-the-Hudson;

4322, by Senator McGee, an act to amend the New York State Urban Development Corporation Act;

4484, by Senator Goodman, an act to amend the Tax Law;

4546A, by Senator Stafford, an act to amend the Tax Law;

4754, by Senator Trunzo, an act to amend the Vehicle and Traffic Law;

4762, by Senator Trunzo, an act to amend the Vehicle and Traffic Law and the Transportation Law;

4810, by Senator Maltese, an act to amend the Environmental Conservation Law;

4886, by Senator Goodman, an act to amend Chapter 188 of the Laws of 1862;

4900A, by Senator Skelos, an act to amend the Penal Law;

4959, by Senator Maziarz, an act to amend the Town Law;

5014A, by Senator Seward, an act to amend the Vehicle and Traffic Law and the Insurance Law;

5054, by Senator Hoffmann, an act to amend the Vehicle and Traffic Law and the Insurance Law;

5069, by Senator Farley, an act to amend the Banking Law;

5086, by Senator Maziarz, an act to amend Chapter 693 of the Laws of 1996;

5198, by Senator Bonacic, an act to amend the administrative code of the City of New York;

5616, by Senator Padavan, an act to amend the General Municipal Law;

5661, by Senator Larkin, an act to amend the Real Property Law;

5676A, by Senator Larkin, an act to authorize the Commissioner of the Department of Transportation;

5732, by Senator Bonacic, an act in

relation to adjusting.

All bills directly for third reading.

ACTING PRESIDENT KUHL: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, I move to accept the report of the Rules Committee.

ACTING PRESIDENT KUHL: The motion is to accept the report of the Rules Committee. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The Rules Report is accepted. The bills are ordered directly to third reading.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, could we return to the controversial calendar and call up Calendar Number 1150, please.

ACTING PRESIDENT KUHL: The

Secretary will read Calendar Number 1150, temporarily laid aside earlier today.

THE SECRETARY: Calendar Number 1150, by Senator Bonacic, Senate Print 4471A, an act in relation to enacting the Christopher Gardner Memorial Act.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Will the sponsor yield to a couple of questions, Mr. President?

ACTING PRESIDENT KUHL: Senator Bonacic, do you yield to a question?

SENATOR BONACIC: I do.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: First of all, Senator, one of the things I just want to make sure I understand about this bill is that this bill applies when the newborn child tests positive for drugs or alcohol; isn't that correct?

SENATOR BONACIC: That is correct.

SENATOR DOLLINGER: Again,

through you, Mr. President, if Senator Bonacic will continue to yield.

ACTING PRESIDENT KUHL: Senator Bonacic, do you continue to yield?

SENATOR BONACIC: I will continue to yield to all of his questions.

SENATOR DOLLINGER: That would mean, through you, Mr. President, that the mother had been exposed to drugs or alcohol during a period of time shortly before the delivery of the child. Is that what this bill seeks to do, is to detect that?

SENATOR BONACIC: That particular section of the legislation, the answer is yes.

SENATOR DOLLINGER: As I understand it -- again, through you, Mr. President -- that's because the presence of drugs or alcohol in the blood system of the mother creates a danger to that child, a danger of physical abuse; is that correct? This deals with the potential for physical abuse; isn't that correct?

SENATOR BONACIC: The legislation is broader than that. It could be emotional abuse, it could be, well, sexual abuse or

malnutrition.

But your answer was -- I would say yes to your question.

SENATOR DOLLINGER: My question, through you, Mr. President, if that's the goal -

ACTING PRESIDENT KUHL: Senator Bonacic, do you continue to yield?

SENATOR BONACIC: I do.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: The goal of your legislation is to say that parents who are abusing drugs or alcohol should have their children removed from them; is that correct?

SENATOR BONACIC: No. No. It's -- you're narrowly defining the legislation, and it's much broader and comprehensive than that.

What the legislation is saying, that if a newborn is born and -- with urine or blood and there's drugs in the urine or the blood, that's a red flag. A danger sign goes up. And then we have to look at this situation more carefully.

And you will then have a family court judge have the people before him, the mother and any other people in the household, and the judge will make a determination that perhaps there were extenuating circumstances and may put the baby back into the house with the mother. And have, you know, social services coming in and looking, and counseling for drug abuse, and try to give assistance to that family and make it stronger. And the baby could be with the family, not necessarily snatched and/or removed.

SENATOR DOLLINGER: Okay. But, through you, Mr. President -

ACTING PRESIDENT KUHL: Senator Dollinger, are you asking Senator Bonacic to yield to another set of questions?

SENATOR DOLLINGER: Yes, Mr. President.

SENATOR BONACIC: I do. I do.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Just so I understand it, though, what you see and what this legislation is designed to do is to say

that there's a correlation between those children who are exposed to drugs or alcohol in utero and the potential for some abuse, some form of abuse after they're born?

SENATOR BONACIC: Yeah, we're saying there is a correlation, that to put that child and reunite them in the house with the mother where there may be drug activity creates a risk of danger or harm. And it creates a rebuttable presumption, by the way, on behalf of the mother to go forward and say that's not the case.

SENATOR DOLLINGER: But through you, Mr. President, that only involves the conduct of the mother of the child. It doesn't involve the conduct of the father of the child, who could be a drug and alcohol abuser and would be a far greater danger to the child than its mother. Isn't that correct?

SENATOR BONACIC: That is correct.

SENATOR DOLLINGER: So what this bill really does is it singles out women who are drug abusers and substance abusers, and

says to them if you have a child, we are going to create a rebuttable presumption that we'll remove your child, but if your husband or your boyfriend, the father of the child is a drug and alcohol abuser, this bill does nothing to detect that, even though I believe the statistics show that the male parent is a far greater danger to the child than the female parent. Isn't that correct?

SENATOR BONACIC: Let's go back a minute. We're talking specifically now on a newborn child, as opposed to many reasons why a child beyond the newborn stage is removed from a household. It could be drug activity in that household; it could be, as I said, sexual abuse; it could be neglect, malnutrition, emotional abuse. It could be an assortment of all of these things.

But on the newborn situation which you're focusing on, the family court will not only look into the mother's activities, it will look into her relationships with everybody else that's in that household and whether or not that baby should be returned to that household.

SENATOR DOLLINGER: But again, through you, Mr. President -

ACTING PRESIDENT KUHL: Senator Bonacic, do you continue to yield?

SENATOR BONACIC: I do. I do.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: This bill does nothing to prevent child abuse if the father of -- this portion of the bill does nothing to prevent child abuse, mental abuse, the abuse you've talked about, if the father is the culprit and the mother is clean; is that correct?

Because the mother of the child - since the child gets its blood system from its mother, if the mother -- the father is a drug and alcohol abuser but the mother is clean, this bill says that the child -- there's no presumption created, there's no removal, there's no light that goes off that suggests there's a problem, but the child is introduced into a family where the father could be the perpetrator of those kinds of abuse.

SENATOR BONACIC: In those -- in

that particular circumstances, you're right, you'll need something else to trigger an event in that household to cause intervention.

SENATOR DOLLINGER: Okay. If that's the case -- again, through you, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger, you're asking Senator Bonacic to yield again?

SENATOR BONACIC: I do.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: If you believe that the presence of drug and alcohol abuse is a -- of a parent is a signal for potential abuse of the child, why doesn't this bill say that if you're convicted of driving while intoxicated or if you test positive for drugs in your employment, that you trigger the exact same issues? Why shouldn't we look at, since your corollary is if the parents, either one of parents are abusing drugs, there's a potential for abuse of the child, an unreasonable potential, an intolerable potential for that, why don't we say that

anytime a parent with a child under age 18 is convicted of driving while intoxicated, is - tests positive in an employment context, why wouldn't your bill immediately trigger the same response? Why is it just pregnant women and newborn mothers who bear the responsibility for this?

SENATOR BONACIC: I think we're trying to achieve a balance in preserving the family unit and not overly intervene every time there is an incident of an adult in a household and how it affects the child or children in that household.

So I would say to you that, you know, the legislation doesn't cover that. It -- one of the things that I'd like to point out to you, if I may, that -- I'll just take a second, if I may -- "Young children remain at high risk for loss of life. Between 1995 and 1997, 78 percent of these children were less than five years old at the time of their death."

So the particularly young children seem to be more vulnerable. And we're saying when the baby is born -- and that is the most

innocent victim, that needs the most safeguards and protection, we're going to take a look in those circumstances into the family household and whether the baby should be returned to that household starting out.

SENATOR DOLLINGER: Again, through you, Mr. President, if Senator Bonacic will continue to yield.

SENATOR BONACIC: I do.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: What happens under your bill if the mother tests positive, the father does not test positive, and the court makes a determination that the mother is not fit to have the child but that the father is and the mother and father are still living together? What do you do?

SENATOR BONACIC: I think under our bill, it's what's in the best interests of the child. And I think that the family court judge makes a determination, on balance, of whether or not in that family environment the health and safety and best interest of the child is preserved or not.

If the court finds in that specific instance that there are overbearing circumstances that the best interests of the child would be jeopardized having, let's say, a bad mom and a good dad, that child is removed.

SENATOR DOLLINGER: Okay. A couple of quick questions, through you, Mr. President, on the specifics of the bill, and then I'll -

ACTING PRESIDENT KUHL: Senator Bonacic, do you continue to yield?

SENATOR BONACIC: I do.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: The provision of the bill that deals with the fatality review team, that team, as I read the legislation, is given very broad powers to investigate child fatalities. Does it require that those fatalities be in any way related to the alcohol or substance abuse of either parent?

SENATOR BONACIC: It does not. It's -- it's -- they're comprehensive, to do a

broad investigation as to what caused the death of the child. And it -- alcohol or drugs may not be part of what caused the death of the child.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Bonacic will continue to yield.

SENATOR BONACIC: I do.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Senator, why wouldn't we just simply have a mandatory referral to the district attorney's office to investigate fatalities of children under the age of 5 or 7? As you know, grand juries have the ability not only to issue indictments but can issue reports, can issue determinations, white papers, can come up with fact-finding about circumstances which could lead to beneficial legislative changes or changes in policies and procedures.

Why create another level of government when we could simply refer to the district attorney, have him sent it off to a grand jury, and have that same kind of

investigation occur?

SENATOR BONACIC: I think that's a fair question. I think on the fatality review board it does call -- at local option, by the way -- for a member of the district attorney's office to participate. But we also require a person from Child and Protective Services. There were, I think, three or four categories.

And people with specialties we thought could lend more wisdom in determining not only the cause of death but what steps could be done to prevent future deaths, whether they make recommendations -- it would be broader, and a broader base to analyze the problem. But I'm not saying that only a district attorney couldn't do what you're suggesting.

SENATOR DOLLINGER: Thank you very much, Mr. President. I appreciate Senator Bonacic's candid evaluation and responses to my questions.

On the bill, Mr. President. This bill stems from a laudable premise. And the premise is that children in a household where

a parent is abusing drugs or alcohol creates a potential of harm to the child. That premise -- and I agree with Senator Bonacic. I agree that that's a premise that ought to drive us to do something. The question becomes, what do we do? What's reasonable for us to do?

This bill says, when it's broken down -- at least the critical part of it that I quizzed Senator Bonacic on -- this bill says that if the mother tests positive for either drugs or alcohol, the State of New York, the state, the government, will have the ability to remove the child from, potentially, the child's family, which could include both the mother and the father, even if the father tests without any presence of drugs or alcohol at all.

This bill says that the State of New York will decide whether the child will be given over to its parents. This bill does not require the father to be tested at the time of birth. It says that the child's going to be tested and, because the child gets its blood system from its mother, that if the mother has

drugs or alcohol, then there's an unreasonable threat, an intolerable threat to the child.

I would suggest to Senator Bonacic that the -- I agree with his premise. I go back to my original comment, I agree with the premise. But I would suggest that it's the father oftentimes, including -- or the roommates, the male roommates, as in the case of the child who was tragically killed, which Senator Bonacic is attempting to put onto this bill, give this bill a name -- which I also appreciate. But I would suggest that it's the male presence that poses the great danger to the child. And this bill doesn't deal with the dangers posed by fathers to their children, it only deals with the correlation between the blood alcohol of the mother and the blood alcohol of the child.

To that extent, Mr. President, I think the bill unfairly singles out women, pregnant women and women who have just given birth. I would suggest to Senator Bonacic if he wants to be consistent in his theory - that is, that high levels or that the blood alcohol and the use of drugs and alcohol by a

parent are a danger to the child -- I would suggest that logical consistency would drive us to a position where we would say if you're found guilty of driving while intoxicated, if you're found to be using drugs at your place of employment, if we believe that drug and alcohol use on the part of the parents creates a danger to the child, the logical corollary would be to say we're going to start looking at this every time there's a report, every time someone is arrested for DWI, we're going to create a rebuttable presumption that you're no longer fit to be a parent.

Why wouldn't we do that? And I would suggest because we all know that that bill would mean fathers would suddenly be found in large numbers to be unfit to be parents because of their use of alcohol. And I would suggest that's why we wouldn't do it, because it would be too pervasive. Yet why do we do it for pregnant women and women who've just given birth? Why do we single out this most defenseless group of women when we won't hold adult men to the same standard? Instead, we're going to hold young mothers to it.

I'm not sure, Senator Bonacic - and believe me, I strongly support the best interests of the child as the test for these decisions about children. And I agree that there are thousands of examples where the family court judges have to step in and figure out is this the right thing, for a child, to do or not? And I also agree that you could create a rebuttable presumption that drug and alcohol use by the mother is a danger to the child.

I will also tell you there is one other, I believe, irrebuttable presumption that we can never forget, that the best thing for a child is to be held in its mother's arms. And it seems to me that we cannot single out women, we cannot single out young, pregnant women.

If what we want to do is to say if you use drugs and alcohol, it's presumed that you're going to be a bad parent and we're going to look at your family life to determine if you should still have jurisdiction over your kids, I could live with that. Maybe - at least it would be worth discussion.

But to single out pregnant women alone, young women, for this test, to ignore the responsibilities of the fathers, to immediately throw them into the family court and to deal with the other issue -- that is, the issue of how do they rebut that presumption when oftentimes they don't have the financial resources to do it -- I think that's an enormous burden to throw on them.

I would hope that our social services would intervene with children as quickly as they can. But I'm very leary of giving Big Brother the ability to take over where mom and dad should be playing out. This is Big Brother singling out young mothers, and I think, when all is said and done, it's unfair.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

Senator Morahan.

SENATOR MORAHAN: Mr. President, if the sponsor would yield to a question.

ACTING PRESIDENT KUHL: Senator Bonacic, do you yield to a question from Senator Morahan?

SENATOR BONACIC: I do.

SENATOR MORAHAN: Senator, under current law is there any set of circumstances wherein a child can be removed from a household or a home setting that -- where the child is in jeopardy?

SENATOR BONACIC: Yes, there is. The family court could make a judgment now that there is a harm or danger to the child and it's not in their best interest to stay there and could do that, yes.

SENATOR MORAHAN: Will the sponsor continue to yield?

ACTING PRESIDENT KUHL: Senator Bonacic, do you continue to yield?

SENATOR BONACIC: I do.

SENATOR MORAHAN: And would those circumstances usually occur by someone bringing something to the attention of the court, either by way of complaint or some other evidentiary way?

SENATOR BONACIC: Yes. Normally a complaint would come from a member of the family. Perhaps it could be couples that are split, through the father against the mother.

It could be an uncle or an aunt. Usually it's a family member that has knowledge of what's going on.

But the problem that's facing a family court judge is there's a tendency to try to preserve the family unit. And what we want to do is to give that judge a clear direction that the standard will not be just the family unit but what is the best interest and safety of the child. It gives a statutory, clear direction not only to the judge, to district attorneys, to social service agencies, to anyone that deals in this field in protecting children.

SENATOR MORAHAN: Will the sponsor continue to yield, Mr. President?

SENATOR BONACIC: I do.

SENATOR MORAHAN: Would it be fair to say that on testing of the child that this is another methodology to see if there's something that either child protective services or someone else should look into or investigate?

SENATOR BONACIC: Right now, if a child was born with drugs either in its blood

or urine, that would not trigger any presumption. The child would be returned to the household.

SENATOR MORAHAN: Will the sponsor continue to yield, Mr. Chairman?

ACTING PRESIDENT KUHL: Senator Bonacic, do you continue to yield?

SENATOR BONACIC: I do. I do.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR MORAHAN: And so therefore, if there is a finding in the blood or the urine of the newborn babe, that would not necessarily result in the taking away from the mother or the household or the father or the family unit that child, in and by itself?

SENATOR BONACIC: That is correct. It would just give a family court judge an opportunity to look at what are the circumstances why this occurred and would it be safe to return the child to the mother.

And I would presume, not knowing exactly how it would work, but nine times - maybe 90 times out of 100, that child would be with the mother, with special counseling and

special monitoring by the child and family services.

SENATOR MORAHAN: Would the sponsor continue to yield, Mr. President?

SENATOR BONACIC: I do.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MORAHAN: So after an investigation that goes to family court, et cetera -- now, earlier there was some comment about an infant's death and the investigation thereof. Is there anything in your bill that would preclude or take away or interfere with the authority of a sitting district attorney?

SENATOR BONACIC: This bill in no way diminishes any of the authority of a district attorney to investigate the cause of the death of an infant.

SENATOR MORAHAN: Would he continue to yield, Mr. Chairman?

ACTING PRESIDENT KUHL: Senator Bonacic, do you continue to yield?

SENATOR BONACIC: I do.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR MORAHAN: Therefore, in the case of any suspicious death the district attorney the would be the prosecutor?

SENATOR BONACIC: That's assuming that an indictment occurred. We have a fatality review in the case of an infant death to see -- it may never result in an indictment, but it could result in a changing of policies or state legislation as a deterrent to try to do things to make children more safe and not have a repeat occurrence.

SENATOR MORAHAN: Thank you, Mr. President. Thank you, Mr. Sponsor.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the bill?

Hearing none -- Senator Bonacic.

SENATOR BONACIC: Just to close.

ACTING PRESIDENT KUHL: Senator Bonacic, to close discussion on the bill.

SENATOR BONACIC: You know, one of the things that I was reflecting on when I heard Senator Dollinger speaking on how it's unfair if a baby, a newborn, was removed from the mother, or perhaps if there was a driving while intoxicated of the father, that maybe we

should review whether a child should be taken from the household.

I do believe that what has been happening in the United States in the last ten years has been very disturbing, when I would say a generation ago we have not seen the rising incidence of child abuse and deaths that we're seeing in our country in the last ten years. And it is a statistical fact that young children are dying as a result of child abuse in the families.

And when they do investigate, 75 percent, approximately, of the times the culprit was a parent, as to why that child died. Now, it could have been malnutrition, just not feeding a young child enough. It could have been physical abuse. It could have been sexual abuse. And I'm only talking about incidences where there's deaths. What about incidents where the child survives and there's just permanent scars, not only physically but mentally, that that child must bear for the rest of their lives?

So what we have to do, I humbly believe, is to give a clear direction in those

isolated and minimal cases where the child can never be returned to the family unit because it's no longer the safe haven that we would like it to be in how it's portrayed on TV, in old movies. The times are changing, I'm sorry to say, and it's a sad commentary on those families in the United States where it is an unsafe place to be, it is a place of danger, it is a place of high risk to either injury or death to young children.

And that is the reason for the legislation. And I would hope that in most instances, children always remain with the family unit in a loving and caring and nurturing environment. But in those instances where it does not exist, we must step up, as a matter of state policy, and remove that child to a safer and better place so the child can survive.

So that is the reason for the legislation. I thank Mr. President and my colleagues for their patience, and I would support the legislation.

ACTING PRESIDENT KUHL: Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, I understood that Senator Bonacic closed. I wanted to ask him a question, if he doesn't -

ACTING PRESIDENT KUHL: Senator Bonacic, do you yield?

SENATOR BONACIC: I do.

SENATOR PATERSON: Oh, thank you. Thank you.

Senator, with the type of structure that you're suggesting, I wanted to ask you about the legislation as it applies to the hospital administration procedure. In other words, we don't have a strict construction of what duties are incumbent upon the hospital.

And my question is, in situations where there is some documentation that there is a stigma based on, at times, where the hospital is, what the view of people in the hospital might be, private doctors not wanting to offend patients who are in their practice by not having the drug tests -- as opposed to, say, for instance in districts such as the one I represent, there's sometimes an automatic presumption that if there's something wrong with someone, it might be related to some

substance abuse problem.

So I guess my question is, wouldn't it be more foresighted if we in negotiating this legislation created more of a structural duty so that we have equity in terms of enforcement of establishing what the procedures should be in the hospitals all around this state?

SENATOR BONACIC: I'm not sure that I understand your question. I think under this legislation, every newborn that's born in the state of New York would be tested to see if there is drugs in its blood or its urine. So I'm not quite clear on, when you're talking of a particular hospital and the perception of stigmatism, I'm not clear on what you're getting at.

SENATOR PATERSON: Senator, you may very well be right. Just to verify that, can you read for me from the bill where it says every newborn will be tested? Because I don't see where it says that.

SENATOR BONACIC: Well, I don't think there's any language in the bill that specifically excludes one class from testing

than another. It's our intent that every newborn would be tested.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: I don't want to sound semantics, Senator. I'm really trying to ask a serious question.

The intent may be there, but I'm looking for the language. In other words, this is sometimes a problem with public policy, is that that may have been the legislative intent, but in enforcement there's a delineation as to where it actually exists. And my question is, does the legislation actually say every newborn will be tested? Because if it does, that's fine with me.

SENATOR BONACIC: Well, I think -- not that I think. I think what - we're talking specifically as to what existing law is with the testing of newborns. So wherever existing law is that requires a test for newborns, we're saying if it's a positive testing for drugs, that creates a rebuttable presumption with the mother and that she would have to come forward to have the child come

back to the household.

SENATOR PATERSON: Yeah, and Senator, that's actually a specific problem that I had with this solution and one that we debated in the house earlier this year.

My reading of existing law is that we don't have a mandatory testing of newborns for these substances as it exists right now. In other words, if that's what you want to establish, and it seems clear from your presentation that that's your desire and your intent, I would think that we should write it into the legislation. It would seem pretty simple to do that.

My concern is that it's just not there under the current law. And if it is, if you can show me where it is, then I can accept it. But as we stand right now, I cannot find in existing law where we test newborns for these types of substances on a mandatory basis.

SENATOR BONACIC: Senator Paterson, I think you raise a good point. It's something we should look at.

SENATOR PATERSON: Thank you.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 35. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

The Chair recognizes Senator Dollinger, to explain his vote.

SENATOR DOLLINGER: Thank you, Mr. President. Just ever so briefly. I made my points pretty clear earlier.

I just want to reemphasize one thing. For some reason, when it's a young mother who tests positive for drugs or alcohol, we immediately force her to rebut a presumption that she's unfit. But a parent who tests positive for alcohol, or a parent after birth, after the child -- when the child is ten days old, if it weren't at their birth, but if has parent tests positive for either of those things while they have minor children, we don't create such a presumption.

And I suggest again that the difference between those penalizes one select group of people, young mothers, and it's not fair. No.

ACTING PRESIDENT KUHL: Senator Dollinger, you'll be recorded in the negative.

Announce the results.

Senator Sampson, were you trying to help the capital maintenance and clean the chimney, or were you attempting to cast a vote in the negative from the chimney?

SENATOR SAMPSON: Both.

(Laughter.)

ACTING PRESIDENT KUHL: It's good to see your volunteering efforts. We'll make sure that that message gets sent to the custodian.

THE SECRETARY: Those recorded in the negative on Calendar Number 1150 are Senators Dollinger, Duane, Montgomery, Oppenheimer, Paterson, Sampson, Schneiderman, Seabrook, and Smith. Ayes, 48. Nays, 10.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Wright, why do you rise?

SENATOR WRIGHT: Thank you, Mr. President. I would request unanimous consent to be recorded in the negative on Calendar Number 1200.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Wright will be recorded in the negative on Calendar Number 1200.

SENATOR WRIGHT: Thank you.

ACTING PRESIDENT KUHL: Senator Duane, why do you rise?

SENATOR DUANE: Thank you, Mr. President. I'd like to receive unanimous consent to vote in the negative on Calendar Number 1072.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Duane recorded in the negative on Calendar Number 1072.

Senator Paterson, why do you do rise?

SENATOR PATERSON: Mr. President, on Calendar Number 1150, is Senator Markowitz recorded as a no vote?

ACTING PRESIDENT KUHL: That's

correct, Senator Paterson. Senator Markowitz is recorded as a negative on Calendar Number 1150.

SENATOR PATERSON: Okay. I'm sorry, Mr. President. Because we didn't read his name, and -- just checking.

ACTING PRESIDENT KUHL: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, is there any housekeeping at the desk?

ACTING PRESIDENT KUHL: There is.

We'll return to the order of motions and resolutions.

The Chair recognizes Senator McGee.

SENATOR McGEE: Thank you, Mr. President.

On behalf of Senator Stafford, on page number 52 I offer the following amendments to Calendar Number 1141, Senate Print Number 733, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar 1141 are received and

adopted, and the bill will retain its place on the Third Reading Calendar.

Senator McGee.

SENATOR McGEE: On behalf of Senator Skelos, on page number 54 I offer the following amendments to Calendar Number 1189, Senate Print Number 4642A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments to Calendar Number 1189 are received and adopted, and the bill will retain its place on the Third Reading Calendar.

Senator McGee.

SENATOR McGEE: Mr. President, I wish to call up Calendar Number 383, Assembly Print Number 824.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 383, by Member of the Assembly Luster, Assembly Print 824, an act to amend the Alcoholic Beverage Control Law.

SENATOR McGEE: I now move to reconsider the vote by which this Assembly

Bill was substituted for my bill, Senate Print Number 1552, on March 29th.

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT KUHL: Senator McGee.

SENATOR McGEE: On behalf of Senator Kuhl, I now move that Assembly Bill Number 824 be committed to the Committee on Rules and his Senate bill be restored to the order of the Third Reading Calendar.

ACTING PRESIDENT KUHL: The bills to be submitted, and the Senate bill is restored.

SENATOR McGEE: Mr. President, I now offer the following amendments.

ACTING PRESIDENT KUHL: The amendments are received and adopted.

Senator McGee.

SENATOR McGEE: Mr. President, on behalf of Senator Seward, I wish to call up his bill, Print Number 4051, recalled from the

Assembly, which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 631, by Senator Seward, Senate Print 4051, an act to amend the County Law.

SENATOR McGEE: Mr. President, I now move to reconsider the vote by which this bill was passed.

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

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT KUHL: Senator McGee.

SENATOR McGEE: Mr. President, on behalf of Senator Seward, I now offer the following amendments.

ACTING PRESIDENT KUHL: The amendments are received and adopted.

Senator McGee.

SENATOR McGEE: Mr. President, I move to commit Senate bill Print Number 1347, Calendar 234, on the order of third reading, on behalf of Senator Bruno, to the Committee

on Rules.

ACTING PRESIDENT KUHL: The bill is recommitted.

SENATOR McGEE: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Thank you.

Senator Seabrook? No? You're okay?

SENATOR SEABROOK: Yeah.

ACTING PRESIDENT KUHL: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, I'd like to request that Senate stand at ease until the return of Senator Volker, at which time we will take up Calendar Number 1166.

ACTING PRESIDENT KUHL: Senator Paterson. You're standing at ease?

SENATOR PATERSON: Would the Acting Majority Leader, of great distinction, be able to give us any idea how long that might be? Because we have a lot of housekeeping to do here in the Minority. We already cleaned that chimney. I see the

chimney over there doesn't look like anyone's done any work on it in a while. And we Just need a little time.

SENATOR FUSCHILLO: Mr. President, Senator Volker will return in five, ten minutes.

ACTING PRESIDENT KUHL: The Senate will stand at ease for approximately five minutes.

(Whereupon, the Senate stood at ease at 2:55 p.m.)

(The Senate reconvened at 3:08 p.m.)

ACTING PRESIDENT KUHL: The Senate will come to order.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr.President, at this time will you please call up Calendar Number 1166.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 1166, by Senator Volker, Senate Print 5567, an act to amend the Executive Law, in relation to the DNA identification index.

SENATOR VOLKER: Read the last section.

(Laughter.)

ACTING PRESIDENT KUHL: The Secretary will read the last section.

SENATOR PATERSON: Since Senator Volker came all the way back here, I thought he'd give us an explanation.

SENATOR VOLKER: Mr. President, I thought I would try. I mean, what the heck. Everybody looks stunned.

By the way, the Governor sends his best. I just was with the Governor talking about some other legislation, including one piece of legislation we just passed here. And I had to give an update to some people there. They said that three times this year we've passed unanimously the sexual assault reform bill, the Volker-Paterson and so forth sexual assault reform bill. I had to inform him it was four times, since we just did it again just a little while ago.

The bill that we're talking about here today is a rather dramatic expansion of the state's DNA database. I assume most

people realize that DNA has become one of the classic administrative tools that is being used to solve crimes nationwide and was enacted here some years ago, initially enacted in a bill known as, and I will say it, Zaleski-Volker, back, I believe, in 1989 when we passed legislation creating the initial DNA database.

The present DNA database, however, is limited to a comparatively small group of violent felons, sexual predators, and it can only -- DNA can only be divined or taken from blood samples. This bill would expand the use of DNA indexing rather dramatically. What it would do is it would basically say that all felons, all convicted felons, both in jail and out of jail, would be tested for DNA, and that DNA would then be included in a DNA database which would be used for the solution of crimes and in many cases has been found nationwide could be used not only to find criminals but in some cases to absolve some criminals, because DNA has been used, DNA testing, to find people who are actually found guilty that were found to be not guilty.

What the bill would do is it would allow these designated offenders the use of not just blood but other parts of body samples, for instance -- such as an example here, hair and samples from a person's skin and so forth -- which could be used to get DNA samples.

It would also stiffen the penalties, by the way, for disclosure or use of DNA record -- DNA samples or records to a Class E felony from what is now an A misdemeanor. And I remember we disputed that a lot when this bill was initially passed some years ago.

DNA has been found in some states to be one of the most -- one of the greatest tools in sex crimes. In Virginia, for instance, they expanded it to burglary, and when they did the testing of burglars 42 percent of the burglars turned out to either have other warrants for sex crimes or to have been previously arrested and convicted for sex crimes that heretofore had not been known.

So that basically is the bill.

Keep in mind that this would expand to all those who have been or would be convicted of felonies. Convicted of felonies. There was a bill from out of New York City that talked about arrests. This doesn't go that far. This just is convicted felonies.

SENATOR PATERSON: Mr. President, if Senator Volker would yield for a -

SENATOR VOLKER: Why, certainly, Senator.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator, you've pretty much covered my initial concern, which was the disclosure of DNA information. New York State willingly sells a lot of information about driver's licenses and that kind of thing. But here we're talking about information that's medical, physiological, racial, ethnic and genealogical.

And the concern I have is just for the information to get out. Up until the mid-seventies, any African-American testing positive for sickle cell anemia was banned, at that time, from admittance to the Air Force.

And even now there's a lot of data about people in West Africa testing positive for leprosy, that they incidentally test positive for HIV even though they don't have the virus.

So some of this information can be at times a little bit misleading. But at least in the area of law enforcement, I would suppose that DNA evidence is now in a sense comparable to what we thought fingerprinting did 20 or 30 years ago. Is that correct?

SENATOR VOLKER: Right. Right. You're absolutely right. In fact, that's one reason for the felony involved here. Although you are right, that this is a very classified type of information, it is only to be used for the strictest of criminal justice kinds of issues and cannot be disclosed for any other reason without penalty. And we've upgraded that penalty.

SENATOR PATERSON: If the Senator would yield.

SENATOR VOLKER: Sure.

SENATOR PATERSON: Senator, I notice that we've expanded it to white collar crimes. Was there any particular reason?

SENATOR VOLKER: Well, the reason -- we haven't actually directly expanded it to white collar crimes unless they're felonies. In other words, you're right, that any felony would be included here.

I guess the issue really is when you're talking about white collar crimes, you sometimes are talking about people who may be violent criminals who committed also white collar crimes. And I think that's what the theory is, that if you're going to go to felonies then you should go to all felonies. And in this case some of those felonies are what could be termed white collar crimes. And in those cases, for instance, you may well find that a person who committed a so-called white collar crime might be a burglar or might be a -- for all we know, might be a rapist. And the DNA testing would help you to find them.

SENATOR PATERSON: Mr. President, one last question for Senator Volker, if he would.

ACTING PRESIDENT KUHL: Senator Volker, do you continue to yield?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator, I'm just concerned about this very reputable tool, one that could really inure to the benefit of law enforcement officials who are pursuing hardened criminals, people with previous records or those who already have DNA in the registry.

I just have a concern for those who've never committed a crime, have never been involved in such a crime. We have a lot of public officials at some point calling for the use of -- for the collection of DNA of newborns or in a sense rounding everyone up and getting everybody's DNA so it can be used as a law enforcement technique.

And personally, I just don't think if anyone has not committed a crime or has never been involved in the criminal justice system that they should be tested. I wanted to know if you felt that there'd be expansion on this legislation in the future just to, in a sense, DNA the whole population.

SENATOR VOLKER: It's a great concern of mine too, Senator. And I think probably if we really look at this -- and that's why I think it should only be for convicted felons. And I think that may be the danger to it, as much as I -- I think I'm a fairly rockbed conservative -- why I may have some problem with arrests. And that is that you do have to be careful with simply testing people with arrests. I suppose you could just build up a huge DNA database.

But on the other hand, I think you do have to be careful. I think, first of all, what we have to do here is establish what is absolutely necessary in the investigative field -- and I think felonies are certainly necessary -- and then make sure that we're able to protect that database to its maximum before we move off in any other direction. Because I happen to agree with you, I don't really think -- it's all very well to talk, for instance, about babies and all the rest of the things. But I really think that we should probably not move off in other directions, that we should limit it to convicted people

and to convicted felons, meaning people who have committed serious crimes that puts them in state prison.

SENATOR PATERSON: Thank you, Senator Volker.

SENATOR VOLKER: You're welcome.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, no further questions. The witness may step down.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, if the sponsor would yield.

ACTING PRESIDENT KUHL: Senator Volker, do you yield to a question from Senator Montgomery?

SENATOR VOLKER: Absolutely.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MONTGOMERY: Yes. Senator Volker, I certainly appreciate your concern for caution.

I just want to clarify that DNA

carries genetic information on it in that -

SENATOR VOLKER: That's true.

SENATOR MONTGOMERY: So is it possible -- perhaps hopefully not probable or likely, but is it possible for those entities with access to DNA material to also be able to get genetic -- information on, you know, your genetic makeup which could add to or could hamper a person's being able to get a job, get insurance, to participate in other kinds of activities where, you know, a decision may be made or a judgment may be made based on the genetic content?

SENATOR VOLKER: The answer is if anything like that happened, it would be a Class E felony. And any public official or person involved in it would be subject to a jail term and what -- a Class E felony provides a jail term. And any repetitive nature of any allowing that information to be disseminated, they could be charged with a series of felonies.

So the answer is no, the information can only be used in criminal matters. It cannot be used in any other way.

And the only way that it could ever -- it would have to be illegally dispensed with. And any public official would do that realizing that he or she would lose -- not only lose their job but obviously would be prosecuted.

SENATOR MONTGOMERY: So, Mr. President, if I just may pursue -

ACTING PRESIDENT KUHL: Senator Volker, do you continue to yield?

SENATOR VOLKER: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR MONTGOMERY: -- an additional -- so, Senator Volker, what you're saying is that we definitively, definitely should not anticipate that any agency who currently has access to fingerprints as a means of determining employability would never additionally have access to DNA information as a means of determining employability?

SENATOR VOLKER: Right. Not only that, Senator, but I assume you realize that the only way that you can do that is if that is understood by the person who is using the

information. In other words, that is -- the information with fingerprints was specifically authorized for whatever that job was or whatever in a law. Otherwise, you couldn't really use that.

In this case, there's absolutely no authorization to use DNA for anything in that area. And therefore, any use of that would constitute a crime. And so anyone that would use it could -- will be charged with a crime. Because if you got information illegally and then you used it illegally, you yourself who used it could also be charged with a crime in addition to the person who gave it to you.

SENATOR MONTGOMERY: Just one last question.

ACTING PRESIDENT KUHL: Senator Volker, do you continue to yield?

SENATOR VOLKER: I yield.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR MONTGOMERY: Thank you, Senator.

So the only use of DNA is for those persons who have been convicted of serious

crimes, based on this -

SENATOR VOLKER: Felonies, right. Exactly.

SENATOR MONTGOMERY: -- on this legislation?

Okay, thank you.

ACTING PRESIDENT KUHL: Senator Seabrook.

SENATOR SEABROOK: Yes. Mr. President, would the sponsor yield to a few questions?

ACTING PRESIDENT KUHL: Senator Volker, do you yield to Senator Seabrook?

SENATOR VOLKER: Yes.

ACTING PRESIDENT KUHL: He yields.

SENATOR SEABROOK: Senator Volker, as it relates to this information that's being gathered, this is basically from an individual who is convicted of a felony and this will be basically obtained through the criminal justice system and not through a private source?

SENATOR VOLKER: Exactly.

SENATOR SEABROOK: And private

sources aren't allowed?

SENATOR VOLKER: Exactly. Exactly. It would be managed through the criminal justice system.

SENATOR SEABROOK: Just on the bill.

ACTING PRESIDENT KUHL: Senator Seabrook, on the bill.

SENATOR SEABROOK: On the bill. The sponsor has done a credit to the bill in terms of those requests by the mayor and others who talked about just doing DNA testing on everybody who has basically not been convicted of a crime, which I think that's a crime within itself.

And I think if we're talking about basically securing these fundamental rights and not having them initiating, I think it's important this bill provides those particular protections that is there.

So I think that he has satisfied the needs and concerns of those who have that, who have an interest in protecting those fundamental rights and not in the violation of taking those rights from individuals who have

not been convicted. Because, as you know, we had a similar situation in the City of New York where young men, African-American men were picked up, placed in lineups with no permission from their parents, and had pictures taken, and those pictures were actually distributed throughout. And we have a similar situation relating to yearbooks and other things, clearly in terms of violating those fundamental rights which the Constitution provides for. Those not been convicted of a crime or basically committed a crime.

So I think this is a bill from the right direction, and I would hope we would not come back next year and the forces that be will be talking about "Now let's expand this DNA testing to everybody that was born," and then basically we'd be living in a state of chaos. And also you'll have a number of people who will be convicted of crimes that they did not commit.

So I think that this is an outstanding bill that was driven by the sponsor.

ACTING PRESIDENT KUHL: Any other member wishing to speak on the bill?

Hearing none, the Secretary will read the last section.

THE SECRETARY: Section 8. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

THE SECRETARY: Ayes, 56. Nays, 2. Senators Duane and Smith recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator McGee, why do you rise?

SENATOR McGEE: Mr. President, I wish to have unanimous consent to be recorded in the negative on Calendar Number 1200.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator McGee will be recorded in the negative on Calendar Number 1200.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, is there any more housekeeping at the desk?

ACTING PRESIDENT KUHL: It's all taken care of, Senator.

SENATOR FUSCHILLO: There being no business, I move we adjourn until Wednesday, June 9th, at 11:00 a.m.

ACTING PRESIDENT KUHL: Without objection, Senate adjourns until tomorrow, Wednesday, June 9th, at 11:00 a.m.

(Whereupon, at 3:25 p.m., the Senate adjourned.)