NEW YORK STATE SENATE

THE

STENOGRAPHIC RECORD

ALBANY, NEW YORK

June 17, 1999

10:35 a.m.

REGULAR SESSION

SENATOR RAYMOND MEIER, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MEIER: The Senate will come to order.

I ask everyone to please rise and recite with me the Pledge of Allegiance to the Flag.

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

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

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

ACTING PRESIDENT MEIER: Reading of the Journal.

THE SECRETARY: In Senate, Wednesday, June 16th, the Senate met pursuant to adjournment. The Journal of Tuesday, June 15th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT MEIER: 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 Fuschillo.

SENATOR FUSCHILLO: Mr. President, on behalf of Senator Goodman, I wish to call up Senate Print Number 664B, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 1360, by Senator Goodman, Senate Print 664A, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT MEIER: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, I now move to reconsider the vote by which this bill was passed and ask that said bill be restored to the order of third reading.

ACTING PRESIDENT MEIER: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 38.

ACTING PRESIDENT MEIER: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, I move to amend Senate Bill Number 664B by striking out the amendment made on June 10, 1999, and restoring it to its previous print number, 664A.

ACTING PRESIDENT MEIER: The amendment is received, and the bill will be restored to its previous print number.

Senator Fuschillo.

SENATOR FUSCHILLO: I now move to discharge, from the Committee on Environmental Conservation, Assembly Print Number 1158, and substitute it for the identical bill.

I now move that that substituted Assembly bill have its third reading at this time.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1360, by Member of the Assembly Grannis, Assembly Print 1158, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 38.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, on behalf of Senator Goodman, I wish to call up Senate Bill Number 5920A, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 1450, by Senator Goodman, Senate Print 5920A, an act to amend the General Municipal Law and

Chapter 130 of the Laws of 1998.

ACTING PRESIDENT MEIER: Senator Fuschillo.

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

ACTING PRESIDENT MEIER: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 38.

ACTING PRESIDENT MEIER: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, I now move to have its third reading at this time.

ACTING PRESIDENT MEIER: The Secretary will read.

That bill will be laid aside temporarily, Senator Fuschillo.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Are there any substitutions to be made?

ACTING PRESIDENT MEIER: Yes, we

have them. Would you like those done?

SENATOR SKELOS: If you could make the substitutions at this time, please.

ACTING PRESIDENT MEIER: The Secretary will read the substitutions.

THE SECRETARY: On page 32, Senator DeFrancisco moves to discharge, from the Committee on Rules, Assembly Bill 1088 and substitute it for the identical third reading, 1306.

ACTING PRESIDENT MEIER: Substitution ordered.

Senator Skelos.

SENATOR SKELOS: 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 MEIER: Reports of standing committees.

The Secretary will read.

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

Senate Print 2505, by Senator Padavan, an act to amend the Public

Authorities Law;

2684, by Senator Leibell, an act to amend the Civil Service Law;

3758, by Senator Libous, an act to amend the Tax Law;

3898A, by Senator Stafford, an act to amend the Executive Law and the Criminal Procedure Law;

3914A, by Senator Velella, an act to amend the General Business Law;

4174A, by Senator Meier, an act to amend the Public Authorities Law;

4190B, by Senator Paterson, an act in relation to authorizing;

4275, by Senator Velella, an act to amend the Administrative Code of the City of New York;

4458B, by Senator Marchi, an act to amend the Not-for-Profit Corporation Law;

4516A, by Senator Wright, an act to amend the Retirement and Social Security Law;

4556, by Senator Seward, an act to amend the Real Property Tax Law;

4633A, by Senator Kuhl, an act to amend the Education Law;

4692A, by Senator Marchi, an act to amend the Public Authorities Law and the Real Property Tax Law;

4906, by Senator Farley, an act to amend the Public Health Law;

5208B, by Senator Seward, an act to amend the Education Law;

5618A, by Senator Seward, an act to legalize, validate, ratify and confirm;

5689A, by Senator Saland, an act to amend the Social Services Law;

5789, by Senator McGee, an act to amend Chapter 584;

5832, by Senator Gentile, an act to authorize;

5875, by Senator Rath, an act to amend the Executive Law;

5888, by Senator Meier, an act to amend the Social Services Law;

5893, by Senator Rath, an act authorizing the implementation;

5919, by Senator Bonacic, an act to exempt certain parcels;

5927, by Senator Marcellino, an act to amend the Environmental Conservation Law;

5973, by Senator Wright, an act to amend the Agriculture and Markets Law;

5987, by Senator Volker, an act to amend the Penal Law and the Criminal Procedure Law;

And 5988, by Senator Johnson, an act to amend the Vehicle and Traffic Law.

All bills ordered direct for third reading.

ACTING PRESIDENT MEIER: Senator Skelos.

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

ACTING PRESIDENT MEIER: The question is on the motion to accept the report of the Rules Committee. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The report is accepted.

SENATOR SKELOS: Mr. President, can we take up the noncontroversial active

list.

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

THE SECRETARY: Calendar Number 45, by Member of the Assembly Weisenberg, Assembly Print 3522A, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 38.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 62, by Senator Meier, Senate Print 1028A, an act to amend the Education Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 526, by the Assembly Committee on Rules, Assembly Print 8233, an act to amend the Family Court Act and the Social Services Law.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 8. This act shall take effect on the 90th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 893, by Senator Trunzo, Senate Print 4487A, an act to amend the Public Authorities Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 912, by the Assembly Committee on Rules, Assembly Print 8168, an act to amend the Town Law.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1029, by Senator Wright, Senate Print 5279, an act to amend the Public Lands Law and the Environmental Conservation Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1422, by Senator Balboni, Senate Print 5003A, an act to amend the Penal Law.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1506, by the Committee on Rules, Senate Print 5935, an act to amend Chapter 141 of the Laws of 1994.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1512, by Senator Nozzolio, Senate Print 5823, an act to amend the Civil Practice Law and Rules.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 39. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

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

SENATOR SKELOS: If we can go to the controversial calendar, please.

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

THE SECRETARY: Calendar Number 912, by the Assembly Committee on Rules, Assembly Print 8168, an act to amend the Town Law, in relation to providing that a local law to abolish a police department.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MEIER: Senator Bonacic, an explanation has been requested of Calendar 912 by Senator Dollinger.

SENATOR BONACIC: Thank you very much, Mr. President. This is an act to amend our Town Law, which would provide that a local law to abolish a police department shall be subject to a permissive referendum.

Presently, a police department can be abolished by a town without voter approval. And as a matter of policy, I think the safety of our citizens and police protection is a vital concern to the people who live in the towns. And it's an expression of democracy to allow a permissive referendum to see whether or not they would want a police department to be abolished, in the event that the town board would vote accordingly.

Presently, Village Law does allow

for a permissive referendum on the issue of the abolition of a village police department.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, will the sponsor yield just to a couple of quick questions?

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

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Does the County Law require a permissive referendum if the county elects to change its police forces?

SENATOR BONACIC: I do not know the answer to that. I've just been concentrating on the Town Law and the legislation that's before us.

SENATOR DOLLINGER: Through you, Mr. President.

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

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: He

yields.

SENATOR DOLLINGER: Do you know whether the cities are required to hold permissive referendums if they change their police force or the components of the police force or abolish it?

SENATOR BONACIC: Again, I do not know the answer to that question. I have expressed to you that the Village Law allows for the abolition of the police department, and now we want to change the Town Law.

This has passed the Assembly, by the way, with four no votes. And if I may, we have memos of support by the CSEA, the New York State Police Investigators Association, the AFL-CIO. I do have a memo in opposition from the Association of Towns.

SENATOR DOLLINGER: Mr. President, just on the bill.

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: This was an idea that came out of the work of a former Senator named Mary Ellen Jones, who devised this bill for a particular problem in Monroe

County. It's amazing to me that I guess it finds its way on the Rules Committee, as the Jones bills always did, on the last day. But it's got Senator Bonacic's name on it.

I'll let my other colleagues address the bill before I decide how to vote on it. But I remember that this bill has been around for a long time. It's not necessarily a reflection on Senator Bonacic. I hope you won't interpret it that way. But I remember when it was her bill, it could never seem to get to the floor.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: Thank you very much. Would the sponsor yield to some questions?

ACTING PRESIDENT MEIER: Senator Bonacic, do you yield for a question?

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Thank you very much.

I'm just wondering why it is that

we're looking at this particular situation having to do with police forces and referendums. Why are we only looking at this issue and not a broader range of issues having to do with fiscal policy of the towns of the state?

SENATOR BONACIC: It's my experience in government that you do things in -- one step at a time, in slow increments. When you try to do broad, comprehensive legislation, what you have is studies after studies after studies and nothing much really ever gets done.

So we've done it at the village level. Now we're addressing it at the town level. And I would be willing to entertain - you know, any comprehensive legislation that you may have on your mind in this area, we'd certainly take a look at it.

SENATOR DUANE: Through you, Mr. President.

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

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: He

yields.

SENATOR DUANE: Is there anything in current law that precludes towns from putting forward referendums for themselves?

SENATOR BONACIC: You mean -- on this issue, it needs a legislative act, at the state level, to allow for a permissive referendum.

SENATOR DUANE: Through you, Mr. President.

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

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: As I understand it, this legislation says "requires." But I'm under the impression that if a town wanted to have a referendum, they could have a referendum. Is that not the case?

SENATOR BONACIC: I'm having a difficult time hearing, Senator Duane. Could you repeat the question, Senator, please?

SENATOR DUANE: Absolutely.

It is my understanding that this

legislation requires a referendum, whereas presently there is the option to have a referendum on that matter such as this. Is that not correct?

SENATOR BONACIC: Yes. A town board could now, before they vote as a town board, ask for an advisory opinion from its electorate if it was so inclined.

SENATOR DUANE: Through you, Mr. President.

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

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: So indeed, we're really sort of forcing something onto the towns of New York State that they probably have not asked for. At least I'm not aware of them having been asked to have this requirement imposed upon them.

SENATOR BONACIC: That is correct.

But we have to make a judgment as a matter of state policy whether or not police

protection and the safety of our residents is an important issue that in certain situations that they would have the right to vote in a democratic way whether or not they approve or disapprove of a town board's action. Since the people ultimately are paying for the police department through its taxes, and they're the ultimate beneficiaries of town policy.

SENATOR DUANE: Through you, Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Duane, on the bill.

SENATOR DUANE: I personally have pretty strong opinions on the issue of referendums. I also have strong opinions on the issue of mandates, unfunded mandates and funding mandates which are imposed on the cities and towns of the state of New York.

But I am struck by the -- although I'm not ironclad and rigid on those positions, and I guess maybe what I should say is I'm pleased to see that other members of this body, contrary to what they may have said in debates on this floor, actually share a wide

variety of views on the issue on referendums and mandates to our local government, and that there really are no ironclad rules on the way we look at those things.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Breslin.

SENATOR BRESLIN: Mr. President, would the sponsor yield to a question or two?

ACTING PRESIDENT MEIER: Senator Bonacic, do you yield for a question?

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BRESLIN: Senator Bonacic, I have a number of towns in my district who have talked with me about this legislation, and they were uninformed as to whether or not there's been towns throughout the state that have adopted, through a vote of their town board, to eliminate their police department in the last several years.

Do you have any information about whether or not there are, in fact?

SENATOR BONACIC: There has been

a -- there have been town boards that have voted for the elimination of their town police departments. I don't have those statistics, but I can tell you that it has occurred.

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

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

SENATOR BONACIC: I do. I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BRESLIN: Some of their concerns have been -- in some of my towns there's village police departments, town police departments, state police, often the sheriff's department. And from a regionalization point of view, they view it as something -- as a cost-cutting efficiency and still having good police protection. Was that reviewed in the drafting of this legislation?

SENATOR BONACIC: It's -- it's not necessarily reviewed. But these are judgment questions that every constituency in a town must decide.

Because if a town -- a town board has to make its argument: Lookit, we have quite a bit of other agencies, whether it's state police, joint agreements with the village, or sheriff's office, and we don't really need our police department. And you're going to save X amount of dollars on your taxes.

Now, these are judgments for the people in that town to make. And they're value judgments. And they're paying the price for that decision. So we're asking that they be able to participate in that decision.

And if the facts are conclusive, as you've indicated, with the town concerns, I trust the wisdom of the people to do what's right for them in their town.

SENATOR BRESLIN: Again, through you, Mr. President.

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

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BRESLIN: Don't we also

trust the citizens to choose representatives who can make informed decisions and not consider the passions or the emotions of situation, as a police force often engenders?

SENATOR BONACIC: There's no question that our constituents choose elected officials to make judgments. But in the case of police protection and the safety of families and neighborhoods, we believe it is such a high priority that they would have an opportunity -- in a permissive referendum, now. Permissive, not mandatory referendum - if they got 5 percent of the votes cast in that town for the last governor's election through a petition, they would have the right to participate in democracy, which is working as it should.

SENATOR BRESLIN: One final question, through you, Mr. President.

ACTING PRESIDENT MEIER: Senator Bonacic, do you yield for a question?

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: He yields.

SENATOR BRESLIN: If in fact it

becomes law, has there been any development of the way it would be posed to the voters, in a positive or a negative sense?

SENATOR BONACIC: You mean like a format in how -

SENATOR BRESLIN: Format.

SENATOR BONACIC: -- they would frame the issue?

SENATOR BRESLIN: That's correct.

SENATOR BONACIC: That would be left to the town board. We have no legislation that is a prototype format of how you should present it.

But, you know, with reporters covering town meetings, the people will have an accurate flavor of the decision judgments, the cost benefits that they would have to make.

SENATOR BRESLIN: Thank you very much, Senator Bonacic.

SENATOR BONACIC: Thank you, Senator.

SENATOR BRESLIN: On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator

Breslin, on the bill.

SENATOR BRESLIN: I have serious reservations on this bill. But I think when we are in fact faced with reservations -

ACTING PRESIDENT MEIER: Excuse me a second, Senator Breslin.

Gentlemen, members, could we please get through this in an orderly fashion so we can conclude today.

Senator Breslin.

SENATOR BRESLIN: Thank you, Mr. President.

When we are faced with those reservations, we have to weigh the cost factors, the regionalization factors, but most importantly the factor of letting the people be the final judge.

And with the people the final judge, I will vote in the affirmative for this legislation.

ACTING PRESIDENT MEIER: Senator Stachowski.

SENATOR STACHOWSKI: Will the sponsor yield for a couple of questions, Mr. President?

SENATOR BONACIC: I do.

SENATOR STACHOWSKI: Mr. President, through you.

Senator, I really wasn't going to ask any questions, but it kind of caught my interest, the comment about that since it's a police department and public safety, that although we trust local elected officials to do budgets and take care of sidewalks, we don't trust them to make a decision on whether they should keep their own police department.

And I'm kind of troubled by that, only because is that the message we're sending, that towns, elected officials aren't capable of making a decision? Because they spend every day with the people in their district work, they're right -- they live there, they work there.

In a town meeting, they have an area for the public to speak at a town meeting. If they were talking about eliminating the police department, there would probably be a lead-in time. It wouldn't be like a midnight decision, something coming out of a rules committee like we do and suddenly

it's up on the floor and we're passing it saying that we're getting rid of the police department. It would probably be at least a couple of months' -- or probably longer - play into that, we're looking at getting rid of the police department.

So I'm sure that there would be plenty of give-and-take at different town board meetings with members of the town, people that live there, taking that little public space that they have to talk and voicing their opinion.

And with all of that and the fact that they live right there and are always there, we don't think they'd have enough input to make the decision whether they should keep their police department or not?

SENATOR BONACIC: My response to that is we have it in Village Law.

If you recall, a couple of years ago with city school budgets we gave the people the right to vote, where those decisions were made by city school boards only. And I think whenever you can give the people an opportunity to express their

opinion -- since they're paying for the police department -- as to whether or not they want it, we should give them that opportunity.

And if the town board gives good reasons why a police department should be abolished, I trust the wisdom of the people. They'll ratify the legitimate reasons which the town board has stated why it should be abolished.

But if they disagree and if they think they have inadequate police protection, especially in the rural areas, where the state police are stretched quite thin -- and normally the responsibility, I can tell you, in my Senate district would fall on the state police if you didn't have town police departments. And people may say, "Hey, I'd rather have more police than less police watching out for our towns, and I'm willing to pay that extra money in my taxes to keep them."

SENATOR STACHOWSKI: Mr. President, again, through you.

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

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR STACHOWSKI: I heard what you said, but I'm just a little confused. And the point I'm going back to again is by doing this we're saying that the local officials are not in touch with their communities and that they would make this decision oblivious to what would be the majority of the people that live there's opinion to keep the police, they would still go ahead and abolish the police in a certain town?

In the towns in my district, and I have three, they're pretty aware of what the people think, and they -- they're very aware of -

ACTING PRESIDENT MEIER: Excuse me, Senator Stachowski.

Members, we're trying to conclude our business today. And I would appreciate it if you would give attention to the debate. If you have other business other than the bill on the floor that requires conversation, take it outside.

Senator Stachowski has the floor.

SENATOR STACHOWSKI: As I was saying, they are very aware of what the people think. And on issues that are a lot more minor than something like abolishing your police department, they get tremendous input from the public on -- before they ever think of voting. Even for a thing of maybe changing a wetland or asking for permission to do that or changing a road or putting a turn lane on a road, they get unbelievable public input.

So that I would think that they would get just enormous communication from the people that live in that town if they were ever to do anything like say "We're going to abolish our police."

And I had -- in my old previous district, a lot of which Senator Volker now represents, I also had towns that didn't necessarily -- maybe they had one or two cars, and that it was a combination of the sheriff's department and the state police doing most of the police work there. So that I am familiar with towns like you have in your district. But my concern is that we're taking away the

right of town officials to govern for themselves.

And I understand it is permissive. But they can ask for that kind of election now, and I'm sure that if they brought up an issue of this magnitude, they would get that kind of advisory election called for, just through the work of the policemen that were possibly going to be affected by this.

So my question still remains, do we think that they're not capable of making these decisions and that's why we have this bill? Or do we want to govern for them and that's why we're telling them they've got to have a permissive referendum?

SENATOR BONACIC: I think our town board members do outstanding work. And they are familiar with issues, and they communicate as best they can with their constituents. But sometimes there's legitimate differences of opinion as to whether or not police protection and police safety is a top priority with the people of the town which they live in, of the residents.

And all we're saying is that the

people in those minimum situations where they disagree with their town board when it comes to police protection, if they are so inclined, the people would have the right to tell the town board that "Although we understand that you think you have our best concerns in mind, in this particular case we think -- we don't agree with you, and we'd like to keep the police department." And/or abolish it, agree with them.

You know, I'm a supporter, I always have been, of initiative and referendum. And I always say that you and I and town board members are the servants and we work for the people. And whenever -- and if we remember these relationships, we never fear giving them an opportunity to decide whether or not they agree with us or not.

SENATOR STACHOWSKI: Mr. President.

ACTING PRESIDENT MEIER: Senator Stachowski.

SENATOR STACHOWSKI: If the Senator would yield again.

ACTING PRESIDENT MEIER: Senator

Bonacic, will you yield?

SENATOR BONACIC: I do. I do.

ACTING PRESIDENT MEIER: He continues to yield.

SENATOR STACHOWSKI: I would preface my next question by saying you probably used to be a supporter of initiative and referendum till you got to this house. But, anyway -- because we don't like to let bills come out, even by your guys, that we don't want to see on the floor. So I don't know how we'd ever let an initiative or a referendum with some really abstract questions come to the floor as delivered by the public.

However, the question is as far as you know -- and I don't know if you would have anything on this or not -- has there ever been a town or, for that matter, even a village that abolished their police department when the police department wasn't on board with that abolition?

Meaning that there weren't already provisions for either everybody retiring because they had aged out or being picked up by a different police department, and that the

police department was abolished against the will of the members of the police department it served. Because a lot of times a town will make an agreement -- for example, what happened in a couple of places in my district is they made an agreement with the sheriff's department, for example. And they had a small department, and those members of that department were either absorbed by another town or by the sheriff's department. And so therefore, there was very little opposition to the police department being taken out.

So my question is, has there ever been one where the police department was vehemently against the abolition of the police department and that they still -- the town board went ahead and eliminated it?

SENATOR BONACIC: I can't speak of what motivated, you know, police departments and what they were thinking when a particular political act was -- or a legislative act was going on at the town level.

I can tell you that there have been two village referendums in the mid-Hudson

where the people decided; one was to abolish, one was to keep. And both times the village board wanted to abolish. So in one instance the people agreed with the village board, in the other they did not. And that's in the last year and a half.

SENATOR STACHOWSKI: Thank you, Senator.

On the bill.

ACTING PRESIDENT MEIER: Senator Stachowski, on the bill.

SENATOR STACHOWSKI: The only trouble I have with this bill is that it seems to me we're still not trusting our local elected officials.

And I know that the sponsor has the same high respect for his local elected officials as I do, and he believes they're just as well informed as I do. But I'll never be a person to take away the opportunity for the people that live in a community to vote on the issue. So that I -- although I had questions, I'm satisfied somewhat with the answers. And I know that he has a great respect for local elected officials, and so

I'll support the bill.

But I still have some reservation in the fact that we're telling them "maybe you're not sure what's best for your community."

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 912 are Senators Connor, Duane, Gentile, Hevesi, Kruger, Lachman, Markowitz, Montgomery, Onorato, Sampson, and Smith. Ayes, 45. Nays, 11.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1422, by Senator Balboni, Senate Print 5003A, an act to amend the Penal Law, the Civil Rights Law, and the Executive Law.

SENATOR DOLLINGER: Explanation,

Mr. President.

ACTING PRESIDENT MEIER: Senator Balboni, an explanation has been requested of Calendar 1422 by Senator Dollinger.

SENATOR BALBONI: Thank you, Mr. President.

This bill before us today is the culmination of about six or seven months' worth of work. I've had the opportunity to work with local law enforcement in Nassau County and the New York state troopers, I have met with a variety of different DAs' offices and the Association. And what we have before us is an attempt to continue the work that was initiated in 1996 when this state first recognized the growing threat of gangs in our communities.

The particular background here is there was a shooting in Mineola, my hometown, back in the fall of last year, and there was gang involvement. That led me on a mission to try to put together a workable construct where we could really get at gang activity and gang violence.

Here's what the bill does. It sets

up a series of definitions as to what gang activity and gang membership and what a street gang is. Then essentially what it does is create enhancements. In other words, if regular crimes are committed by gang members, they're enhanced one level.

It also sets up the crime of recruitment, gang recruitment on school grounds for the first time in this state. It then permits expert testimony to be entered into court in a case involving gangs. It creates a new crime of gang assault when three or four members of a gang assault an individual. It provides for witness protection during the pendency of a trial relating to gang issues and gang activity. And then, lastly, it sets up, for the first time, a uniform statewide gang activity database.

The bill is complex only because the nature of the gang activity is complex. The bill attempts to try to walk the fine line between the right of a freedom of association and the gang activities that are done primarily now in Long Island and in the City

of New York by illegal aliens who do not have addresses, perhaps have not been arrested beforehand.

And so that is the characteristics that are attempted to be recognized and dealt with by this measure, Mr. President. Thank you.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Will the sponsor yield to one question, Mr. President?

ACTING PRESIDENT MEIER: Senator Balboni, do you yield?

SENATOR BALBONI: Yes, I yield.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: New York is, under your bill, going down the path of creating enhanced penalties and other antigang sanctions. Is there any evidence in any other state anywhere that enhancing the penalties has resulted in a reduction of gang violence or gang participation?

SENATOR BALBONI: Well, first of all, the -- Mr. President, through you.

ACTING PRESIDENT MEIER: Senator Balboni.

SENATOR BALBONI: Mr. President, the state that's had the greatest experience in this issue is California. They have had significant gang problems for the last decade.

Senator Dollinger asked whether or not enhancing penalties actually deters gang activity. That's hard to tell. But I will tell you this, that there is an entire justice system that is designed around deterring illegal gang participation and illegal gang activity with enhanced penalties in California. Has it worked? The California authorities think it has.

What it has not done, however, it has not stopped the flow of gangs, such as the Bloods and the Crips, to this area. And that's a reality that we should face.

But in addition to the enhanced penalties, Senator, this bill allows law enforcement to use tools previously not enjoyed by them to try and root out and develop the information and the intelligence regarding gang activities so that police

officers can make arrests efficiently and perhaps before violence occurs.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: What are the weapons -- through you, if Senator Balboni would continue to yield.

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

SENATOR BALBONI: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: What are the weapons of choice for gangs in New York State, do you know?

SENATOR BALBONI: The weapons of choice vary as to the gang itself.

Gang structure in New York State is varied. You have, obviously, organized crime. That still, notwithstanding the belief of a former governor, still exists in the state of New York. They are -- they rely principally on execution-style killings.

The gangs that are prominent -- and when I use the word "prominent," the gangs

that operate in some suburban communities tend to be immigrant gangs, not very structured, tend to be very fluid in their travel. And therefore -- and they don't really have a lot of money. And they don't run rackets or extortion or prostitution or drugs.

And essentially what you'll have is -- the shooting that occurred in my hometown was a Saturday night special. So the weapons of choice at that level are anything that the gang members can get their hands on.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Balboni will continue to yield.

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

SENATOR BALBONI: Yes, I do, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Would it be safe to say, Senator Balboni, that the cheap prevalence of firearms is one of the reasons why gang activity resulted both in the shooting in Mineola and in the shootings

throughout -- the other gang-related shootings throughout New York State?

SENATOR BALBONI: I have no information on that.

SENATOR DOLLINGER: Well, you've said that their weapons of choice obviously involve firearms, to some extent. We've had a big discussion here in the last week about whether they're weapons or firearms. I'll call them firearms.

Isn't one of the things that creates the danger of gang activity the abundance of cheap firearms in this state?

SENATOR BALBONI: Senator Dollinger, you're aware that New York State has the toughest gun laws in the nation; correct?

SENATOR DOLLINGER: Was that a question to me, Mr. President? I have -

SENATOR BALBONI: Yes, it was.

SENATOR DOLLINGER: -- the floor. I'll decline to answer any questions until Senator Balboni answers mine.

SENATOR BALBONI: Mr. President, through you.

I'm sure the members understand that New York State has the toughest gun law in the nation. It's called the Sullivan Law. If you'd like it, I can get it at the library for you. And what that law tells us is that illegal weapons are still out there on the street.

And you know how the gangs get them? They buy them out of the back of a trunk in a neighborhood somewhere in perhaps East Harlem, perhaps in New Jersey, perhaps in Connecticut. And they take them and those - and they're as much of a threat to those communities as anywhere else.

The point here is not so much to go after the weapons -- because I believe we already have very sufficient laws on the books -- but rather to go after the way the gangs operate.

For example, with recruitment. How do you know a member -- an individual that walks with two or three other members is a member of the gang? Well, they wear colors. They have handshakes. They have different types of graffiti that they utilize to mark

their territory. They have certain modus operandi.

These things, though, are not traditional law enforcement indicators. And so what the police have had to do is to try to change their entire methodology as it relates to identifying and dealing with gang members. And that's really what the bill is intended to do.

SENATOR DOLLINGER: Through you, Mr. President, will Senator Balboni yield to another question?

SENATOR BALBONI: Yes, Mr. President.

ACTING PRESIDENT MEIER: Senator Balboni, do you yield?

The sponsor yields.

SENATOR DOLLINGER: Isn't it also true that they could be buying those handguns out of the back of trunks of cars in Mineola, your hometown?

SENATOR BALBONI: Oh, I hope not.

SENATOR DOLLINGER: Why would you conclude that they would be buying them -

ACTING PRESIDENT MEIER: Senator

Dollinger, do you wish Senator Balboni to yield for another question?

SENATOR DOLLINGER: I do, Mr. President. And I apologize.

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

SENATOR BALBONI: Yes, I do, Mr. President.

ACTING PRESIDENT MEIER: You have to let me know.

The Senator yields.

SENATOR BALBONI: Mr. President, I'm sorry, I'm focusing on the question. But I'll focus on your questions.

SENATOR DOLLINGER: What is it about East Harlem, New Jersey, and Connecticut that makes you think that that's the only place they're buying guns out of the trunks of cars?

SENATOR BALBONI: I apologize. You've got me. I don't -- I don't have the exact title of the Tobacco and Firearms study -- done in 1992, I believe, but I'll check -- that actually talked about the

trafficking of illegal firearms into the state and into the surrounding states. That's where I got the information that led me to believe that that's where it occurs. I have no personal knowledge of it, though.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Balboni would continue to yield.

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

SENATOR BALBONI: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: What is there in this bill that would create greater penalties or reduce or deter anyone, gang member or otherwise, from buying those Saturday night specials, as you referred to them, out of the trunks of cars anyplace in the state of New York? Considering that's where the gangs get their weapons from, what is there in this bill that addresses that issue?

SENATOR BALBONI: Mr. President,

I'm sure that the member is aware of the federal body of law that deals with the interstate transportation of guns and weapons. That is the body of law which has been utilized by law enforcement agencies to try and get at these types of sales. This bill does nothing in that regard.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Balboni would continue to yield.

SENATOR BALBONI: Yes, I do.

SENATOR DOLLINGER: The whole point of your law, Senator Balboni, is that that body of law isn't working. That's why we need your bill; right? Because the federal body of law that you say protects or restricts access to weapons, it isn't working. That's because gangs are too prevalent. That's why we need this antigang rule here in New York, is because federal law isn't working.

If that's the case, why doesn't your bill contain a provision that will increase penalties or restrict access to weapons that are sold out of the backs of trunks of cars in New York State? Federal law

isn't working. Why wouldn't -- you want to solve this problem. You acknowledge that's part of the problem. Why doesn't your bill solve that problem?

SENATOR BALBONI: Mr. President, through you.

ACTING PRESIDENT MEIER: Senator Balboni.

SENATOR BALBONI: The area of this bill that creates new crimes, such as gang recruitment, such as gang assault, the area of the bill that allows for expert testimony in court, the area of the bill that protects witnesses' identification, names, and knowledge by individuals outside of the courtroom, so as to prohibit witness intimidation, those are new sections of law. That is the focus of the bill. Because we believe that those -- those new statutes are going to give law enforcement the ability to effectively investigate and prosecute gang activity in the State of New York. That's the focus of this bill.

Gun violence, the laws associated with gun violence is a broad, broad topic.

And we could debate this, you and I, back and forth as to what truly is an effective deterrent, whether or not the Sullivan Law, the toughest gun law in the nation, is in fact a deterrent to someone who's going to go out and get a gun any way, shape, or form, and what this state's role could be in stemming that flow of violence and guns.

But that's not the point of this bill. This bill is specifically designed to, for the first time, identify, root out, and effectively deal with gang-related activity.

SENATOR DOLLINGER: I have a final question, Mr. President.

ACTING PRESIDENT MEIER: Senator Balboni, do you yield for the final question?

SENATOR BALBONI: Yes, Mr. President.

ACTING PRESIDENT MEIER: He yields.

SENATOR DOLLINGER: Senator, you're familiar, I'm sure, with the RICO provisions under state law, the RICO provisions under federal law which create penalties for criminal enterprises and create

additional sanctions for criminal enterprises which involve more than one person. How does this bill differ from the application of those laws to gang activity?

SENATOR BALBONI: We originally -- when we came up with this idea, we decided to take a look at the state version or equivalent of RICO, which is called - what's it called, again?

SENATOR DOLLINGER: Racketeering.

SENATOR BALBONI: I'll get you the state name.

SENATOR DOLLINGER: We know what it is. I don't know what its name is.

SENATOR BALBONI: And in consultation with the members of the Legislature like Dale Volker, we decided that this would be a better approach.

Because we're also having to work -- remember, there are gang statutes in law right now as a result of our actions in 1996. This statute works off of that, so - and as I said, before includes new provisions like gang recruitment. We've never done that beforehand. In fact, I don't believe the RICO

statutes, either the federal or the state RICO statutes, deal with gang recruitment at all.

SENATOR DOLLINGER: Thank you, Mr. President, just on the bill.

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I'm not going to vote against this bill, which in my opinion goes about a third of the way to solving the problem that Senator Balboni has detected. I think we ought to take steps to start solving the problem.

But I would just suggest that this bill and my colloquy with Senator Balboni emphasizes a couple of the problems, a couple of the problems that we have in trying to control violence of any type in this state.

First of all, it somewhat troubles me that Senator Balboni has the impression that gangs are buying guns out of the trunks of cars in East Harlem, New Jersey, and Connecticut. They're buying guns out of the trunks of cars in Mineola, they're buying them out of the trunks of cars in Rochester, New York, they're buying them out of the trunks of

cars everywhere. Because these weapons are so abundant that you can buy them by the trunkload in Virginia -- you can buy them anywhere and truck them into New York State, and we can dump more weapons into the hands of youths and gangs.

Yet Senator Balboni suggests that the federal law -- we have plenty of federal laws. Obviously, the federal laws aren't working if you can buy a truckload -- a trunkload of guns and drive them up and open them up in any parking lot in New York State. The federal law isn't working. State law isn't working either, because obviously the gang problem continues.

We're not doing the right thing. I would just suggest that when federal law on guns aren't working and state law on guns aren't working, what we ought to do is look to change the state law on guns. We ought to look to restrict access to people who can sell them out of a trunk. We ought to look to put more restrictions on the transfer of weapons.

And I would just suggest that one of the great dangers about those who don't

want to put restrictions on weapons is that now you have gangs hiding under the skirts of the NRA. And they're hiding there because the NRA doesn't want to put restrictions on these weapons of any type.

So what we do is because of that, because of that, we allow gang members to continue to buy these weapons. Back in the days of West Side Story, when Tony killed Bernardo, it was done with a knife. That was back in the old days before we had an absolute abundance of weapons scattered through our neighborhoods. Now they're out shooting each other with tommy guns and AK-47s.

I would just suggest to decrease gang violence, this bill gets us about halfway there. Let's finish it off and go the other half and let's deal with the problem of weapons in the hands of kids. That's what we ought to be doing.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would like to ask the sponsor if he would yield for a couple of

questions -

ACTING PRESIDENT MEIER: Senator Balboni, do you yield?

SENATOR MONTGOMERY: -- for clarification.

SENATOR BALBONI: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Yes, thank you.

Senator Balboni, I'm trying to figure out for myself what is this new category of young people that we're looking to include in this that would be separate and apart from what the Governor's Juvenile Justice legislation also deals with. Because according to my information here, the Juvenile Justice Reform Act that the Governor has proposed, and I believe we've passed in this house, permits 14- and 15-year-olds to be prosecuted as adults for the following additional designated felony offenses. The first one is gang assault, first degree. Aggravated assault on a police or a peace officer. And et cetera, et cetera.

It also increases the length of time that a person who would be sentenced under this new law would be incarcerated. It also permits 12-year-olds to be prosecuted as adults for murder in the second degree. Now, I'm not sure that your -- I don't know that the 12-year-olds are actually engaged under your legislation, but this bill covers them.

And it seems to do essentially what your bill does for the exact same age group that your bill seems to be targeting. So I am trying to figure out what is the purpose of this, what are we actually doing. Are we going beyond our Juvenile Justice Reform Act with your legislation, or does this in any way enhance this bill that we've already done?

SENATOR BALBONI: The legislation before this body specifically targets gang activity. The Juvenile Justice Act does not. The Juvenile Justice program talks about juveniles of any type of activity level; in other words, whether or not they act independently, with a friend. There's no recognition that in fact there's an organization, an organized criminal

enterprise, as it were, at work here.

The development of this legislation, as I said before, was with the Nassau County Police Department, the City of New York, who talked about gang recruitment on school grounds taking place, particularly on Long Island. This is happening. It's a reality, shocking as it is. It's happened in New York City. And this is an attempt to try and allow law enforcement to identify that gang activity.

And oftentimes it's done by children, 16-year-olds going up to 12-year-olds and saying, "You're going to be in a gang." Or "When you come out, I'm going to slit your wrists." Or "I'm going to steal your bike," "I'm going to punch you in the face," "I'm going to take your lunch money."

And the irony here is there's a specific immigrant group that has been in the papers on Long Island as a result of their immigration in great numbers to Long Island. And the irony is that -- people have warned me not to talk about one specific group of people. That's just unfair. But the irony is

they're the ones who are being preyed upon. They're the ones who the gangs are targeting. Why? Because many of the kids don't go to school, perhaps. They don't have a set house. Or they live illegally, they're illegal aliens.

And what's happening is they're the ones who are having their money stolen if they have any, who are terrorized, being forced to join a gang, being encouraged to step outside of a society that perhaps they don't speak the language.

That's who we should be protecting, the most vulnerable. That's what this legislation does. This is not just to say, you know, "Oh, my gosh, the gangs are coming to suburbia, let's protect ourselves." No, no, no, no. This is a recognition of the fact that there's a whole culture that is below the surface of our society and they're being preyed upon, sometimes by their own people, sometimes by a group of organizations that have gotten together. That's what this bill is designed to do.

And unfortunately, the reality, as

presented to me by law enforcement and the DAs, is that it is children who are committing these crimes. Not adults, it's children. And they're being used for everything from being used to run drugs to actually being enforcers.

In Hempstead, Long Island, the Hempstead Police Department -- who has been, in the view of the statewide law enforcement agencies and the federal agencies, one of the preeminent law enforcement departments in trying to deal with this situation -- they have videotape of people trying to recruit students on school grounds. There's nothing hypothetical about this. This is taking place.

And so the question becomes what's the best way to try and address it and provide for real, hard-hitting deterrents.

I'm as disturbed, Senator Montgomery, as you are with the need to enforce and enhance penalties against children. But the reality of it is they're the ones who are committing these crimes.

SENATOR MONTGOMERY: All right. Through you, Mr. President. I would like to

just ask for -- to clarify.

You say that the young people who are being preyed upon, those are the ones we're trying to protect. How does your legislation protect young people who as -- you have referred to as being initiated into a gang against their will, they've had their wrists slit and whatever else has happened to them, but nonetheless out of intimidation or fear or whatever, they are now part of the gang?

What do we do with those young people? How do we distinguish between the ones who have recruited, the leadership in the gang, versus the members of the gang who are now part of the gang because they were recruited, perhaps through the intimidation process, but nonetheless they are now participants? How do we distinguish those people, and what do we do with them?

SENATOR BALBONI: Throughout the bill there are provisions that allow the court to consider, first, the mental culpability of the actor. In other words, were they committing the crime in order to further the

purposes of the gang. That's a requirement stated in the bill, in order to have the penalties enhanced. That's how we protect. They've got to have the culpability, the mens rea, as we talked about.

We're also allowing expert testimony to talk about the modus operandi of the gang. We'll give a jury the ability to understand the structure of a gang -- who was the leader, who are the followers. And then the jury in its deliberations will be able to mete out the consequences of the actions based upon that information.

SENATOR MONTGOMERY: Okay. Mr. President, one last question for Senator Balboni.

ACTING PRESIDENT MEIER: Senator Balboni, do you yield for another question?

SENATOR BALBONI: Yes, Mr. President, I yield.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Senator Balboni, I know that the New York City Police Department has a specific gang unit. And

the -- they also have a youth unit in each of the precincts. And it is my understanding that, based on the police officers that I've spoken with in the seven different precincts that I represent, all of them are very - they're also concerned about gang activity, but they also are concerned more about preventing young people from becoming engaged in the kind of activity that is associated with gangs.

And I'm just wondering, does your legislation in any way address what the police officers and the police department is attempting to do vis-a-vis prevention, based on their working to prevent young people from going in and the different -- and the variety of different methods they have come up? What do we have in that legislation that supports that, since this is to address gangs?

SENATOR BALBONI: Senator Montgomery, I cannot stand before you and tell you that I have done an in-depth survey or had in-depth discussions with all of the various commissioners or police departments or district attorneys around the state on the

issue of gang violence. I'm going to try to do that, but I have not done that.

My experience relates to my own county. Chief Faust is the gentleman who oversees Nassau County's efforts in gang violence. He talks about these types of programs for schools. We have a district attorney, Denis Dillon. His biggest thing is PALs, police athletic leagues. He's trying to drive money into them. He's a big boxing fan, thinks boxing's a great way to get these kids off the street and give them something to do. I agree with him.

I would be remiss at this point in time -- or I'd be reluctant, I would be reluctant at this point in time to try and legislate programs that the police, if they're a good department, are going to have in their operations, in the way that they police their communities, the kind of programs that they think are going to work. Not to tell them what to do, encourage them. Because, as you know, prevention is so much cheaper than having to put somebody behind bars.

But I think that a lot of the

programs that are out there working, you're right, this bill does not address those. Because I think that the police departments themselves, they're in the best position to try and develop those programs.

SENATOR MONTGOMERY: Thank you. Mr. President, I want to thank my colleague for his patience.

And briefly, on the bill -

ACTING PRESIDENT MEIER: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: -- I fully understand there's no one probably in this room that has more problems with gang activity than I do in terms of the people that I represent.

However, we in my district and in communities throughout the city, I think, and certainly in Brooklyn have met with the police department, from the narcotics people and all of the other specialty divisions, and from the top people on down to the local precinct captains. And we have also talked extensively with the divisions within each precinct that try to deal with the whole issue of gangs.

We've had workshops and -- you name it, we've talked about it and tried to do it in our area.

And one of the most salient things that is missing from the resource bank is the capacity of the police department to do early intervention and prevention. That's what we need, and that's what we want. That's what we really are looking for in terms of help from this government body.

And I have not heard from our local law enforcement people that they want stronger laws, that that's where they're weak. They're weak in the capacity to address the needs of young people in the way that they understand, as law enforcement people, is most effective.

So I'm not going to vote for this legislation. Not because I don't have a concern for gangs, because obviously I do. And all of my colleagues within my Senate district, from every level of government, we all do. But we also all have the same absolute concerns. And that is how do we do prevention, how do we develop more capacity in the form of programs that the police

department knows and the police officers who are experts know work. How do we do more in terms of youth courts and community-justice-center-type facilities where we can bring together community, school, law enforcement, and court to begin to have an early impact on children before they become advanced criminals, and so forth and so on.

So I'm voting against this because it's not what -- it's not what we in our community have identified as the main problem as related to gang activity.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Sampson.

SENATOR SAMPSON: Mr. President, would the sponsor yield for a question or two?

SENATOR BALBONI: Yes, Mr. President.

SENATOR SAMPSON: Through you, Mr. President. I commend Senator Balboni on enacting such legislation such as this, because we do need to take the first step, especially in gang activity, which has increased tenfold within the last couple of

years.

And as Senator Montgomery said, we do need some prevention programs to really prevent this activity. Because, as Senator Balboni said, he's talking about, you know, protecting the most vulnerable. In a lot of ways to protect the most vulnerable is through enacting such programs such as PAL or any other program or after-school program. Because we know most of those activities occur between the hours of 2:00 to 8:00 p.m., when these children have nothing to do.

But one thing I want to find out, which has become prevalent within the last couple of years, gang graffiti. And, through you, Mr. President, I want to ask the Senator what provisions, if any, does this legislation take to record or keep track of such gang activity, gang graffiti?

SENATOR BALBONI: Mr. President, I yield.

ACTING PRESIDENT MEIER: Senator Balboni.

SENATOR BALBONI: First of all, let me just start by recognizing your work in

this area, Senator Sampson. I know of your interest and your legislation.

The bill itself deals with graffiti only in that, for the first time in this state, it would attempt to create a gang -- a statewide gang database for the computer justice system -- system of computers in the justice system that would recognize a whole host of elements or characteristics of gangs, among them being graffiti.

You know, this is kind of a novel approach for us, if you talk to law enforcement here. But yet this is what they do in California. They've got a program called Gang Net in California which is -- and Cal Net -- very sophisticated. And essentially, they allow for downloading to any local police department a color photograph of both the individual, the colors that the gangs wear, the graffiti that they use, you know.

And what's really interesting, the police departments tell me that the graffiti is an important indicator. Because when the gangs, if the heat gets too much in their local neighborhood, they shift their base of

operation. And it could be as simple as getting everybody in a car and going upstate somewhere and hanging out for a couple of days. But yet, believe it or not, they still go out and they perform graffiti and write graffiti on the walls.

And this is an indicator to the law enforcement groups up there that there's a new gang in town. You know, they may not be operating -- this may not be their new base of operations, but nonetheless, this would allow law enforcement communities to know what they're dealing with. You know, as another trace here.

That's the way that this bill deals with graffiti itself.

SENATOR SAMPSON: Okay.

ACTING PRESIDENT MEIER: Senator Seabrook.

SENATOR SEABROOK: Yes, Mr. President. Will the sponsor yield to a question?

ACTING PRESIDENT MEIER: Senator Balboni, do you yield for a question?

SENATOR BALBONI: Yes, I do, Mr.

President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SEABROOK: Mr. President, through you.

Senator Balboni, there's a couple of questions as it relates to common characteristics that you talk about in this bill. And are you familiar with the term "wannabes"?

SENATOR BALBONI: "One of these"?

SENATOR SEABROOK: No, "wannabes."

SENATOR BALBONI: "Wannabes"? W-A-N-N-A-B-E-S?

SENATOR SEABROOK: Right.

SENATOR BALBONI: I've been a wannabe all my life.

(Laughter.)

SENATOR BALBONI: I'm not sure what, but I wannabe something.

SENATOR SEABROOK: Right. So the -

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

SENATOR BALBONI: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SEABROOK: So the question of gang wannabes in our communities are a reality. We have more wannabes than gang members.

This question of common characteristics -- and if you look at some of the common characteristics that you talk about, the style of dress, the hand gestures, their language, this is part of what the children in our communities do, the wannabes. The majority are. Less gang members, more wannabes.

This also allows them to be picked up without committing a crime. Part of the bill here says that if they're in the company of those known gang members but yet they're not necessarily gang members, that they can actually be picked up and identified as a gang member. That's part of the characteristic.

The clothing that they wear, the tattoos -- the tattoos are a part of the trend of the wannabes. The clothing is sold in the

Gap, it's sold at your major stores.

So how do we deal with this question of the wannabes and this issue of common characteristics?

SENATOR BALBONI: Mr. President, Senator Seabrook raises a very important question. That's the difficulty with this bill. How do you allow police agencies to identify gang members but yet still recognize individual freedoms and associations?

If you take a look at the definitions contained on page 2 of the bill, in Section 280 you'll see that the criminal street gang member is an individual, as defined in here, who has two or more of the following characteristics. A jury has to find that. Just because a law enforcement agency designates an individual as a gang member and they are involved in criminal behavior, that doesn't automatically put on them that moniker. That has to be proved as an element of the crime under this bill.

That's why the next section of the bill, where it talks about expert testimony, is so important. Because an expert will be

able to differentiate for a jury what the difference between a wannabe is and what the difference between a gang -- a full-fledged, active participant in a gang is.

Is that a perfect system? Is it a foolproof system? Will enacting this statute possibly result in the arrest of individuals who are merely copycats or wannabes? I can't tell you with an absolute certainty that it won't.

But it is my understanding and my belief that the law enforcement communities across the state are so stretched with resources that to go out and simply to pick somebody up and now, as a pretense, say, Well, we thought you were a gang member because you did something with your hands, or you're wearing this color or whatever, and make it completely specious -- particularly in this current environment, it's just not going to happen.

I have faith in that. Maybe that's not good enough for you. I understand that and appreciate that very much. But this is an attempt -- again, working with law enforcement

and DAs -- to try and provide law enforcement with tools to get at this problem.

SENATOR SEABROOK: Thank you, Senator Balboni.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Seabrook, on the bill.

SENATOR SEABROOK: I think that here we again are looking -- and the bill has questions as it relates to common characteristics, as it relates to identifying members or who could be classified as street gang members. And it says "two or more of these characteristics." And "based on a reliable informant."

I'm still trying to figure out what's a reliable informant. So that's probably one of the other questions. Because in most cases, if you're paid, you can probably buy a lie any type of way that you desire.

The other issue, in terms of their clothing and the gestures, in the district in which I live there is a school for the deaf that's populated by a tremendous amount of

African-American and Latino kids who have a desire to wear those type of clothing that's there. They don't speak, but they use a lot of sign languages that the gang members use. A number of police officers would assume that these are gang members.

I have a number of kids who have basically worn a certain color and people said that if they're wearing red today, they're part of the Bloods. And the Gap sells those big overblown shirts that everybody wears. The baggy jeans are the style. In fact, they cost more than some of the outfits we wear. And the kids don't speak, but they use sign languages coming from school. And they wear their hair in a style of dreadlocks, in most cases, and some are clean-shaven. And police would assume that they are gang members, because they want to be like everybody else. The media has portrayed these individuals on television, and it's a part of their dress and their vernacular and everything else.

So it's rather hard. And when we talk about these characteristics, that's the danger of it. And we're a little bit

overstepping as to how we begin to look and to identify these gang members.

SENATOR BALBONI: Mr. President, would the gentleman yield for a question?

ACTING PRESIDENT MEIER: Senator Seabrook, will you yield for a question from Senator Balboni?

SENATOR SEABROOK: Absolutely. Absolutely.

SENATOR BALBONI: Senator Seabrook, you're not suggesting that this bill in any way, shape, or form contains penalties for mere association with a gang?

SENATOR SEABROOK: I'm saying that this bill, in terms of the characteristics that's there, gives an officer the opportunity to stop an individual on the basis of his association. It says "based upon the association of other gang members." It might be a cousin that they might be at the same dinner one night.

SENATOR BALBONI: Mr. President, will the Senator yield for another question?

SENATOR SEABROOK: Yes.

ACTING PRESIDENT MEIER: The

Senator yields.

SENATOR BALBONI: Would you please -- for the benefit of the body, Senator Seabrook, could you direct me to where it states in the bill that a law enforcement officer is allowed to make a stop based upon solely either looking like they are a gang member, wearing their dress, someone saying that they're a gang member? Where does that say that in the bill?

SENATOR SEABROOK: It says in the bill that a person -- a criminal street gang member means a person who has two or more of these following criteria. Based upon that, the individual can be placed in a data bank. And such a data bank and the individual who is there, a police sees an individual who's dressed in this characteristic, has this tattoo and everything else, he assumes that this is a gang member.

I'm saying that the presumption of police officers in most cases in those communities in which I represent, they would be stopped. They would be searched. The arrests, I don't know. But they will be

stopped. They will be searched.

SENATOR BALBONI: As a result of this bill only, Mr. President?

SENATOR SEABROOK: Not as -- Mr. President, not as a result of this bill only. Because even without this bill, they're being stopped.

My point is that this bill in a sense gives them a means and a basis of legality that says, well, this is a gang member.

So based upon that, Mr. President, that this bill in a sense is almost similar to the bill that they -- well, not the bill, but the actions of the New Jersey state troopers. In a sense. There's a profile that's created. There's an actual profile that's actually created by this bill -- characteristics, customs, dress, tattoos. So you're actually beginning to profile.

So we've got to be very careful. The only thing we didn't profile was the complexion. But based upon that, it's children who are shopping at the Gap, children who are shopping at J.C. Penney. The outfits

that they wear, the baggy jeans. All of this is a part of that.

And I'm saying that in our communities, again, when we look at the school that's in the district in which I represent, the young guys who don't speak but use sign languages to communicate -- the Bloods and the Crips and everybody else use sign languages to communicate too. Even the wannabes.

And so therefore, you have a system that begins to profile individuals. And so the danger of this -- and in this bill I understand that there's a need to deal with gang members and gangs that take place.

You deal with that not on the basis of the characteristics, you give gang members options and opportunities. Because this is a gang, it's just a progressive, productive gang of people associating. When our children do not have all of the other means of being involved in other activity, the gangs serve their purpose. The Boys Club is a gang of guys together. The Girls Club is a gang of guys and girls together. The question is, what do they do?

So there are those who believe and do criminal activity, but profiling at this particular point creates a problem. And it also gives all of us the belief that when we see individuals dressing like that, tattoos like that, we would assume that they're gang members. The guy who rides a motorcycle and have a helmet on and he is pumped up, you would think he was a member of the Hell's Angels. This guy might be a Wall Street broker.

So we've got to be very careful in bills that allow this whole proliferation of profiling. But -- I do understand the need of what Senator Balboni is trying to do, but it is a dangerous step when we step over and allow, in America, where racism exists -- that we better be careful of how we do this. See, the reality is with the racism that exists within our society, the carefulness of how we craft bills -- we have to be very careful. Because what Mike wants is something good, but those who will implement that will allow something bad to happen. So the carefulness of crafting that is essential and necessary,

because all communities are different.

There is a need to deal with youth violence, to deal with gang violence. But I think that we have to begin to say perhaps we need to educate children a little better. We need to begin to talk about it in reality in schools, as a part of a curriculum. That's what changes attitudes and behaviors about gangs.

When our children would care to be in a facility -- there's a prison that was built in the South Bronx a couple of years ago, across the street from the school on 149th Street. The children are saying, "I would love to go and play in the gym and swim in the pool at the prison, because my school don't have a gym or a pool." So the question is that they would be prone to commit a crime to go into the new spot for it than to go into the old school.

So I'm saying that we have to be creative as to how we deal with gangs in the reality. They start out with nothing to do. And when there's an absence of -- nothing to do, they will create something to do. We have

to begin to say that if crime is at the level of being created at a higher percentage from 3:00 to 8:00, then there's something that we have to do to allow our children to be involved. Every school should be open. It took ten years to fight to get the custodians to say that they didn't have control of the schools in New York City and we would have to pay to have schools open.

So I understand the desire, and I understand what gang members -- I have a problem with some of the same young people in my community, that we're going to take over a park this Sunday. We're going to have African-American men saying that we have had enough in this park. And all the gang members, the wannabe gang members, we plan to bring a gang of African-American men in the park to deal with those individuals who believe that they have to create this gang, this violence, because we have not stepped up to the plate to show them that that's not the way to go. So we have a responsibility.

I'm saying that there's enough on the books to deal with individuals who commit

crimes now. We don't have to do this. And the profiling that's in here is the most dangerous thing that can happen. And it will come back -- not that Mike, Senator Balboni, has a desire to have this, because I know him well enough. But I know the danger of profiling that will take place here. We will come back, and we will be just like New Jersey where we see that we are actually codifying, profiling in a bill. And that's the danger of what we have to look at.

So I think that we need to go back to the drawing board on this bill. I understand that the Senator has a real commitment to deal with this. But this is something that will come back to haunt us here in this Legislature. So it was suggested that we would sit back.

And at this particular point in time, I would urge my colleagues not to vote for this bill at this particular time until we come to the realization that there's something wrong with this bill.

Thank you very much, Mr. President.

ACTING PRESIDENT MEIER: Senator

Balboni.

SENATOR BALBONI: Senator, the last thing that I would ever want to do is propose legislation to this house that will in any way further or widen the racial divide in this state or in any community therein.

I have never, I have never considered the aspect of profiling within this bill. And that's perhaps because I've gotten the view of this bill from law enforcement. It has been law enforcement that has said to me, "We consider gang members now all the time." But when they come into your school and they try to recruit your children, my children, somebody else's child, we don't have anything to get them on. We can't stop the recruitment.

See, what you're talking about would be very true if this -- these characteristics were not already considered by law enforcement. I assure you, they are. In every neighborhood that the police are involved, this is what they look for. Where do you think I got the list?

By putting it into statute, what I

am trying to do is allow the courts on the back end, after the criminal act has taken place -- not before -- when we're dealing not with children but with children who have committed criminal acts that either have injured somebody, terrorized somebody, destroyed a neighborhood, and now we allow a jury to consider, as a part of the punishment, the enhancement of the penalty based upon expert testimony that this was a gang-related crime that was directed against a victim and these were done by full-fledged members or leaders of a gang.

I understand your concerns very, very well. But I think that we have to take the courageous step to try and see if we can't recognize that crime in this state is never an easy fit, that if we're truly going to deal with a new breed of criminals -- that is what the gangs represent -- that we need to take different approaches.

Having said that, this bill is being carried by Assemblyman Klein. Assuming this bill doesn't -- if this bill does not become law this session, I will invite you,

Senator Sampson, Senator Montgomery, let's sit down and take a look at this bill from your community's perspective, my community's perspective -- I don't mean racial, I mean where we live. And let's see if we can't perhaps take out some of the provisions that you might find to be offensive.

I thank you for your comments.

ACTING PRESIDENT MEIER: Senator Seabrook.

SENATOR SEABROOK: Mr. President, I just want to say to Senator Balboni that in no way, shape, or form that I would associate him with anything in terms of a divide or creating a problem, because I know him too well to be about that.

But I'm just saying that the realities of what exists, what exists in our communities -- and not too long ago, Senator Balboni, the street crime unit in the City of New York, the number of people that they stopped just on the basis of what they wore, how they walked -- if there was a big enough shirt and the jeans were sagging and they were on bikes or whatever, the assumption was that

they had guns. The number of people that were stopped and searched without any cause outweighed the number of people that they actually stopped and arrested and the guns that were retrieved.

And I'm saying that we have to be very careful about how we overstep this line, because it's a very thin line. And that's what we have to be very careful of.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 11. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1422 are Senators Duane, Mendez, Montgomery, Rosado, and Seabrook. Ayes, 53. Nays, 5.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President -- just one second, please -- could

we at this time recognize Senator Rosado?

ACTING PRESIDENT MEIER: Senator Rosado.

SENATOR ROSADO: Mr. President, I would like unanimous consent to be recorded in the negative on Bill 912, Calendar 912.

ACTING PRESIDENT MEIER: Without objection, Senator Rosado will be recorded in the negative on Calendar 912.

Senator Mendez.

SENATOR MENDEZ: I also request unanimous consent to be recorded in the negative on Calendar Number 912.

ACTING PRESIDENT MEIER: Without objection, Senator Mendez will be recorded in the negative on Calendar 912.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, can we at this time call up Calendar Number 371.

ACTING PRESIDENT MEIER: Secreta ry will read Calendar 371.

THE SECRETARY: Calendar Number 371, by Senator Spano, Senate Print 1469B, an act to amend the Social Services Law.

ACTING PRESIDENT MEIER: Senator Marcellino.

SENATOR MARCELLINO: Is there a message at the desk, Mr. President?

ACTING PRESIDENT MEIER: There is a message at the desk.

SENATOR MARCELLINO: Move to accept, please.

ACTING PRESIDENT MEIER: The question is on the motion to accept the message of necessity. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The message is accepted. The bill is before the house.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MEIER: The bill is passed.

Senator Schneiderman, why do you rise?

SENATOR SCHNEIDERMAN: Mr. President, I request unanimous consent to be recorded as voting in the negative on Calendar 912, Senate 4450, and Calendar 14 -- no, 1512, Senate 5823.

ACTING PRESIDENT MEIER: Without objection, Senator Schneiderman will be recorded in the negative with regard to Calendar 912 and Calendar 1512.

SENATOR SCHNEIDERMAN: Thank you very much.

ACTING PRESIDENT MEIER: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, can we call up now Calendar Number 1068.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 1068.

THE SECRETARY: Calendar Number

1068, by Senator LaValle, Senate Print 5206C, an act to amend the Education Law.

ACTING PRESIDENT MEIER: Senator Marcellino.

SENATOR MARCELLINO: Is there a message at the desk, please?

ACTING PRESIDENT MEIER: There is a message at the desk.

SENATOR MARCELLINO: Move to accept.

ACTING PRESIDENT MEIER: The question is on the motion to accept the message of necessity. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The message is accepted. The bill is before the house.

Read the last section.

THE SECRETARY: Section 23. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, at this time can we have the noncontroversial reading of Supplemental Calendar Number 1.

ACTING PRESIDENT MEIER: The Secretary will read the noncontroversial calendar found in Supplemental Calendar Number 1.

THE SECRETARY: Calendar Number 1524, by Senator Padavan, Senate Print 5505, an act to amend the Public Authorities Law, in relation to establishing.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: I'm sorry. Senator Duane. To explain your vote?

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

ACTING PRESIDENT MEIER: Senator Duane, to explain his vote.

SENATOR DUANE: I'm very pleased to vote in favor of this legislation. I sponsored similar legislation when I was in the New York City Council. It is long overdue and a laudable idea.

I do also want to mention that often it is important to provide special protections for different groups of people, which is why I continue to push for passage of bias-related legislation. Oftentimes special considerations need to be addressed through legislation, in this case with half-fare programs for persons with a disability, and in the case of the bias bill to protect people who are perceived to be or who are different from being attacked in their neighborhoods.

But I vote in the affirmative. Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator

Duane will be recorded in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Seabrook.

SENATOR SEABROOK: Yes, Mr. President. With unanimous consent I would like to be recorded in the negative on Calendar 912 and Calendar 1512.

ACTING PRESIDENT MEIER: Without objection, Senator Seabrook will be recorded in the negative on Calendar 912 and Calendar 1512.

The secretary will continue to read.

THE SECRETARY: Calendar Number 1534, by Senator Leibell, Senate Print 2684, an act to amend the Civil Service Law, in relation to including.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1535, by Senator Libous, Senate Print 3758, an act to amend the Tax Law, in relation to extending.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number

1536, by Senator Stafford, Senate Print 3898A, an act to amend the Executive Law and the Criminal Procedure Law, in relation to expanding.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR DOLLINGER: Lay it aside, Mr. President.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: In relation to Calendar Number 1537, Senator Velella moves to discharge, from the Committee on Rules, Assembly Print Number 5384A and substitute it for the identical Third Reading Calendar, 1537.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1537, by Member of the Assembly Klein, Assembly Print Number 5384A, an act to amend the General Business Law.

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT MEIER: Lay the

bill aside.

THE SECRETARY: Calendar Number 1538, by Senator Meier, Senate Print 4174A, an act to amend the Public Authorities Law, in relation to the creation.

ACTING PRESIDENT MEIER: There's a home rule message at the desk.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1539, Senator Paterson moves to discharge, from the Committee on Rules, Assembly Print Number 7270B and substitute it for the identical Third Reading Calendar, 1539.

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

Read the last section.

THE SECRETARY: Calendar Number 1539, by Member of the Assembly Wright, Assembly Print Number 7270B, an act in relation to authorizing the City of New York.

ACTING PRESIDENT MEIER: Substitution ordered.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1540, by Senator Velella, Senate Print 4275, an act to amend the Administrative Code of the City of New York, in relation to workers on excavations.

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

Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1541, by Senator Marchi, Senate Print 4458B, an act to amend the Not-for-Profit Corporation Law and the State Finance Law, in relation to providing.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the 30th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1542, Senator Wright moves to discharge, from the Committee on Rules, Assembly Print Number 7402A and substitute it

for the identical Third Reading Calendar, 1542.

ACTING PRESIDENT MEIER: Substitution ordered.

Read the last section.

I'm sorry, the Secretary will read.

THE SECRETARY: Calendar Number 1542, by Member of the Assembly Bragman, Assembly Print Number 7402A, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT MEIER: Now read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1543, Senator Seward moves to discharge, from the Committee on Local Government, Assembly Print Number 643 and substitute it for the identical Third Reading

Calendar, 1543.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1543, by Member of the Assembly Luster, Assembly Print Number 643, an act to amend the Real Property Tax Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1544, Senator Kuhl moves to discharge, from the Committee on Finance, Assembly Print Number 2977B -

SENATOR CONNOR: Lay it aside.

THE SECRETARY: -- and substitute it for the identical Third Reading Calendar,

1544.

ACTING PRESIDENT MEIER: Senator Connor, we'll get the bill before the house and then we'll lay it aside at your request.

Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1544, by Member of the Assembly Sanders, Assembly Print Number 2977B, an act to amend the Education Law.

ACTING PRESIDENT MEIER: The bill will be laid aside at the request of the Minority Leader, Senator Connor.

SENATOR CONNOR: At the request of Senator Dollinger, please.

ACTING PRESIDENT MEIER: Senator Dollinger requested the lay-aside.

The Secretary will continue to read.

THE SECRETARY: In relation to Calendar Number 1546, Senator Farley moves to discharge, from the Committee on Rules, Assembly Print Number 7879 and substitute it for the identical Third Reading Calendar, 1546.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1546, by the Assembly Committee on Rules, Assembly Print Number 7879, an act to amend the Public Health Law, in relation to continuing.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1547, by Senator Seward, Senate Print 5208B, an act to amend the Education Law, in relation to illegal practice.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1548, by Senator Seward, Senate Print 5618A, an act to legalize, validate, ratify and confirm the dissolution.

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

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1550, by Senator McGee, Senate Print 5789, an

act to amend Chapter 584 of the Laws of 1998.

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

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1551, by Senator Gentile, Senate Print 5832, an act to authorize the Brooklyn Cultural Center of New York, Incorporated.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1552, by Senator Rath, Senate Print 5875, an act to amend the Executive Law, in relation to establishing.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1553, Senator Meier moves to discharge, from the Committee on Rules, Assembly Bill Number 996B and substitute it for the identical Third Reading Calendar, 1553.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1553, by Member of the Assembly Jacobs, Assembly Print Number 996B, an act to amend the Social Services Law.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 5. This act shall take effect in 180 days.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1554, by Senator Rath, Senate Print 5893, an act authorizing the implementation of a Smart Growth planning demonstration program.

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1555, by Senator Bonacic, Senate Print 5919, an act to exempt certain parcels of land.

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

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

SENATOR MARCELLINO: Mr. President.

ACTING PRESIDENT MEIER: Senator Marcellino.

SENATOR MARCELLINO: Could we go back to Calendar Number 1554, by Senator Rath, and lay that aside for the day.

ACTING PRESIDENT MEIER: Calendar 1554 will be laid aside for the day at the request of the Acting Majority Leader.

Senator Marcellino, the remaining bills are high. And that completes the reading of the noncontroversial calendar.

SENATOR MARCELLINO: Mr.

President, we're just waiting for Senator Kuhl for two seconds. He'll be right here. Then we'll debate that bill. He should be here momentarily.

Can we recognize the Right Honorable Deputy Minority Leader, Mr. Paterson.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. May I be -- with unanimous consent of course, may I be recorded in the negative on Calendar Numbers 912 and 1422, 912 and 1422.

ACTING PRESIDENT MEIER: Without objection, Senator Paterson will be recorded in the negative on Calendars 912 and 1422.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, at this time can we call up Calendar Number 1544.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 1544.

THE SECRETARY: Calendar Number 1544, substituted earlier today by Member of

the Assembly Sanders, Assembly Print Number 2977B, an act to amend the Education Law.

SENATOR DOLLINGER: Explanation, Mr. President.

ACTING PRESIDENT MEIER: Senator Kuhl, an explanation has been requested of Calendar 1544 by Senator Dollinger.

SENATOR KUHL: Thank you, Mr. President.

This bill is a rather modest proposal. It makes relatively few changes in the Education Law, but a very important change. Primarily, this bill would raise the compulsory education maximum level, which is currently 16, to 17. And what it would do is to raise the option to a higher age for local school districts to require students to go to school.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Will Senator Kuhl yield to a couple of questions?

ACTING PRESIDENT MEIER: Senator Kuhl, do you yield for a question from Senator Dollinger?

SENATOR KUHL: I'd be happy to.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Senator, I agree with the concept of this wholeheartedly. But I have two questions.

First of all, how many -- strike that. Does the current law provide that local Boards of Education may set a higher age beyond 16, or is that new language in the bill?

SENATOR KUHL: It -- they have the authority to raise the age currently, under current law, higher than 16, but they can only go to 17. And currently in the state of New York the City of New York has elected to do so. So that in the City of New York, students are required to continue education till the year in which they turn 17, while in the rest of the state they're only required, unless there is a local option -- and I don't believe there are many local options through the rest of the state -- most students only are required to go to school until the year in which they turn -- the end of the year in

which they turn 16.

SENATOR DOLLINGER: Through you, Mr. President. And again, I -

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

SENATOR KUHL: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: And again, I want to make this clear, that I think this is a good bill for all kinds of reasons.

But what will be the practical effect on truancy if this measure passes? I mean, I appreciate the fact that we're trying to get kids to go to school for a longer period of time. But is this simply going to result in a huge increase in the truancy numbers if we jump it from 16 to 17?

SENATOR KUHL: I don't believe so, Senator. This is -- really, if you look at the state of education in New York, there's a major revolution going on, if you will. There's been a requirement from a national standpoint to upgrade the quality of education in not only New York but in the country, and

New York is starting to do that.

The Board of Regents, as you know, who are elected by a joint conference of both houses, have selected the -- a higher standard for students to graduate. That is gradually being phased in and will be fully implemented by the year 2003.

One of the things that is, I think, causing some concern right now, because - there's a great deal of anxiety that's been created because there's an unknown. There's a change going on, and there's an unknown. People don't know, for instance, what the Global Studies Regents is going to look like that they're going to be required to pass to actually graduate from high school. And the issues go on and on and on.

But not to bore you, and certainly not to take -- I think to spend a lot of time on another area, there also is going to be, I think, an increased opportunity and perhaps desire from some students just to call it quits at 16 and just say, "Look, I'm not going to engage in that more competitive course of study, and therefore I'm going to just exit

and go do my thing."

The reality is currently right now we have about 28,000 students who are dropping out of school. The reality is, quite frankly, that to get anywhere in today's world, you have to have a high school education. And without that you're going to be probably, in most cases, a drain on our society. You're either going to end up not being able to subsidize yourself and your family and you're going to be thrust into a situation where you are violating the law to survive and end up in a correctional facility, or you're going to end up being in need of some temporary services and also being able not to take care of yourself.

So the emphasis behind this proposal is to do what is absolutely essential in today's world, and that is to give an education to our students and recognize that there are times in a young person's life when they are not necessarily making the most mature decision. So what we're simply saying is we're going to require students to receive a formal education until they're 17, and local

municipalities, school districts, may elect to extend that even further.

SENATOR DOLLINGER: One final question, through you, Mr. President.

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

SENATOR KUHL: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: The only objection that I've heard to this bill is that its impact on home schools, with respect to the reporting requirements, the additional reporting requirements beyond age 16, the extra year that people who are educating their children in the context of their home, that they would have extra reporting requirements.

Is it possible that even though we're increasing the compulsory age of education, that they could waive that after 16, just to cut down on the cost or on the administrative burden of home schooling?

SENATOR KUHL: To answer your question, Senator, that is a possibility.

And Reverend Motley, who is

promoting this possible concern in this area, is in the stands behind you, and he and I have had a discussion just as recently as about an hour ago. And as I had told him several days ago, in fact, that is an issue - overregulation, bureaucratic controls -- that we would be happy to look at.

And from my conversation with him, you'd be happy to know that the Commissioner of Education has also committed to do a review of the regulations, to try to make it easier for home schoolers, as long as they meet a certain standard of providing that education, to actually deliver that educational format.

So the answer to your question is yes, that's a possibility. Will that happen? I don't know. But I have committed to the home school people that in fact we will undertake a review of the regulations to try to ease any burden that this might provide to them. But also to ease any other burden that might be imposed on them as a result of regulations from the Department of Education.

Now, the other thing that Reverend Motley did say to me was that, "Oh, we're very

much in favor of this bill." So you should know that also.

SENATOR DOLLINGER: He made that clear to me as well.

Through you, Mr. President, just on the bill.

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I think the reason why -- and I hadn't really thought of the home schooling before it was brought to my attention. Truancy in the context of home schooling is relatively slim. If mom or dad is doing the educating, the kids are there in the home. And the concept of truancy is really almost inconsistent with the whole notion of home schooling.

But I commend Senator Kuhl for doing this. I continue to believe that there are two things we should look at. Not just raising the age of compulsory education, but the other thing that we might want to do and the other thing we ought to at least consider is raising the age at which you are entitled to a universal free public education. It is

now age 19, that we can educate our students up to 19.

One of the problems we've run into in many contexts is the concept of remediation until you get your high school degree. And as we know, too many kids are not getting it by the time they're 19. They're not eligible for the GED. They don't get that educational foundation. And yet when they try to go back and get it at some future time -- we had a debate here in the context of the Finance Committee when we were considering nominees for the CUNY system in which we talked about how we had students who were using up their TAP appropriation so they could get the remediation which we can now only afford them in either in our community colleges or our four-year institutions.

And so it seems to me that one of the things we should look at -- and I agree with Senator Kuhl's philosophy and his concept that we should be providing more incentives to go through school. And I would suggest that we not only look at the compulsory age of education, but that we look at that whole

notion of the concept of when are you entitled to a universal free public education, and that it not necessarily be age-determinative but that it be skills-determinative.

And that we might establish a situation in which, even though it's more costly -- and this is where I agree Senator Kuhl absolutely and completely. I believe you can't get -- you can't even begin to show up on the radar screen without a high school education. I actually believe that you can't even begin to make it to do the kinds of things that you talked about, supporting your family and not being a drain on society, without a college education these days. And that is the message we ought to be sending.

I'm going to vote in favor of this bill because it takes a step in that direction. I would like to think that we would at some point take further steps that will get us to that whole notion that was true in the 1920s when we put in the age 16, when we were convinced in the 1920s that if you got to age 16, you probably could have a high school degree, and that gets you in the middle

class.

The notion now is very simple. To get into the middle class, to survive in this society, you have to have that college degree.

And I welcome this step. I hope we can go further.

SENATOR KUHL: Would Senator Dollinger just yield to one question?

ACTING PRESIDENT MEIER: Senator Dollinger, do you yield for a question?

SENATOR DOLLINGER: Absolutely, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR KUHL: Senator Dollinger, you used the age of 19. I'm curious as to where you picked up that piece of information.

SENATOR DOLLINGER: It was my understanding -- through you, Mr. President - that that was the age at which your entitlement to a free public education -- it was 18, and then it was extended to 19 so that those students could continue to go to a free public high school until age 19.

That's my understanding. I may be

incorrect with that, Mr. President.

SENATOR KUHL: Just for your benefit, Senator Dollinger, if I may -

ACTING PRESIDENT MEIER: Senator Kuhl.

SENATOR KUHL: If you would refer to Section 3202 of the Education Law, you'll find that that age is 21.

SENATOR DOLLINGER: 21, okay.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: Just to explain my yes vote. Because -

ACTING PRESIDENT MEIER: Well, you want to speak on the bill? We're on the bill now.

SENATOR OPPENHEIMER: Okay. Call the roll, yeah.

ACTING PRESIDENT MEIER: Okay. Read the last section.

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

ACTING PRESIDENT MEIER: Call the

roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Oppenheimer, to explain her vote.

SENATOR OPPENHEIMER: Thank you.

This obviously, I think, is an excellent bill. Otherwise, I wouldn't have cosponsored it. We have now -- our students will have to pass five Regents exams before they will be able to get the Regents diploma. We -- that's in the future. We're putting in one each year.

But it may take additional time for some of our students to meet and reach these standards and pass these exams in order to qualify for the Regents diploma. And therefore, I think it's important that we give them and mandate the extra time that they will need to do this.

However -- here's the however -- I don't want this to look like it is the answer to the problems that we have with education today. If we want to assure academic success, we really have to work on those at-risk kids who are struggling with our education system.

And therefore, I see this as one step. But many steps need still to be taken to provide for the at-risk student at a very early age and to provide the smaller classes and to provide the pre-kindergarten instruction and to offer the staff development that will be necessary for the teachers to teach to the higher standards.

And all of this really takes substantial additional resources. And so I would make my appeal also for those resources so that we can offer the at-risk student additional time, summer-school assistance, after-school hours to provide assistance to them.

There's a whole panoply of needs here. This addresses one piece of it. I support the bill. I don't want to overlook the other important needs of our education system.

ACTING PRESIDENT MEIER: Senator Oppenheimer will be recorded in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Mr. President, I would like unanimous consent to be recorded in the negative on Calendar 1512.

ACTING PRESIDENT MEIER: Without objection, Senator Montgomery will be recorded in the negative on Calendar 1512.

Senator Gentile.

SENATOR GENTILE: Yes, Mr. President. I'd like unanimous consent to be recorded in the negative on Calendar 371 on the original calendar.

ACTING PRESIDENT MEIER: Without objection, Senator Gentile will be recorded in the negative on Calendar 371.

Senator Smith.

SENATOR SMITH: Thank you, Mr. President. I request unanimous consent to be recorded in the negative on Calendar Number 1420.

ACTING PRESIDENT MEIER: Without

objection, Senator Smith will be recorded in the negative with regard to Calendar 1420.

Senator Santiago.

SENATOR SANTIAGO: Yes, Mr. President. I would like to be recorded in the negative on Calendar 912, please.

ACTING PRESIDENT MEIER: Without objection, Senator Santiago will be recorded in the negative on Calendar 912.

SENATOR PATERSON: Mr. President, without objection, I'd like to be recorded in the negative on Calendar Numbers 1512 and 1534.

ACTING PRESIDENT MEIER: Without objection, Senator Paterson will be recorded in the negative with regard to Calendar 1512 -- what was the other one, Senator Paterson? 1534?

SENATOR PATERSON: 1534.

ACTING PRESIDENT MEIER: Senator Smith, excuse me. The Chair requires a clarification. Is it Calendar 1422 you wish to be recorded in the negative on? That would be Senator Balboni's bill that was debated extensively.

SENATOR SMITH: Yes.

ACTING PRESIDENT MEIER: All right, the record will so reflect. And without objection, Senator Smith will be recorded in the negative on Calendar 1422.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President. Can we return to the regular calendar and call up Calendar Number 644.

ACTING PRESIDENT MEIER: On the regular calendar, the Secretary will read Calendar 644.

THE SECRETARY: Calendar Number 644, by Senator Saland, Senate Print 3815B, an act to amend the Family Court Act, in relation to dispositions.

SENATOR MARCELLINO: Is there a message at the desk?

ACTING PRESIDENT MEIER: There is a message at the desk.

SENATOR MARCELLINO: Move to accept.

ACTING PRESIDENT MEIER: The question is on the motion to accept the message of necessity. All those in favor

signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The message is accepted. The bill is before the house.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, can we call up, on the same calendar, Calendar Number 994.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 994.

THE SECRETARY: Calendar Number

994, by Senator Volker, Senate Print 3521A, an act to amend the Civil Practice Law and Rules, in relation to motions.

ACTING PRESIDENT MEIER: Senator Marcellino.

SENATOR MARCELLINO: Is there a message at the desk?

ACTING PRESIDENT MEIER: Yes, there is a message.

SENATOR MARCELLINO: Move to accept that message.

ACTING PRESIDENT MEIER: The question is on the motion to accept the message of necessity. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The message is accepted. The bill is before the house.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Can we now call up Bill Number 1164.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 1164.

THE SECRETARY: Calendar Number 1164, by Senator Skelos, Senate Print 5434A, an act to amend the Vehicle and Traffic Law, in relation to appointment.

ACTING PRESIDENT MEIER: Senator Marcellino.

SENATOR MARCELLINO: Is there a message at the desk?

ACTING PRESIDENT MEIER: There is a message.

SENATOR MARCELLINO: I move to accept the message.

ACTING PRESIDENT MEIER: The question is on the motion to accept the

message of necessity. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The message is accepted. The bill is before the house.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: May we stand at ease temporarily.

ACTING PRESIDENT MEIER: The Senate will stand at ease temporarily.

(Whereupon, the Senate stood at ease at 12:45 p.m.)

SENATOR LACK: There will be an immediate conference of the Senate Majority in Room 332. Repeat, an immediate conference of the Senate Majority in Room 332.

(Whereupon, the Senate reconvened at 2:30 p.m.)

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to the order of motions and resolutions.

ACTING PRESIDENT MEIER: Motions and resolutions.

SENATOR SKELOS: Mr. President, there are three privileged resolutions at the desk by Senator Larkin. I ask that the titles be read and move for their immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: By Senator Larkin, Legislative Resolution Number 2058, commending Pat Ernenwein upon the occasion of her service of twenty years as executive director of Planned Parenthood.

ACTING PRESIDENT MEIER: The

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

The Secretary will read.

THE SECRETARY: By Senator Larkin, Legislative Resolution Number 2059, congratulating Dirk and Ella Ossmer upon the occasion of their 50th wedding anniversary.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

The Secretary will read.

THE SECRETARY: By Senator Larkin, Legislative Resolution Number 2060,

congratulating Erwin and Dorothy Koziak upon the occasion of their 50th wedding anniversary.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

SENATOR SKELOS: Are there any substitutions at the desk?

ACTING PRESIDENT MEIER: We have one substitution.

The Secretary will read.

SENATOR SKELOS: Please make the substitution.

THE SECRETARY: On page 10, Senator Spano moves to discharge, from the Committee on Rules, Assembly Bill Number 7076 and substitute it for the identical Third Reading Calendar, 369.

ACTING PRESIDENT MEIER:

Substitution ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, on Supplemental Calendar Number 1, would you please call up Calendar Number 1558, by Senator Volker.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 1558 on the Supplemental Calendar Number 1.

THE SECRETARY: Calendar Number 1558, by Senator Volker, Senate Print 5987, an act to amend the Penal Law and the Criminal Procedure Law, in relation to capital punishment.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Is there a message of necessity at the desk?

ACTING PRESIDENT MEIER: There is a message at the desk.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT MEIER: The question is on the motion to accept the message of necessity. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT MEIER: The message is accepted. The bill is before the house.

Read the last section.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MEIER: Senator Volker, an explanation has been requested of Calendar 1558.

SENATOR VOLKER: Mr. President, I'm sorry. I didn't realize we were started.

This is a bill, this is a Governor's Program bill to deal with a potential expansion of the death penalty statute that we passed in 1995. Probably the most high-profile part of this bill deals with the -- dealing with a Supreme Court case - well, actually a Court of Appeals case - which in the meantime, by the way, has been denied review -- which deals with a case called the Jackson case. And it deals with the issue of pleading to life without parole.

Very quickly, let me say I think the decision was probably in error. We thought the decision in the Jackson case didn't apply. And the reason was the Jackson case was basically a kidnapping case. Although it was, in my opinion, an erroneous federal statute. A lot of us in law enforcement didn't like the idea that you could get the death penalty for kidnapping someone even though you didn't kill them. Because the danger in that was always that you almost encourage the kidnapper to kill somebody, because they got the same penalty whether they kept them alive or they killed them. And we frankly, many of us, thought the federal government that enacted that statute wasn't thinking very clearly.

And maybe that's one of the reasons why most criminal justice statutes that mean anything, I think, are at a state level. But that's neither here nor there.

At any rate, the Court of Appeals in this state just recently decided a case that -- and it was the matter of Hynes versus Tomei, I believe it was -- that said that the

death penalty statute, as far as a person pleading to life without parole, was invalid because the person was coerced, because there was no ability to go to trial.

Interesting, by the way, one of the most fascinating declarations of deterrence any of us have ever seen. What this says is the fear of the death penalty is so strong that some 40 people or more pled to life without parole because they were so fearful to go to a jury on the issue of the death penalty.

This bill clears up that issue, and it does it in -- primarily in a way that what would happen is a person could plead to murder and be subjected to the jury, a decision by the jury, as to whether there would be death or life without parole. You could also plead, under this bill, to life without parole. Because under the Jackson case, you had to have the ability to do something else besides just plead to life without parole, and this bill does that.

The other thing is you could actually plead, in this case, as in virtually

every state in the union, you could plead to capital punishment, to the death penalty, but only through -- as I say, only through a jury trial.

There are several expansions here of categories of people who would be -- could be subject to the death penalty. And maybe most significantly, it changes the end of the case pattern whereby, instead of the defendant having the last shot at the jury, the prosecutor is the last one to sum up to the jury. As is the case, by the way, I believe, in all 39 other states that have a death penalty statute.

It also allows, at the penalty phase -- which is the phase in which the jury decides on sentencing -- allows victim impact statements and allows the victim to make statements.

One other thing it does, which I admit is very important, it allows for what we call prior bad acts to be brought in at the sentencing stage, where previous convictions are allowed in. The bill that we passed in '95 admittedly allowed a great deal of leeway

for defendants on the issue of mitigation. We still allow that. But what some people argued at that time was that we really weighted it so strongly on the mitigation side that we should at least allow some testimony as to previous bad acts in the case. And that's what this bill does.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, would Senator Volker yield to a question?

ACTING PRESIDENT MEIER: Senator Volker, do you yield for a question?

SENATOR VOLKER: Sure.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Actually, Senator Dollinger relinquished the floor to me for a moment. I just want to ask you a technical question -

SENATOR VOLKER: Sure.

SENATOR PATERSON: -- about something that you just said.

As the law stands now, would a defendant be able to plead to the death

penalty?

SENATOR VOLKER: You mean would he be able to plead to capital punishment? The answer is no.

SENATOR PATERSON: No?

SENATOR VOLKER: No.

SENATOR PATERSON: This would actually change that?

SENATOR VOLKER: No. No, you still can't plead -- in other words, you still can't stand up in front of a judge and say, "I plead to subject myself to the death penalty." That you still can't do. You can't -- some people would say you can't commit suicide.

Under this bill, that part of it still remains. It's just that you can plead to murder and subject yourself to the jury and you can -- which decides death or life. You could plead to life without parole. But you couldn't plead directly to capital punishment, no.

SENATOR PATERSON: Mr. President, if the Senator would yield just for a moment.

SENATOR VOLKER: Sure.

SENATOR PATERSON: And how does

that change the law as it stands right now?

SENATOR VOLKER: Well, the major change in the law is that under the present law you couldn't actually plead to murder and then allow yourself to go to the jury on the issue of death or life without parole. In other words, you've got to try in order to get to the jury on the issue of life without parole, death, or life term.

You can still plead now, under this statute, to life without parole, but you had the option to plead to murder and go to the jury and plead your case before the penalty phase on the issue of whether you should get the death penalty or life without parole.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, I want to thank Senator Volker for his answer and Senator Dollinger for his indulgence. I just wanted to clear up that technical point.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President. As I promised Senator Volker

earlier, I intend to ask him a series of questions if he would yield, at least at the start, for a couple of questions.

ACTING PRESIDENT MEIER: Senator Volker, do you yield for some questions from Senator Dollinger?

SENATOR VOLKER: Sure. Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DOLLINGER: Before I ask my first question, Senator Volker, let me tell you, I agree with one thing that you said completely. And that is there's no question that the death penalty has had a deterrent impact on the people charged with capital offenses. And there's no question that it deters them. The option of life in prison without parole deters them from taking their case to trial.

The big question we debated when we did the death penalty was whether it was actually going to deter their conduct in killing someone, which I think the jury is still out on. But there's no question that the option of life imprisonment without parole

has deterred people who are facing murder in the first degree from going to trial. I think the evidence is pretty strong that that's the case.

Let me go back to a couple of sections of the bill, Senator Volker, if I could. First of all, on page 3, the section that deals with the other instances in which the death penalty would now be permitted. My question is, do we have any evidence that any of the cases under which we are currently prosecuting for capital offenses in this state, whether they involve the killing for the pleasure of it or the act of -- to experience the act of killing or to obtain membership or status in a group or organization? Are there any cases for which we're currently prosecuting people that involve any one of those three?

SENATOR VOLKER: I think there are -- nationwide, there are definitely some. And I understand that there is a case in New York City that one of the -- and I think it's -- I'm not sure if it's tried or not yet. I don't think it was tried yet -- that deals

with the issue of pleasure killing and may also deal with the issue of membership in a club.

And, Senator, I must tell you something. When people tell me that the death penalty is not a deterrent, I have to kind of chuckle. I mean, when the death penalty declined in this country, the murder rate shot out of control. And since we have established the death penalty not only in this state, in this country, the murder rate has dropped like a rock.

So I only point that out -- there are instances. Now, as to whether some of the instances of cases in New York relate to these specific issues, I believe there is one where the allegations are that there was, in effect, some pleasure killing, if you want to call it, and also an issue of whether there was some gang involvement in it.

SENATOR DOLLINGER: Again, through you, Mr. President, if Senator Volker will continue to yield on that point.

SENATOR VOLKER: Sure.

ACTING PRESIDENT MEIER: The

Senator yields.

SENATOR DOLLINGER: But aren't those people charged with the death penalty anyway? I mean, they would be charged regardless of whether we had this new language or not.

SENATOR VOLKER: Could be. Although there could be some cases where they might not be. Remember, we don't -- it depends on the type of killing there is.

And I could cite you three or four cases that are presently under active investigation, shall we say, where the issue is -- and one of them is a very high-profile case -- where the question of whether that person would be subject to capital punishment could depend on, for instance, prior killings and things of that nature, as is -- the person is suspected of being involved in a prior killing.

And, I mean, there are a number of cases where there may be some involvement in some of the changes that are being made here. It's possible there may not be. But we do know nationwide that there have been incidents

that appear to involve these type of actions.

SENATOR DOLLINGER: Again, through you, Mr. President -

SENATOR VOLKER: Sure.

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

SENATOR VOLKER: Yes, I'll continue to yield.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DOLLINGER: With respect to the provision immediately in front of that, where the killing is motivated by the benefits of a trust, an insurance policy, an estate, do we have any evidence that there are any cases that encompass that in this state since we've put the death penalty in place?

SENATOR VOLKER: My counsel informs me that under the current death penalty statute, there would be no way that that could be covered. But as far as I know, there are none right now that appear to be of that nature.

But of course, remember, as my counsel points out, since this now would not

be covered by the death penalty statute, we don't know for sure whether there may have been some cases that were murder-two cases, as the saying goes, because they weren't covered by this provision.

Am I clear on that? In other words, I am not aware of a case directly involving this. On the other hand, there may well be, because they would not be death penalty cases at the present time unless the guy was a multiple murderer or some other reason for bringing them into the fold. They could well have killed someone for this very reason, and they're in jail, and we wouldn't know. But I am not aware specifically of a case in New York at this time that involves this.

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

I've got a couple of others on a couple of other sections.

On page 4, section 4, the lines 14 through 21, "effects a change in the postconviction motions." Could you explain to me what the theory behind that is, why -- I

assume, through you, Mr. President, that the postconviction motions are all brought at the time the verdict is rendered; that is, to set aside the verdict, to challenge the -- to poll the jury, to do all that.

Why would we wait until after the sentencing phase to do that if one of the effects that the court could do is the court could rule, even after the jury came back, that there wasn't sufficient evidence for the jury to find the defendant guilty beyond a reasonable doubt and therefore avoid the conviction? Why would you wait until after the sentencing -

SENATOR VOLKER: Well, I think the reason for that provision is to avoid enormous delays. A judge always has the authority, by the way, whether you -- the authority to move against a decision. But the reason for this is an attempt to bring all the motions at the end of the proceedings so that they don't delay the sentencing process in - for a long period of time, as I understand that.

And the other thing is I think

that -- I think that judges, the judicial comment on some of these things could have an impact, I suppose, on the sentencing proceeding, and I think that's one reason for the -- for that. That's the only thing I can think of.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Volker will continue to yield.

SENATOR VOLKER: Sure.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DOLLINGER: The concern about the sentencing phase of the hearing is critically important. As I know you well understand, Senator Volker, the nature of the evidence that's admissible and produced at the sentencing portion of the hearing is so critically important because that's the point at which the jury has already established this is a bad guy, that this guy has committed a capital offense. And the question becomes what's the appropriate penalty.

This change allows impact of the crime on the victim's family and the

community. Could you tell me what the phrase "the community" means?

SENATOR VOLKER: Well, I think what it would be is -- is -- again, it would be more like a victim's statement, testimony. I think the community, they're talking about the family and what impact it could have. Or I suppose in the case of a police officer, you could at least bring in some evidence as to the impact of that crime, just -- I'm just thinking in terms of the person's death, loss of an important person in the community.

It is more a matter of comment. As you know, no state in the union allows as much flexibility on the mitigating stage as New York. In fact, that was frankly a decision of mine, way back when. That was in my original bill, before the court even moved to allow more mitigation. I did -- I felt that was absolutely critically important.

Most states, by the way, allow virtually unfettered ability to make both sides to -- to testify at the sentencing. This actually -- the -- in reality, what this bill does is to move toward the way the rest

of the country is allowing the sentencing phase, and that is allowing victims to come in. Some states are even more extensive in allowing testimony of prior bad conduct than we are.

We're talking about crimes here. The crimes -

SENATOR DOLLINGER: -- we're getting into the bad conduct -

SENATOR VOLKER: And that's true. And that's a significant change. We're talking here about -- a lot of these people are people that have been arrested a number of times and convicted, and we're allowing that in.

SENATOR DOLLINGER: Again, through you, Mr. President, if Senator Volker will continue to yield.

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

SENATOR VOLKER: Yes. Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: I understand, Senator Volker, the point about other bad

acts. My question here specifically deals with the language of "the community."

And here's why I'm concerned, Senator. Because this suggests that if you killed a -- if someone were killed who was a high-profile person, like the supervisor of a town or a New York state senator, or a community -- a president of the community bank, that the broad community could come in and comment on the loss of a particular individual's life and its impact on the community, but that would not necessarily have any direct relevance to the issues of the murder or the penalty.

And my concern is that by putting in the phrase "the community," do we set a double standard? Do we set a standard that says if you happen to be shot -- and I'll use my own district, because it's the one I'm most familiar with -- if you happen to be shot in Brighton and you were a community resident in the town of Brighton, a wealthy, upper-middle-class suburb, that you might be subjected to a different community action than if you were shot in the central portion of my

city, in an area where there's substantial poverty?

Do you set up a dichotomy when you allow the community in one case to come in and articulate its sense of loss and another community which may not have that same capability?

SENATOR VOLKER: I think you'd make an interesting argument on appeal, except for one thing. I think you'd make the same argument in the minority community, that a person was so valuable to the minority community, for instance, that you could make an argument maybe more valuable than a person in a more wealthy community or, for instance, the Jewish community or anything.

I think the idea of this is to allow some sort of -- and most states do this -- to allow some sort of testimony on the value of human life to the community where the killing occurred. And, you know, I suppose this would have to be within limits, and obviously the judge would limit that. But the idea -- I think what you have said is fascinating.

I would look at it from a different standpoint. Not the value of, for instance, a wealthy person. I would look at the value, for instance, of a poorer person and of somebody who is a part of the community. I'll give you an example. For instance, what about a rabbi who is killed, or a priest or a minister or whatever? I suppose that that is something that some would argue should be at least part of some of the testimony.

SENATOR DOLLINGER: Again, through you, Mr. President.

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DOLLINGER: My concern is that the testimony at the sentencing phase includes mitigating circumstances, which is largely focused on the psychology, the background, the life of the accused, now the guilty party.

The evidence from -- that is in aggravation is from the family of the

deceased. My question is, how -- if you bring in the community, if you allow broad testimony as to the value of the life to the community, do we in essence ratchet up the penalties for those who happen to kill people who are perhaps more famous or more noteworthy or more established in the community than we do for the guy who lives next door? Are we setting a standard that says that if you kill somebody famous, you're more likely to get the death penalty?

SENATOR VOLKER: I think the truth has been that it seems if you kill somebody famous, you're less likely to get it.

But I think -- I think -- I guess I look at it from both sides. I think you could make an argument that -

SENATOR DOLLINGER: Excuse me, Madam President. I'm having some difficulty hearing Senator Volker.

ACTING PRESIDENT McGEE: Gentlem en, please.

SENATOR VOLKER: I understand what you're getting at, Senator. But I don't -- I think this is a provision that

attempts to deal with some of the -- with some sort of testimony that could deal with the individual or individuals that are involved and at least some sort of dealing with the community involvement.

I could foresee that a poor person could be just as easily -- they could just as easily give testimony as to their involvement in the community as somebody who is wealthy or famous or whatever. And I would suspect strongly that any -- as you know, any defense attorney worth his note would be pretty careful here to make sure that the testimony didn't go awry. And I think the judge would be also.

SENATOR DOLLINGER: Okay. Just a couple more questions, Madam President, and I'll be done.

ACTING PRESIDENT McGEE: Senator Volker, will you yield?

SENATOR VOLKER: Sure.

SENATOR DOLLINGER: I'd like to turn to page 7, to the prior bad acts question which you raised and I know you've been concerned about before.

Could you just explain to me the provision about -- it says if -- in other words, you could introduce at the sentencing phase evidence of any prior violent felony; is that correct?

SENATOR VOLKER: Right.

Conviction. Let me just -- this is a conviction. You can't just -- not an arrest, a conviction.

SENATOR DOLLINGER: Okay. Again, through you, Madam President. That would include any violent felony -

ACTING PRESIDENT McGEE: Senator Volker, do you yield?

SENATOR DOLLINGER: - conviction, even a Class D felony conviction?

SENATOR VOLKER: That's true.

SENATOR DOLLINGER: And the part I don't understand is the section that starts on line 13, "or in any other jurisdiction of an offense for which the sentence of imprisonment is in excess of one year." Are you saying that, in other words, if they meet the felony test in our state and they're sentenced for more than a year, that's -

SENATOR VOLKER: If the violent felony offense in that state equated to a violent felony offense in our state, then that you could bring into evidence. The one year is because in some states -- not in our state, where a violent felony offense is traditionally more than one year. But in some states, a violent felony offense does -- has a basis of one year.

It's only, though, a violent felony offense. And that offense in that other state must equate to a violent felony offense in this state. In other words, if it's a violent felony offense but it's not one that's in our state, you can't bring it in.

SENATOR DOLLINGER: Okay. Again, through you, Madam President.

ACTING PRESIDENT McGEE: Senator Volker, do you continue to yield?

SENATOR VOLKER: Sure.

SENATOR DOLLINGER: Does this bill put any time limit on when the violent felony offense has to have occurred?

SENATOR VOLKER: No, it doesn't.

SENATOR DOLLINGER: So, through

you, Madam President, if someone were charged with a violent felony offense at age 16 or 17 -- a baseball fight -- and were convicted -

SENATOR VOLKER: Yeah, convicted. Not charged.

SENATOR DOLLINGER: Right, convicted. If they were charged with murder and convicted, they would face -- they would have that brought up as an aggravated circumstance five, ten, fifteen, twenty years later?

SENATOR VOLKER: It could.

But, Senator, I think you realize that a minor offense, even a minor violent felony offense, so to speak, if it was a long time ago, the defense attorney -- since you have virtually unfettered ability to bring in any kind of mitigating testimony you want - I'm sure would blow that one pretty well out of the water. Because, remember, the defendant still has a right to respond to this.

I think the intention of this is to avoid situations where you have people, for

instance, who have multiple violent offenses in their background and at the mitigating stage are made out to look like choirboys and in reality they have a long criminal record behind them.

And the reason, by the way -- I guess there was some discussion, I've been told, of arrests and of other bad acts. But I think rightfully so, they limited this to convictions and violent felony convictions.

SENATOR DOLLINGER: Okay.

SENATOR VOLKER: Other states, by the way, as I understand it, allow even more -- even broader aggravating testimony than this.

SENATOR DOLLINGER: Okay. Just one final area of questions.

ACTING PRESIDENT McGEE: Senator Volker, will you continue to yield?

SENATOR VOLKER: Yes.

SENATOR DOLLINGER: Senator, if you could turn to page 8 -- and I again apologize for this sort of exegesis approach where we're reading through each line by line. But in line 22, where it talks about the -- if

the jury determines that the aggravating factors substantially outweigh the mitigating factors. "In determining whether the death penalty should be imposed, the jury may consider all of the facts and circumstances of the case, including any victim testimony offered." I'm not sure I understand what that means.

Am I -- I don't mean to take it out of context, but I'm trying to figure out what it means.

SENATOR VOLKER: I think that brings in the victim evidence sort of thing. I think they're just saying that if they -- in order to reach the level of victim evidence, then they must decide that the aggravating factors outweigh the mitigating factors in determining whether the death penalty should be imposed.

I think what it means is you then go on to listen to the next part of it. Because of course, as you know, if they don't make that determination, then they would not do the death penalty and they would go back to a life term or life without parole.

SENATOR DOLLINGER: Final question, Madam President.

ACTING PRESIDENT McGEE: Senator Volker, will you continue to yield?

SENATOR VOLKER: Yes.

SENATOR DOLLINGER: Does this bill, this amendment to it, still require that the death penalty sentence be imposed, weighing all those factors beyond a reasonable doubt, by unanimous vote of all the jurors?

SENATOR VOLKER: Yes. If it's not a unanimous vote, you can't have the death penalty. It still maintains its -- the aggravating -- mitigating circumstances must outweigh them by beyond a reasonable doubt. And if there is any negative -- if someone doesn't agree, then you can't have the death penalty.

SENATOR DOLLINGER: Okay. Thank you, Madam President.

I heard -- I appreciate Senator Volker's continuing candor as we plow through now, four years later, the second iteration of the bill that he and I debated on the floor a number of times, that most of the people in

this chamber have heard me debate and talk about.

I'm going to vote in the negative, Madam President. I continue to be committed to see the death penalty repealed in this state. I appreciate those who want to clarify it and make sure that it's constitutional so that if we're going to use it in any circumstance we make sure we accord the full constitutional rights to those who are charged with the possibility of losing their lives at the hands of the government.

But let me tell you why in this particular proposal. I'm concerned because the changes with respect to the circumstances under which the killing -- in which the killing occurs where it's motivated by the pleasure killing, I don't think there's significant evidence that that's a different problem from what we're currently trying to address in New York State with respect to the death penalty. Which is, if it's a capital offense and murder one, you're charged with the death penalty.

There's another provision in there

about killing for estates and trusts benefits. Again, I don't see that, I guess, as a whole new dimension of this, something that's happening all over the place that we need to impose this deterrent on this. We have the death penalty. If you kill someone, you potentially face the death penalty. That's a pretty strong deterrent. Should be, anyway.

Two, the section that deals with the change in the sentencing provisions that allows evidence of prior bad acts, that is very, very explosive evidence to place in front of a jury, even at the sentencing phase. To bring up a past violent act that could have occurred a decade or a decade and a half earlier in their lives, it could be a substantially, in my judgment, prejudicial fact.

And while Senator Volker properly points out that the court could have the ability to restrict the entry of that evidence, I would point out that there is nothing in this statute that gives the courts the guidance as to when that would be appropriate. So what we're left with is a

court looking at a statute that says any violent felony offense anytime in the individual's life, whether it was a year before the murder occurred or twenty years before the murder occurred, can be evidence in a sentencing phase.

I think that's a very dangerous time to introduce that evidence. At a time when someone's life is in the balance, suddenly their past, whether it's a long time ago or a short time ago -- I would agree with Senator Volker, his argument would have greater credibility if they were a relatively short period of time, if you could say that those violent felony offenses were within the prior three or four years, or five years. Then it would have relevance and the court would be able to say, Okay, we may have someone who has a violent predisposition, and that violence predisposition should be taken into account by the sentencing jury.

But in this case, because it extends so far back, it tends to bring in highly prejudicial cases, highly prejudicial convictions that could significantly influence

the jury.

I'll conclude with just one other objection, and I pointed it out to Senator Volker. And that is the question of the community's ability to testify at the time of sentencing. I continue to be concerned, Madam President, with the dangers that the death penalty will not be enforced uniformly across the spectrum of those who commit murder. There is no question that all the -- there is no question that the data shows, and it showed it in 1995, it continues to show it until this day, that the death penalty is being used disproportionately against people of color.

And it seems to me that the danger of allowing the community to testify without any statutory guidance is that we will be in a situation where the communities that are best able to articulate, that are best able to come up and testify, will be the communities in which the death penalty will be most prominently endorsed. And those will be communities of largely upper-class and wealthy who will rally a community to testify in favor of the death penalty.

What I'm afraid of is that that will only perpetuate the prospect that this penalty will be used disproportionately against the poor and people of color. It was my fear in 1995. There is nothing that has transpired from 1995 to date to give me any consolation that that isn't in fact a true problem with continued use of the death penalty. You can see it in other states. We will see it in New York.

And I would just strongly suggest that whoever does the drafting of this bill, that the broad invitation for a community testimony on the issue of the death penalty as being an appropriate sentence in a particular case will skewer the use of the death penalty against some particular people, and that what we'll end up with is a further disproportionate impact of the use of this penalty.

I go back to what I said in 1995. The penalty is unfair, it is unjust, we don't need it. And I think these amendments, although they're driven to enhance something that I have a enormous fundamental

disagreement with, are wrong-headed even as a matter of law. I would suggest that we not make these changes.

I would suggest it, and I pray for that day when we will all come to our senses and realize that the state, based on those inalienable rights that were articulated in the Declaration of Independence that we talked about yesterday, that this government has no right to take away that life. We can put people in prison for their lives, but taking it away and destroying it ourselves is not something that a government relying on the just consent of the governed should do.

ACTING PRESIDENT McGEE: Read the last section.

Senator Paterson, why do you rise?

SENATOR PATERSON: Oh, thank you, Madam President.

Madam President, I voted against the death penalty in 1995, and I -- but I understand that as a -- as we're sworn to uphold the laws of this state, that this is now a part of our law. And looking at it in that context, I'm trying to view this bill in

the sense that it is designed to enhance a law -- laws that we already have.

Senator Dollinger just referred to the disproportionate impact. And I actually have a different context in which I'd like to phrase a question, if Senator Volker would be willing to yield.

SENATOR VOLKER: Sure.

ACTING PRESIDENT McGEE: Senator Volker, will you yield?

SENATOR VOLKER: Sure.

SENATOR PATERSON: Senator, my concern is that when the victim is unable to produce the type of litany of circumstance that we have become even more familiar with from watching the televised sentencings - there was a case in New Jersey where the mother of a 3-year-old was kidnapped and murdered, and we actually saw the testimony at the sentencing of her killer. And in the Jeffrey Dahmer case some years ago, we saw the same thing.

And where the victim is not in the position to create that kind of support at the sentencing, does that not really influence the

jury in the sense that now it doesn't appear that that life may have been quite as important or certainly one that could evoke the kind of emotion that pulls at all of our heartstrings when we see it on television? And does that, if anything, create somewhat of a double standard, depending on whose life the perpetrator snuffed out in that case?

SENATOR VOLKER: Well, first of all, Senator, it's very difficult for the victim to organize any kind of a -- because that victim is dead.

SENATOR PATERSON: Right. I'm really talking about -

SENATOR VOLKER: I think what you mean is the family and so forth, or if there is no family -- I think -

SENATOR PATERSON: I mean the victim in the sense of victimization.

SENATOR VOLKER: The broad sense.

And then the other thing, as you well know, Senator, thanks to this house, we don't have cameras in the courtroom. So you're not going to see it on television, the sentencing, which I think is a very good

thing, and I think you would agree with me.

But in any case, I think that that's an issue frankly that a district attorney and that the people representing the public have to present. I mean, I suppose you could make that argument that if there isn't as much victim impact shown, that somehow it might somehow help the person. I guess it probably depends, too, on the individual involved.

That's another reason, by the way, why maybe I would disagree with Senator Dollinger's limitation on violent crimes; in other words, you shouldn't allow a violent crime to be brought in after twenty years. I made a point, what about somebody who was in jail for 25 years for first-degree murder, gets out after 25 years and murders somebody. And just as an example, that couldn't be brought in under his twenty-year limitation.

So, Senator, I guess the answer to that is I suppose you could try to make that argument, but I think the truth is that this is a matter of the circumstances, and therefore it would depend on the circumstances

of the case.

SENATOR PATERSON: If the Senator would continue to yield.

SENATOR VOLKER: Certainly.

ACTING PRESIDENT McGEE: Senator Volker, you continue to yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT McGEE: Thank you.

SENATOR PATERSON: Senator - through the President -- you referred to prior bad acts being raised. And I certainly would feel that if I were on a jury and I was considering someone's life, it would be relevant for me to know whether or not there was a pattern of conduct that demonstrated that in this particular case a life was taken, but this individual had historically involved themselves in violence and had put other lives at risk, and this is just the circumstance in which a life was lost. Can you establish that with just one prior bad act?

SENATOR VOLKER: I think the truth is that you may have hit on one of the arguments certainly at least in favor of

violent felony offenses. And the argument in some states is that you should even give more latitude to the other side, because the mitigating side of the testimony is unlimited.

And you are probably right. There is an argument that possibly we should broaden the law even more to allow the prosecutor to show maybe even more evidence of bad acts. And one of the arguments, I guess, was more arrests. For instance, you might have somebody who's arrested 15 or 20 times, but under the present death penalty law you couldn't bring that in unless he or she was convicted.

So you could make that argument. But of course, that's an argument for an even broader aggravating circumstances section.

SENATOR PATERSON: Madam President, in the case where -- I wouldn't be interested, Senator, in the arrests. What I would be interested in would be the situations where there was a conviction, even if it was for a high degree of assault, where it was clear that whether or not the life was lost, it was by reason of circumstance. In other

words, someone throws someone down the stairs, they might not die in that situation. But certainly it was not -- it was reckless enough that it could have happened. I'm not interested in the arrest, but where there are the prior bad acts.

What concerns me is when we have an incident or two in the long life of an individual that would be establishing the pattern.

My question now relates to the wills, the insurance policies, the trusts, the estates of those who are being killed for the purpose of the killer getting ahold of those documents. We already have in the law the contract killing as a prerequisite for the death penalty. And my question here is just under the M'Naghten Rules, the establishment of malice aforethought, do we need the specific reference as to what the benefit would be for the perpetrator? Or don't we recognize that just the establishment of intent would be the circumstance that would make someone eligible to be punished by death?

SENATOR VOLKER: One of the -- it

was just pointed out to me, Senator, that you are right. Unless you have a second jury to determine the sentencing, which is possible. In other words, you have the one jury to determine their guilt or innocence and a second jury to determine the sentencing.

If you have the same jury, as is normally the case, you cannot bring in the evidence that was used to find the person guilty, because that has already been entered in. And some of the things that you talked about that may be part of the killing would not be available in the sentencing procedure. And you're absolutely correct.

Unless there was a second jury, and then those sorts of things could be brought in, since they were part of the crime. But other than that, they could not be brought in in the penalty stage.

SENATOR PATERSON: Madam President, I want to thank Senator Volker for his answers. And if he would yield for one final question.

ACTING PRESIDENT McGEE: Senator Volker, will you yield for one final question?

SENATOR VOLKER: Certainly, yes.

SENATOR PATERSON: Senator, you have here that we would change the order, where the prosecutor in the sentencing phase would have in effect, quote, the last word, whereas the victim has that in the trial.

And I would assume, if I could try to read your mind for a moment, that at the time of trial there's a presumption of innocence and therefore the defendant would be given every opportunity and the last opportunity to explain to the jury that there is reasonable-doubt circumstances that the defendant not be convicted. I would assume that in the sentencing phase, the presumption now is that there's a burden on the guilty party to prove why we should not, as a matter of law, seek the death penalty.

But my question is, with a human life lying in the balance, why would we not leave it as we have it now and give the person who is likely to lose his or her life the last chance to explain to society why that life should be spared?

SENATOR VOLKER: Senator, first

of all, I would disagree with you on only one thing. I don't think there's any presumption of the death penalty. In fact, the reverse has been true, as you know, in the cases that have been tried already. And in fact, that most cases do not result in death penalty cases.

But it has been pointed out that, I believe, we are one of the only states, if not the only state in the union, that does not on the penalty side have the prosecutor or the district attorney do the last summation. Now, remember that we have given the defendant every possible opportunity, with mitigating circumstances, with virtually no limits on what he or she can bring in during that penalty stage.

And I think the argument is that the district attorney should at least have the last opportunity to at least make a pitch on the -- in the evidence that's been presented in the penalty stage.

SENATOR PATERSON: Madam President.

ACTING PRESIDENT McGEE: Senator

Paterson.

SENATOR PATERSON: Certainly some of the changes that Senator Volker has proposed are quite valid. I don't think I really have a problem with the expansion to include the evidence relating to murders to enlist membership in some organization or gang, or pleasure murders, as they're so-called. Or even these cases where -- to get hold of the resources in a will or trust or insurance policy. We certainly would understand that.

I would have to say that just the disproportionate nature of how the death penalty is enforced, even some problems with the rights of society versus the individual, are -- really compel me to vote against this legislation.

But what I would say if this is going to be the law, and we're here following the law, there are some interesting changes that Senator Volker is making. Certainly the ability to plead to the murder and then the - in the second phase, the jury would determine whether or not this would be a capital crime

is, I think, actually an enhancement of the legislation.

But I guess I agree with Senator Dollinger. My long-held views on the existence of the death penalty compel me to vote against this legislation.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR CONNOR: Madam President.

ACTING PRESIDENT McGEE: Senator Connor.

SENATOR CONNOR: If I may, in closing.

I know the death penalty doesn't seem like a big deal anymore politically, but there's a statute on the books. No one in this state has suffered the ultimate penalty under that statute, nor is it likely that such will happen for some time to come.

So in a sense, while Senator Volker makes a technical, legal correction as well as embracing some of the Governor's suggestions to expand the category or types of murders covered -- and I certainly have no brief for people who commit thrill killings or anything

else -- ultimately, for me, this vote comes down to the same consideration that weighed with me every time we've had the death penalty.

And that is, I am unconvinced that the death penalty is a deterrent. I am thoroughly convinced it was unworthy of a civilized society. Without ever having executed anyone in New York for decades now, we have seen our crime rate rates plummet, we have seen our murder rates plummet. And, oh, I know the second-floor publicists would say we only have 30 percent of the murders per year that we used to have because, gee, we said we were going to have a death penalty, we enacted it, and everybody's afraid to commit murders. It's not quite so simple, Madam President.

Many, many crimes for which we have not enhanced the penalty have also fallen dramatically. The combination of demographic trends, a good economy, and some fantastically great policing initiatives -- we've also seen some bad policing initiatives in New York City. But, by and large, there have been some

good initiatives, going back to Mayor Dinkins' proposal, Safe Streets, Safe Cities, which this house embraced. And we've put more police officers on the streets.

So we're all gratified that crime has been reduced. There is simply no evidence whatsoever that the death penalty has been a factor. It remains for me totally unproven that it deters any conduct. I think people who commit murders, particularly those we would -- the statute would punish with the death penalty, are people who do not think of the consequences of their actions, are motivated by sociopathic tendencies that recognize no deterrence, no normative guide from the law or anything else.

The problem with the death penalty is there are mistakes. And any system, including as seemingly fair a system as perhaps we have evolved here in New York, makes mistakes. And while I've seen no new studies showing the deterrent effect of the death penalty, we have seen dozens and dozens of cases in the past few years in other states involving capital punishment, in this state

involving lengthy prison terms for crimes like rape and so on, where the advent of DNA testing has been not only an incredibly valuable tool for law enforcement to prove that the guilty are guilty, but where the courts have permitted DNA evidence or where there was DNA evidence in long-closed crimes wherein the system was convinced that the guilty had been convicted, lo and behold, we read case after case where DNA testing proves, nope, you had the wrong guy.

And in the cases in New York thus far, some people have been released from prison after serving 10, 15, 20 years of their life in prison, when the DA has to stand up after the DNA testing and say, "Oops, convinced as we were for the last 15 years that we had the right person, we were wrong."

Now we have seen in other states - there was a case not so long ago in Illinois -- where, when there is old DNA evidence, blood stains, other things like that, and hair samples and so on, that accurate DNA testing and comparisons have established that people on death row, people

who have exhausted almost all of their appeals on legal technicalities and other things, and lost them at the highest courts of the land because the courts said, "Look, the jury heard all the evidence and they convicted him, and that's our system" -- and it is our system, but DNA testing has proved it made a mistake, it made a tragic mistake.

And thankfully we hear about all the cases where the person on death row is sprung by this evidence before they're executed. There was one case where the prisoner came within 12 hours of being executed.

And I think no one doubts -- no one who has looked at it has any doubt whatsoever that in these United States, since the reinstitution of the death penalty, that innocent people have been executed. Why? Because we have, under the Supreme Court, retrenched from the scope of appeal that's allowed postconviction. The Supreme Court has sanctioned executing people because, gee, they didn't meet deadlines in their appeals.

You know, it's one thing, Madam

President, to throw out the automobile accident cases because the lawyers didn't file something on time. But we have seen people go to the chair because of procedural errors that their lawyers made.

We have had holdings from the U.S. Supreme Court basically saying, well, it's irrelevant whether the person seems to have been innocent or not, they got a trial and da-da-da-da-da, and the system has to be upheld at all costs.

You're then faced with a prisoner who has already been executed. Even if there were DNA testimony, there's no one that has any standing anymore to apply to a court to go back and examine the DNA record.

But one thing that ability has done is it's clearly proven what many of us said years ago in debating this bill: innocent people get convicted. And the one thing about the death penalty is there is no way to undo the harm. There's no way to say "Sorry about the last 14 years, but we're letting you go free." Its very finality and irreversibility, when imposed due to what is a fallible

system -- and our system is fallible. And I don't criticize it. It's fallible, and it's probably the best legal jurisprudential system ever invented on the face of the earth. But it's nonetheless a human system. It's subject to mistakes. The -

ACTING PRESIDENT McGEE: Excuse me, Senator Connor.

Could we please have some quiet.

SENATOR CONNOR: Thank you, Madam President.

Indeed, the system vindicates itself on those occasions when it is concerned enough to allow things like reopening a record and examining DNA testing and attempting to cure errors.

So let's go with what the wisdom of these past years has taught us. It hasn't taught us that the death penalty deters crime. It has taught us just how fallible, just how possible it is for our system of justice, fair as we try to make it, but nonetheless a human system of justice, to make mistakes.

And all these past few years has taught me is what I always knew intuitively,

and that is we ought not play God. We ought not repeal one of the Ten Commandments. We won't stop any killing by killing people.

Madam President, I'm against this bill because it's one more step in a whole death penalty march that, while it meets public acclaim, just doesn't satisfy me that it's the right thing to do.

ACTING PRESIDENT McGEE: Senator Volker, to close.

SENATOR VOLKER: Madam President, I will try to be brief.

Senator Connor, I understand what you said. But let me tell you something, Senator Connor. My father was here in 1965. He listened to that same general speech. He listened to that speech and he came home and he said, "Now the murder rate is going to soar. It will rise dramatically."

It doubled within four years. The murder rate in New York City tripled within a decade. The murder rate particularly, in the minority community, became enormous. You talk about depriving people's rights.

And, Senator, let me remind you of

something. In '65, when the Bartlett Commission repealed -- my father was part of that Bartlett Commission and did the Minority report to the Bartlett Commission. And every single thing he said in that Minority report came true. And everything that the Majority said didn't happen.

You can say all you want about it not being a deterrent, but how do you explain when nationwide, when the death penalty ceased, that the murder rate shot out of control, and since we have restored the death penalty -- and when we restore the death penalty, by the way, we automatically somehow restore tough sentencing. And that's what we've done in this state.

Let's not forget that a lot of us said, for instance, if we could lock up most of the professional burglars in this state, the burglary rate would go down. It's gone down. If we could do something about stolen cars, it would go down.

And the reason I'm saying that is that the point is that deterrence has been clearly and unequivocally proved. I think

it's kind of -- it's like saying "We don't care what the facts say, we don't like this and we don't want it."

And, Senator Connor, let me point something out to you. The handful of cases - and there have been some cases on DNA. Some of those cases proved that the evidence that was used in those cases was erroneous. It didn't necessarily, in some cases, say that those people didn't commit the crime. I only point that out to you because under our law, when a person is found to be not guilty, we have to assume that they didn't commit the crime. In some of those cases, that's not necessarily true.

What we did is when we don't have the evidence -- and, by the way, if you can retry a capital case after ten years, it's no secret that the chances of ever getting a conviction again is almost nil. Defense attorneys know that virtually everywhere. That's one reason they do that.

Let me tell you something else, Senator Connor. And I was challenged in this some years ago, and I still say it. There has

never been a person in the history of this state that was executed where there is even substantial evidence that that person was not guilty. Some California professors came here with some bogus allegations, but when they were looked into, they turned out to be merely allegations and foolishness and so forth.

I point that out because I think it's important to point that out. I am only saying this. I don't say that the death penalty can deter all killings. But the murder rate is down dramatically. In addition to that, let me just say that what the Governor is trying to do with this bill here is to enhance a system that nationwide people believe is working well, and I think it's working well here in New York.

And I would only make a prediction to you. I would not be so sure that the first execution in this state is so far off. There are a number of cases that are wending their way through the Court of Appeals. And remember, the way the system works now, it is much quicker than it was in the past. The federal government has enhanced the system and

so have we.

So I think it is working. And I think it's important for all of us to realize, whether we like it or not, that the death penalty has had an impact on the murder rate and on the quality of life in this state.

ACTING PRESIDENT McGEE: Senator Marchi.

SENATOR MARCHI: Madam President, I probably hold a record for voting for Volker bills, because they are excellent uniformly, and I have the greatest respect.

But the death penalty should be put under the jeweller's eye. In my view, in my view, the only effect that the death penalty has is to provoke morbid propensities. And it encourages the commissions of more killings. It's a thrill operation, it's an operation that excites. And the public spectacle of an execution doesn't discourage anybody. Thucydides, the great Greek historian, pointed that out, I think, very graphically. Beccaria another Italian criminologist, 1500 years later showed it to be true.

Charles Dickens interviewed, Madam

President, interviewed 287 people who were about to be hung, drawn, and quartered in London -- because they used it to do it with thousands of people, and that was to be the great public example that would discourage homicide. Do you know, Madam President, 264 had watched, they had seen that event take place.

So I think that there's abundant evidence and reason that it does provoke morbid propensities which are out there, and it brings them out and it becomes very dramatic. I don't accept the theory that only the poor people die. But I do accept the theory -- I've yet -- and I've challenged audience after audience and chambers after chambers, give me the name of one person that was executed for having committed homicide in the United States of America. I've never seen that person. And if there is one, it would only prove the rule.

But there are none. Bob Morgenthau, who I think is one of the finest district attorneys and most sensitive human beings that I've been privileged to know -- I

wish I had his Op-Ed piece from the New York Times several years ago when he pointed out that when he took office -- you know, we like to say that we've been making dramatic progress against crime. Bob Morgenthau, before the dramatic reduction that has taken place -- and I credit it to good police work. I think the police deserve credit, and the management and law enforcement efforts have paid off. Safe Street Acts, as you mentioned also, which initialled at the start. These things have paid off, and we have seen improvements. But Bob Morgenthau had achieved a remarkable record under very difficult circumstances, and there was a dramatic drop in homicides in the county of New York or in the borough of Manhattan.

So I -- you know, the old days, they'd put maces on and they'd have chains and everything to impress that the state was very serious and very regal in applying. You know, all this stuff, what impact does it have on the general public? They become calloused to life.

In Florida they had a disk jockey

and every time they'd kill somebody, he would describe it gleefully over the radio and hundreds of people would mass outside and cheer. And then one night he had the bright idea, he got a -- they were electrocuting them in Florida. And he had a frying pan, and he had bacon. He fried the bacon. And it was a guy named Spenkelink who had killed and was being executed. So he said now -- they gave the signal that the execution was taking place -- "Now you are hearing Spenkelink, Spenkelink frying." And with that, from the reportage that was universally consistent, there was great cheering from the crowd.

Do you think that anybody's morals were elevated? Do you think that they -- a greater repulsion for the taking of a human life was increased in any way?

These are terrible circumstances and -- the death penalty revisited, no matter how much we sweeten it. I wrote a letter to -- and he could very well be the president of the United States -- when that Karla Faye Tucker was being executed, and she had 14 years. I don't know how many of you saw the

televised interview that was conducted with her. I don't see how anything was -- any profit, really -- she upstaged them completely. Said, "Well, I'll be seeing you gentlemen when I'm in heaven and you're coming in, and I'll be greeting you." And I hope I greet you. Because I felt here was a person who had made heinous mistakes in her youth, and 14 years later she was being executed.

Big victory. Big victory for what? I don't know. Not a big victory for the advancement of the concept of justice.

And then there were stories, even the current President of the United States, instead of staying an execution, and perhaps -- maybe it's the Scotch verdict on the condition of the person, but the person was supposed to be mentally deranged.

You, Senator Connor, presented many circumstances of varied -- various situations. Burying your mistakes, even with DNA and everything else. We have -- we have weapons to apply to protect the public. And there may be very special circumstances, I suppose. There was a Catholic thing put out by the

Vatican, under very special circumstances. If you had a caravan in the Old West and they were going across the country and there were about maybe 50 or 100 people, and somebody kills, what do you do with that person? Can you put them in jail? Do you have the means of coping with a problem of that nature? Probably not.

But we do have means. We do have means. Life imprisonment is available. And we don't have to go to the point and revert to a practice that virtually all of the advanced nations of this world have abandoned.

And those states where they are faithfully executing and adhering to the requirements of the law are the ones that have the biggest number of homicides. How many people has California executed in the last - since they adopted it in 1973? Very few. I don't know. Two, three people. Jersey, I think, is still waiting on someone. But we have something like 20,000 homicides a year. So it's very evident it's a sometime thing. You're more likely to win the Super Lottery than to be executed.

But what you have done to the public? What a spectacle to give them. This is not pagan Rome in the year 1000 or 100 B.C. This is the year where we would like to elevate, to raise, to raise the human spirit, to raise respect for life. This does not do it. It does about everything possible to destroy it, I think.

And I say this with the greatest deference and respect. I'm voicing my own feelings that I've held every since I was a teenager, I guess, that this is simply not acceptable. Defense in a just war, self-defense, these are things I can understand doing and exercising that force that is necessary to preserve your life.

But, Madam President, this ain't the way to go. This ain't the way for people who are children of God and who should be held to higher standards and be giving better examples. Punishment, yes. There is punishment available. And to remove them and take them away from those opportunities to inflict harm, all well and good. But otherwise, I just cannot support this bill.

ACTING PRESIDENT McGEE: Senator Connor, to close.

SENATOR CONNOR: Just briefly, Madam President.

As Senator Volker put forth the proposition that it's never been demonstrated that an innocent person was executed in New York State, there came to mind a book I read a few years ago by our parliamentarian called The Trial of Bat Shea. It was for a crime that at least half of this -- or more than half of this house would think the most heinous crime possible, a Democrat on Election Day killing a Republican at the polls. But the book convinced me that they got the wrong guy. It was a different Democrat, probably.

But I commend the book to Senator Volker, because I think while -- I think it's a rather sweeping statement to say that the State of New York's judicial system was so infallible that there never was an innocent person executed.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 19. This

act shall take effect on the first day of November.

SENATOR CONNOR: Slow roll call.

ACTING PRESIDENT McGEE: Slow roll call has been called for.

The Secretary will read. Ring the bells.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Balboni.

(No response.)

THE SECRETARY: Senator Bonacic.

(No response.)

THE SECRETARY: Senator Breslin.

SENATOR BRESLIN: No.

THE SECRETARY: Senator Bruno.

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

THE SECRETARY: Senator Connor.

SENATOR CONNOR: No.

THE SECRETARY: Senator DeFrancisco.

(No response.)

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: Madam President, just to explain my vote, briefly.

ACTING PRESIDENT McGEE: Senator Dollinger, to explain his vote.

SENATOR DOLLINGER: I dedicate my vote on this bill to two people that live in my district. Their names are Betty Tyson and John Duval. In 1972, they were convicted of the highest possible offense in the State of New York. They were both sentenced with the highest possible penalty in the State of New York, 25 years to life. They both walked free in the 54th Senate District today because it turns out that at their trial, the district attorney failed to give their defense lawyer a statement from a witness that was inconsistent with his testimony at trial.

They were found guilty. Their convictions were affirmed by the New York Court of Appeals, the highest court in this state. And if the highest penalty in this state had been death, neither of them would be walking in the 54th Senate District today. A mistake was made. Two innocent -- two people were found guilty in an unfair trial. Two

people who deserved a fair trial didn't get one.

And I would suggest that if there's a better argument against the death penalty, it lies in the lives of Betty Tyson and John Duval. In their honor, and in respect for their lives, I vote no.

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

THE SECRETARY: Senator Duane.

SENATOR DUANE: No.

THE SECRETARY: Senator Farley.

(No response.)

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: Yes.

SENATOR FARLEY: I vote aye.

THE SECRETARY: Senator Gentile.

SENATOR GENTILE: Yes.

THE SECRETARY: Senator Gonzales.

(No response.)

THE SECRETARY: Senator Goodman.

SENATOR GOODMAN: Aye.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Aye.

THE SECRETARY: Senator Hevesi.

SENATOR HEVESI: Yes.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Yes.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator Kruger.

SENATOR KRUGER: Yes.

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lachman.

SENATOR LACHMAN: No.

THE SECRETARY: Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Aye.

THE SECRETARY: Senator Libous.

(No response.)

THE SECRETARY: Senator Maltese.

(No response.)

THE SECRETARY: Senator

Marcellino.

SENATOR MARCELLINO: Aye.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: No.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: To explain my vote.

ACTING PRESIDENT McGEE: Senator Markowitz, to explain his vote.

SENATOR MARKOWITZ: Thank you.

I voted for the death penalty and have been a supporter of it. I have some real concerns on this particular legislation because New York State has no record at all thus far of the implementation of the death penalty, how the juries are working. I have real -- I just -- this is one of those kinds of issues that really cause -- should cause all of us to say whether or not we want to be in a position to expand something that we don't have any experience at at this time.

So I just wanted to get on record that although I support the death penalty - and I plan to support this legislation as

well. But I think that all of us should be put on notice, and I think we have that responsibility that we should not go crazy on this type of legislation, that we have to monitor this very closely. Because, put into the wrong hands in the future, I would dread to think where this can go and what it could mean potentially to those that are accused and convicted. So I just want all of us in the Senate to be mindful of that.

I'll vote yes, with both eyes wide open.

ACTING PRESIDENT McGEE: Senator Markowitz is recorded in the affirmative.

Call the roll.

THE SECRETARY: Senator McGee.

SENATOR McGEE: Yes.

THE SECRETARY: Senator Meier.

SENATOR MEIER: Yes.

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: No.

THE SECRETARY: Senator Montgomery.

ACTING PRESIDENT McGEE: Senator Montgomery, to explain your vote.

SENATOR MONTGOMERY: Yes, Madam President, to explain my vote briefly.

Senator Volker referred to the high murder rate and that the high murder rate was impacting particularly on communities where people of color were. And I just want to remind Senator Volker that those communities are communities of high infant mortality, high educational-system failure for young people, high unemployment, high health -- health indices of failure and inadequacy, and so on and so on. And so it is no surprise that it would also be the areas where there would be the highest dysfunctionality in terms of social indicators; i.e., murder rates and what have you.

But we cannot address the problems of those neighborhoods particularly, and including the murder rate, by escalating our incarceration rate and trying to escalate the rate and degree that we do the death penalty.

So I am voting no. I voted no on the death penalty. I vote no on this. I will continue to hold that position until I am satisfied that the way that we're addressing

or the reason that we're addressing crime in this way is that it is in fact going to be a solution to some of -- to crime itself and that it is not an attempt to address all of the ills in certain communities by virtue of our penal system and the death penalty.

Thank you. I am voting no.

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

Call the roll.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: Yes.

THE SECRETARY: Senator Morahan.

SENATOR MORAHAN: Yes.

THE SECRETARY: Senator Nanula.

(No response.)

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: Aye.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: Madam President, to explain my vote.

ACTING PRESIDENT McGEE: Senator

Oppenheimer, to explain her vote.

SENATOR OPPENHEIMER: I'll be voting in the negative. I strongly believe that a government that is postulating that one should not kill, that individuals should not kill, that same government should not be in the business of killing itself. It sets a rather poor example.

I would like to take issue with one thing that Senator Volker said. Actually, not take issue. I feel -- I've come to a different conclusion than he does on why we are having less murders. He feels it's the deterrent of the death penalty. I think we are having less crime throughout our nation because we are having a rising economy. The economy is lifting all the boats, and therefore people are more -- are working. We have the lowest unemployment rate that we have ever had since the Second World War, and I think that is why we are seeing far less crime and far less murder.

I think this is a very poor policy, for the state to be in the murder business. I vote no.

ACTING PRESIDENT McGEE: Senator Oppenheimer to be recorded in the negative.

Call the roll.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: No.

THE SECRETARY: Senator Rath.

SENATOR RATH: Yes.

THE SECRETARY: Senator Rosado.

SENATOR ROSADO: No.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Sampson.

SENATOR SAMPSON: No.

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: No.

THE SECRETARY: Senator Schneiderman.

SENATOR SCHNEIDERMAN: No.

THE SECRETARY: Senator Seabrook.

SENATOR SEABROOK: No.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Yes.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Yes.

THE SECRETARY: Senator Smith.

SENATOR SMITH: No.

THE SECRETARY: Senator Spano.

(No response.)

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: Yes.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky, excused.

Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Aye.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Aye.

THE SECRETARY: Senator Waldon.

SENATOR WALDON: No.

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: Aye.

ACTING PRESIDENT McGEE: Call the absentees.

THE SECRETARY: Senator Balboni.

SENATOR BALBONI: Aye.

THE SECRETARY: Senator Bonacic.

SENATOR BONACIC: Yes.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Gonzales.

(No response.)

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Yes.

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: Aye.

THE SECRETARY: Senator Nanula.

(No response.)

THE SECRETARY: Senator Spano.

SENATOR SPANO: Aye.

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 41. Nays, 17.

ACTING PRESIDENT McGEE: The bill is passed.

I take this moment, on behalf of

the Senate, to wish a very happy birthday to Senator Mary Lou Rath. Today is her birthday. So let's say happy birthday to Senator Rath.

(Applause.)

Senator Paterson.

SENATOR PATERSON: Madam President, while we're on the subject, today is also the birthday of one of our colleagues from this side of the aisle. And I know you'd like to join me in wishing happy birthday -- I don't even know how we can work today, with two of our colleagues having birthdays on the same day. But I know you'd like to wish happy birthday to Senator John Sampson from Kings County.

ACTING PRESIDENT McGEE: Absolutely.

Happy birthday to Senator John Sampson.

(Applause.)

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Madam President, Senator Velella said his birthday is September 25th, and he hopes we're not in

session.

(Laughter.)

ACTING PRESIDENT McGEE: I'm not too sure about that, Senator Velella.

Senator Skelos.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Rules Committee in the Majority Conference Room.

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

Senator Skelos.

SENATOR SKELOS: Madam President, please call up Calendar 1537, by Senator Velella.

ACTING PRESIDENT McGEE: The Secretary will call Calendar Number 1527 - 37.

THE SECRETARY: Calendar Number 1537, by Member of the Assembly Klein, Assembly Print 5384A, an act to amend the General Business Law.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 180th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator Santiago. To explain -

SENATOR SANTIAGO: Madam President, will the sponsor yield for a question, please?

ACTING PRESIDENT McGEE: We're on a roll call, Senator Santiago.

Senator Paterson.

SENATOR PATERSON: If Senator Santiago would like to speak on the bill, perhaps I would move that we, with unanimous consent, withdraw the roll call and have an explanation on the bill. Or she can just speak on the bill. Whatever you like, Madam President.

ACTING PRESIDENT McGEE: Roll call is withdrawn.

Senator Santiago.

Senator Velella, will you yield the floor? Thank you.

SENATOR VELELLA: Madam President, just so we're -- did we recall the bill -- withdraw the roll call? Is the bill before the house?

ACTING PRESIDENT McGEE: We withdrew the roll call. The bill is on the floor.

SENATOR VELELLA: Yes, Senator, I yield to a question.

SENATOR SANTIAGO: Thank you.

Senator, does this measure apply to companies and retailers outside of New York State who issue credit cards in New York or just to those issuers based in New York State?

SENATOR VELELLA: It would apply to only those who the state laws apply to. And hopefully we would be setting a national precedent with this.

SENATOR SANTIAGO: Would you repeat that, please?

SENATOR VELELLA: I said it would apply to only those who are subject to the laws of the State of New York, and hopefully we would be setting a national precedent with this.

SENATOR SANTIAGO: Can I interpret that to mean no, that it would only apply to New York State? I want to make sure I understand.

SENATOR VELELLA: It would apply to those who the laws of New York State apply to. So it would only apply to the people who do this business in the State of New York.

SENATOR SANTIAGO: Okay. Thank you, Senator.

ACTING PRESIDENT McGEE: Excuse me, Senator Santiago. Could you suffer an interruption?

Can we have some quiet here, please?

Okay, Senator Santiago. Thank you.

SENATOR SANTIAGO: Thank you, Senator.

Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator Santiago, on the bill.

SENATOR SANTIAGO: I appreciate your response. I tried to listen to it carefully. I still have some reservations, and I'd like to explain what they are. I

spoke on this floor a number of times about parity between New York State and out-of-state financial institutions. For example, the parity issue was the driving force behind the wild-card legislation we've passed twice in the Legislature.

I know Senator Farley shares my concerns and commitment to keeping our in-state financial institutions on equal footing with out-of-state counterparts. I fear this measure, even with its excellent intent, would have an unintended consequence of handicapping in-state financial institutions and retailers that issue credit cards.

It would be wonderful if this measure could be revised to reach out-of-state institutions that solicit business in New York State. However, we know that this can only be done a hundred percent effectively on a federal level. Most credit card issuers are in Delaware or South Dakota, and this bill does not speak to that. It only reaches three or so of the major issuers, which is Chase, which is the largest employer on Long Island;

M&T Bank, which is a large employer in the Buffalo area; American Express, which is headquartered in New York City; and all the small independent banks that issue credit cards upstate. What it leaves out is every other issuer in the nation.

So because I see this bill as impacting only New York State institutions and as a consequence giving a competitive advantage to out-of-state institutions, I must vote against it, well-intentioned though it may be, and encourage my colleagues to do so.

It's a wonderful bill. It should be a federal bill. And if we were in a federal chamber, it would be appropriate to vote for it. But because we're in a state chamber and our responsibility is to protect financial institutions in the state of New York, I strongly encourage my colleagues to vote against this bill.

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

Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 180th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1537 are Senators Bonacic, Breslin, Connor, Duane, Farley, Montgomery, Onorato, and Santiago. Ayes, 51. Nays, 8.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, would you please call up Calendar Number 1545, by Senator Marchi, please.

ACTING PRESIDENT McGEE: Call Calendar Number 1545.

THE SECRETARY: Calendar Number 1545, by Senator Marchi, Senate Print 4692A, an act to amend the Public Authorities Law and the Real Property Tax Law.

SENATOR FUSCHILLO: Is there a message at the desk?

ACTING PRESIDENT McGEE: Yes, there is, Senator Fuschillo.

SENATOR FUSCHILLO: Move to

accept.

ACTING PRESIDENT McGEE: The motion is to accept the message of necessity. All in favor say aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Any opposed?

(No response.)

ACTING PRESIDENT McGEE: The message is accepted.

Read the last section.

THE SECRETARY: Section 15. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, will you please call up Calendar Number 1557, by Senator Wright.

ACTING PRESIDENT McGEE: The Clerk will call 1557.

THE SECRETARY: Calendar Number 1557, by Senator Wright, Senate Print 5973, an act to amend the Agriculture and Markets Law.

SENATOR FUSCHILLO: Is there a message at the desk?

ACTING PRESIDENT McGEE: There is a message at the desk.

SENATOR FUSCHILLO: Move to accept.

ACTING PRESIDENT McGEE: The motion is to accept the message of necessity. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The message is accepted.

The Secretary will read the last section.

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

ACTING PRESIDENT McGEE: Senator Rath, to explain her vote.

Call the roll, please.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Rath.

SENATOR RATH: Madam President, I request unanimous consent to be recorded in the negative on Calendar Number 1537.

ACTING PRESIDENT McGEE: Without objection, so recorded.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, on the regular calendar, please call up Calendar Number 257, by Senator Larkin.

ACTING PRESIDENT McGEE: Clerk will call Calendar Number 357 -- 1357.

SENATOR FUSCHILLO: Madam President.

ACTING PRESIDENT McGEE: Wait one moment, please.

SENATOR FUSCHILLO: Calendar Number 257.

ACTING PRESIDENT McGEE: Calendar two-five -

SENATOR FUSCHILLO: 257.

ACTING PRESIDENT McGEE: 257. Oh, that's great. Calendar 257.

THE SECRETARY: Calendar Number 257, by Senator Larkin, Senate Print 2534A, an act to amend the General Municipal Law and the Town Law.

SENATOR FUSCHILLO: Is there a message at the desk?

ACTING PRESIDENT McGEE: Yes, there is.

SENATOR FUSCHILLO: Motion to accept.

ACTING PRESIDENT McGEE: The motion is to accept the message. All those in favor say aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: Message is accepted.

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, please call up Calendar Number 1041.

ACTING PRESIDENT McGEE: The Secretary will call 1041.

Oh, I'm sorry, the bill is passed.

The Secretary will call 1041.

The last bill was passed.

THE SECRETARY: Calendar Number 1041, by -

SENATOR GOODMAN: Madam President.

ACTING PRESIDENT McGEE: Senator Goodman.

SENATOR GOODMAN: I ask to be recorded in the negative on Senate 3914A, which passed in this house a few moments ago.

ACTING PRESIDENT McGEE: Senator Goodman will be recorded in the negative on

bill -- yes.

SENATOR GOODMAN: Thank you.

ACTING PRESIDENT McGEE: Thank you. So recorded.

The Secretary will read.

THE SECRETARY: Calendar Number 1041, by the Assembly Committee on Rules, Assembly Print 8201, an act to amend the Banking Law.

ACTING PRESIDENT McGEE: Call the roll.

No, read the last section.

THE SECRETARY: Section 2. This act shall take effect in 90 days.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, on the supplemental calendar, please call up Calendar Number 1549.

ACTING PRESIDENT McGEE: The

Secretary will call Calendar Number 1549.

THE SECRETARY: Calendar Number 1549, by Senator Saland, Senate Print 5689A, an act to amend the Social Services Law and the County Law.

SENATOR FUSCHILLO: Is there a message at the desk?

ACTING PRESIDENT McGEE: Yes, there is.

SENATOR FUSCHILLO: Madam President, is there a message at the desk?

ACTING PRESIDENT McGEE: Yes, there is.

SENATOR FUSCHILLO: Move to accept.

ACTING PRESIDENT McGEE: The motion is to accept the message of necessity. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: Motion is accepted.

The Clerk will read the last

section.

THE SECRETARY: Section 11. This act shall take effect June 30th.

ACTING PRESIDENT McGEE: Senator Paterson, to explain his vote.

SENATOR PATERSON: I was actually -- all right, I'll explain my vote, Madam President.

I explained pretty much yesterday that we did not think that where these appointments and legislative leaders were involved that the Minority leaders of the Assembly and the Senate should be excluded.

And for that reason, I wish to vote in the negative.

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

Clerk, call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1549 are Senators Breslin, Connor, Dollinger, Duane, Onorato, Paterson, Seabrook, Smith, and Stachowski. Ayes, 50. Nays, 9.

ACTING PRESIDENT McGEE: The bill

is passed.

SENATOR FUSCHILLO: Madam President.

ACTING PRESIDENT McGEE: Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, on the supplemental list, please call up Calendar Number 1536, by Senator Stafford.

ACTING PRESIDENT McGEE: The Clerk will call 1536.

THE SECRETARY: Calendar Number 1536, by Senator Stafford, Senate Print 3898A, an act to amend the Executive Law and the Criminal Procedure Law.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR STAFFORD: It's very understandable -

SENATOR DOLLINGER: -- Senator Stafford, please.

ACTING PRESIDENT McGEE: Can we have some quiet in here, please.

SENATOR STAFFORD: -- the question that Senator Dollinger has, if we can

answer that.

This, as you know, as we have the tenor of the times and as we have some of the problems that we have, it's very understandable that the state police, together with other law enforcement agencies, would be working together. I would emphasize this is only on a task force, by a document that has to be signed by the state police superintendent. It could not be something unilateral where the -- one agency moved out into an area that is not in their jurisdiction. And it's something that we will watch very closely.

I will say that in all areas of the state, and actually in an area that -- well, let's say in all areas of the state. Thank you.

SENATOR DOLLINGER: Through you, Madam President. I want to thank Senator Stafford for the explanation and the assistance of his counsel as well.

Senator Stafford, I'm going to vote in favor of this bill. I would just like to encourage you to take the next step in dealing

with this problem of the enforcement of warrants in different jurisdictions.

The reason why I ask you to do this is because the City of Rochester, which I represent, was in a civil action brought in the United States Federal District Court. The city police officers went in with a warrant from an adjacent community to enforce the warrant. And what happened is there was a scuffle, there was an ensuing fight. The person injured by the police officers brought a federal civil rights action against the City of Rochester, and the United States District Court ruled that he was entitled -- the plaintiff was entitled to a directed verdict, that the police were not properly at his home because there was no state legislation that authorized the city police department to enforce a warrant from the adjacent community.

This bill, as I understand it, says that when the state police are involved in the a multijurisdictional task force, that the superintendent, Mr. McMahon, who I have tremendous -

ACTING PRESIDENT McGEE: Senator

Dollinger, would you hold it for just one moment, please.

Can we have some order in the chamber, please?

Sergeant-at-arms, will you clear the back aisle and close the door. Thank you very much.

Senator Dollinger.

SENATOR DOLLINGER: Through you, again, Madam President, on the bill.

-- that the superintendent, Mr. McMahon, who I have tremendous confidence in, can use this procedure if they're a multijurisdictional task force.

However, it doesn't solve the problem, the broader problem, of a police agency that has a valid warrant from one community enforcing it in the other community. And I know that the City of Rochester has appealed that verdict.

But at least in my judgment, in a reading of the Criminal Procedure Law, that that is probably an accurate determination by the Federal District Court, because they did not have the express statutory authority to

enforce a valid warrant in the City of Rochester even though it came from a nearby jurisdiction.

And I would just strongly recommend that the nature of this is to give our police the power to avoid jurisdictional disputes and jurisdictional difficulties when in a multijurisdictional task force, enforcing a warrant and taking other police actions.

I would just recommend it to your attention, perhaps for the next session, to your counsels' attention, that we look at that issue. I will provide them with the data that shows the specifics of that directed verdict. But it highlights a critically important problem which, in the case of the City of Rochester, came back to result in a civil liability against them when all they were doing was enforcing the law and doing what we want our police departments to do.

So I'm going to vote in favor of this bill. It's the right thing to do. I would just ask Senator Stafford perhaps next year to take that next step.

ACTING PRESIDENT McGEE: Read the

last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, will you kindly take up Calendar Number 1559.

ACTING PRESIDENT McGEE: The Clerk will call Calendar Number 1559.

THE SECRETARY: Calendar Number 1559, by Senator Johnson, Senate Print 5988, an act to amend the Vehicle and Traffic Law and the Education Law.

SENATOR FUSCHILLO: Is there a message of necessity at the desk?

ACTING PRESIDENT McGEE: The message is at the desk.

SENATOR FUSCHILLO: Move to

accept.

ACTING PRESIDENT McGEE: The motion is made to accept the message of necessity. All in favor say aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Those opposed say nay.

(No response.)

ACTING PRESIDENT McGEE: Motion is passed. Motion is accepted.

The Clerk will read the last section.

THE SECRETARY: Section 15. This act shall take effect April 1st.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, may we return to the reports of standing committees. I believe there's a report of the Rules Committee at the desk.

ACTING PRESIDENT McGEE: Senator Smith.

SENATOR SMITH: Thank you. Madam President, I request unanimous consent to be recorded in the negative on Calendar Number 1537.

ACTING PRESIDENT McGEE: Without objection.

We will return to the reports of standing committees.

The Secretary will read.

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

Senate Print 143A, by Senator Nozzolio, an act to amend the General Business Law;

1467, by Senator Spano, an act to amend the Vehicle and Traffic Law;

2077, by Senator Farley, an act in relation to affecting;

2082A, by Senator Oppenheimer, an act authorizing the appointment;

2155B, by Senator Hannon, an act to amend the General Obligations Law;

2429A, by Senator Bonacic, an act to amend the Judiciary Law;

2559, by Senator Maltese, an act to amend the New York City Charter;

2878, by Senator Velella, an act to amend the Criminal Procedure Law;

3038, by Senator Balboni, an act to amend the Vehicle and Traffic Law;

3363, by Senator Stachowski, an act authorizing;

3432, by Senator Kuhl, an act to amend the Agriculture and Markets Law;

3619C, by Senator Marcellino, an act to amend the Environmental Conservation Law;

3964, by Senator Skelos, an act to amend the Criminal Procedure Law;

4013A, by Senator Libous, an act to enact the False Reporting Act of 1999;

4167, by Senator Nozzolio, an act to amend the Family Court Act;

4454, by Senator Goodman, an act to amend the Vehicle and Traffic Law;

4488B, by Senator Marchi, an act to amend the Waterfront Commission Act;

4501A, by Senator Wright, an act to amend the Vehicle and Traffic Law;

4559A, by Senator Nozzolio, an act to amend the Family Court Act;

4698, by Senator Kuhl, an act to amend the Alcoholic Beverage Control Law;

5195A, by Senator Bonacic, an act to amend the Environmental Conservation Law;

5361A, by Senator Saland, an act to establish a pediatric extended care center;

5547A, by Senator Stafford, an act to amend the State Finance Law;

5592, by Senator Kuhl, an act to amend the Judiciary Law;

5779, by Senator Leibell, an act authorizing the reopening;

5783A, by Senator Leibell, an act to amend the Environmental Conservation Law;

5798, by Senator Morahan, an act to authorize the payment;

5866, by Senator Morahan, an act to amend the Real Property Tax Law;

5961, by Senator Hannon, an act authorizing the assessors;

5983, by Senator Mendez, an act to

amend Chapter 899 of the Laws of 1984;

And 5995, by the Senate Committee on Rules, an act to amend Chapter 1040 of the Laws of 1981.

All bills ordered direct for third reading.

ACTING PRESIDENT McGEE: Senator Fuschillo.

SENATOR FUSCHILLO: Move to accept the report of the Rules Committee, Madam President.

ACTING PRESIDENT McGEE: The motion is made to accept the report of the Rules Committee. All in favor will say aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The motion is accepted. The Rules report is accepted.

Senator Fuschillo.

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

ACTING PRESIDENT McGEE: Yes, there is.

Senator Libous.

SENATOR LIBOUS: Thank you, Madam President. On behalf of Senator Larkin, on page 20 I offer the following amendments to Calendar Number 760, Senate Print Number 681, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR LIBOUS: Madam President, on behalf of Senator Fuschillo, I wish to call up his bill, Print Number 5952, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1525, by Senator Fuschillo, Senate Print 5952, an act in relation to authorizing.

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

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

SENATOR LIBOUS: Madam President, I now offer up the following amendments.

ACTING PRESIDENT McGEE: Amend ments received.

Senator Fuschillo, we have some substitutions.

SENATOR FUSCHILLO: Madam President, are there any substitutions at the desk?

ACTING PRESIDENT McGEE: Yes, there are.

The Secretary will read the substitutions.

THE SECRETARY: On page 9, Senator Bonacic moves to discharge, from the Committee on Rules, Assembly Bill Number 3977 and substitute it for the identical Third Reading Calendar, 336.

On page 16, Senator Leibell moves to discharge, from the Committee on Rules,

Assembly Bill Number 5617 and substitute it for the identical Third Reading Calendar, 603.

On page 19, Senator Maltese moves to discharge, from the Committee on Rules, Assembly Bill Number 4152A and substitute it for the identical Third Reading Calendar, 697.

On page 21, Senator Fuschillo moves to discharge, from the Committee on Rules, Assembly Bill Number 7248 and substitute it for the identical Third Reading Calendar, 798.

On page 21, Senator Leibell moves to discharge, from the Committee on Rules, Assembly Bill Number 5189 and substitute it for the identical Third Reading Calendar, 807.

On page 21, Senator Spano moves to discharge, from the Committee on Rules, Assembly Bill Number 3798B and substitute it for the identical Third Reading Calendar, 817.

On page 27, Senator Hannon moves to discharge, from the Committee on Rules, Assembly Bill Number 8686 and substitute it for the identical Third Reading Calendar, 956.

On page 28, Senator Hannon moves to discharge, from the Committee on Rules, Assembly Bill Number 8071A and substitute it

for the identical Third Reading Calendar, 957.

On page 26, Senator Skelos moves to discharge, from the Committee on Rules, Assembly Bill Number 8187 and substitute it for the identical Third Reading Calendar, 921.

And on Supplemental Calendar Number 1, Senator Marcellino moves to discharge, from the Committee on Rules, Assembly Bill Number 8114A and substitute it for the identical Third Reading Calendar, 1556.

ACTING PRESIDENT McGEE: Substitutions ordered.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, there will be an immediate meeting of the Majority in the Majority Conference Room.

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

SENATOR DOLLINGER: Madam President, on behalf of Senator Connor, there will be an immediate meeting of the Minority Conference in the Minority Conference Room.

ACTING PRESIDENT McGEE: There

will be an immediate meeting of the Minority Conference in the Minority Conference Room.

The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 4:30 p.m.)

(Whereupon, the Senate reconvened at 5:30 p.m.)

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, on the first supplemental calendar, would you please call up Calendar Number 1556.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 1556 on the first supplemental calendar.

THE SECRETARY: Calendar Number 1556, substituted earlier today by the Assembly Committee on Rules, Assembly Print Number 8114A, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 1525, by Senator Fuschillo. The bill is on the members' desks.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 1525.

THE SECRETARY: Calendar Number 1525, by Senator Fuschillo, Senate Print 5952A, an act to amend the Education Law and the Public Authorities Law.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR SKELOS: Mr. President, is there a message at the desk?

ACTING PRESIDENT MEIER: Yes, there is a message at the desk.

SENATOR SKELOS: Move to accept the message.

ACTING PRESIDENT MEIER: The question is on the motion to accept the

message of necessity. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The message is accepted. The bill is before the house.

Read the last section.

THE SECRETARY: Section 14. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Dollinger, to explain his vote.

SENATOR DOLLINGER: Mr. President, I understand that this bill passed the house yesterday, 60 to nothing, and that we amended the Senate version to conform with the Assembly version. And therefore, under those circumstances, we're consenting to the passage of this bill.

Thank you, Mr. President. I vote

in the affirmative.

ACTING PRESIDENT MEIER: Senator Dollinger will be recorded in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: Senator Breslin. I'm sorry, one moment.

The bill is passed.

Senator Breslin.

SENATOR BRESLIN: Mr. President, I request unanimous consent to be recorded in the affirmative for Calendar Number 1549.

ACTING PRESIDENT MEIER: Without objection, Senator Breslin will be recorded in the affirmative with regard to Calendar 1549.

Senator Breslin, just to clarify. The record will reflect that the record is being corrected so that your vote will be recorded in the affirmative on that bill.

SENATOR BRESLIN: That's correct, Mr. President.

ACTING PRESIDENT MEIER: Thank you, Senator Breslin.

Senator Skelos.

SENATOR SKELOS: Mr. President, on the main calendar would you please call up 956, by Senator Hannon.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 956.

THE SECRETARY: Calendar Number 956, substituted earlier today by the Assembly Committee on Rules, Assembly Print Number 8686, an act to amend the Public Health Law.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect in 180 days.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Waldon, why do you rise?

SENATOR WALDON: Mr. President, I request, respectfully, unanimous consent -- I was out of the chamber on other Senate business when we dealt with Calendars 912 and 1512 -- to be recorded in the negative.

ACTING PRESIDENT MEIER: Without objection, Senator Waldon will be recorded in the negative with regard to Calendar 912 and Calendar 1512.

SENATOR WALDON: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, if we could now move to the supplemental active list and call up Calendar Number 220, by Senator Wright.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 220, found on the supplemental active list.

THE SECRETARY: Calendar Number 220, by Senator Wright, Senate Print 2733A, an act to amend the Estates, Powers and Trusts Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Bonacic, do you wish to have the Secretary do the supplemental active list in regular order?

SENATOR BONACIC: I do, Mr. President.

ACTING PRESIDENT MEIER: The Secretary will read the supplemental active list.

THE SECRETARY: Calendar Number 534, by Senator Larkin, Senate Print 21, an act to amend the Criminal Procedure Law, in relation to security.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill

is passed.

THE SECRETARY: Calendar Number 539, by Member of the Assembly Schimminger, Assembly Print Number 1540, an act to amend the Criminal Procedure Law, in relation to peace officers.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 670, by Senator Farley, Senate Print 4541, an act to amend the Banking Law, in relation to the regulation.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 697, by Senator Maltese, Senate Print 2824A, an act to amend the Public Health Law, in relation to requiring hospitals.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect April 1, 2000.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

SENATOR BONACIC: Mr. President.

ACTING PRESIDENT MEIER: Senator Bonacic.

SENATOR BONACIC: Could we now take up the Senate Supplemental Calendar Number 57B, and can we go to the

noncontroversial reading.

ACTING PRESIDENT MEIER: The Secretary will read the noncontroversial calendar, beginning with Senate Supplemental Calendar 57B.

Senator Bonacic.

SENATOR BONACIC: Mr. President, I would ask if we could go to Calendar Number 697, Senate Bill Number 2824A, by Senator Maltese, and ask to reconsider the vote by which it was taken.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 697.

THE SECRETARY: Calendar Number 697, by Senator Maltese, Senate Print 2824A, an act to amend the Public Health Law.

ACTING PRESIDENT MEIER: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: Senator Bonacic.

SENATOR BONACIC: Can we substitute the Assembly Bill for the Senate bill which we just reconsidered.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 697, by Member of the Assembly Grannis, Assembly Print Number 4152A, an act to amend the Public Health Law.

ACTING PRESIDENT MEIER: Substitution ordered.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Bonacic.

SENATOR BONACIC: Mr. President, we would now like to return to the Senate Supplemental Calendar Number 57B, and we ask that we proceed with the noncontroversial reading, please.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 1560, by Senator Nozzolio, Senate Print 143A, an act to amend the General Business Law and the Executive Law.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 5. This act shall take effect January 1.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1561, by Senator Spano, Senate Print 1467, an act to amend the Vehicle and Traffic Law, the State Finance Law, and the Social Services Law.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 5. This act shall take effect October 1.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1562, Senator Farley moves to discharge, from the Committee on Civil Service and Pensions, Assembly Bill Number 3563 and substitute it for the identical Third Reading Calendar, 1562.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1562, by Member of the Assembly Vitaliano, Assembly Print Number 3563, an act in relation to affecting.

ACTING PRESIDENT MEIER: Senator Farley.

SENATOR FARLEY: To explain my vote.

ACTING PRESIDENT MEIER: We'll start the roll call, Senator, and then I'll recognize you.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

This is one of the more significant bills that we will pass this year. It's one that is the number-one priority of every retired public employee in the state. It says that they cannot take away the health benefits that they currently have unless they do it for everyone. They can't unilaterally reduce the health benefits of a retired public employee.

It's the right thing to do. It's a great piece of legislation. And as I said, it's the number-one priority of every retired public employee in this state. Good bill.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: I assume you vote aye, Senator Farley.

SENATOR FARLEY: I vote aye.

ACTING PRESIDENT MEIER: Senator Farley will be recorded in the affirmative.

Senator Breslin.

SENATOR BRESLIN: To explain my vote, Mr. President.

ACTING PRESIDENT MEIER: Senator Breslin, to explain his vote.

SENATOR BRESLIN: I commend Senator Farley for extending this to retirees and tying it in with existing employees. It certainly will make a lot of people in my district, the most heavily populated of state retirees, very, very happy.

And I hope we will see a time when we can do that on a permanent basis, a basis that will be forever, so our senior citizens who have been state and local workers can live on a year-to-year basis with a total comfort level that they will continue to have their health benefits.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Breslin will be recorded in the affirmative.

Senator Dollinger, to explain his

vote.

SENATOR DOLLINGER: Mr. President, just to briefly explain.

I concur with Senator Breslin. I also think that Senator Farley's bill eliminates a temptation. And the temptation is that in the collective bargaining process, with tremendous pressures inside the collective bargaining process, that the current employees, who have the ability to ratify a contract, would sacrifice, be tempted to sacrifice the benefits of their retirees to maintain their own benefits.

I think that that's a temptation I know has existed in the collective bargaining process. And what I think this does is this creates a parity between the current employees and the retirees and prevents that temptation. Or, frankly, the pressure from an employer to require the active employees to sacrifice their retirees for the sake of a current contract.

I think it takes one of the temptations in the collective bargaining process out of the process. And I think we'll

end up with a fairer, more equitable collective bargaining process with respect to retirement benefits for all employees that are in the state system.

So I think this bill takes away a temptation that might occur at the collective bargaining process, and I think it's a good bill.

ACTING PRESIDENT MEIER: Senator Dollinger will be recorded in the affirmative.

Senator Waldon, to explain his vote.

SENATOR WALDON: Very briefly, Mr. President.

What Senator Farley has done I think is absolutely brilliant in regard to ensuring that those most powerful unions in the state cannot cut a deal which benefits their members and leaves the little guys out.

That's a brilliant, brilliant move. I support what he's doing. I am voting aye.

ACTING PRESIDENT MEIER: Senator Waldon will be recorded in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1564, by Senator Hannon, Senate Print 2155B, an act to amend the General Obligations Law, in relation to certification.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1565, by Senator Bonacic, Senate Print 2429A, an act to amend the Judiciary Law, in relation to establishing.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 3. This

act shall take effect January 1.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1566, by Senator Maltese, Senate Print 2559, an act to amend the New York City Charter, in relation to permitting.

ACTING PRESIDENT MEIER: Senator Bonacic.

SENATOR BONACIC: Mr. President, we ask that that bill be laid aside temporarily.

ACTING PRESIDENT MEIER: Lay the bill aside temporarily.

The Secretary will continue to read.

THE SECRETARY: In relation to Calendar Number 1567, Senator Velella moves to discharge, from the Committee on Rules, Assembly Bill Number 5141 and substitute it for the identical Third Reading Calendar,

1567.

ACTING PRESIDENT MEIER: Read the last section.

Oh, I'm sorry. Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1567, by Member of the Assembly Nolan, Assembly Print Number 5141, an act to amend the Criminal Procedure Law, in relation to peace officer status.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1568, Senator Balboni moves to discharge, from the Committee on Rules, Assembly Bill Number 5839 and substitute it

for the identical Third Reading Calendar, 1568.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1568, by Member of the Assembly Tonko, Assembly Print Number 5839, an act to amend the Vehicle and Traffic Law and the State Finance Law.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 4. This act shall take effect in 180 days.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1569, Senator Stachowski moves to discharge, from the Committee on Rules, Assembly Bill Number 6674 and substitute it

for the identical Third Reading Calendar, 1569.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1569, by Member of the Assembly Wirth, Assembly Print Number 6674, an act authorizing Paul S. Zywiczynski to file for certification.

ACTING PRESIDENT MEIER: There's a home rule message at the desk.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1570, Senator Kuhl moves to discharge, from the Committee on Rules, Assembly Bill Number 5807 and substitute it for the identical Third Reading Calendar,

1570.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1570, by Member of the Assembly Magee, Assembly Print Number 5807, an act to amend the Agriculture and Markets Law and the State Finance Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1571, Senator Marcellino moves to discharge, from the Committee on Rules, Assembly Bill Number 6248C and substitute it for the identical Third Reading Calendar, 1571.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1571, by Member of the Assembly DiNapoli, Assembly Print Number 6248C, an act to amend the Environmental Conservation Law and the Public Health Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1572, by Senator Skelos, Senate Print 3964, an act to amend the Criminal Procedure Law, in relation to the designation.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1573, Senator Libous moves to discharge, from the Committee on Rules, Assembly Bill Number 1075B and substitute it for the identical Third Reading Calendar, 1573.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1573, by Member of the Assembly Bragman, Assembly Print Number 1075B, an act to enact the False Reporting Act of 1999.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Aye.

ACTING PRESIDENT MEIER: Senator Duane, to explain his vote. No? I'm sorry, I thought you had your hand up.

The Secretary will announce the results.

THE SECRETARY: Ayes, 57. Nays, 2. Senators Duane and Montgomery recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1574, by Senator Nozzolio, Senate Print 4167, an act to amend the Family Court Act, in relation to authorizing.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Duane -- oh, there you are. Why do you rise?

SENATOR DUANE: I wanted to ask, Mr. President, for unanimous consent to be recorded in the negative on Number 1564.

ACTING PRESIDENT MEIER: 64?

SENATOR DUANE: 64.

ACTING PRESIDENT MEIER: Without objection, Senator Duane will be recorded in the negative on Calendar 1564.

The Secretary will continue to read.

THE SECRETARY: In relation to Calendar Number 1575, Senator Goodman moves to discharge, from the Committee on Rules, Assembly Bill Number 8489 and substitute it for the identical Third Reading Calendar, 1575.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number

1575, by the Assembly Committee on Rules, Assembly Print Number 8489, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1576, by Senator Marchi, Senate Print 4488B, an act to amend the Waterfront Commission Act.

SENATOR BONACIC: Mr. President.

ACTING PRESIDENT MEIER: Senator Bonacic.

SENATOR BONACIC: Is there a message of necessity at the desk?

ACTING PRESIDENT MEIER: There is a message at the desk.

SENATOR BONACIC: Move to accept,

please.

ACTING PRESIDENT MEIER: The question is on the motion to accept the message of necessity. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The message is accepted. The bill is before the house.

The Secretary will read.

THE SECRETARY: Section 4. This act shall take effect upon enactment into law.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1578, Senator Nozzolio moves to discharge, from the Committee on Rules, Assembly Bill Number 7069A and substitute it

for the identical Third Reading Calendar, 1578.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1578, by Member of the Assembly John, Assembly Print Number 7069A, an act to amend the Family Court Act.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Nozzolio, to explain his vote.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President and my colleagues, this measure before us is the culmination of over three years of work with the entire Monroe County delegation, including working with our County Executive, Jack Doyle.

While the judge who last took office added in Monroe County occurred almost twenty years ago, the court has experienced a staggering increase in the number of cases it handles, growing from 10,000 cases back then to over 25,000 cases today.

I'm very pleased that our delegation could work together to provide not one but two county Family Court judges to the very overburdened Family Court system in Monroe County. The court has experienced a tremendous increase in workload, and the cases are much more complicated today and difficult to resolve. The addition of those court judges will help address the very growing issues of helping our children and families who seek justice.

Mr. President, again, this has been a bipartisan effort, an effort that the entire delegation -- Senator Alesi, Maziarz, Dollinger, and myself -- have worked very closely together on, and that we're very pleased that the county executive, through his support, is able to realize this important need in Monroe County.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Nozzolio will be recorded in the affirmative.

Senator Dollinger, to explain his vote.

SENATOR DOLLINGER: Thank you, Mr. President. I want to echo the sentiments of Senator Nozzolio, but I also want to add my thanks to my colleague from the east.

Senator Nozzolio, you navigated this ship through lots of shoals and occasionally through even the unruly deckhand in the delegation. But you did it with a masterful sense of getting to the goal. And the goal was to create, as you properly point out, two desperately needed Family Court judges. And I applaud your perseverance. It took a long time and a lot of effort, but I think you got everybody on the same page.

And I think it's important, as we work to these goals, sometimes we do navigate through different straits and go in different directions. But you kept this thing on course, and I commend you for that. And, frankly, when those two new Family Court

judges are sworn in, whoever they may be, I hope you will take a great deal of pride in having helped the people of our county.

I extend the same commendations to Senator Alesi and to Senator Maziarz and to our colleagues in the Assembly. This is a great day for the children and the families of Monroe County. We should all be proud.

And again, I commend your hand on the helm that got us there.

ACTING PRESIDENT MEIER: Senator Dollinger will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1579, by Senator Kuhl, Senate Print 4698, an act to amend the Alcoholic Beverage Control Law, in relation to summer and winter licenses.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1580, by Senator Bonacic, Senate Print 5195A, an act to amend the Environmental Conservation Law, in relation to permits for mining.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57 -- ayes, 56. Nays, 3. Senators Leibell, Marcellino, and Saland recorded -- also Senator LaValle. Also Senator McGee.

In relation to Calendar Number 1580, those recorded in the negative are Senators Fuschillo, LaValle, Leibell, Marcellino, McGee, and Saland. Ayes, 53.

Nays, 6.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1582, Senator Saland moves to discharge, from the Committee on Finance, Assembly Bill Number 8156A and substitute it for the identical Third Reading Calendar, 1582.

ACTING PRESIDENT MEIER: Substitution ordered.

THE SECRETARY: Calendar Number 1582, by the Assembly Committee on Rules, Assembly Print Number 8156A, an act to establish a pediatric extended care center.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1583, Senator Stafford moves to discharge, from the Committee on Finance, Assembly Bill Number 6709A and substitute it for the identical Third Reading Calendar, 1583.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1583, by Member of the Assembly Farrell, Assembly Print Number 6709A, an act to amend the State Finance Law, in relation to the issuance of bonds.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Senator McGee, to explain her vote. No?

Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

Senator McGee.

SENATOR McGEE: Mr. President, I would like unanimous consent to be recorded in the affirmative for Calendar Number 1580, Senator Bonacic's bill.

ACTING PRESIDENT MEIER: Without objection, Senator McGee's vote will be changed to be recorded in the affirmative on Calendar 1580.

Senator Padavan.

SENATOR PADAVAN: Yes, by unanimous consent, I'd like to be recorded in the negative on Calendar Number 1580.

ACTING PRESIDENT MEIER: Without objection, Senator Padavan will be recorded in the negative on Calendar 1580.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. I'd like to request unanimous consent to be recorded in the negative on Calendars 1537 and 1549.

ACTING PRESIDENT MEIER: Without objection, Senator Schneiderman will be recorded in the negative on Calendar Numbers 1537 and 1549.

The Secretary will read.

THE SECRETARY: Calendar Number 1584, by Senator Kuhl, Senate Print 5592, an act to amend the Judiciary Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1586, by Senator Leibell, Senate Print 5779, an act authorizing the reopening.

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

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1587, by Senator Leibell, Senate Print 5783A, an act to amend the Environmental Conservation Law and the Navigation Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1588, Senator Morahan moves to discharge, from the Committee on Rules, Assembly Bill Number 7228A and substitute it for the identical Third Reading Calendar, 1588.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1588, by Member of the Assembly Gromack, Assembly Print Number 7228A, an act to authorize the payment of transportation aid.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1589, Senator Morahan moves to discharge, from the Committee on Rules, Assembly Bill Number 7339A and substitute it for the identical Third Reading Calendar, 1589.

SENATOR SCHNEIDERMAN: Lay it aside.

SENATOR DOLLINGER: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside. Wait a minute.

Substitution ordered.

Okay, the Secretary will read.

THE SECRETARY: Calendar Number 1589, by Member of the Assembly Gromack, Assembly Print Number 7339A, an act to amend the Real Property Tax Law.

ACTING PRESIDENT MEIER: Now lay the bill aside.

The Secretary will continue to read.

THE SECRETARY: In relation to Calendar Number 1590, Senator Hannon moves to discharge, from the Committee on Rules, Assembly Bill Number 557 and substitute it for the identical Third Reading Calendar, 1590.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1590, by Member of the Assembly Hill, Assembly Print Number 557, an act authorizing the assessors of the County of Nassau.

ACTING PRESIDENT MEIER: Read the

last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

SENATOR DOLLINGER: This is Calendar Number 1590, Mr. President?

ACTING PRESIDENT MEIER: Yes, it Senator.

SENATOR DOLLINGER: I just rise to -- this is another instance in which we are creating a -- the ability of the assessor to take a retroactive property tax reduction.

My concern is, as we've noted this a number of times, this bill is retroactive to 1989. This is a decade's worth of late taxes that they're able to file for.

I again call on my colleagues from Long Island, especially Nassau County, where this problem seems to continue to persist, that we seem to have this growing list of people who don't file for their property tax

exemption. They're entitled to them, but they don't file, and now we end up with a ten-year property tax exemption that we're going to grant.

I continue to be in opposition, Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger will be recorded in the negative.

The Secretary will announce the results.

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

ACTING PRESIDENT MEIER: The bill is passed.

Senator Farley.

SENATOR FARLEY: Mr. President, I wish to call up Senator Lack's bill, which is Print Number 5790, which is recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MEIER: Secretary will read.

THE SECRETARY: Calendar Number 1352, by Senator Lack, Senate Print 5790, an act to amend the Public Authorities Law.

SENATOR FARLEY: Would you please reconsider the vote by which this bill passed.

ACTING PRESIDENT MEIER: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: Senator Farley.

SENATOR FARLEY: Mr. President, I now offer the following amendments.

ACTING PRESIDENT MEIER: Amendments received.

Senator Farley.

SENATOR FARLEY: On behalf of Senator Maziarz, Mr. President, on page 27, I offer the following amendments to Calendar Number 945, Senate Print 4005, and I ask that that bill retain its place on the Third Reading Calendar.

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

Senator Fuschillo.

SENATOR FUSCHILLO: Mr.

President, can we go back to motions and resolutions and adopt the Resolution Calendar, please.

ACTING PRESIDENT MEIER: Motions and resolutions.

The motion is adopt the Resolution Calendar. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The Resolution Calendar is adopted.

SENATOR FUSCHILLO: Mr. President.

ACTING PRESIDENT MEIER: Senator Fuschillo.

SENATOR FUSCHILLO: Can we go to the controversial calendar, the Supplemental Calendar Number 2, Calendar Number 1589, please.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 1589 on the Supplemental Calendar Number 2.

THE SECRETARY: Calendar Number 1589, substituted earlier today by Member of the Assembly Gromack, Assembly Print Number 7339A, an act to amend the Real Property Tax Law.

SENATOR DOLLINGER: Can we have an explanation, please?

ACTING PRESIDENT MEIER: Senator Morahan, an explanation has been requested by Senator Dollinger for Calendar 1589.

SENATOR MORAHAN: Yes, Mr. President.

Rockland County, as well as many other counties that are serviced by volunteer agencies, both ambulance and fire and other sorts of community services, want to make some recognition of the contribution of those individuals who serve the community and to encourage those who come behind us to continue to so serve.

This bill would allow a governing body, whether it be a town, a village, or a county, to grant up to a 10 percent tax reduction or abatement, if you will, on those people who live in the area they serve and

have served under a certain set of criteria.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, will the sponsor yield to a couple of questions?

ACTING PRESIDENT MEIER: Senator Morahan, do you yield?

SENATOR MORAHAN: Yes, sir.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: This 10 percent property tax exemption, the way the bill reads is that it will only apply to Rockland County; is that correct?

SENATOR MORAHAN: No, it will not. It will also apply to other counties.

SENATOR DOLLINGER: What other counties -- through you, Mr. President.

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

SENATOR MORAHAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: What other

counties will it apply to?

SENATOR MORAHAN: It doesn't apply to counties by name, but they also -- it indicates by size of county.

SENATOR DOLLINGER: And, through you, Mr. President, what other counties other than Rockland fit the size requirements that are contained in this bill?

SENATOR MORAHAN: I can't answer that.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Morahan will continue to yield.

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

SENATOR MORAHAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: If you don't know what other counties it would affect, why did you put the size requirements in the bill, that it could only be between counties that have 261,000 and 270,000?

SENATOR MORAHAN: This was agreed to by the County of Rockland, so that would be

included. In discussing it with my Assembly cohorts, or my colleagues in the Assembly, we thought this would narrow the number of counties and therefore reduce the controversy with the bill, if there would be any.

SENATOR DOLLINGER: Again, through you, Mr. President, if Senator Morahan will continue to yield.

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

SENATOR MORAHAN: Yes, I do.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DOLLINGER: You said that the County of Rockland approved this tax exemption. Do we have a home rule message from the County of Rockland endorsing this bill?

SENATOR MORAHAN: There is not a home rule message as I understand it.

But we did pass a resolution. I was there in the legislature when we passed a resolution asking the members of the Senate and the Assembly representing the county to put forth this legislation, so they in turn

could adopt such a program.

SENATOR DOLLINGER: Through you, Mr. President.

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

SENATOR MORAHAN: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Is there any reason why this concept of a property tax reduction for volunteer firefighters or ambulance workers shouldn't be applied to the whole state?

SENATOR MORAHAN: It could be. And I think any expansion of this will be future legislation for those who would like to join in.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Morahan will continue to yield.

ACTING PRESIDENT MEIER: Senator Morahan -

SENATOR MORAHAN: Yes, I will.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Is there any income limitation on the people who would qualify for this benefit? In other words, if you owned a million-dollar house and you get a 10 percent tax abatement or tax exemption, that's worth a lot more than if you own a $100,000 house. Is there any ceiling on how much the tax reduction would be?

SENATOR MORAHAN: The bill doesn't put in any ceiling. But I don't know of any volunteer fireman or paramedic who lives in a million-dollar house. I just don't happen to know any of those, so I guess it didn't cross my mind.

SENATOR DOLLINGER: Okay. Through you, Mr. President, if Senator Morahan would continue to yield.

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

SENATOR MORAHAN: Yes, I do, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: But what this means is then that certain members of the fire

department will get larger dollar returns because their exemption will be worth more, depending on the value of their house. Does it strike you as fair that those who own more expensive houses, who would therefore presumably have more income, actually get a bigger tax deduction under this bill than those who might have smaller houses and might need bigger deductions?

SENATOR MORAHAN: Well, it's all relative. It's a 10 percent reduction on what they now pay. Those who have larger homes are paying more. So there is a sense of fairness, as long as it's the same percentage for each individual that is eligible for this under the law.

SENATOR DOLLINGER: Let me - through you, Mr. President, just one other question from myself. And I believe other members -

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

SENATOR MORAHAN: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: What happens if one of the two members that are on the deed owns the property but the other member doesn't belong to the volunteer fire department? Do they get the full 10 percent exemption?

SENATOR MORAHAN: Yes, they do.

SENATOR DOLLINGER: What happens if both members belong to the fire department? Do they each get a 10 percent exemption?

SENATOR MORAHAN: I don't know. I don't believe so.

SENATOR DOLLINGER: Through you, Mr. President, I believe other members may have questions.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Breslin.

SENATOR BRESLIN: Through you, Mr. President, will the sponsor yield to a couple of questions?

SENATOR MORAHAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BRESLIN: We talked about owners. How about someone who rents property?

What kind of a benefit would they get?

SENATOR MORAHAN: They don't get a benefit, unfortunately. There's no way I could write that in.

SENATOR BRESLIN: Through you, again -

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

SENATOR MORAHAN: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BRESLIN: You said that there was a resolution passed by the Rockland County legislature.

SENATOR MORAHAN: Yes.

SENATOR BRESLIN: Was there a home rule attached to it directing us to act?

SENATOR MORAHAN: No, there was not.

SENATOR BRESLIN: Again, through you, Mr. President.

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

SENATOR MORAHAN: Yes, I do.

ACTING PRESIDENT MEIER: The

Senator yields.

SENATOR BRESLIN: With this tax benefit, was there any consideration given to taking the word "volunteer" off "fireman" and making it more of a paid position, a compensated position?

SENATOR MORAHAN: Well, that's one of the things we're trying to encourage, is more volunteerism. Because a paid fire department would really be a more expensive way to go for the county and the municipalities within the county.

SENATOR BRESLIN: Again, through you, Mr. President.

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

SENATOR MORAHAN: Yes, I do, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BRESLIN: Again, getting back to the ownership of the property, we talked about a joint tenancy, a husband and wife or two firemen owning it. What about if -- I have a big family. If someone owned

it with their brothers and sisters, if there was one volunteer fireman, would the entire property be considered?

SENATOR MORAHAN: Senator, it's a tax exemption on the property regardless of how many own it. It's on the property. As long as one of the people is a volunteer, one of the owners.

SENATOR BRESLIN: Thank you, Senator.

On the bill.

ACTING PRESIDENT MEIER: Senator Breslin, on the bill.

SENATOR BRESLIN: I think it's an ill-conceived bill, a not-very-well-thought-out bill, a bill that's particularly for Rockland County, even though it has a population designation. It will give a windfall benefit to some firemen -- who perform wonderful services and need to be recognized -- and not a windfall for others who may rent. It gives a particular windfall if you happen to own a house with a volunteer fireman.

But I think that for all of those

reasons, I will vote in the negative on this legislation.

ACTING PRESIDENT MEIER: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, there will be an immediate meeting of the Rules Committee in the Majority Conference Room.

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

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. If the sponsor will yield to a couple of questions.

ACTING PRESIDENT MEIER: Senator Morahan?

SENATOR MORAHAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Thank you.

If I understood your answer to Senator Breslin's question a moment ago, even if someone is a -- owns a piece of property with their brother or with, as in the case of

the Breslin family, multiple brothers, perhaps, you're saying there still would be a 10 percent property tax reduction?

SENATOR MORAHAN: If they reside in the domicile, yes.

SENATOR SCHNEIDERMAN: Well, the language of the bill -- and I'm referring to lines 4 to 5 -- actually refers specifically to "real property owned by an enrolled member of a company." It doesn't say real property partly owned or real property owned by an enrolled member along with someone else.

But your contention is that that language in lines 4 to 5 would cover the full 10 percent deduction even if someone was only a 25 percent owner of the piece of property?

SENATOR MORAHAN: I would think it would, yes, sir.

SENATOR SCHNEIDERMAN: Well, I believe that other property tax exemptions specify the nature of the ownership. And I believe that this -- unlike, as far as I'm aware, the other property tax exemptions in New York State law -- doesn't have the same language.

Did you intentionally put that in differently from all the other property tax exemptions?

SENATOR MORAHAN: No, I did not.

SENATOR SCHNEIDERMAN: Do you think that it's fair that -

ACTING PRESIDENT MEIER: Senator Schneiderman, do you wish the sponsor to continue to -

SENATOR SCHNEIDERMAN: Ah, yes. Through you, Mr. President, if the sponsor would continue -

ACTING PRESIDENT MEIER: Well, I know it is troublesome, but we have these rules, you know.

SENATOR SCHNEIDERMAN: Not - not -

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

SENATOR MORAHAN: I certainly do.

ACTING PRESIDENT MEIER: The sponsor continues to yield.

SENATOR SCHNEIDERMAN: Not at all. Thank you.

I don't understand the fairness,

and perhaps you can explain it to me. There may be a volunteer firefighter who owns 25 percent of a piece of property that's valued at $2 million, and that piece of property will get a huge property tax exemption, whereas someone who entirely - volunteers full-time and is a renter gets no benefit, or if they own a lesser piece of property entirely owned by the firefighter, they get a much lesser exemption.

Can you explain the thoughts behind the equities of that, Senator?

SENATOR MORAHAN: Well, as I said a little bit earlier, Senator, it would have to be the prime residence of the volunteer. If it's his prime residence and he is on the deed, he would get the -- or she would get the tax deduction.

SENATOR SCHNEIDERMAN: The full -- through you, Mr. President.

SENATOR MORAHAN: Yes, the full 10 percent. The whole $50.

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

SENATOR MORAHAN: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Thank you. Thank you.

Senator, let me ask you a question. Does this tax exemption apply to Orange County? Would this apply to volunteer firefighters in Orange County?

SENATOR MORAHAN: It may very well.

SENATOR SCHNEIDERMAN: Do you know whether or not it applies to Orange County, Senator?

SENATOR MORAHAN: I believe it would, because I believe the populations are about the same.

SENATOR SCHNEIDERMAN: And so in answer to some earlier questions, there was some discussion -- if the sponsor will continue to yield.

SENATOR MORAHAN: I will continue to yield, Mr. President.

SENATOR SCHNEIDERMAN: Thank you. Thank you.

-- of which counties were covered

by this, and we mentioned Rockland and weren't sure about others. So now you think at least Rockland and Orange are covered by this; is that correct, Senator?

SENATOR MORAHAN: Well, I would have to look at the population of all the counties that would fall in the range of the population outlined in the legislation. Maybe Chemung County also applies. I have no knowledge of that.

SENATOR SCHNEIDERMAN: Could Albany County be eligible, as far as you're aware, Senator?

SENATOR MORAHAN: I don't know. And I don't have a list of those counties who would be eligible under the guidelines of the bill, which stipulates a specific population. Therefore, those counties with the population that's within the bill would be able to, if they chose to, adopt a local law to do this abatement.

SENATOR SCHNEIDERMAN: Through you, Mr. President, if the sponsor will continue to yield.

ACTING PRESIDENT MEIER: Do you

continue to yield, Senator?

SENATOR MORAHAN: Yes, I do.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR SCHNEIDERMAN: Well, many of us, in trying to assess whether or not to vote for a bill, try and assess the fiscal impact on the state. And if we don't have any information as to how expensive this would be, how many counties are covered, that's difficult.

You're certain that Rockland County applies. Are you certain that Orange County would be included within this or not, Senator?

SENATOR MORAHAN: I'm not certain. I would believe it is. I would have to ask a colleague from Orange County if they know the population of Orange County. I believe they're very similar and that both would be eligible under the guidelines of the populations that I know to be in Orange County, but they're not in front of me, or in Rockland County, which are not in front of me.

But I know Rockland County it does apply to.

SENATOR SCHNEIDERMAN: Through you, Mr. President, if the sponsor will continue to yield.

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

SENATOR MORAHAN: I continue to yield, yes, sir.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Thank you.

Is there a home rule message from Orange County in connection with this legislation, Senator?

SENATOR MORAHAN: There's no home rule legislation necessary here.

SENATOR SCHNEIDERMAN: But is - if the sponsor would continue to yield.

SENATOR MORAHAN: Yes, I continue to yield, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: I take it, then, from your answer there is no home rule message. Is there a resolution or anything else from Orange County in connection with

this legislation?

SENATOR MORAHAN: No, sir.

SENATOR SCHNEIDERMAN: Are emergency medical technicians covered under this legislation?

SENATOR MORAHAN: If they belong to an ambulance corps, yes.

SENATOR SCHNEIDERMAN: If the sponsor would continue to yield.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: I'm not sure I understand. An emergency medical technician who does not belong to an ambulance corps would not be eligible for this, but an emergency medical technician who belongs to an ambulance corps would be eligible? Is that what you're saying, Senator?

SENATOR MORAHAN: That is correct.

SENATOR SCHNEIDERMAN: Okay, Mr. President. On the bill.

ACTING PRESIDENT MEIER: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I thank

the sponsor for his time and patience.

I find it baffling that given all of the concerns about the fiscal state of New York State that we don't know how many counties this would be applicable to and how expensive it might be. I also find that the irrationality of extending this to one or perhaps two counties makes no more sense than the exclusion of Rockland County that took place yesterday in the pesticide bill.

And I think that this is not the kind of legislation that we should be advancing in this house, and I urge everyone to vote no.

ACTING PRESIDENT MEIER: Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President. Would the sponsor yield to a question?

SENATOR MORAHAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Senator Morahan, the provisions in this piece of legislation are very specific in terms of who would be

impacted were this to become law. Specifically, that the county's population must be between 261,000 and 270,000 -- very, very specific.

And I know Senator Dollinger asked about this and Senator Schneiderman asked about it and Senator Breslin alluded to it. I'm just -- if you could, for my edification, just explain the rationale on the specific population guidelines for this to be applicable.

SENATOR MORAHAN: There is a statewide bill, I understand, being considered that would include all the counties and all the towns and all the villages. That legislation is not moving forward at the moment.

Rockland County would like to have the ability to do this now for their volunteers, people who work on a 24-hour-call basis, unpaid, putting their lives in jeopardy. We lost, in Rockland County, two volunteer firemen in the last year and a half. And I believe it's important that we do something to acknowledge the county's request

to give them relief.

And it's not a money bill. Rockland County considered this bill, and the average that they came up with was $50 a year. Let me finish, Senator, just so in case you don't miss what I'm saying. About $50 a year for a volunteer in Rockland County if he gets a county tax abatement.

The county is the only municipality so far who has indicated any support for this, or they're the ones who requested it. No other town or village, to my knowledge, has asked for this bill. So in order to get this done so that Rockland County can acknowledge the work done by the volunteers, I put a bill in that would cover the county, at their request.

SENATOR HEVESI: Thank you, Mr. President. If the sponsor would continue to yield.

SENATOR MORAHAN: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Senator Morahan, the underlying premise behind this bill I

think is a good one, and I commend you for recognizing that volunteer ambulance workers and volunteer firefighters provide an extraordinary service at no cost to the public, and that service sometimes places their own lives and their own well-being in jeopardy. And the concept that we would provide an additional -

ACTING PRESIDENT MEIER: Senator Hevesi, excuse me just one moment.

We have two members on opposite sides of the chamber trying to hear each other. I'd appreciate it if everybody would cooperate with them.

Senator Hevesi, go ahead.

SENATOR HEVESI: Thank you, Mr. President.

So the notion that we would provide an additional benefit to individuals who are so giving of themselves I think is a good one.

But there are some problems in the implementation of this bill, specifically as to why we would exclude every other county that doesn't fall within that prescribed population specification that's outlined in

the bill. And specifically, it would be very difficult for me to go back to my district - and I've got many volunteer firefighters and many volunteer ambulance workers -- and have to try and explain to them why I supported a bill that conferred a benefit to someone where they are equally deserving of that benefit.

And so I guess I would -- my question to you is, in keeping with that vein, Senator Morahan, would you agree that this is a benefit that we should provide for all volunteer firefighters and all volunteer ambulance workers in every county in New York State?

SENATOR MORAHAN: Well, I would say that if you wanted to put a bill in like that, it certainly would be considered. And anyone here could do that, anyone who's concerned with their district or their county could put a bill in.

SENATOR HEVESI: Mr. President, through you.

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

SENATOR MORAHAN: Yes, Mr.

President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Senator Morahan, I'm trying to get a sense on whether or not, were such a piece of legislation to be introduced, whether it would receive the requisite consideration to get it passed. So I'm trying to gauge how I'm going to vote on this piece of legislation by whether this institution would be responsive to providing the benefit for every county, as I believe is deserving.

So specifically, my question to you, would you be supportive of extending these benefits to everyone else? And I guess if the answer is no, I'd like to explore why not.

SENATOR MORAHAN: Well, the answer is not no and the answer is not yes, Senator.

The answer goes like this. That if a bill to do that went through committee and came to the floor, then I think I would support it. Because then all of the Senators

would be able to participate, their committees could do the research, they could do the back-home effort to see if it's needed and necessary.

So if it came through the proper and exploratory process that the Senate rules allow for, yeah, I think you would get support.

SENATOR HEVESI: Thank you.

On the bill.

ACTING PRESIDENT MEIER: Senator Hevesi, on the bill.

SENATOR HEVESI: Mr. President, I like the idea behind this piece of legislation. Again, as I suggested a few minutes ago, the men and women who perform the services that we ask them to perform, volunteer ambulance workers and firefighters, they don't receive the credit, the public recognition that sometimes I think we would feel that they're deserving of. What they do receive is the self-gratification for knowing that they are doing something without monetary compensation, something that provides the ultimate benefit to people in society, which

is to help protect people's lives. And when people are in danger or in jeopardy or sick or need assistance, that they don't question the purpose, they don't question the personality of the person that they are supposed to be helping, they go in and they do it. And so I have the greatest respect for the men and women who perform this valuable service for free.

And so we can easily and logically deduce that it is only appropriate that we provide an additional benefit for them. I am just greatly troubled with this piece of legislation, because I have 1.7 or 1.8 million people in my county of Queens, and for me for vote yes on this piece of legislation and then go back to my district and tell them, "Sorry, I think you do as good as job as the volunteer firefighters and the volunteer ambulance workers in every other county, including the county that is getting this additional benefit" -- evidently it's Rockland County - I don't think that the -- as good a job as the workers, the ambulance workers and the firefighters in Rockland County do, that they

are any more heroic or deserving of an additional benefit than my constituents are deserving of. And as a result, I am not going to be able to support this legislation.

But, Senator Morahan, I commend you for the concept behind this, and I am greatly appreciative of your stated support for expanding this concept of conferring this benefit throughout the entire state.

I intend to vote in the negative, Mr. President.

ACTING PRESIDENT MEIER: Senator Waldon.

SENATOR WALDON: Thank you very much, Mr. President. Would our colleague from Rockland County permit me to ask a couple of questions?

SENATOR MORAHAN: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

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

Senator, I have before me the 1998 New York State Statistical Yearbook. And it speaks to the populations in all of the

counties of the state, both in the year 1990, which is part of your proposal, and in 1996.

Would you be kind enough to tell us why you chose 1990 as the linchpin year, versus a more current year -- '96, '97, '98, '99 -- if that came into your deliberations?

SENATOR MORAHAN: I believe that was selected because that was the last official census taken in the state of New York.

SENATOR WALDON: Thank you very much, Senator.

Mr. President, would the gentleman yield one more time?

ACTING PRESIDENT MEIER: Do you continue to yield, Senator?

SENATOR MORAHAN: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR WALDON: Thank you, Mr. President.

Senator, we've had a lot of colloquy on the floor in regard to - discussion on the floor in regard to your proposal, which is meritorious. But being

that there's so much concern as a result of this proposal, would it not be better, so that those of us who want to support the concept could vote for it, could you not withdraw the bill and craft it so that all of these other counties which are so deserving could be considered? Is that something that you might wish to consider?

SENATOR MORAHAN: Well, I would normally consider something like that. But Senator Farley has a bill that already now does this statewide. And I believe when that passes, this would fold.

But I want to give the relief to the firefighters in Rockland County who have petitioned loudly and often to the county government for this sort of relief and recognition.

SENATOR WALDON: Thank you very much, Senator. I appreciate it.

Thank you, Mr. President.

SENATOR LACHMAN: Mr. President, I believe there's an amendment at the Chair on this.

ACTING PRESIDENT MEIER: Would

you give us a moment to take a look at it, Senator Lachman.

SENATOR LACHMAN: Thank you.

ACTING PRESIDENT MEIER: Senator Lachman, the amendment is germane. Do you wish to weave -- yeah, weave -- waive the reading?

SENATOR LACHMAN: I would -- yes, I would rather waive the reading rather than weave the reading on the amendment. If I may speak on the amendment.

ACTING PRESIDENT MEIER: The reading of the amendment is waived, and you may now weave your explanation.

SENATOR LACHMAN: Senator Morahan, I think this is a very good bill. The only problem is it's been limited to one particular area of our state.

Now, in answer to Senator Hevesi's question a few minutes ago, I believe you said that you would consider having the benefits of this bill go further than your county. And I think that's a very worthwhile and humane statement. I think there are other people, other firefighters in other counties, from

Sullivan County to Rensselaer County to Kings County and Queens County, who stand to benefit from such an amendment.

And I therefore offer this amendment for consideration, especially based upon your remarks in answer to the question of one of my colleagues that you would consider such an amendment. Thank you.

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

(Response of "Aye.")

SENATOR MONTGOMERY: Party vote in the affirmative.

SENATOR FUSCHILLO: Party vote in the negative.

ACTING PRESIDENT MEIER: The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 23. Nays, 36. Party vote.

ACTING PRESIDENT MEIER: The amendment fails.

Read the last section.

THE SECRETARY: Section 2. This

act shall take effect on the first day of January.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1589 are Senators Breslin, Connor, Dollinger, Duane, Hevesi, Lachman, Mendez, Montgomery, Rosado, Sampson, Schneiderman, Smith, and Waldon. Ayes, 46. Nays, 13.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, if we could return to reports of standing committees, I believe there's a report of the Rules Committee at the desk.

ACTING PRESIDENT MEIER: The Secretary will read.

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

Senate Prints 1156, by Senator Dollinger, an act to amend the Real Property

Law;

3075A, by Senator Kuhl, an act to amend the Abandoned Property Law;

3399, by Senator Lack, an act to amend the Judiciary Law;

4577B, by Senator McGee, an act to amend the Election Law;

4917A, by Senator Marcellino, an act to amend the Public Service Law;

5647A, by Senator Nozzolio, an act to amend the Tax Law;

5950, by Senator Fuschillo, an act to amend the General Business Law;

5969 by Senator Trunzo, an act to amend the Civil Service Law;

6003, by Senator Velella, an act to amend the Education Law;

And 6004, by Senator Rath, an act to enact the Clinic Access and Anti-Stalking Act of 1999.

All bills directly for third reading.

ACTING PRESIDENT MEIER: Senator Fuschillo.

SENATOR FUSCHILLO: Mr.

President, I move to accept the report of the Rules Committee.

ACTING PRESIDENT MEIER: The question is on the motion to accept the report of the Rules Committee. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The report of the Rules Committee is accepted.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, if we can go to the supplemental active list and call up Calendar Number 578, please.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 578.

THE SECRETARY: Calendar Number 578, by Senator Nozzolio, Senate Print 3776B, an act to amend the Executive Law.

ACTING PRESIDENT MEIER: Senator Fuschillo.

SENATOR FUSCHILLO: Mr.

President, is there a message of necessity at the desk?

ACTING PRESIDENT MEIER: There is a message at the desk.

SENATOR FUSCHILLO: Move to accept.

ACTING PRESIDENT MEIER: The question is on the motion to accept the message of necessity. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The message of necessity is accepted. The bill is before the house.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Duane, to explain his vote.

SENATOR DUANE: Thank you, Mr. President.

In that this bill has come back to us on a second vote, I'm sad to see that it did not include, as is what I believe is the intent, inclusion of a domestic partner. I think domestic partners of crimes victims are as entitled to counseling as are any other relative of crime victims, and I'm sad to see that it was not included in this legislation, though it's our second time to be able to do it.

I'm hopeful that that will -- that it will be clarified in the future.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: How do you vote, Senator?

SENATOR DUANE: Aye.

ACTING PRESIDENT MEIER: Senator Duane will be recorded in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

SENATOR PATERSON: Mr. President, may I be recorded in the negative on Calendar Number 1589, with unanimous consent? Especially with your consent.

ACTING PRESIDENT MEIER: Senator Paterson will be recorded in the negative on Calendar 1589, without objection.

Senator Fuschillo, we have a little housekeeping. Shall we take care of that at this time?

SENATOR FUSCHILLO: Mr. President, is there any housekeeping at the desk?

ACTING PRESIDENT MEIER: I think so.

Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, may we call up Bill Number 4591, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 950, by Senator Hannon, Senate Print 4591, an act to amend the Public Health Law.

ACTING PRESIDENT MEIER: Just a

moment.

SENATOR NOZZOLIO: Mr. President -

ACTING PRESIDENT MEIER: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President. I now move, on behalf of Senator Hannon, to reconsider the vote by which this bill was passed.

ACTING PRESIDENT MEIER: Call the roll on reconsideration.

THE SECRETARY:

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

SENATOR NOZZOLIO: Mr. President, I now offer the following amendments.

ACTING PRESIDENT MEIER: Amendments received.

Senator Hoffmann.

SENATOR HOFFMANN: Mr. President, I was out of the chamber earlier today when Calendar 1559 came up and passed. I would appreciation permission to be recorded in the negative on that bill.

ACTING PRESIDENT MEIER: Without

objection, Senator Hoffmann will be recorded in the negative on Calendar 1559.

SENATOR HOFFMANN: Thank you.

SENATOR FUSCHILLO: Mr. President.

ACTING PRESIDENT MEIER: Senator Fuschillo.

SENATOR FUSCHILLO: Will you kindly take up Calendar 1527, please.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 1527.

THE SECRETARY: Calendar Number 1527, by the Senate Committee on Rules, Senate Print 5965A, an act providing for the election of delegates.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR CONNOR: Explanation.

ACTING PRESIDENT MEIER: Senator Bruno, with regard to Calendar 1527, there's a message of necessity at the desk. Do you - the motion is to -

SENATOR BRUNO: Move to accept the message.

ACTING PRESIDENT MEIER: -

accept the message of necessity. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The message is accepted. The bill is before the house.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1527, those recorded in the negative are Senators Fuschillo, Marcellino, and Skelos. Ayes, 56. Nays, 3.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Seabrook, why do you rise?

SENATOR SEABROOK: Yes, Mr. President. With unanimous consent, I'd like to be recorded in the negative on Calendar 1589.

ACTING PRESIDENT MEIER: Without objection, Senator Seabrook will be recorded in the negative on Calendar 1589.

Senator Balboni, why do you rise?

SENATOR BALBONI: Mr. President, I request unanimous consent to be recorded in the negative on Calendar 1527.

ACTING PRESIDENT MEIER: Without objection, Senator Balboni will be recorded in the negative on Calendar 1527.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we get to Supplemental Calendar 57C and go to the noncontroversial calendar.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 1581, Senator Dollinger moves to discharge, from the Committee on Aging, Assembly Print 3430 and substitute it for the identical Third Reading Calendar, 1581.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1581, by Member of the Assembly Morelle, Assembly Print 3430, an act to amend the Real Property Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1585. In relation to Calendar Number 1585, Senator Kuhl moves to discharge, from the Committee on Finance, Assembly Bill 4321A and substitute it for the identical third reading, 1585.

ACTING PRESIDENT MEIER:

Substitution ordered.

Secretary will read.

THE SECRETARY: Calendar Number 1585, by Member of the Assembly Parment, Assembly Print 4321A, an act to amend the Abandoned Property Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1593, by Senator Lack, Senate Print 3399, an act to amend the Judiciary Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1594, by Senator McGee, Senate Print 4577B, an act to amend the Election Law.

SENATOR BRUNO: Is there a message at the desk?

ACTING PRESIDENT MEIER: Yes, there is, Senator.

SENATOR BRUNO: Move to accept the message.

ACTING PRESIDENT MEIER: The question is on the motion to accept the message of necessity. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The message is accepted. The bill is before the house.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1595, by Senator Marcellino, Senate Print 4917A, an act to amend the Public Service Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1596, by Senator Nozzolio, Senate Print 5647A, an act to amend the Tax Law.

ACTING PRESIDENT MEIER: Read the

last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1597, by Senator Fuschillo, Senate Print 5950, an act to amend the General Business Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1598. In relation to Calendar Number 1598,

Senator Trunzo moves to discharge, from the Committee on Rules, Assembly Bill 8833 and substitute it for the identical third reading, 1598.

ACTING PRESIDENT MEIER: Substitution -

SENATOR SMITH: Lay it aside.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1598, by the Assembly Committee on Rules, Assembly Print 8833, an act to amend the Civil Service Law.

ACTING PRESIDENT MEIER: Senator Smith, you're asking that the bill be laid aside?

SENATOR SMITH: Yes.

ACTING PRESIDENT MEIER: Lay the bill aside.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 1600, by Senator Rath, Senate Print 6004, an act to enact the Clinic Access and

Anti-Stalking Act of 1999.

SENATOR BRUNO: Is there a message at the desk?

ACTING PRESIDENT MEIER: Yes, there is, Senator Bruno.

SENATOR BRUNO: Move we accept the message.

ACTING PRESIDENT MEIER: The question is on the motion to accept the message of necessity. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The message is accepted.

Read the last section.

THE SECRETARY: Section 15. This act shall take effect on the first day of November.

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

Senator Bruno, that concludes the

reading of the noncontroversial portion of the supplemental calendar.

SENATOR BRUNO: Mr. President, can we at this time go to the controversial calendar, starting with 1600.

ACTING PRESIDENT MEIER: The Secretary will read the controversial calendar, commencing with Calendar 1600.

THE SECRETARY: Calendar Number 1600, by Senator Rath, Senate Print 6004, an act to enact the Clinic Access and Anti-Stalking Act of 1999.

SENATOR CONNOR: Explanation.

ACTING PRESIDENT MEIER: Senator Rath an explanation has been requested by the Minority Leader, Senator Connor, of Calendar 1600.

SENATOR RATH: Thank you, Mr. President.

Very simply, what the act will provide is a simple explanation of establishing new criminal penalties for stalking and conforming the state law to federal law to protect public access to places of religious worship and health-care

facilities that provide family-planning services.

And that's simple enough to understand, and I'm sure you've all had the bill in front of you, you've looked at it, you know what it provides for. And we can go through that, and we will go through that. But let me frame the discussion a little bit.

It has been a long time in coming to the floor, this particular bill. And words from somewhere down the ages rang in my head as I was thinking about framing the debate tonight. And you might say it's the best of times and the worst of times. In a country where there is a lot available to people, a lot available to all of us, we have moments of violence bursting on our consciousness, whether it's the World Trade Center or Columbine High School or Dr. Slepian in Amherst, New York, my hometown, my district. The violence that's perpetrated on people and the violence that people are willing to put up with shocks our sensitivities.

And in our responsibility as representatives of large constituencies all

across the state of New York, we feel very strongly the responsibility to take some sort of action. The violence that people have had perpetrated on them and have witnessed and, indeed, culminating in the violent death of Dr. Slepian, insults our sensitivities. We know people have the right to access to health-care facilities. We know that. We know that people have the right to free speech. But how do these conflict, and how can we accommodate?

That debate has been going on for a long, long time. In my activities in public life the last twenty years, I would tell you that I drew my conclusions about where I was going to be in these areas about twenty years ago, when I had a daughter who was growing up and I needed to sort out in her thoughts and in our family's thoughts and in the morals, if you will, and the folkways and mores that we live with in our household, how we were going to deal with the issues that really come to a culmination in front of us today.

And some folks would characterize a bill like this as a litmus test. I don't

characterize things as litmus tests. I characterize one bill at a time as to whether it's best for the people I represent and what they expect from me. And it's foolishness to think that we would not be the upholders of the law that we are sworn to protect and the law that we represent when we're sent to Albany by our constituencies.

The great sadness that was reflected in my community and, indeed, all across not only the state of New York but all across the United States when Dr. Slepian was killed by -- I wouldn't even begin to try to characterize the kind of mind that would think that that was all right, to call attention to an issue by doing that, if indeed that was what was in that person's mind.

But tonight we're here to try to give some shape to the future of this issue in the state of New York, by making it -- by putting criminal penalties to the act of stalking. We've done that already in this Legislature earlier this year, and now we have the opportunity to add the penalties for trying to bar access to health facilities or

places of worship.

ACTING PRESIDENT MEIER: Senator Goodman.

SENATOR GOODMAN: Mr. President, we live in a great free land, Mr. President, in which every citizen has the right to assume that in going about their daily business and earning their daily bread and in seeking the care that they must have for their bodies and their minds that they may go unassailed and free and without any obstruction or interference with their free right of movement.

But, Mr. President, I'm sorry to report to you that freedom is not free. Indeed, freedom carries with it a very high price at times, and one which we must discharge appropriately if we're to protect the very preciousness of our way of life and the ability of our people to go about their daily lives with a sense of release and without fear that they shall be either killed or maimed or brutalized in any fashion.

And for that reason, this very significant omnibus bill which is before us at

the moment, in my judgment, is probably one of the landmark pieces of legislation which this body has been asked to consider, probably since 31 years ago when I found myself in this house debating the bill which preceded Roe versus Wade by two years and granted freedom of reproductive choice to women everywhere in the state of New York.

Let it be noted, Mr. President, that that was a momentous event and that at the time that that bill passed, we had as a leader in this Legislature an individual of great stature named Earl Brydges. For those of you who may recall that day -- and there probably are not too many left in this chamber -- that leader had an opposition to the bill that was brought before the house for consideration. And at the conclusion of it, in the final debate, he actually made a speech and he concluded by lapsing into tears and slumping into his chair in almost a -- with almost a sense of defeat.

And yet at that moment, Mr. President, I daresay he rose to a degree of stature that was probably the very ultimate

degree of stature of his entire life, because he had believed in one fundamental principle. That was that this house, this great, great house in which we sit tonight, must be a place in which people have the right to have their various views understood and debated, and that with respect to certain issues of conscience and safety and in the protection of liberty, it becomes imperative that this house entertain a variety of different views.

Therefore, I want to thank most profoundly the leader of the Majority of the Senate, Senator Bruno, for the extraordinary degree of statesmanship which he showed in being willing to bring this -- allow this bill to come before the house tonight, because it's a bill which I think is replete with significance.

Why? Because let's take just a moment to discuss its most significant components. First of all, if we look at the bill itself, there's a declaration of legislative intent which I think starts significantly on line 6 of the first page, which says, "The unfortunate reality is that

stalking victims have been intolerably forced to live in fear of their stalkers, stalkers who repeatedly follow, phone, write, confront, threaten or otherwise unacceptably intrude upon their victims, often inflicting immeasurable emotional and physical harm upon them. Current law does not adequately recognize the damage to public order and individual safety caused by these offenders."

And if we look a little more deeply into the bill, we come upon the language on page 2, line 13, which says: "The Legislature also finds that criminal acts involving violence and intolerance at health-care facilities and places of religious worship have become more prevalent in recent years. Medical clinics, physicians' offices and other facilities throughout the state have become targets in a campaign of obstruction and terrorism aimed at closing the facilities and intimidating those who seek to obtain or provide reproductive health services. In addition, places of religious worship have regrettably been targets of vandals or radicals, thereby threatening these havens of

peaceful prayer and meditation."

And finally it says, in this very important passage, "Legislation is necessary to supplement federal law by empowering state and local officials to assist in combatting violence and acts of vandalism at health-care facilities and places of religious worship. It is therefore the intent of this Legislature to provide state criminal penalties against anyone who by force or threat of force or physical obstruction intentionally injures, intimidates, or interferes with another person or attempts to injure, intimidate, or interfere," and so on.

Mr. President, this language makes it very plain that this Legislature, in its wisdom, has reached a very serious conclusion in regard to a state of affairs in this society which is absolutely intolerable; namely, that there are people who, for whatever reason -- whether it's due to religious bigotry, whether it's due to different convictions with respect to the matter of freedom of choice or the like - impose their will not by persuasion but by

physical force, by intimidation, by violence, even culminating in the type of tragic murder we witnessed in Buffalo with the death of a health-care physician named Dr. Barnett Slepian, who was killed not at the entrance to his clinic, mind you, but in his own home, by someone who stalked and killed him and indeed singled him out, if you will, for a death notice on the Internet, using the very latest technology to locate and to identify a man who is perceived as a bull's-eye in the target of terrorists who were not willing to allow people to seek their freedom of choice as best they chose.

That, Mr. President, reflects to us, I think, the unbelievable atmosphere which this bill tonight is a strong weapon to oppose and must be considered in that light, in my judgment.

Now, let's be very clear what's going on here. What's going on here is that it was the position of this Legislature, to be followed two years ago later by the United States government, and since upheld repeatedly by Supreme Court decisions, that in the event

and with respect to the matter of reproductive services, a woman has an absolute freedom of choice with regard to how she wishes to bear a child or not bear a child, and within the restraints imposed by that law, it was imperative that those rights be protected.

In an attempt to protect them in 1994, the federal government passed a bill which was designed to guarantee access to clinics. It was a well-intended instrument, but unfortunately there was not sufficient muscle to permit it to be properly functional. And what has happened was simply that there are insufficient numbers of federal marshals, of the United States attorneys and their assistants in all of the localities - certainly in the state of New York -- to enable that federal protective legislation to really have teeth. So it became a toothless tiger in many areas, simply because there's a lack of district attorneys and police officials.

And not long ago -- I must share with you an experience that I had. I decided that it would behoove me, as one who had been

an advocate for some while of the freedom of choice, to go to Buffalo to observe the actual clinic in which Dr. Slepian had done his work. When I arrived there, I was astonished to find a group of demonstrators outside carrying signs, which were perfectly permissible under our Freedom of Speech Act, but also people who were shouting and who were frankly giving signals that looked very ominous indeed.

Now, as it happened, they were totally surrounded by United States marshals, by local law enforcement officials, and by state troopers as well. And it happened that because of the notoriety of the Slepian murder and the situation that occurred in Buffalo, that there was now a total effort at enforcement of the federal law which was effective.

And on the day that I was there, no violence did occur. But there had been warning signals sent out prior to that, to my arrival, indicating that that clinic in Buffalo is to be the prime target of terrorists who wish to preclude the possibility of women obtaining services to

which they're entitled to legally obtain under the law.

Now, Mr. President, I mention this experience because it's indelibly engraved in my mind, not just that visit, but also other visits that I've made to clinic entrances, where there are women who stand in terror of being literally murdered on the streets. And I don't say this to be dramatic, because we're trying, frankly, to deemphasize the emotion in this and simply talk to the direct concept of good behavior and civility. But there are people who literally are concerned for their very well-being if they seek and attempt to do what they wish in terms of their freedom of choice.

Unfortunately, in the nation, this is a phenomenon that's repeated in many places. And unfortunately, in the nation as well, there is an inadequacy of enforcement.

But here in New York State, we've concluded that it is imperative that, first of all, stalking be addressed frontally and that it be prevented. Because stalking is a particularly vicious crime which is often

clandestine, which can involve people receiving threatening phone calls or being followed on the street or literally into their homes where they could be slaughtered without mercy by people who have set up a deliberate design over time strategically to entrap them and to do away with them.

This is something which is so terrorizing, as we look in our nightly televisions at what's gone on in Kosovo and we see those corpses strewn about the horizon, we can just imagine how people feel when they meet this kind of actual physical threat.

This is not mythological, and this is not being said to excite your emotions or bring them to a boil. It's simply to say that this is simply unacceptable in New York. And because it's unacceptable, we're taking action to vigorously confront it and to prevent its recurrence.

Now, what is this law that we've got before us going to do? In my judgment, it will establish several things. A state law giving doctors and clinics local law enforcement protection, access to state

courts, and granting state investigative powers will clearly reduce violence.

And there's evidence that laws aimed at protecting women and abortion providers work. Since the federal law was enacted, for example, the number of clinics reporting severe violence dropped by 52 percent. So it is possible to prevent these things from happening. There's clear evidence to that effect, and that's going to occur in New York, I'm confident, with the passage of this law.

The Governor has taken a bold initiative on this. And I want to compliment all of my colleagues here, many of whom do not agree with the theory of abortion at all - and this does not reflect that point of view, and it should not be misconstrued as a reflection of their attitude, pro or con, on abortion, where honest people can certainly differ in an appropriate fashion.

But what it does do is to say that freedom is the essence of what we have to protect. And it's in the protection of that freedom that this law has been so carefully

crafted. And I'm confident that with your assistance tonight, it will pass in this house overwhelmingly and, in the fullness of the evening, will pass in the Assembly, to accomplish something which is so precious to all of us.

Many of us are the sons or grandchildren of immigrants who escaped pogroms, who escaped violence in other parts of the world, who came here knowing that this was indeed the place of sanctuary. But it hasn't always been a place of sanctuary, and it's to preserve that precious heritage that we're gathered here tonight and that we're going to do our duty.

And in my opinion, this is deserving of the highest praise for our leadership and for those of you who wish to vote in favor of this most significant and enduring measure.

ACTING PRESIDENT MEIER: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President.

Sometimes we have to pass

legislation that we wish we didn't have to do. And it's another indication of how fragile our rights sometimes are as individuals in this society. And it's unfortunate that in New York it's even necessary for us to implement something that really should not have to be on the books, and that is a simple guarantee that a person has the opportunity to exercise her prerogative to undertake a legal procedure guaranteed by this state.

The fact that there is a federal statute that has to back up access to clinics was disturbing enough. But following the violence in Buffalo, described very capably by Senator Goodman and Senator Rath, I think it's quite apparent that this is a responsible decision by this Legislature and one that we really must undertake today in order to assure that the dignity of people in this state is afforded as well as their access to this health care.

To those people who are on both sides of this issue, it's another indication that we have failed as a society that the service itself is even necessary. Perhaps it

would be easier not to consider the reasons why abortion still exists. But please let's remember for a few moments that we have all failed in our task as educators if there is still a need for underage girls to seek this service because they have been impregnated by somebody through an act of rape or incest. And it's unreasonable for a woman who has been denied other medical opportunity to be denied this when it is the only legal way that she is going to be able to address the situation that is now guaranteed under the law.

But to be faced, in the pursuit of that procedure, with insults and an attack and an abusive behavior from people she does not even know is an indignity that should not be allowed to continue.

This is a responsible position for us to take. I'm pleased with the fact that we have reaffirmed once again our concern about stalking as an ever-growing menace in this society -- to men as well as to women, but clearly much, much greater a threat to women of this state.

These are two very, very important

messages that we send in one bill to the women of this state, that we have not abandoned their rights and that the New York State Senate understands full well the need for us to continue reviewing legislation at the state level when it is deficit in protection of women's rights in any areas.

I too would like to compliment Senator Bruno for his even-handed handling of this matter. It was not a difficult decision to come to this consensus -- it was not an easy decision to come to this consensus. I'm sorry, Mr. President, there's a great deal of noise around me, so I was temporarily distracted.

And I think perhaps I can speak from the heart in saying how much I recognize Senator Bruno's desire to bring together people from all parts of this state, from all sides of several different issues, so that we could, with dignity and clarity, send a message that we will insist on respect for the women of this state when they seek this procedure at any clinic or health facility in this state.

Thank you.

ACTING PRESIDENT MEIER: Senator Maltese.

SENATOR MALTESE: Mr. President, I'd like to make a few observations concerning this legislation.

First of all, as certainly all my colleagues on both sides of the aisle know, there was legislation passed at the federal level in 1994, the Freedom of Access to Clinic Entrances, FACE, that was passed overwhelmingly by the Democratic side, with many, many fewer Republicans voting for it. It was passed in that manner because it has become a symbol across our nation.

But the federal law, and I read right from the description, will deter criminal activity against persons who provide or obtain reproductive health services and deter similar acts at places of religious worship, and has made it a federal crime for anyone to deny or attempt to deny another person access to health-care services or religious worship.

Thus, Mr. President, with a first

offense punishable by six months in jail or a $10,000 fine, I feel the area has been covered.

But in addition, Mr. President, as pertaining specifically to this legislation, I wish to point out terminology that is exact in the federal statute and the state statute. And it is terminology that indicates that a parent or legal guardian of a minor shall not be subject to penalties under this section for such activities insofar as they are directed exclusively at that minor.

I just wish to submit and have some personal knowledge of circumstances where men and women attempted to deter or discourage daughters or unemancipated minors from seeking abortions, and while they would have been protected for their actions, attempting to deter their own children where, if there was interference from guards or security guards - as there was in one instance -- they would then be subject to the extreme penalties in this bill.

In addition, Mr. President, the - I wish to point out that this bill in just one

instance goes further than the federal legislation, in that in addition to utilizing the terminology in the federal legislation, for the first time uses the term not only "intimidate or interfere with another person" but uses the terminology "to discourage."

I submit, Mr. President, that when people legally picket, lawfully picket outside an abortion clinic, with -- taking none of the hideous circumstances where people are harmed or physically threatened or intimidated, certainly the use of the terminology "discourage" would at least lead us to question perhaps the constitutionality of the section.

In addition, Mr. President, we have a circumstance where you could very well have, outside an abortion clinic, a number of pickets. Some of the pickets would be there perhaps in connection with a labor dispute. Some of the pickets there might very well be there as AIDS activists. Some of the pickets might be there in connection with possible animal-rights issues, use of animals in experiments or what have you. And you would

have the Right to Life pickets.

And under the terminology, again, of both pieces of legislation, the pro-life people, because they were seeking to picket or object to or discourage people who were seeking abortion services, would be classified completely separate and apart from their associates on picket lines standing right next to them.

I submit again, Mr. President, when we go into these areas, we go into the thought-police area as to what you think rather than what you do.

My good colleague, Senator Goodman, has described this as a piece of landmark legislation. And I believe it is a piece of landmark legislation, but unfortunately not in the same sense that Senator Goodman calls it.

He referred earlier to Earl Brydges. I was in the room subsequent to Earl Brydges' decision, where Earl Brydges himself had indicated that that was one of the things that disturbed him most in his life, one of the decisions that he made. And I only refer it to at this point in time because Senator

Goodman did. And other Senators in this house at this time heard him make those statements and similar statements, that it was one of the most difficult decisions he made and a decision that he regretted.

I won't put words into his mouth. He's long gone, God bless him. The fact of this matter is this is a decision that I honestly believe, despite -- taking into consideration the Right to Life people, taking into consideration those conservative-minded people that would object to it, it's a decision that we'll subsequently come to regret.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. Would the sponsor yield to a couple of questions?

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

SENATOR RATH: Surely.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Thank you.

Through you, Mr. President.

The language in the section establishing the penalty of criminal interference with health-care services or religious worship refers, in several instances, to "the intimidation or interference with." And the language I'm focusing on is "another person because such other person was or is observing or providing reproductive health services."

And my question is, Senator, when it refers to those providing reproductive health services, does that extend beyond doctors to cover nurses, other people who work at clinics, escorts who bring people in and out?

SENATOR RATH: Yes, it does, Senator.

SENATOR SCHNEIDERMAN: So the definition of those providing reproductive health services is to be taken broadly, as including all who work at or around a clinic?

SENATOR RATH: That's the intent of the legislation as drafted.

SENATOR SCHNEIDERMAN: Thank you

very much, Senator.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: Thank you, Senator Rath, for your answers and for your legislation.

As many of you know, I've made something of a cause out of this legislation. This has been a major focus of my work in this legislative session.

And Senator Goodman, who spoke earlier, and I were both at a candlelight vigil in New York City after the despicable murder of Dr. Slepian, and at that time -- it was before I had taken office -- Senator Goodman told the crowd that we were going to pass a clinic antiviolence bill this session. And I'm ashamed to admit that I wasn't sure he was right. And he said, when he said that - and this part I really wasn't sure about - "We're going to pass it with a lot of good Republican votes."

And I'm very, very proud of the fact that we're finally bringing this house

into the light of reality, and that today Senator Goodman's words are being proven true and that today we're moving forward on an issue that is of critical importance for the men and women of the state of New York. Because tonight we're taking a step forward from what I believe is a form of self-inflicted blindness in this house towards the reality that informed Americans have recognized for years all across this country. And that's that there's a campaign of violence and terror against reproductive health facilities.

And I hear Senator Maltese, and I respect the sincerity of his views. We're not passing this law because reproductive health facilities are better than anyplace else. We're passing this law because they're under attack and current law enforcement strategies have been unable to deal with the particular type of attack that they are focused on.

The murder of Dr. Slepian unfortunately was necessary to bring public attention to an issue that those of us in the abortion-rights movement have known of for

years. There's a terrorist network that will stop at nothing to destroy freedom of choice in this state and in this country. We know that the FACE law has been effective. We know that clinic antiviolence laws in other states have been effective. And tonight we're taking at least a first step in our house towards making such a law a reality in the state of New York.

Now, this bill, in my view, is not a perfect bill. Senator Oppenheimer and I sponsored a clinic antiviolence bill earlier this session that I felt went further, contained some other provisions I would like to see. I hope we will move forward to add those provisions. I hope we will take things further.

This bill is modeled on the federal FACE bill. I'm proud of the fact that several months ago Senator Charles Schumer, who as a Congressman was one of the lead sponsors of the FACE bill, stated that after reviewing the clinic antiviolence bill Senator Oppenheimer and I introduced in this house and Assembly Member John, who joins us here, introduced in

the Assembly -- after reviewing that, he came to the conclusion that he can improve the federal law by amending it to reflect some of our changes. I hope we will take that up in this house again.

But I think that this is a monumental night, because this is the first time that this house -- and I commend everyone who's participated in this -- has been open to the reality of what's going on in this country and has taken up the cause of women, clinic workers, and doctors who have been suffering for years without our support.

And I read from the statement of legislative intent. This, in my mind, is perhaps the most important thing in this bill, the recognition of this house, finally -- and now I quote -- "that medical clinics, physicians' offices, and other facilities throughout the state have become targets in a campaign of obstruction and terrorism aimed at closing the facilities and intimidating those who seek to obtain or provide reproductive health services."

That's reality. It may not be

pretty, but that's why we need this bill. I'm very impressed with the fact that we were able to get it this session.

I know all of you or many of you have been on the receiving end of the campaign that we've launched over the last months, and I have to recognize at this time the hundreds and hundreds of volunteers across this state who participated in the campaign -- letter writing, postcards. You've seen the young men and women outside the Senate chambers every week. You've seen the ads, you've gotten the phone calls. Maybe some of you haven't gotten the phone calls, but I think they've been there. And I think that this represents the people of the state of New York sending a message and us receiving the message.

I am pleased with the fact that we're moving this forward. I know that there's work to be done to bring this together with the views in the Assembly and try and actually get a law passed. I know that there are questions about the stalking provisions of the bill, although I have to say that unlike clinic access, which is an issue I was

familiar with, I didn't know a lot about stalking when I got here. My education, due to Senator Balboni, primarily, I recognize issues about stalking now that I did not understand. I realize there are concerns about the stalking portion of the bill.

I hope we will move forward to work with the Assembly to pass a law this year. I'm very proud that in my first session we're passing a bill. I really would be doubly proud if we can pass a law. I commend all who have worked on this, all who have supported this. This is a very important step for us, and I hope that we'll be able to work together to advance this issue in the future.

ACTING PRESIDENT MEIER: Senator Marchi.

SENATOR MARCHI: Mr. President, this is a very difficult subject. Not in terms of what we should do; the problem and the issue of the life of the unborn comes into play. And there are so many of us who know and are fully cognizant that over 30 million unborn never reached the state of life by virtue of a procedure that terminated their

existence.

It is a legal procedure in this country, and the reaction has been very sharp. The one thing that undermines, I think, in a very serious way is the visitation of violence, intentionally inflicted, and this bill points to that. This is not a question of placing a benediction on the procedure itself, because there are differences. Those differences survive.

Nevertheless, there are people who certainly it's between themselves and their Maker, and for us to make those judgments are certainly beyond our ken. At one time I could say that most of us were born when physicians had taken the Hippocratic oath -- that's 2300 years ago -- that prohibited this procedure. That was only eliminated a few years ago, when I was studying law. It was then a crime.

So strong feelings survive about the rights of the unborn. So this subject has much of its genesis from that feeling that resulted and the companion feeling of many people in our country that reproductive rights exist so that life can be terminated.

I have a feeling that if we fail to pass this bill, if we fail to establish the legitimacy of laws that stand resolutely against the use of violence and force to obstruct access to clinics, access to physicians who are -- have a license to practice, we will have made a serious mistake. We will have seriously undermined -- if this kind of fratricidal warfare continues, constructed an impedence to a rational study and -- by individuals just on the question of life and what it means and when it takes place.

There was an attempt to do that in Roe v. Wade by dividing it in trimester segments. And there's increasing evidence, of course, that there is a viability of the unborn that comes very early after the moment of conception.

There is also a growing propensity to make some changes by increment, such as consent, on the part of parents where minors are involved. We invoke that principle when it comes to removing a splinter from the finger of a child, but we stand resolutely in

the way of measures to allow parental cooperation and parental consent in those procedures. Even with safeguards against judicial review on the part of situations that complicate the problem no end.

So we have a very, very difficult challenge. But we cannot abide by the reckless use of violence, obstruction, that has nothing to do with legitimate objection and presenting -- and the presentation of reasons that would attenuate the practice. And that is why this bill is important.

Senator Bruno deserves great credit in recognizing this. Not in terms of the basic differences that still exist and will continue to exist, but that we simply cannot invite a vigilante law to go out with a saber and cut down anybody that interferes with that process.

And I submit again, this is the worst way that we will -- I believe that eventually we will understand this problem better, and not on terms with which I would be discomfited. Or, for that matter, all of us. But we'll never give them a chance to be

articulated, we will not give them a chance to get that deep-seated judgment and consideration it deserves unless we continue to live in an orderly society that observes the norms of law.

And this isn't the only occasion that Senator Bruno has manifested courage. He's tackled several other things that we can think back here that were sacred cows. And he was resolute to the point that I feel there's been a substantial broadening of our freedoms and our access to freedom.

So I would hope, Mr. President, that we recognize this as a necessary step if we are to assure the tranquility of order in terms of lawful respect. We cannot do it under the present circumstances where the federal government, even though they have addressed this issue in almost the precise language we have here, is unable to do it - for very practical reasons. They don't have the people to do it.

We can do it with much greater sensitivity and with a greater degree of fairness, and at the same time take in the

problem of stalking and take in the problem of the profanation of houses of worship that are other examples where we go to the barricades and display our indifference to the respect that we should have for each other.

ACTING PRESIDENT MEIER: Senator DeFrancisco.

SENATOR DeFRANCISCO: I'm a little bit confused here. I hear terms like "this is an historic moment," "it's a monumental bill." And the reason I have confusion in understanding that is, number one, there is a federal statute already in existence that does exactly what this statute does. So I don't know that this is so monumental or historic.

Secondly, I want to make clear that there's two bills here, one that I support, the stalking bill. We've passed it before, and I did vote for it, and I'm voting -- I would vote for it again if it was a stand-alone bill. But there's another bill here, and that deals with the clinic access. And the reason I don't think this bill is historic or monumental is everything that it

prohibits, everything that this bill prohibits, there's already an existing criminal statute.

If you kill a doctor, whether he's in a clinic or whether he's outside, that's murder. If you assault a doctor or assault somebody else, a patient or someone seeking an abortion, it's an assault. If you harass somebody, it's harassment. If it's bad, it's aggravated harassment. If you menace them, it's menacing. If you damage property, it's criminal mischief. And all various degrees. So to suggest that this is monumental -- it merely is a designer bill.

We've heard over and over again by the advocates that this bill is not an abortion bill, it's a health clinic or a health bill. It's interesting that every single person who spoke in favor of it, except Senator Marchi, termed it as an abortion bill and a great reaffirmation of abortion rights.

Well, the danger with designer bills, I think -- and that's the reason we have penal statutes that punish crime no matter what the circumstances might be.

Certain activities are antisocial. Certain activities are criminal. They should be penalized, and they should be criminalized.

But when you start these designer bills, what happens? We see something on TV, there's a killing in a school, then we have a designer bill that we should not kill in schools or we should not have whatever the illegal activity may be, depending upon where the location is.

It's not monumental. It's a designer bill to make a certain group believe that they're doing something special. And there's nothing special. Every one of these activities could be determined to be penal, criminal, and punished accordingly. The fact that the law enforcement agents did punish and did seek redress for what -- the wrongs that happened in Buffalo is a pretty good indication that that's the case.

Now, what's particularly disturbing to me and what's so hypocritical in my mind, the same individuals who are advocating for this designer bill, I believe, would have been screaming during the Vietnam War if anyone

even talked about stopping someone from demonstrating and throwing blood on an airplane or demonstrating out in front of a draft board or demonstrating -

ACTING PRESIDENT MEIER: Excuse me, Senator DeFrancisco.

In particular, would the staff seated along the side of the chamber please give the Senator some courtesy. And the same extends to members as well.

Senator DeFrancisco, the floor is yours.

SENATOR DeFRANCISCO: -- and demonstrating sometimes violently in front of various areas where recruitment was taking place for the military people.

You know, we have a right to peaceably assemble. And if we don't peaceably assemble, if we do these terrible things that were done in Buffalo and elsewhere, we have criminal laws that apply to all of these situations.

And I guess what I'm saying here is I don't believe this is monumental, I don't believe it's historic, I don't believe it's

necessary. And there's a huge danger, I believe, in the designer bills that are increasingly coming before us when a tragedy occurs. We should have one set of criminal laws that applies to everybody under any circumstances.

And therefore, I intend to vote against this bill.

ACTING PRESIDENT MEIER: Senator Waldon.

SENATOR WALDON: Thank you very much, Mr. President. I will attempt to be brief.

There's been much discourse around this issue on both sides of the aisle. I've discussed it with people in our conference and folks like Nick Spano in your conference. I've discussed it with Tom Long, who's a buddy of mine, even though philosophically we don't agree. I have discussed it with women on our side of the aisle. This is a very important issue.

And so I applaud Senator Rath, who in her wisdom and in her sensitivity has crafted a bill that all of us hopefully will

support. I applaud Joe Bruno, our leader, for making sure that it hit the floor. And I also applaud Senator Connor, who has had very intense discourse around this issue in our conference.

Whether or not this is monumental, I'm not sure. But I know it is extremely important, because a lot of people have suffered pain and suffering, both from a physical aspect and a psychological aspect surrounding this issue.

So what I really rose to say, Mr. President, is we should applaud ourselves by virtue of the fact that we came together on an issue that's important. It is not partisan. It is people-centered and people-driven. It is health-care-driven. It is women-centered and women-driven, in my opinion, and that's extremely important to all of us.

So I applaud, again, the sponsor. I applaud the leadership. I encourage all of my colleagues to do the right thing and support this legislation.

Thank you very much, Mr. President.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: Well, I, for one, am very, very happy tonight. I guess it's monumental for me, Senator DeFrancisco, because I've worked on this for so long, to see it come to fruition is very good. It makes me very happy.

I would say that the federal clinic access law has had a good impact. That was written about five years ago. But local and state authorities cannot charge offenders, as you know, under federal violations. And that's why we -- that was the significance of this law, why we felt it was necessary at the state level. It is necessary to have this at the state level.

I'd like to bring up one other point that hasn't come out tonight, and that is that reproductive health clinics, which we are seeking this protection for, people keep talking about abortions. And it is true that many of them do provide abortion services. But the fact is the vast number of people coming into clinics in my county are there for

a whole panoply of other services. They have Pap smear services, ovarian cancer tests, they have contraceptive care, they have prenatal, they have postnatal, they have first year of baby's life.

They provide so many other services, which I think is really very significant. And therefore, I think that they should be considered as reproductive health clinics, which is what they are. They are there to treat the whole -- the whole reproductive care that a woman is seeking. And indeed, they give general medical annual checkups. So as you can see, there's a whole lot of things that happen in a reproductive health clinic.

We definitely think that the antichoice protesters have a definite right to peacefully demonstrate. We have always said that. But they do not have the right -- and that is why this bill is so important -- to intimidate or to harass or to in any way harm either the clinic workers or the people coming to the clinic.

And this is a very important bill

for me at this particular moment because we are about to open a new reproductive health clinic in New Rochelle, and we have already received unpleasant threats. And it's something that has us very concerned. And hopefully we'll be able to move a joint bill in both houses that will permit us to monitor more closely and control the kind of activities that will be going on, we expect, outside of this new clinic.

In the bill that I sponsored and was cosponsored by Eric, there was a reference which I had hoped would be in this bill which would protect from violence those people who work in clinics who are not on the site of the clinic. The piece in our bill had these protections written in that it was not just at the clinic, but rather at the person's home or wherever the clinic workers lived or ate or whatever. And so we think that that is something that hopefully might appear in a negotiated bill.

But, you know, I just have to say this is a very good, good beginning. And hooray for all of us, for you on that side of

the aisle who supported this and us on this side of the aisle who stuck with it, and for all those really super advocates around New York State who helped us so much to promote this bill.

And I applaud the sponsor and the other side of the aisle and the Majority Leader for bringing this forward.

ACTING PRESIDENT MEIER: Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President.

Mr. President, I am very pleased this evening. Many weeks ago I rose on the floor of this body and spoke out in support of legislation which would protect women, thousands of women, from being stalked and harassed. And I want to publicly recognize Senator Balboni for having brought that very important issue to our attention. And that work is here in tonight's legislation. Very, very important. Absolutely essential.

But I said at the time that however wonderful that legislation was and is, and however necessary, it doesn't take away the

absolute clarity that we need to protect anyone who exercises their constitutional right to seek reproductive health-care services, in addition to those who would provide it.

And then there was -- there was some quiet. We didn't hear much, except from several individuals -- Senator Oppenheimer, Senator Connor, and particularly from Senator Schneiderman, who never missed an opportunity to articulate just how essential it was that we provide protection for individuals who unquestionably needed it, need it now, and will need it in the future.

And, Mr. President, we have before us a piece of legislation tonight that has some technical problems. And there was some articulation of those technical problems. But I would like to say here tonight that our role, those of us on this side of the aisle, is by definition, in the course of our advocacy on behalf of our constituents and the people of New York State, is to be critical, so that we may craft the best policy to help people.

But it would be disingenuous of us in assuming that role of being critical if we didn't at the same time recognize when there has been some significant leadership. And so, Senator Bruno, I would like to commend you for having recognized the need and then provided the leadership to say, You know what, we have some unquestionably treacherous political waters to navigate, but it's important that we do so, and so we're going to provide some will to do it.

On the other hand, I'd be remiss if I didn't also say that however wonderful that is, that the legislation that's before us provides protection for women who would be stalked, it provides protection for anyone who seeks or provides reproductive health-care services. But we could have before us, though we have a really good piece of legislation - we could have a great piece of legislation if this was, let's say, the omnibus New York State Citizen Protection Act of 1999, in that it also provided protection to those who would be victimized because they were Jewish, or black, Puerto Rican, Latino, disabled,

homosexual, whatever.

And so, Senator Bruno, I believe that you are now somewhat a victim of your own success, in that your ability to come through on this unquestionably essential piece of legislation -- and I applaud you for it - also lends itself to our knowledge that where there's a will, there's a way, and a recognition of a problem that we have all articulated here on numerous occasions, that that problem can also be solved by the same navigating of very difficult -- and, you know, we'll recognize that -- very difficult circumstances and the pressures that push and pull and try and blow apart what needs to be a cohesive process so that the people in this state can benefit.

So I want to applaud the members on this side of the aisle who wouldn't let up, who wouldn't relent on this issue, and all the members on the other side of the aisle, those who support it and those who didn't. And I recognize that there are individuals who have real concerns about what we've done here. But I'd like to commend everybody tonight. It's

deserving that we do that.

And I'd like to let everyone know that as a result of the legislation that sits on my desk tonight, I am proud to be a member of this institution, and, Mr. President, I'm proud to vote for this bill.

Thank you.

ACTING PRESIDENT MEIER: Senator Duane.

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

I also rise to applaud what I hope will be the successful passage of this legislation, but also to applaud our ability to discuss it on the floor and to actually vote on a piece of legislation and let our opinions be known with an actual piece of legislation which has been allowed onto the floor.

As many of you have heard, I've served as a clinic escort and a clinic defender, and I'm hopeful that the legislation which I believe will be passed here will someday soon make it easier for everyone to safely get reproductive health care in the

state of New York.

I would also like to ask the sponsor, through you, Mr. President, to yield to a couple of questions on a couple of elements of the bill.

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

SENATOR RATH: Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Thank you very much.

The area of the legislation before us, which is slightly different from the stalking legislation which earlier had come before us, I just wanted to get some clarification, if I may, Madam President. And my question has to do with line 44, which is -- oh, section 10, I guess it is, line - page 5, line 44. The area which talks to the amendment of the Penal Law, specifically the language which says "for no legitimate purpose knowingly engages in a course of conduct directed against the person or persons on whose behalf such order was issued and such

conduct is likely, under the circumstances, to cause substantial distress" -- and that's the critical word -- "to a reasonable person or persons."

And I'll give you a moment to look at it as well. And I'm going to go on, then, on page 4, to line 19, then to focus on the definition of the word "distress," if I may.

SENATOR RATH: You're requesting, as I understand it, Senator, a definition of the word "distress," a clarification of what we mean there in line 19?

SENATOR DUANE: Well, yes, Madam Sponsor of the legislation. Through you, Mr. President.

I understand that the word "distress" in Section 7 refers to the definition of "distress" on line 19. And so specifically, my question is "distress, in addition to its normal meaning, includes but is not limited to," and then there's quite a lengthy definition of things that it's not limited to.

But I was wondering whether it's the intent of the legislation that it could

include, for instance, such things as serving papers in the office or the place of work where a person is employed.

SENATOR RATH: Let me check with counsel.

SENATOR DUANE: Absolutely.

SENATOR RATH: If the word "distress" and the behavior that results in the distress is part of an action that has no legitimate purpose, then that would be considered distress.

SENATOR DUANE: And through you, Mr. President.

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

SENATOR RATH: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: And the threshold is based upon the person who is being distressed, how they feel to be distressed; is that correct?

SENATOR RATH: Right. Yes.

SENATOR DUANE: Through you, Mr. President, if the sponsor would continue to

yield.

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

SENATOR RATH: Surely.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Might that include -

SENATOR RATH: I'm sorry, I was listening to counsel. Were you asking another question? Would you please repeat that, Senator?

SENATOR DUANE: Absolutely. Through you, Mr. President, if the sponsor continues to yield.

ACTING PRESIDENT MEIER: Go ahead, Senator Duane.

SENATOR DUANE: The bar is - the -- what matters is the person who feels the distress; is that correct?

SENATOR RATH: Yes.

SENATOR DUANE: Through you, Mr. President, if the sponsor continues to yield.

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

SENATOR RATH: Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: In the case of, for instance, an admirer who sends on a daily basis, say, flowers or cards, could that be included in the definition of causing distress?

SENATOR RATH: Yes. A continuous pattern of activity certainly would cause distress, Senator.

SENATOR DUANE: And through you, Mr. President, if the sponsor continues to yield.

ACTING PRESIDENT MEIER: Senator Rath, do you yield?

SENATOR RATH: Surely.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Would it include annoying constituents?

SENATOR RATH: I can't hear you, Senator. You're going to have to speak up.

SENATOR DUANE: I'm sorry. Would this include annoying constituents coming by

the office or repeatedly calling, if -

SENATOR RATH: That, Senator, I think might be called a legitimate purpose. I think we all have constituents that some might consider annoying and others would consider them challenging.

(Laughter.)

SENATOR DUANE: Through you, Mr. President.

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

SENATOR RATH: Surely.

SENATOR DUANE: I of course don't have that problem. I was asking on behalf of other members.

Does the sponsor know if there's any other place in law that could be pointed to where the onus of the person being distressed causes the -

ACTING PRESIDENT MEIER: Excuse me a second, Senator Duane.

Ladies and gentlemen, we'll get through this more quickly if we can give attention to the speakers. Thank you.

Proceed, Senator Duane.

SENATOR DUANE: Thank you, Mr. President. It gave me a moment to frame my question better anyway, I think.

Is there anyplace else in state law now that the sponsor is aware of where the person who feels that -- something like distress or an emotion like distress causes a charge to be leveled against a person?

SENATOR RATH: Yes, Senator. There is harassment and there is menacing.

And this is a different level that we're speaking of here, and one that I think has not been identified very clearly in the past and consequently needed to be laid out, just as questions such as you're bringing up tonight have been brought up. Because distress is quite different than menacing or harassment.

SENATOR DUANE: Through you, Mr. President, the new Mr. President. If I could focus for a moment on this new level.

ACTING PRESIDENT MAZIARZ: Senator Rath, do you continue to yield?

SENATOR RATH: Surely.

ACTING PRESIDENT MAZIARZ: The

Senator yields.

SENATOR DUANE: In the case of a person who is mentally ill or has a chemical imbalance and may, through no fault of their own, provide an appearance that could cause distress to a person, is it the sponsor's intention to include those circumstances as being covered by this legislation?

SENATOR RATH: Senator, I think, as you pointed out, if someone is mentally imbalanced and because of their appearance someone might try to construe that that was causing distress, that wasn't by intent. I think that that is a stretch, if you will, to try to say that that would be distressing in the intent that it is here in this legislation.

SENATOR DUANE: Through you, Mr. President, if the sponsor will continue to yield.

ACTING PRESIDENT MAZIARZ: Senator Rath, do you continue to yield to Senator Duane?

SENATOR RATH: Surely.

ACTING PRESIDENT MAZIARZ:

Senator Duane.

SENATOR DUANE: Just to try to clarify, you're talking about the intent of the legislation and not the intent of the person that may be doing the -

SENATOR RATH: Yeah.

SENATOR DUANE: If you would clarify that.

SENATOR RATH: Senator, I believe your question was if distress was caused to a person by another person who was mentally disturbed and in their actions or their dress, appearance, whatever, might be distressful to someone else, they are not knowingly try to distress someone. So that would not be something that would be considered here.

This is by intent. We're talking of someone who is intentionally attempting to cause distress in another person.

SENATOR DUANE: Through you, Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Rath, do you continue to yield?

SENATOR RATH: Surely.

ACTING PRESIDENT MAZIARZ:

Senator Duane.

SENATOR DUANE: I just want to clarify as much as I possibly can.

So I do have a -- just a concern, as opposed to a confusion, that while I think that -- I agree that what's being reached for -- and this does have to do with whether the person who's doing the bothering, if you will, that we have to look at their intent. I still have concern that as much weight seems to be being given, if not more weight, to how a person perceives what's happening, as much as the person who is doing the -- you know, the asking or the putting upon, if you will.

SENATOR RATH: Senator, let me point out that I think stalking is very often identified as something that happens to women. And even if you're not being stalked but you think someone is stalking you, you are in grave distress. And this is what was being looked for as the stalking legislation was being developed.

And as an adjunct to the piece of legislation that has been talked about a great deal tonight, the stalking legislation did

pass this Legislature earlier this year.

SENATOR DUANE: Through you, Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Rath, do you continue to yield to Senator Duane?

SENATOR RATH: Surely.

ACTING PRESIDENT MAZIARZ: Senator Duane.

SENATOR DUANE: I just raise this in the context that the language has just changed a little bit, and so I'm just trying to clarify it, because there isn't the same history on this as there was there.

But I just -- to continue, through you, Mr. President, if a person is a person who is asking for money -- whether, you know, for a religious organization or for their own personal circumstances -- and I want to make this aside from any legislation which may be in existence in the cities and towns across the state having to do with panhandling and aggressive panhandling. But in circumstances of a person who may be asking for money for a legitimate cause or what some may consider to

be a legitimate cause but others not a legitimate cause -- or, for that matter, for no particular cause but their own personal ability to put some money in their pocket - are these persons potentially at risk of being captured under this legislation?

SENATOR RATH: I think, Senator, as you're referring to the panhandling circumstance that all of us have found ourselves in that place -- I think we find ourselves going to another place if someone is panhandling. And we're talking about a consistent and continual course of conduct that could distress someone.

For example, someone coming out of an office building and walking to the same bus stop every night and observing someone, the same person, in a red jacket or what have you, following every day or every other day. That's the kind of activity that we're trying to get at here, not panhandling.

SENATOR DUANE: Thank you very much.

SENATOR RATH: You're welcome.

SENATOR DUANE: On the bill, Mr.

President.

ACTING PRESIDENT MAZIARZ: Senator Duane, on the bill.

SENATOR DUANE: Thank you very much.

I just would like to say again that I'm very happy that we've been able to have this discussion about this bill on the floor. I'm optimistic that it will be passing. I will be celebrating its passage. And I'm also glad that we had the opportunity to put some of the open-ended questions on the floor as the process continues.

Thank you very much. Thank you.

ACTING PRESIDENT MAZIARZ: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President. I shall be brief.

ACTING PRESIDENT MAZIARZ: Senator Connor, on the bill.

SENATOR CONNOR: I think my colleagues have already articulated some of the -- what we would regard as shortcomings in the bill, and concerns. With respect to the stalking portion, there is a concern about

perhaps a certain vagueness in definitions that could lead to prosecutions for conduct under circumstances that the sponsor doesn't intend, that no one thinks should be the subject of a criminal prosecution.

But we certainly recognize the unique and frightening phenomenon of stalking and that it is somewhat difficult to quite define it in very traditional legal terms. But nonetheless, people who are the victims of stalking do need the assurance that there are additional penalties and protections. And those victims tend to be largely women, although certainly not exclusively women.

With respect to the clinic access, that has been a problem that many members in this house, a lot of members on this side of the aisle, have raised during the course of the past month. We've actually talked about it for a couple of years now.

While we've talked and advocated, there have been, throughout the country, and regrettably here in New York as well, some instances that show that people who work in these reproductive-health-service clinics are

at some risk. They're at risk from people who are more than extremists, who are criminal terrorist extremists.

It's not about their political views. I have read the bill. I think the definitions meet the test. I do not want to punish anyone for advocacy on any side of any issue. That's a First Amendment concern. But there is a difference, Mr. President, between advocacy and literally physically putting yourself in the path of someone who is merely attempting to seek a legal service.

By way of shortfall, I think in the bill proposed by my colleagues earlier in this session the private right of action and the access by private individuals to the courts to vindicate these rights was an important one. It's not in this bill. Hopefully over the course of the next few days, in the negotiations with the Assembly, some of these differences will be resolved in a way that will further reassure us, those of us who are concerned about this issue, that we're writing the best law possible.

That said, certainly the bill comes

a long way, a long way. Certainly a long way in this house. And Senator Bruno is to be congratulated for recognizing that this is an important issue and putting it before the members.

It's not decided yet. We haven't voted yet. But I suggest most humbly, Mr. President, that the best way to go with issues that are of great concern -- albeit there are people of sincere conscience who will be opposed to this as well as those who would support it -- the way to resolve that in a - in our representative democracy is exactly as how we're doing it now, on the floor of a representative body. Not in the streets, not in a brawl outside, but in a legislative debate with a vote by the people's representatives. And, Senator Bruno, this evening, with respect to this issue, you have made that possible.

Thank you, Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, just briefly.

I just want to rise because I think an aspect of this bill -- and I'm glad that it finally came out, and I want to compliment Senator Hevesi for mentioning it, is the fine work that Senator Balboni has done on this. I know he's worked on this for a long time.

And the stalking issue is something that we should really focus on. Tens of thousands of people in this great state and throughout the country are stalked. And, Senator Balboni, I just want to compliment you for being the author of this legislation.

ACTING PRESIDENT MAZIARZ: Read the last section.

SENATOR RATH: May I make a final comment, please?

ACTING PRESIDENT MAZIARZ: Senator Rath, on the bill.

SENATOR RATH: Thank you. I'm sorry I delayed a moment. I was checking with counsel here.

This has been probably the most important night that I've spent here in five years. As I said, I developed my position on this -- these issues a long time ago.

Senator Bruno, particularly, thank you for bringing this issue to the floor. An issue -- any issue that's grounded in deep personal and moral convictions is difficult. And it's a brave decision to bring it to the floor and let all of us go at it as we have tonight. But I think most of us were pretty much where we were going to be before we came to the floor tonight.

And, Senator Balboni, your effort all year long on the stalking legislation has been outstanding. You've brought something to us that needed to be here, something that, as it is coupled with the clinic access, is putting forward a very good front from the New York State Senate.

And now we have a choice, all of us, in our responsibility as elected representatives of the State of New York. And I would venture to guess that on a range of 1 to 100, there will be some people who are totally opposed and some people who are totally in favor. And for me, for me, if I could have one foot on each side of that 50 percent mark, boy, I would be there. Because

I come to the middle every time on everything every chance I can.

But I can't on this one. I'm over here on this side, and that's why I've sponsored this bill. And as I said earlier, I don't characterize it as a litmus-test bill. I characterize this as services to the people in my district and a lot of other districts around this state who have the legal right to health services and the legal right soon, I hope, not to be harassed and not to be stalked.

As we said earlier at the beginning of the debate, the violence that we see in our communities insults our intelligence. And this was just another form of violence that we've seen and that we're trying to correct.

And as we go forward and do our vote and walk away from here tonight and walk away from this session, of course we'll be talking and dealing with our constituencies. But more importantly, I think I heard all around the room tonight, and it's a very personal thing, we'll all be dealing with our consciences. And that's where this kind of a

vote should be. It's what your constituents will know. As they talk to you, they will know that you've soul-searched and you've come to the conclusion to do the very best job you can for them.

And I'm proud of all of you and really proud to be a member of the State Senate.

Thank you.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 15. This act shall take effect on the first day of November.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MAZIARZ: Senator Meier, to explain his vote.

SENATOR MEIER: Thank you, Mr. President.

I can't recall a more troubling vote that I've had to cast in my almost three years here now. But I am persuaded by the statement made earlier by Senator DeFrancisco

that for every act that has been complained of at these facilities, there is an existing criminal law that applies.

Having said that, let me say this. I don't want anyone in my district or anyplace else to take comfort from my vote if they go to the door of one of these facilities with hatred, if they go to the door of one of these facilities with the intent to threaten or to commit violence. And I say to them that it is not the advocates for this bill that have brought us to tonight. It is you who claim the mantle of the pro-life movement and profane its name by bringing hatred and violence to the forefront.

I vote no.

ACTING PRESIDENT MAZIARZ: Senator Balboni, to explain his vote.

SENATOR BALBONI: Mr. President, allow me to strike a different chord.

This has been a very difficult session for all of us. For the first time in our professional careers, we've had our pay taken away, we've been unable to get any type of logjam done, and we've been unable to come

to grips with so many issues in this state because we are frozen in place and perhaps we don't trust one another enough. Well, hopefully that ends here tonight.

My explanation of my vote is a message to the Speaker of the State Assembly. Mr. Speaker, please do not view this act, this act of courage on behalf of so many members in this chamber, particularly on behalf of Senator Joe Bruno, as an act of cynicism or politics. Let's use this vote tonight as the first step towards coming together to finalize all the issues that face us this year.

This was a very difficult thing to do for so many people in this chamber. And in Joe Bruno's wisdom, he decides that this is this the step that can bring us to conclusion.

Mr. Speaker, Mr. President, I vote yes.

ACTING PRESIDENT MAZIARZ: Senator Meier will be recorded in the negative, Senator Balboni in the affirmative.

Senator Farley, to explain his vote. Senator Farley.

SENATOR FARLEY: Thank you, Mr.

President.

Let me just say that this is a difficult vote. This is a very troubling situation.

Senator Balboni, I applaud you for what you've done in this stalking issue. Your legislation would have answered every problem that we have with clinic access.

And on your birthday, Senator Rath, I applaud you for what you're doing here.

But let me just say that as we go forward on this, this is a pro-life chamber. This Senate has historically supported life.

This is not an abortion issue. This is a rights issue. Many of us worked very hard to make sure that the civil suits are out of this legislation, because that could be a real harassing situation. It is - it mirrors the federal legislation, with that exception. But the stalking law will become law, which is crucial.

And with that, I am going to vote aye.

ACTING PRESIDENT MAZIARZ: Senator Marcellino, to explain his vote.

SENATOR MARCELLINO: Mr. President, thank you.

And I congratulate my colleagues, Senator Balboni and Senator Rath, for their efforts; our Leader, for bringing this bill out.

This bill sends a very simple message. This bill says that violence will not be tolerated. Violence, no matter what the intent, no matter what the cause, no matter what the purpose, if you perpetrate violence against your fellow person, that will not be tolerated. That's what we're saying here. That's what we intend here. And that's what we mean here by this vote.

I vote aye.

ACTING PRESIDENT MAZIARZ: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1600 are Senators DeFrancisco, Maltese, Meier, and Padavan. Ayes, 55. And nays, 4.

ACTING PRESIDENT MAZIARZ: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar 1598.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number 1598, substituted earlier today by the Assembly Committee on Rules, Assembly Print 8833, an act to amend the Civil Service Law.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we go to the regular calendar and call up Calendar 855.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number

855, by the Assembly Committee on Rules, Assembly Print 7901, an act to amend the Education Law.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time call up Calendar 983.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number 983, by Member of the Assembly Vitaliano, Assembly Print 6692A, an act to amend the Penal Law.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we call up Calendar Number 1352.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number 1352, by Senator Lack, Senate Print 5790A, an act to amend the Public Authorities Law.

ACTING PRESIDENT MAZIARZ: Read the last section.

Senator Bruno, there's a message of necessity from the Governor.

SENATOR BRUNO: Please accept the message.

ACTING PRESIDENT MAZIARZ: The motion is to accept the message. All those in

favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MAZIARZ: Opposed, nay.

(No response.)

ACTING PRESIDENT MAZIARZ: The message is accepted.

Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we call up Calendar 645.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number 645, by Senator Saland, Senate Print 4138A, an act to amend the Domestic Relations Law.

ACTING PRESIDENT MAZIARZ: Read

the last section.

SENATOR DUANE: Explanation.

ACTING PRESIDENT MAZIARZ: Senator Saland, there's been an explanation requested on Calendar Number 645 by Senator Duane.

SENATOR SALAND: Mr. President, this is the uniform child custody jurisdiction -

ACTING PRESIDENT MAZIARZ: Excuse me, Senator Saland. Senator Duane has withdrawn his request for an explanation.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect in 180 days.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

SENATOR BRUNO: Mr. President, is there a substitution at the desk?

ACTING PRESIDENT MAZIARZ: There is one substitution.

SENATOR BRUNO: Please make the substitution.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: On page 27, Senator Hannon moves to discharge, from the Committee on Rules, Assembly Bill 7140B and substitute it for the identical third reading, 944.

ACTING PRESIDENT MAZIARZ: Substitution ordered.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we call up Calendar 63.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number 63, by Member of the Assembly Stringer, Assembly Print 1568, an act to amend the Education Law.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time ask for an immediate meeting of the Rules Committee in Room 332.

ACTING PRESIDENT MAZIARZ: There will be an immediate meeting of the Rules Committee in Room 332. Immediate meeting of the Rules Committee in Room 332.

(Whereupon, the Senate stood at ease at 8:25 p.m.)

(Whereupon, the Senate reconvened at 8:34 p.m.)

ACTING PRESIDENT MAZIARZ: Senator Kuhl.

SENATOR KUHL: Mr. President, could you call up Calendar Number 945, please, on the regular calendar.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number

945, by Senator Maziarz, Senate Print 4005A, an act to amend the Public Health Law and the Education Law.

SENATOR KUHL: Is there a message of necessity at the desk?

ACTING PRESIDENT MAZIARZ: Senator, there is a message of necessity at the desk.

SENATOR KUHL: I move we accept the message.

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

(Response of "Aye.")

ACTING PRESIDENT MAZIARZ: Opposed, nay.

(No response.)

ACTING PRESIDENT MAZIARZ: The message is accepted.

Senator Kuhl.

SENATOR KUHL: Read the last section.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 6. This

act shall take effect immediately.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Mr. President, may I have permission to ask for unanimous consent to be recorded in the negative on Calendar Number 1559.

ACTING PRESIDENT MAZIARZ: With out objection, so ordered.

SENATOR KUHL: Thank you.

ACTING PRESIDENT MAZIARZ: The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 8:36 p.m.)

(Whereupon, the Senate reconvened at 8:55 p.m.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MAZIARZ: The Senate will come to order.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees.

I believe there is a report of the Rules Committee at the desk. I ask that it be read.

ACTING PRESIDENT MAZIARZ: Return to the order of standing committees.

The Secretary will read.

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

Senate Print 1191A, by Senator Johnson, an act to amend the Tax Law;

1740B, by Senator Connor, an act to amend the Public Authorities Law;

2432B, by Senator Johnson, an act to amend the Insurance Law and the Vehicle and Traffic Law;

2726B, by Senator Stafford, an act to allow Lawrence E. Strait;

2836, by Senator Johnson, an act in relation to allowing;

3403A, by Senator Bonacic, an act to amend the Executive Law;

3646, by Senator Stafford, an act to amend the Education Law;

3680, by Senator Spano, an act to amend the Education Law;

4002, by Senator Skelos, an act to amend the Retirement and Social Security Law;

4110, by Senator Onorato, an act to amend the Labor Law;

4769A, by Senator Spano, an act to authorize correction officers;

4852, by Senator Bonacic, an act to amend the General Municipal Law;

5333, by Senator Leibell, an act to amend the Retirement and Social Security Law;

5569, by Senator Seward, an act to amend the Insurance Law;

5740, by the Senate Committee on Rules, an act to amend the Insurance Law;

5780, by Senator Leibell, an act to amend the Retirement and Social Security Law;

5787, by Senator Rath, an act to amend the Penal Law;

5943, by Senator Saland, an act to amend the Parks, Recreation and Historic Preservation Law;

5944, by Senator Leibell, an act to amend the Retirement and Social Security Law;

6006, by Senator Nozzolio, an act to amend the Penal Law;

And 4197, by Senator Saland, an act to authorize the payment.

All bills ordered direct for third reading.

ACTING PRESIDENT MAZIARZ: Senator Skelos.

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

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

(Response of "Aye.")

ACTING PRESIDENT MAZIARZ: Opposed, nay.

(No response.)

ACTING PRESIDENT MAZIARZ: The report is accepted.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please, on the original -- main

calendar, please take up Calendar Number 1270, by Senator Maziarz.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number 1270, by Senator Maziarz, Senate Print 5654A, an act to amend the General Municipal Law and the Vehicle and Traffic Law.

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

Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

Senator McGee, why do you rise?

SENATOR McGEE: Mr. President, I wish for unanimous consent to be listed as voting in the negative on Senate Bill 5988.

ACTING PRESIDENT MAZIARZ: Would you repeat the number, please, Senator?

SENATOR McGEE: 5988.

ACTING PRESIDENT MAZIARZ: Which one is that?

SENATOR McGEE: It's -- Calendar 1559, please.

ACTING PRESIDENT MAZIARZ: With out objection, Senator McGee will be recorded in the negative on Calendar 1559.

Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, I ask unanimous consent to be recorded in the negative on Calendar Number 1559.

ACTING PRESIDENT MAZIARZ: With out objection, Senator Nozzolio will be recorded in the negative on Calendar Number 1559.

Senator Libous.

SENATOR LIBOUS: Mr. President, I too would ask unanimous consent to be recorded in the negative on 1559.

ACTING PRESIDENT MAZIARZ: With out objection, Senator Libous will be recorded in the negative on Calendar Number 1559.

Senator Seward.

SENATOR SEWARD: Yes. Mr.

President, I would also ask unanimous consent to be recorded in the negative on Calendar Number 1559.

ACTING PRESIDENT MAZIARZ: Senator Seward, without objection, will be recorded in the negative on Calendar Number 1559.

Senator DeFrancisco.

SENATOR DeFRANCISCO: If it's good enough for Senator McGee, it's good enough for me.

ACTING PRESIDENT MAZIARZ: And apparently several others, Senator DeFrancisco.

Without objection, Senator DeFrancisco will be recorded in the negative on Calendar Number 1559.

Senator Farley.

SENATOR FARLEY: I vote no.

(Laughter.)

ACTING PRESIDENT MAZIARZ: With out objection, Senator Farley also will be recorded in the negative on Calendar Number 1559.

Senator Morahan. Senator Morahan

requests, without objection, to be recorded in the negative on Calendar Number 1559.

Senator Rath.

SENATOR RATH: Yes, Mr. President, I request unanimous consent to be recorded in the negative on 1559.

ACTING PRESIDENT MAZIARZ: With out objection, Senator Rath would like to be recorded in the negative on Calendar Number 1559.

Senator Stachowski, why do you rise?

SENATOR STACHOWSKI: I'd like unanimous consent to be recorded in the negative on Calendar 1559. Thank you.

ACTING PRESIDENT MAZIARZ: Senator Stachowski, without objection, will be recorded in the negative on Calendar Number 1559.

ACTING PRESIDENT NOZZOLIO: Senator Maziarz, why do you rise?

SENATOR MAZIARZ: Thank you, Mr. President. I would like to join many of my colleagues and request unanimous consent to be recorded in the negative on Calendar Number

1559 -- and apologize to Senator Johnson.

Thank you, Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Maziarz in the negative on Calendar Number 1559.

ACTING PRESIDENT MAZIARZ: The Senate will come to order.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up the Senate Supplemental Calendar 57D, and take the noncontroversial portion.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number 1601, by Senator Johnson, Senate Print 1191A, an act to amend the Tax Law, in relation to establishing.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 120th day.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1602, Senator Connor moves to discharge, from the Committee on Rules, Assembly Bill Number 3013B and substitute it for the identical Third Reading Calendar, 1602.

ACTING PRESIDENT MAZIARZ: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1602, by Member of the Assembly Lentol, Assembly Print Number 3013, an act to amend the Public Authorities Law.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The

bill is passed.

THE SECRETARY: Calendar Number 1603, by Senator Johnson, Senate Print 2432D, an act to amend the Insurance Law and the Vehicle and Traffic Law, in relation to creating.

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT MAZIARZ: Lay the bill aside.

THE SECRETARY: Calendar Number 1605, by Senator Johnson, Senate Print 2836, an act in relation to allowing Edward Andersen to be reclassified.

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

Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: In relation to

Calendar Number 1606, Senator Bonacic moves to discharge, from the Committee on Rules, Assembly Bill Number 6070A and substitute it for the identical Third Reading Calendar, 1606.

ACTING PRESIDENT MAZIARZ: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1606, by Member of the Assembly Vitaliano, Assembly Print Number 6070A, an act to amend the Executive Law, in relation to longevity.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1607, Senator Stafford moves to discharge, from the Committee on Rules,

Assembly Bill Number 6429 and substitute it for the identical Third Reading Calendar, 1607.

ACTING PRESIDENT MAZIARZ: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1607, by Member of the Assembly Bragman, Assembly Print Number 6429, an act to amend the Education Law.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1608, by Senator Spano, Senate Print 3680, an act to amend the Education Law, in relation to collective bargaining.

ACTING PRESIDENT MAZIARZ: Read

the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

SENATOR BRUNO: Lay it aside, please.

ACTING PRESIDENT MAZIARZ: Lay the bill aside.

THE SECRETARY: Calendar Number 1609, by Senator Skelos, Senate Print 4002, an act to amend the Retirement and Social Security Law, in relation to authorizing.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 5. This act shall take effect January 1.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: In relation to

Calendar Number 1610, Senator Onorato moves to discharge, from the Committee on Rules, Assembly Bill Number 6833 and substitute it for the identical Third Reading Calendar, 1610.

ACTING PRESIDENT MAZIARZ: Substitution ordered.

Secretary will read.

THE SECRETARY: Calendar Number 1610, by Member of the Assembly Nolan, Assembly Print Number 6833, an act to amend the Labor Law.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1611, Senator Spano moves to discharge, from the Committee on Rules,

Assembly Bill 7999A and substitute it for the identical Third Reading Calendar, 1611.

ACTING PRESIDENT MAZIARZ: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1611, by the Assembly Committee on Rules, Assembly Print Number 7999A, an act to authorize correction officers of the County of Westchester.

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

Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

Senator Morahan, why do you rise?

SENATOR MORAHAN: Yes, I'd like unanimous consent, sir, to be recorded in the affirmative on 1559 calendar.

Yes, in the affirmative. I thought it was a different bill.

ACTING PRESIDENT MAZIARZ: With out objection, Senator Morahan will be recorded in the affirmative on Calendar Number 1559.

Senator LaValle.

SENATOR LAVALLE: Mr. President, may I have unanimous consent to be recorded in the negative on Calendar Number 1607.

ACTING PRESIDENT MAZIARZ: Without objection, Senator LaValle will be recorded in the negative on Calendar 1607.

Senator Bonacic.

SENATOR BONACIC: Mr. President, I ask for unanimous consent to vote in the negative on Calendar 1559.

ACTING PRESIDENT MAZIARZ: With out objection, Senator Bonacic will be recorded in the negative on Calendar Number 1559.

The Secretary will read.

THE SECRETARY: In relation to Calendar Number 1612, Senator Bonacic moves to discharge, from the Committee on Rules,

Assembly Bill Number 7105B and substitute it for the identical Third Reading Calendar, 1612.

ACTING PRESIDENT MAZIARZ: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1612, by Member of the Assembly Lopez, Assembly Print Number 7105B, an act to amend the General Municipal Law.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1613, by Senator Leibell, Senate Print 5333, an act to amend the Retirement and Social Security Law, in relation to service retirement benefits.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1614, Senator Seward moves to discharge, from the Committee on Rules, Assembly Bill Number 8275 and substitute it for the identical Third Reading Calendar, 1614.

ACTING PRESIDENT MAZIARZ: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1614, by the Assembly Committee on Rules, Assembly Print Number 8275, an act to amend the Insurance Law, in relation to the writing.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1615, by the Senate Committee on Rules, Senate Print Number 5740, an act to amend the Insurance Law, in relation to the authority.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1616, Senator Leibell moves to discharge, from the Committee on Rules,

Assembly Bill Number 8310 and substitute it for the identical Third Reading Calendar, 1616.

ACTING PRESIDENT MAZIARZ: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1616, by the Assembly Committee on Rules, Assembly Print Number 8310, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1617, by Senator Rath, Senate Print 5787, an act to amend the Penal Law, in relation to civil liability.

ACTING PRESIDENT MAZIARZ: Read

the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date as such chapter.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1618, Senator Saland moves to discharge, from the Committee on Rules, Assembly Bill Number 6375B and substitute it for the identical Third Reading Calendar, 1618.

ACTING PRESIDENT MAZIARZ: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1618, by Member of the Assembly Grannis, Assembly Print Number 6375B, an act to amend the Parks, Recreation and Historic Preservation Law.

ACTING PRESIDENT MAZIARZ: Read

the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1619, by Senator Leibell, Senate Print 5944, an act to amend the Retirement and Social Security Law, in relation to membership.

SENATOR LACK: Lay it aside.

ACTING PRESIDENT MAZIARZ: Lay the bill aside.

THE SECRETARY: Calendar Number 1620, by Senator Nozzolio, Senate Print 6006, an act to amend the Penal Law, the Vehicle and Traffic Law, and the Family Court Act, in relation to falsely reporting an incident.

ACTING PRESIDENT MAZIARZ: Senator Bruno, there is a message of necessity at the desk.

SENATOR BRUNO: Thank you. Move

to accept the message.

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

(Response of "Aye.")

ACTING PRESIDENT MAZIARZ: Opposed, nay.

(No response.)

ACTING PRESIDENT MAZIARZ: The message is accepted.

Read the last section.

THE SECRETARY: Section 11. This act shall take effect on the first day of November.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MAZIARZ: Senator Duane, to explain his vote -- I'm sorry.

SENATOR DUANE: After the vote, I want to say something.

THE SECRETARY: Ayes, 57. Nays, 2. Senators Duane and Montgomery recorded in the negative.

ACTING PRESIDENT MAZIARZ: Senator Duane.

SENATOR DUANE: Thank you, Mr. President. I was -

ACTING PRESIDENT MAZIARZ: The bill is passed.

SENATOR DUANE: I was hoping I could have unanimous consent to vote in the negative on Calendar Number 1617.

ACTING PRESIDENT MAZIARZ: With out objection, Senator Duane will be recorded in the negative on Calendar Number 1617.

Senator Saland.

SENATOR SALAND: Mr. President, I would request unanimous consent to be recorded in the negative on Calendar 1559.

ACTING PRESIDENT MAZIARZ: With out objection, Senator Saland will be recorded in the negative on Calendar Number 1559.

The Secretary will read.

I'm sorry, Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, I would like unanimous consent to be recorded in the negative on Calendar 1545.

ACTING PRESIDENT MAZIARZ: With

out objection, Senator Montgomery will be recorded in the negative on Calendar Number 1545.

The Secretary will read.

THE SECRETARY: Calendar Number 1621, by Senator Saland, Senate Print 4197, an act to authorize the payment of ordinary disability benefits.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we take up Calendar Number 1608.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number 1608, by Senator Spano, Senate Print 3680, an

act to amend the Education Law, in relation to collective bargaining representation.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 3. Senators Duane, Paterson, and Smith recorded in the negative.

ACTING PRESIDENT MAZIARZ: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we take up Calendar 1619.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number 1619, by Senator Leibell, Senate Print 5944, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MAZIARZ: I'm sorry, Senator Lack.

SENATOR LACK: Mr. President, withdraw the roll call, please.

ACTING PRESIDENT MAZIARZ: Roll call is withdrawn.

Senator Lack.

SENATOR LACK: Thank you, Mr. President.

I arise to first congratulate Senator Leibell for his chapter amendment - this is 1619, right -- for his chapter amendment with respect to my chapter of last year on the teachers Tier 1 bill. This is the tier equity bill which would equalize that for everyone else.

It's unfortunate that lines 16 through 24 have to be placed in the bill. When we passed this bill last year - unanimously, I might add, and unanimously in

the Assembly -- it was quite apparent what we were doing to restore to 12,000 teachers in this state, in both the city and state teachers union, the right to go back to Tier 1 status.

Unfortunately, the Teachers Retirement System, because of the use of one word "contribution," withheld $13.9 million owed to over 5,000 teachers in this state for prior service credit, because they said we in the Legislature did not know what we were doing.

We supplied the Teachers Retirement System with four years' worth of legislative history. And they said that was not adequate because we could not, in our legislative history, exclude that which we didn't know. Imagine that. We should exclude in our legislative history what we could not know and what we did not contemplate.

My opinion, my colleagues, is that quite frankly, in the name of this body, we should sue the State Teachers Retirement System, because that an impossibility, to be told by a retirement system in this state that

the Legislature did not know what it was doing. Unfortunately, to do that would mean it would be another four or five years before 5,000 teachers would receive $13.9 million.

So instead, we are passing legislation which makes it crystal clear to the Teachers Retirement System exactly what we meant. And 5,000 teachers will now get the money that they're owed.

By the way, we should contrast the operations of the New York State Teachers Retirement System with that of the New York City Teachers Retirement System, which had almost a thousand teachers covered under the same legislation last year. Upon passage, the New York City Teachers Retirement System immediately returned prior years' service credit to the thousand teachers that were affected and added it back into their retirement system without all the hullabaloo of having to pass an extra bill this year.

What a difference, what a difference in representation between the State Teachers Retirement System and the City Teachers Retirement System. I should also

comment that part of that, quite frankly, is the manner by which the relationship between the State Teachers Union exists with the State Teachers Retirement System and the UFT, the United Federation of Teachers, in New York City with their retirement system.

Upon passage last year, Randy Weingarten, the president of the UFT, immediately spoke to the City Teachers Retirement System and had everything in the pipeline frozen and then had her counsel and others work with the City Teachers Retirement System to make sure all monies were immediately returned to the city teachers covered.

That is not true of the state teachers, the United Teachers, who made no effort whatsoever to contact the State Teachers Retirement System to freeze anything in the pipeline. And indeed, after this bill was passed and prior to signature by the Governor, a teacher actually gave $6,000 to the Teachers Retirement System, who accepted it, gave her back her teachers -- her prior years' service credit, which, if they had

waited one day more, would have been hers for nothing once the Governor signed the bill, and have since refused to give the $6,000 back.

Which, after passage of this legislation this evening, assuming it is signed by the Governor, that teacher would finally receive that $6,000 back.

If I was in the Teachers Retirement System, I think I might ask just whose fiduciary they are and then for whose purpose they are serving.

I won't take any more of the valuable time at this late time of the evening to go on about this, but except to say thank you to Senator Leibell for adding this provision to the bill that we are considering this evening.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar 950.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number 950, by Senator Hannon, Senate Print 4591A, an act to amend the Public Health Law, in relation to authorizing.

ACTING PRESIDENT MAZIARZ: Senator Bruno, there is a message of necessity at the desk.

SENATOR BRUNO: Please accept the message.

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

(Response of "Aye.")

ACTING PRESIDENT MAZIARZ: Opposed, nay.

(No response.)

ACTING PRESIDENT MAZIARZ: The message is accepted.

Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MAZIARZ: The bill is passed.

Senator Wright.

SENATOR WRIGHT: Thank you, Mr. President. I request unanimous consent to be recorded in the negative on Calendar Number 1559.

ACTING PRESIDENT MAZIARZ: With out objection, Senator Wright will be recorded in the negative on Calendar Number 1559.

Senator Bruno.

SENATOR BRUNO: Can we take up Calendar Number 1603.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number 1603, by Senator Johnson, Senate Print 2432D, an act to amend the Insurance Law and the

Vehicle and Traffic Law.

SENATOR CONNOR: Explanation.

SENATOR JOHNSON: Mr. President -

ACTING PRESIDENT MAZIARZ: Senator Johnson, an explanation has been requested by the Minority Leader, Senator Connor.

SENATOR JOHNSON: Yes, Mr. President.

This bill will establish a pilot program for taking a defensive-driver course through technological means other than attending a classroom session with an instructor.

Now, it's almost twenty years since I established the original defensive-driver course. And during that time, many people have taken that course, and the results have been very good, justifying the 10 percent discount on auto insurance.

And this is going to expand the opportunity for more people to take this course at home at their own time. If -- and if the experiment works out satisfactorily,

it's going to be -- possibly become permanent. Right now it's only a temporary plan.

ACTING PRESIDENT MAZIARZ: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President. Would Senator Johnson kindly yield to a question?

ACTING PRESIDENT MAZIARZ: Senator Johnson, would you yield for a question?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

Would the Senator explain, with respect to the existing program that yields a 10 percent insurance premium discount, is it not true that the person has to attend a class in person?

SENATOR JOHNSON: That's correct.

SENATOR CONNOR: And their attendance at the class or the course is of course monitored by someone else?

SENATOR JOHNSON: That's correct.

SENATOR CONNOR: If the Senator would further yield.

ACTING PRESIDENT MAZIARZ: Senator Johnson, do you continue to yield?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Connor.

SENATOR CONNOR: They give a test at the end of the course presently?

SENATOR JOHNSON: Well, there's something akin to that, yes.

SENATOR CONNOR: Now, under this pilot program, Senator, would it be true that someone could like buy a video and watch it at home and get a 10 percent discount on their insurance? Is that what could happen here?

SENATOR JOHNSON: Well, that is what happens now in other states where this program is in effect.

We were very skeptical about this program, and we did not introduce a bill which would permanentize this system. This is a pilot program. And I'll tell you, they're

going to have to demonstrate to the satisfaction of the department that indeed they can verify the identity of the person. They will ask questions.

The way it's worked in Texas, they get a videotape and they get a portable computer which they have to hook up, log onto the central headquarters where this program is run from, and verify on various occasions during this course that they've taken that test.

Even after they've done that, it's only a year and a half -- it has to be run for at least a year, then there has to be a year and a half of evaluation after that of their driving record to see if indeed there is a benefit to this program. And after that, it would be determined subsequently if this can continue as a pilot or just terminate.

SENATOR CONNOR: Mr. President -

ACTING PRESIDENT MAZIARZ: Senator Connor.

SENATOR CONNOR: -- would the Senator yield for another question?

SENATOR JOHNSON: Yes.

ACTING PRESIDENT MAZIARZ: Senator Johnson -- Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

I would inquire of the Senator whether or not there is any independent way to monitor that the person who gets the video and the computer and plays the video has actually bothered to take the couple of hours to go through it.

SENATOR JOHNSON: You know, that is the reason we have a -- that is a permanent program in Texas and New Mexico and possibly other states.

We are skeptical. We want them to prove to the satisfaction of the Commissioner of Motor Vehicles that they can indeed verify the identity of this person. And they say they have a way to do that. Let us hope that they do, or this will terminate and will not continue.

SENATOR CONNOR: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT MAZIARZ: Senator Connor, on the bill.

SENATOR CONNOR: My simple mind tells me that not every bad idea deserves a trial. And this, on the face of it -- you know, we ought to encourage people to learn, learn driver safety, the entire thing. But, you know, we're doing this at the expense of forcing insurers to give a 10 percent discount to someone who says they watched a video.

The whole thing reminds me of - actually, I got some accessories. My son's birthday is on this coming Saturday, and I just got some accessories for his computer game. I mean, he has a Nintendo, and he puts in a video and whatever.

And he tried to tell me earlier this year that he thought he played a much better game of baseball because he had been playing the Ken Griffey, Jr., baseball video game all winter. He's a little better at hitting this year, but I really seriously doubt it has anything to do with the Ken Griffey, Jr., baseball game. Not that I have anything against it. It's provided my wife and I with some hours of rest while he sits transfixed there, hitting home runs on the TV

screen.

But the fact is, I just -- I understand -- I'm sure there's a program in Texas that's very successful for the person that's making good dollars on it by selling it, but I don't know that this is anything we ought to try in New York. And I don't think we ought to try it with other persons' money. And in effect, that's what we're doing with the insurance companies' money. We're forcing them to give 10 percent to someone as a discount on the chance that watching a video may have worked. It's just not comparable to someone who's observed in a class, who goes through coursework, who has some sort of test.

You know, it's just -- I don't know that we're ready for this yet. I'm not ready for it, because -- and I certainly don't think it's fair of us to make the insurance companies pay for this kind of experiment.

I frankly, Mr. President, think if it's ever a good idea, it's at a time somewhat off in the future, and it really shouldn't ought to get a trial now, particularly at somebody else's expense.

Thank you.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MAZIARZ: While the Secretary is tallying the roll call, Senator Bruno inquired as to the score of the Stanley Cup finals. Halfway through the second period, it is Buffalo, 0, Dallas, 1.

(Several Senators booing.)

ACTING PRESIDENT MAZIARZ: It was Senator Bruno that made the inquiry, not me.

Record the negatives and announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1603 are Senators Connor, Duane, Hevesi, Montgomery, Paterson, Sampson, Schneiderman, Seabrook, Smith, and Waldon. Ayes, 49. Nays, 10.

ACTING PRESIDENT MAZIARZ: The bill is passed.

I'm sorry, Senator Morahan. Senator Morahan wants to be recorded in the negative. Without objection.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we go to Calendar 57C, the supplemental calendar, and Calendar 1599.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number 1599, by Senator Velella, Senate Print 6003, an act to amend the Education Law, in relation to limiting.

ACTING PRESIDENT MAZIARZ: Senator Bruno, there is a message of necessity at the desk.

SENATOR BRUNO: Move we accept the message.

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

(Response of "Aye.")

ACTING PRESIDENT MAZIARZ: Opposed, nay.

(No response.)

ACTING PRESIDENT MAZIARZ: The message is accepted.

SENATOR BRUNO: Read the last section.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MAZIARZ: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Is there any housekeeping to be done at the desk?

ACTING PRESIDENT MAZIARZ: There is no housekeeping, Senator Bruno. Other than the fact we want Buffalo to score a couple of goals, Senator.

SENATOR BRUNO: Well, Mr. President, I at this time move that we recommit all the bills that are left on the

calendar to the Committee on Rules.

ACTING PRESIDENT MAZIARZ: The motion is to recommit all the bills on the calendar to the Committee on Rules. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MAZIARZ: Opposed, nay.

(No response.)

ACTING PRESIDENT MAZIARZ: The motion is carried.

Senator Bruno.

SENATOR BRUNO: Mr. President, there being no further business to come before the Senate at this particular time, I move that we stand adjourned until Monday at 3:00 p.m., intervening days to be legislative days.

Thank you, Mr. President, and good night.

ACTING PRESIDENT MAZIARZ: On motion, the Senate stands adjourned until Monday at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 9:39 p.m., the

Senate adjourned.)