NEW YORK STATE SENATE

THE

STENOGRAPHIC RECORD

ALBANY, NEW YORK

August 4, 1999

1:18 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

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

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

THE PRESIDENT: The invocation today will be given by the Reverend Peter G. Young, the pastor of the Blessed Sacrament Church in Bolton Landing, New York.

REVEREND YOUNG: Let us pray, on this beautiful August day to ask You, Oh Lord, that You bless us by Your presence and Your blessings of time together in this summer session.

We have come to express our concern about the welfare our country and our community, of our state, to learn from each other, to grow in spirit and in character, to find Your will for our lives and our neighborhoods.

We thank you for the opportunity in this country to assemble and to be a part of

the process here in this Senate Chamber.

Grant us the wisdom to carry out the decisions that are within Your will. Bless us as we continue to conduct our business with dignity and in sensitive ways.

Amen.

THE PRESIDENT: Thank you.

Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, August 3rd, the Senate met pursuant to adjournment. The Journal of Monday August 2nd was read and approved. On motion Senate adjourned.

THE PRESIDENT: Without object 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 Skelos.

SENATOR SKELOS: If we could

adopt the Resolution Calendar in its entirety at this time.

THE PRESIDENT: The motion is to adopt the resolution calendar, all in favor, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed nay.

(No response.)

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: If we could have an immediate meeting of the Rules Committee in the Majority Conference Room.

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

SENATOR SKELOS: Could we stand at ease pending the report of the Rules Committee.

THE PRESIDENT: The Senate stands at ease.

(Whereupon the Senate stood at ease from 1:21 p.m.)

(Whereupon the Senate reconvened at 1:32 p.m.)

ACTING PRESIDENT FARLEY: Senator

Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Higher Education Committee in the Majority Conference room.

ACTING PRESIDENT FARLEY: There will be an immediate meeting of the Higher Education Committee in the Majority Conference Room.

(Whereupon the Senate stood at ease from 1:33 p.m.)

(Whereupon, the Senate reconvened at 1:45 p.m.)

THE PRESIDENT: The Senate will come to order.

Senator Skelos.

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

THE PRESIDENT: Reports of Standing Committees. The Secretary will read.

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

Senate Print 3080A, by Senator Saland, an act to amend the Public Health Law;

4252, by Senator Volker, an act to amend the Criminal Procedure Law;

2825C, by Senator Meier, an act to authorize the Potsdam School District;

5258B, by Senator Rath, an act to amend the Public Authorities Law;

4927B, by Senator Stafford, an act to amend the State Finance Law and others;

5920A, by Senator Goodman, an act to amend the General Municipal Law;

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

1533B, by Senator Goodman, an act to amend the Vehicle and Traffic Law and the Administrative Code of the City of New York;

3492B, by Senator Maziarz, an act to amend the Social Services Law;

5651A, by Senator Spano, an act to authorize the City of Yonkers;

5829, by the Senate Committee on Rules, an act to amend the Tax Law;

5936, by Senator Hannon, an act to amend the Public Health Law;

6024, by Senator Bruno, an act to amend the Public Authorities Law;

6053, by Senator Skelos, an act to amend the Retirement and Social Security Law;

6057, by Senator Lack, an act to amend the Court of Claims Act;

6010, by Senator Meier, an act authorizing the Commissioner of General Services;

6090, by Senator Mendez, an act to authorize the City of New York; and

2686A, by Senator Stachowski, an act relating to authorizing.

All bills ordered direct for third reading.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Can we adopt the report of the Rules Committee, Madam President.

THE PRESIDENT: All in favor of adopting the report of the Rules Committee, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The report is accepted.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could up Calendar Number 59 at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 316, Senator Saland moves to discharge from the Committee on Finance, Assembly Bill Number 6386B, and substitute it for the identical Third Reading Calendar 316.

THE PRESIDENT: The substitution is ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 316, by Member of the Assembly Schimminger, Assembly Print Number 6386B, an act to amend the Public Health Law.

THE PRESIDENT: The substitution is ordered. The Secretary will read. Read the last section.

THE SECRETARY: Section 4. This act shall take effect December 31.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 563, by Senator Volker, Senate Print 4252, an act to amend the Criminal Procedure Law in relation to the designation.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49, nays one. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

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

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 6. This

act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1162, by Senator Rath, Senate Print 5258B, an act to amend the Public Authorities Law in relation to the powers.

THE PRESIDENT: There is a home rule message at the desk. Read the last section.

SENATOR DOLLINGER: Lay the bill aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calender Number 1316, by Senator Stafford, Senate Print 4927B, an act to amend the State Finance Law and others.

THE PRESIDENT: Read the last section.

SENATOR DUANE: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1450, by Senator Goodman, Senate Print 5920A, an act to amend the General Municipal Law and Chapter 130 the Laws of 1998.

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

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

THE PRESIDENT: The bill is passed.

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

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect in one year.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1646, by Senator Goodman, Senate Print 1533B, an act to amend the Vehicle and Traffic Law and the Administrative Code of the City of New York.

SENATOR VELELLA: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: In relation to Calendar Number 1647, Senator Maziarz moves to discharge from the Committee on Rules, Assembly Bill Number 6407C, and substitute it for the identical Third Reading Calendar 1647.

THE PRESIDENT: The substitution is ordered. The Secretary will read.

THE SECRETARY: Calendar Number 1647, by Member of the Assembly Kaufman, Assembly Print Number 6407C, an act to amend the Social Services Law in relation to authorizing.

THE PRESIDENT: Read the last

section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1649, Senator Spano moves to discharge from Committee on Rules, Assembly Bill Number 8447A, and substitute it for the identical Third Reading Calendar 1649.

THE PRESIDENT: The substitution is ordered.

Read the last section.

THE SECRETARY: Calendar Number 1649, by the Assembly Committee on Rules, Assembly Print Number 8447A, an act to authorize the City of Yonkers.

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

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1650, by the Senate Committee on Rules, Senate Print Number 5829, an act to amend the Tax Law in relation to extending.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

THE SECRETARY: Ayes 49, nays 1. Senator Dollinger recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1651, Senator Hannon moves to discharge from the Committee on Rules, Assembly Bill Number 8851, and substitute it for the identical Third Reading Calendar 1651.

SENATOR DUANE: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

The substitution is ordered. The Secretary will read.

THE SECRETARY: Calendar Number 1651, by the Assembly Committee on Rules, Assembly Print Number 8851, an act to amend the Public Health Law.

SENATOR DUANE: Laid it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1652, by Senator Bruno, Senate Print 6024, an act to amend the Public Authorities Law in relation to the Town of Clifton Park.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1653, Senator Skelos moves to discharge from the Committee on Rules Assembly Print Number 6343 and substitute it for the identical Third Reading Calendar 1653.

THE PRESIDENT: The substitution is ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1653, by Member of the Assembly Abbate, Assembly Print Number 6343, an act to amend the Retirement and Social Security Law in relation to service.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1654, by Senator Lack, Senate Print 6057, an act to amend the Court of Claims Act in

relation to service of process.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date as such chapter.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1663, Senator Meier moves to discharge from the Committee on Rules, Assembly Print Number 8863, and substitute it for the identical Third Reading Calendar 1663.

THE PRESIDENT: The substitution is ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1663 by the Assembly Committee on Rules, Assembly Print Number 8863, an act authorizing the Commissioner of General Services.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1664, by Senator Mendez, Senate Print 6090, an act to authorize the City of New York to grant real property tax exemption.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1665, Senator Stachowski moves to discharge from the Committee on Rules, Assembly Bill Number 4770A, and substitute it for the identical Third Reading Calendar 1665.

THE PRESIDENT: The substitution is ordered.

The Secretary will read.

THE SECRETARY: Calender Number 1665 by Member of the Assembly Tokaz, Assembly Print Number 4770A, an act relating to authorizing the Chattauqua Maryville.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

THE PRESIDENT: The bill is passed. Senator Skelos, that completes the reading of the non-controversial calendar.

Senator LaValle.

SENATOR LaVALLE: I'm sorry, Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Can we go to the controversial calendar and start with Senator Stafford's bill, Senate Calendar 1316.

THE PRESIDENT: The Secretary

will read.

THE SECRETARY: Calendar Number 1316 by Senator Stafford, Senate Print 4927B, an act to amend the State Finance Law and others.

THE PRESIDENT: Read the last section.

SENATOR DUANE: Explanation.

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

SENATOR STAFFORD: Madam President, I apologize.

This bill passed 59 to nothing and then it was negotiated with the Assembly on some wording, and what it is, it really puts the accounting of the State into the twentieth century and follows the principles of good acting principles, GAP and all these new fangled alphabetized rules that we now have to follow.

It is a professional bill is what it is.

SENATOR DUANE: Thank you.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 15. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

THE PRESIDENT: The bill is passed. Senator Skelos.

SENATOR SKELOS: Madam President, please call up Calendar Number 1646.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 1646 by Senator Goodman, Senate Print 1533B, an act to amend the Vehicle and Traffic Law and the Administrative Code of the City of New York.

SENATOR DOLLINGER: Explanation.

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

SENATOR SKELOS: Lets lay the bill aside temporarily.

THE PRESIDENT: The bill is laid aside, Senator Skelos.

SENATOR SKELOS: Madam President, could we call up Senator Hannon's bill,

Calendar Number 1651.

THE SECRETARY: Calendar Number 1651, substituted earlier today, by the Assembly Committee on Rules, Assembly Print Number 8851, an act to amend the Public Health Law.

SENATOR DOLLINGER: Explanation.

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

SENATOR HANNON: Lay it aside.

THE PRESIDENT: The bill is laid aside, Senator.

Senator Skelos.

THE SECRETARY: Why don't we try Senator Rath's bill, Calendar Number 1162.

THE PRESIDENT: Thank you, Senator. The Secretary will read.

THE SECRETARY: Calendar Number 1162 by Senator Rath, Senate Print 5258B, an act to amend the Public Authorities Law.

SENATOR DOLLINGER: Explanation, please.

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

SENATOR SKELOS: We'll lay it

aside temporarily and I urge the members on both of the aisle to please come to the chamber so that when bills are called if you want to debate them or if you want to respond to the questions that you are here so that we may adjourn at a reasonable hour today.

Thank you, Senator Stachowski, for reminding me to make that statement.

THE PRESIDENT: The bill is laid aside temporarily, Senator.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Finance Committee in the Majority Conference Room.

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

(Whereupon the Senate stood at ease at 2:04 p.m.)

(Whereupon, the Senate reconvened at 2:20 p.m.)

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: If we could call up Senator Goodman's bill, Calendar Number 1646.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 1646, by Senator Goodman, Senate Print 1533B, an act to amend the Vehicle and Traffic Law and the Administrative Code of the City of New York.

SENATOR DOLLINGER: Explanation.

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

Senator Goodman.

SENATOR GOODMAN: Good afternoon Madam Lieutenant Governor. Good to see you.

A short while ago, Madam President, a tragedy occurred in my district which I think gives ample justification for this bill. A mother with a baby carriage and a child in the baby carriage was crossing a street in close proximity to my home when the car ran a red light, dragged the baby carriage five blocks, killed the child and very nearly killed the mother in the process.

The process of red light running causes an extreme danger to people, pedestrians particularly, all around the City

of New York. And this bill proposes to offset that with a deterrent that I think is exceptionally effective and is proven so in its use to date. That deterrent relates to the use of red light cameras, which are at strategic high traffic locations in the City and which result in the taking of a picture of cars that go through red lights through an automatic photographic process. The result is a photo of the license plate of the car that goes through and frequently the driver of the car is included in the photo. And this results in summonses being mailed to the owner of the car identified by the license plate and appropriate penalties being enacted.

The camera records an average of 22 violations per day. The number of red light violations has declined by 41 percent at the intersections being monitored. The program is a success from the adjudication standpoint with fewer people challenging tickets they receive and more people being found guilty when they do challenge their tickets.

For all of these reasons it seems to be compellingly obvious that this is a

measure that is designed to increase public safety and to diminish law breaking by running red lights, which is an exceptionally dangerous practice and which certainly has been diminished with the introduction of yellow lights, but unfortunately we have a number of "A" types in the population and for those of you familiar with this psychological phenomenon, an "A" type is someone who steps on the accelerator when the light turns yellow rather than stepping on the brakes.

So we hope that there will be a discontinuance of this synaptic lapse and that when you see a yellow light your impulse will be to step on the brake rather than the accelerator thus saving many lives.

THE PRESIDENT: Senator Velella.

SENATOR VELELLA: Madam President, on the bill.

THE PRESIDENT: Go ahead, Senator Velella.

SENATOR VELELLA: Madam President, I am not an expert on "A" type of personalities and I do not know all of these complicated definitions that Roy is talking

about -- Senator Goodman talking about.

What I do know is that in order to maintain order in the City of New York and have some kind of traffic control devices, Senator Goodman feels that we need to have these cameras observing what is going on.

Let me tell you that I sympathize with the people who were injured by red light runners, but I don't believe that somebody who passed a red light and dragged a baby carriage four blocks is going to be deterred because he might think that there is a camera there.

The major fact is that these cameras are hidden away and most people don't know that they are there. The fact of the matter is I have had numerous people come to my office and complain about being wrongly accused, having the photograph show that did not pass the red light and being told by some administrator, who makes believe he is some type of a judge trying to administer some type of justice that in fact, if you have a problem with this photograph, come on down and lose a day's pay and fight the ticket or else you can pay a $50 fine and it will not go on your

license.

Now, I don't believe that that is at all even trying to get close to administering justice. I think that this is a procedure that has been used wrongfully against people within my district. I think it is wrong to have these cameras there. I think it is the beginning of Big Brother. We have had proposals that these cameras be put on the Thruway so that people speeding can receive tickets and they won't have to pay -- it won't go on their license but they will have to pay a fine. It is just a way to raise revenue and put another tax on the people of this State.

People visit my City from Nassau. People visit the City from Westchester, from all of the areas and they are getting these tickets and it is a revenue raiser. I think it is wrong. If we have to police our streets and enforce the traffic law, lets hire more cops and more traffic enforcement agents. Lets not spy on the people.

I urge the defeat of this bill and I will vote against it.

THE PRESIDENT: There is a home

rule message at the desk.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1646 are; Senators Hoffman, Kuhl, Larkin, Maltese, Marcellino, Onorato, Rosato, Sampson, Schneiderman, Skelos, Spano and Velella.

THE PRESIDENT: Senator Lachman.

THE SECRETARY: Also Senators Lachman and Nozzolio.

Ayes 38, nays 14.

THE PRESIDENT: The bill is passed. Senator Skelos.

SENATOR SKELOS: Madam President, would you please call up Senator Rath's bill, Calendar Number 1162.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 1162, Senate Print 5258B, an act to amend the Public Authorities Law.

SENATOR DOLLINGER: Explanation, Madam President.

THE PRESIDENT: Senator Rath, Senator Dollinger has requested an explanation.

SENATOR RATH: Madam President, Senator Dollinger, the bill in front of us passed here on June 17th, the last day that we were proceeding in the beginning of our session, the end of the beginning I guess rather than the end of the end. And it passed here on the non-controversial calendar.

And of course the bill is to allow the Monroe County Water Authority to act as the facilitator for the developmental of a water system in Genesee County, which may take ten years to build a complete system, but it is the beginning of bringing water over from Monroe and up from Erie or east from Erie, if you will, to meet hopefully some where in the center of Genesee County, very highly planned according or with the mind -- with the thought in mind that they can not squander their farm lands, they can't turn this into a free for all of laterals going off every where. There

is some very specify economic development goals that are in mind. There are some very specific features that will be addressed where there are ground water problems because there are some ground water problems in Genesee County. They have a real need for fresh and potable water.

SENATOR DOLLINGER: Madam President, I am having a difficult time hearing Senator Rath.

THE PRESIDENT: Senator Rath, if you could speak up. Thank you.

SENATOR RATH: I am so rarely asked to speak up. And I probably don't need the microphone if I decide to speak up. Is that enough?

THE PRESIDENT: To clarify, Senator, I think it was more the noise in the chamber rather than your tone of voice.

SENATOR RATH: I see. Thank you, Madam President.

THE PRESIDENT: Your welcome.

SENATOR RATH: Some say I should have been on the stage with this loud booming voice. My children hate it when I do this to

them. However, all of that aside, what changed was two amendments by the Assembly talking about -- and they brought them in after we finished with our bill in this house and the amendments, one of them offered minority business status when it was appropriate and the other was a pro forma piece that we had no objection to, it was just a matter of getting it amended and getting it on our calendar correctly so that we could act on it.

SENATOR DOLLINGER: Through you, Madam President, if Senator Rath would just yield to a couple questions?

THE PRESIDENT: Senator Rath, would you yield?

SENATOR RATH: Surely.

THE PRESIDENT: Go ahead, Senator Dollinger.

SENATOR DOLLINGER: Is this proposal consistent with a regional development plan for western New York?

SENATOR RATH: You bet it is, Senator Dollinger. Genesee County, as you know, is strategically located between Monroe

and Erie with the Thruway cutting right through the middle of it. There are all kinds of opportunities and many companies have looked at Genesee County because it has so much to offer. It is a bedroom community on the western side of it for some Erie County people and on the eastern side of it for Monroe County people for Monday in the village of Leroy. And it has all kinds of potential but it needs water. It has serious problems with ground water with the amount of supply it can get and with the quality of ground water.

And water has been a number one goal and focus for Genesee County for the five years that I have been in the Senate and before that it was kind of on the back burner always ready to come to the front burner.

SENATOR DOLLINGER: Through you, Madam President.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Just one other question for Senator Rath if she will continue to yield.

THE PRESIDENT: Go ahead, Senator

Dollinger, I believe she yielded to a few questions.

SENATOR DOLLINGER: Does this bill effect the rate at which people in Genesee County will pay for their water? What is --- is there an established rate?

SENATOR RATH: Factored into the plan, and they planned at great length with I think it was three different universities that worked with them. There was Cornell and there was UB and I'm trying to think of the third school. They did a large number of studies and they worked, and I insisted, that before I was going to get involved with them on this that they get a sign off from every one of those towns. The City of Batavia is still kind of doing a little of this because they have got a municipal water system and they are going back and forth some, but the rate was an extremely important piece in this and yet they were not able to fix the rate exactly until they knew whether they were going to be able to get some dollars and actually start to make this happen and start with the consultant, which by the way is from Monroe County, the

consultant that is working with Genesee County on this.

And so they have signed off because they are in a framework that will be agreeable.

SENATOR DOLLINGER: Again, Madam President, through you, if Senator Rath will continue to yield?

THE PRESIDENT: Senator Rath, will you continue to yield?

SENATOR RATH: Surely.

THE PRESIDENT: You may proceed, Senator.

SENATOR DOLLINGER: My question really focuses on the language in the bill that talks about the authority -- any services provided by the Monroe County Water Authority to anybody in Genesee County, it shall be recovered solely from those in Genesee County.

My question is this, as you know, we in Monroe County through our water system financed a very substantial treatment plant system, water withdrawal and pumping system. Is there an allocations of what Genesee County is going to pay for the overhead associated

with the development of the entire Monroe County Water Authority? Are they going to contribute to the overall burden or just pay for what is delivered to them?

SENATOR RATH: No, Monroe County Water Authority has signed off totally on this as being something that they want to do. Selling water is something that both of our counties, and I say both meaning Erie and Monroe, they have the water authorities. Let me double check with counsel though because he has been at some of the meetings more than I have.

Counsel advised me that the language that you are talking about was put in at the request of the Monroe County Water Authority.

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

THE PRESIDENT: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I voted against this bill back on June 17th. I am going to vote against it again and let me explain why.

I was concerned then and I am still concerned now about the consequences of the expansion of the water supply for regional growth.

I agree with Senator Rath that there may be or that there are opportunities available in the Genesee County. I believe that the better resolution of those available opportunities would be to steer them toward the major population centers. I know Senator Rath that to some extent that may come at my benefit since I represent a large urban area and contrary to yours in the sense that you represent both an urban area and an extended rural area, but I still believe that from a smart growth perspective the thing to do would be to drive those available jobs closer to the population centers and to take our current infrastructure and put the rehabilitation of the current infrastructure to try to take those jobs and move them closer to the population centers.

I won't deny that there are certain businesses that, because of their need to serve two major metropolitan areas at the same

time may find Batavia to be a better location and may find parts of Genesee County along the Thruway to be more likely as a depot or warehouse facility. But I am concerned that with moving down the road to expand water, where water goes sewer goes and roads go, and at least from my point of view I think that at least based on my sense of Western New York the smarter growth approach would be to try to congregate those great economic opportunities and those development opportunities in our urban areas, either in Buffalo or in Rochester. I have a strong preference, but I believe that that is the better approach to try to congregate those economic opportunities in the population centers and I think so in the long run if we spent more time working on the rehabilitation of the water authority, and I have no qualms about Mr. Stanwicks and his work at the water authority, but I just believe that this is the first step to spreading out and branching out into perhaps even less costly areas like Genesee County economic opportunities that if we were going to plan those regionally we would try to put

them closer to our population centers.

So I understand why they are doing this but I am afraid that this is a step down an eventual road that will just sprawl between Rochester and Buffalo when we will end up with too few opportunities scattered along too large a road rather than opportunities congregated where our people really need them.

That is my view. I said it back on June 17th. I appreciate the efforts of passing this bill. I appreciate the amendments. But I still believe that this is putting the cart of water development above the horse of economic development, which ought to be congregated in our cities.

SENATOR RATH: If I may respond, very briefly.

THE PRESIDENT: Senator Rath.

SENATOR RATH: Senator, you have hit on a hot button of course for me when you talk about smart growth or maybe we'll call it growing smart, growing New York or thinking smart, think smart, think New York.

We are starting from a platform on this issue this year with some dollars in the

budget, as you know, and you have hit on the point where as chair of the Local Government Committee I will have to act responsibly for both sides of the point that you have raised. And Genesee County may end up being the poster child for I believe it will be how to do it right, you are saying that if you don't know if we can do it right doing it this way and I appreciate what your saying. And I understand why your voting no, but I did want to say stay tuned because this is just the beginning.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll. There is a home rule message at the desk.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

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

THE PRESIDENT: The bill is

passed.

Senator DeFrancisco.

SENATOR DeFRANCISCO: I would like to request unanimous consent to be recorded in the negative on Calendar Number 1646.

THE PRESIDENT: Without objection, Senator you will be so recorded as voting in the negative.

Senator Fuschillo.

SENATOR FUSCHILLO: I would like to request unanimous consent to be recorded in the negative on 1646, please.

THE PRESIDENT: Without objection, Senator Fuschillo, you will be so recorded in the negative.

Senator LaValle.

SENATOR LaVALLE: May I have unanimous consent to be recorded in the negative on Calendar Number 1646?

THE PRESIDENT: Without objection, Senator LaValle, you will be so recorded as voting in the negative.

Senator Gentile.

SENATOR GENTILE: Madam President, I would ask unanimous consent to be

recorded in the negative on Calendar Number 1650.

THE PRESIDENT: Without objection, Senator Gentile, you will be so recorded as voting in the negative.

SENATOR GENTILE: On 1650.

THE PRESIDENT: Yes, on 1650.

Senator Skelos.

SENATOR SKELOS: Madam President, call up Senator Hannon's bill, Calendar Number 1651.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 1651, substituted earlier today by the Assembly Committee on Rules, Assembly Print Number 8851, an act to amend the Public Health Law.

THE PRESIDENT: Read the last section.

Senator Dollinger.

SENATOR DOLLINGER: Madam President, I would dispense with an explanation since I believe Senator Hannon and I have had a conversation. I would just like

to put one question on the record, if I may, if Senator Hannon will continue to yield?

THE PRESIDENT: Senator Hannon, do you yield?

SENATOR HANNON: Madam President, maybe just so the record is complete I can explain the thrust of the bill so that -

SENATOR DOLLINGER: I will ask for an explanation then, Madam President.

THE PRESIDENT: Senator Hannon, Senator Dollinger has requested an explanation.

SENATOR HANNON: Thank you, Madam President.

This is a implementation of the tobacco master settlement agreement that has been negotiated by the attorney generals against of the 50 states, actually really only 47 of those states, with the major tobacco companies.

It is a fairly complicated agreement, but it is easy to say how important it is. I point out that New York State will receive twenty-five billion dollars over approximately 25 years from the tobacco

manufacturers in settlement of the suits that have been brought against them.

As part of that settlement there was contemplated the fact that some tobacco manufacturers not currently in existence or not currently the owners of the companies that are producing these products would come about and come into the market in New York State. The attorney generals had recommended an alternative mechanism, namely an escrow fund so that non participating tobacco manufacturers who had not been parties to the suit would be required to pay money into an escrow fund in accordance with a formula that is reflective of those participating manufacturers. And a manufacturer who placed funds in escrow would not be entitled to that money unless the interest was generated, B, there was a judgment or settlement to be paid to New York State, or C, funds exceeded the amount that a manufacturer would have had to pay if it had been a participating tobacco manufacturer, or finally, the funds had been on deposit for over 25 years.

This statute is similar but has

been modified so that the tax and finance aspects of the State Law are conformed with, but it is similar to statutes being passed in all other states. For that reason it will unable the state to go forward with the receipt of the moneys when they become available in our next fiscal year.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: If Senator Hannon will yield to a couple questions.

THE PRESIDENT: Senator Hannon will you yield?

SENATOR HANNON: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Dollinger.

SENATOR DOLLINGER: And they are both of the rather technical variety. The first one, Senator Hannon is, is this a 25 year rolling account? In other words, you put in a million dollars the first year and 25 years later you get your million bucks back, or do you get everything you put into the account in the 25 year period?

SENATOR HANNON: From the way it is worded I believe it is rolling so that it is 25 years later.

SENATOR DOLLINGER: Okay, 25 years later you get out what you put in, that way there is always money there.

SENATOR HANNON: That is the intent.

SENATOR DOLLINGER: Okay. And the second question, Madam President, I did have a brief chance to talk with Senator Hannon, but I will just put it on the record.

My concern here is that these escrow funds will remain in the hands and under the control of the non participating manufacturer who is not a signatory to the agreement but, nonetheless, is putting these funds in escrow in anticipation that we would bring an action against them to recover their proportionate to cost of the Medicaid losses we have sustained as a result of tobacco.

My question is, to what extend does this bill at all shelter those funds in the event of bankruptcy by the participating manufacturer since they are still under their

control, or is there anything in this law that or under the debtor creditor law that we could do to shelter those funds so that other creditors would not be able to have access to those funds or there would be no distribution in bankruptcy?

SENATOR HANNON: To the extent that this is a specific statute placing those money in escrow I would say that that takes precedence over any other state statutes, New York State statute.

To the extent that it would effect preferences, pay outs and priorities under the federal bankruptcy statute, we can not effect that because that is federal law. In that regard I know that there is legislation pending that would exempt from sheltering under the federal bankruptcy law those obligations of a tobacco manufacturer so that in the event one of the manufacturers were to go bankrupt it would change federal law and make that obligation to make the payments under the master settlement still due and owing to each of the specific states.

SENATOR DOLLINGER: Thank you,

Madam President and Senator Hannon for the explanation.

I'm going to vote in favor of this bill as it has been explained by the Chairman of the Health Committee and in the memorandum.

It is the right thing to do to cover all our bases to eliminate the possibility that is even references in the master settlement agreement that there may be other non participating manufacturers come into the market place and are sheltered from the consequences of the tobacco settlement with the named defendants and the named tobacco companies and I think Senator Hannon, and aye I think the point about pending federal legislation making sure that we do everything that we can to preserve this escrow amount in the event that this company comes in and sells cigarettes in our market place we ought to have protection from the federal bankruptcy laws, make it secure, and we also should, and as I think you point out, it is probably preempted by federal law. But there maybe something we could do under our debtor creditor laws to protect that and to keep the

corpus of those moneys available for the State of New York so that if we do sue them and do recover there is a pot of money there to pay for it.

The other thing I would just do is comment Senator Hannon. I know that in this budget we have put the tobacco settlement funds into an escrow account, into a locked box, they key to which lies with the members of the Legislature in conjunction with the Governor, and I think that twenty-five billion dollars we may have a vigorous debate about its future, but it is good to know that the cash is running into a box which the participants in the chamber will hold in part the key to.

Thank you, Madam President.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

THE PRESIDENT: The bill is

passed. Senator Saland.

SENATOR SALAND: Thank you, Madam President.

I would like to request unanimous consent to be recorded in the negative on Calendar Number 1646, Senate 1533B.

THE PRESIDENT: Senator Saland, without objection, you will be so recorded as voting in the negative.

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

SENATOR SKELOS: Madam President, if we could go to reports of Standing Committees, I think that Senator Stafford, Chair of the Finance Committee has a wonderful report for us.

THE PRESIDENT: Thank you, Senator. Senator Stafford. The Secretary will read.

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

As a member of the State Board of Parole, Vernon C. Manley of New York city.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Thank you, Madam President.

As Senator Skelos mentioned, once again, and I have been very pleased to be able to say this constantly, but again I can say it today, a fine group of nominees are before us.

The Governor is to be complimented. They are to be complimented. And it is a pleasure for me now to yield to Senator Nozzolio.

THE PRESIDENT: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Madam President.

Thank you, Madam President and thank you, very much, the distinguished Chairman of the Senate Finance Committee for all his wonderful work these past few days in bringing this budget together and now with additional confirmations.

Before this house is now the confirmation of Vernon C. Manley as Governor Pataki's nominee to serve as a member of the New York State Board of Parole.

Mr. Manley has a great and extensive background in criminal justice

matters and has served in public services for over 25 years. He has been involved in all aspects of those administrative and policy making positions within various criminal justice positions.

Currently he serves as Executive Director of the New York City Department of Probation, which eminently qualifies him certainly to review candidates and decide whether or not they are eligible to be paroled in our criminal justice parole system.

Mr. Manley's education, training, background and experience eminently qualify him for this position. I compliment Senator Stafford and Governor Pataki for moving this nomination. It was unanimously supported by the committee that I chair, Crime Victims, Crime and Correction, and Madam President, I urge the swift confirmation of Vernon C. Manley to the New York State Board of Parole.

THE PRESIDENT: The question is on the confirmation of Vernon C. Manley for confirmation as a member of the State Board of Parole.

All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nomination is hereby confirmed.

And as President of the Senate I would like to acknowledge the presence of Vernon C. Manley, congratulate you and wish you every best success in your new endeavor. Thank you.

The Secretary will read.

THE SECRETARY: As a Member of the State Civil Service Commission, Leo J. Kesselring, of Rochester.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: I yield to Senator Leibell.

THE PRESIDENT: Senator Leibell.

SENATOR LEIBELL: Thank you, Madam President, Senator Stafford.

I am very pleased to rise in support of this very fine nomination that has been sent to us by the Governor. It is for reappointment as a member of State Civil Service Commission.

I had the chance earlier this morning to speak with Leo Kesselring and we had the chance to talk about some of the issues that are important and will be important to our State Civil Service Commission. And we had a chance to renew some old acquaintances and to talk about family friendships. And a brief review of the nominee's resume clearly indicates not only through his education I might also note he went to the same law school, Saint John's, as I went to. His practice, his private practice as an attorney and his efforts on behalf of the community where he lives, he served as chairman of the Monroe County Cultural Center Commission.

I would also note for our colleagues that he has served here in the past as a legal advisor to two members of this body.

This is a nomination I think of which we should all feel very proud and feel very comfortable. I would urge the prompt confirmation of this appointment and I look forward to everyone's support from this body.

Thank you, Madam President.

THE PRESIDENT: The question is on the confirmation of Leo J. Kesselring as a Member of the State Civil Service Commission.

All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Leo J. Kesselring is hereby confirmed as a Member of the Stated Civil Service Commission.

And I would like to acknowledge as President of the Senate, Leo Kesselring's presence along with his wife Cynthia. Congratulations and every best wish on behalf of the Senate.

The Secretary will read.

THE SECRETARY: As a member of the Capital District Transportation Authority, C. Michael Ingersoll of Saratoga Springs.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move the confirmation, please.

THE PRESIDENT: The question is on the confirmation of C. Michael Ingersoll,

of Saratoga Springs, as member of the Capital District Transportation Authority.

All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: C. Michael Ingersoll is hereby confirmed as a member of he Capital District Transportation Authority.

The Secretary will read.

THE SECRETARY: As a member of the Port Authority of New York and New Jersey, Bradford J. Race, Junior, of New York City.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move the nomination.

THE PRESIDENT: The question is on the confirmation of Bradford J. Race, Junior, of New York City, as a member of the Port Authority of New York and New Jersey.

All in favor signify by saying aye.

Senator Goodman.

SENATOR GOODMAN: Madam President, may I be heard on this nomination?

THE PRESIDENT: Of course,

Senator.

SENATOR GOODMAN: Madam President, Bradford Race I think is one of the best known figures in our State government, known for this integrity and his extraordinary ability in the work that he has done as secretary to the Governor.

It gives me a great deal of pleasure at the moment to strongly urge the unanimous vote for this is outstanding public servant. Brad Race is dedicated and is involved in virtually every major policy decision that is placed before the Governor and the State as a whole and it seems to me that the Governor shows extraordinarily fine judgment in giving Bradford Rice this extra responsibility.

As we all know, the Port Authority of New York and New Jersey has immense responsibilities. It is involved with economic development of the entire region and its leadership calls for people with incisive good judgment, vision and the ability to carry out very complex planning and implementation tasks.

For all these reasons I am delighted to be able to say that my constituent Bradford Race is ideally suited to these responsibilities and will make a strong and exceptionally capable commissioner the Ports Authority of New York and New Jersey.

I am delighted to place his name before the body.

Thank you, Madam President.

THE PRESIDENT: The question once again is on the confirmation of Bradford J. Race, Junior, as a member of the Port Authority of New York and New Jersey.

All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Bradford J. Race, Junior, is hereby confirmed as a member of the Port Authority of New York and New Jersey.

The Secretary will read.

THE SECRETARY: As a member of the Buffalo and Fort Erie Public Bridge Authority, Victor A. Martucci of Clarence.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move confirmation, please.

THE PRESIDENT: The question is on the confirmation of Victor A. Martucci as a member of the Buffalo and Fort Erie Public Bridge Authority, Peace Bridge.

All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The confirmation of is hereby confirmed.

The Secretary will read.

THE SECRETARY: As a public member of the State Banking Board, Edward B. Kramer of New Rochelle.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move confirmation.

THE PRESIDENT: The question is on the confirmation of Edward B. Kramer of New Rochelle as public member of the State Banking Board.

All in favor, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nomination is hereby confirmed.

The Secretary will read.

THE SECRETARY: As a member of the Empire State Plaza Art Commission, Lynette M. Tucker of Delmar.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move confirmation, please.

THE PRESIDENT: The question is on the confirmation of Lynette M. Tucker of Delmar as a member of the Empire State Plaza Art Commissioner.

All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

The Secretary will read.

THE SECRETARY: As a member of the Lake George Park Commission, Anthony P.

Reale of Ticonderoga.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move confirmation.

THE PRESIDENT: The question on the confirmation of Anthony P. Reale of Ticonderoga as a member of the Lake George Park Commission.

All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

The Secretary will read.

THE SECRETARY: As director of the New York State Urban Development Corporation, Debra C. Wright of New York City.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move confirmation.

THE PRESIDENT: The question is on the confirmation of Debra Wright as a director of the New York State Urban Development Corporation.

All those in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

The Secretary will read.

THE SECRETARY: As members of the New York State Hospital Review and Planning Council, Robert S. Ascheim, M.D., of New York City and Martin S. Begun of New York City.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move confirmation, please.

THE PRESIDENT: The question is on the confirmation of -- Senator Lachman.

SENATOR LACHMAN: I would like to speak about the Honorable Martin Begun, who I know is also up for a member of Mental Health Services Council, so what I have to say serves for both positions.

Marty Begun has been a distinguished civic and communal leader in New York City for over 20 years, severing with

distinction as president of the New York Jewish Community Relations Council, among other things. Recently he has become a major figure in the State Liberal Party. He had served as as director and dean at the NYU Tisch Medical Center and I am sure he will serve with distinction in both these positions, one he is currently being confirmed to as member of the New York State Hospital Review and Planning Committee Council and the next committee that he will be appointed to in the next five minutes, I hope, member of the Mental Health Services Council, he has my congratulations and every member of the Senate.

Thank you.

THE PRESIDENT: The question on the confirmation of Robert S. Ascheim, M.D., and Martin S. Begun, as members of the New York State Hospital Review and Planning Counsel.

All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominees are hereby confirmed.

The Secretary will read.

THE SECRETARY: As a member of the Mental Health Services Council, Martin S. Begun of New York City.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move confirmation, please.

THE PRESIDENT: The question is on the confirmation of Martin S. Begun of New York City a member of the Mental Health Services Council.

All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

The Secretary will read.

THE SECRETARY: As a member of the Council on Human Blood and Transfusion Services, Morton Spivack, M.D., of New York City.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move confirmation, please.

THE PRESIDENT: The question is on the confirmation of Morton Spivack of New York city as a member of the Council on Human Blood and Transfusion Services.

All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

The Secretary will read.

THE SECRETARY: As members of the New York School for the Blind, James Robert Mac Connel of Bergen and Charles R. Ruffino of Batavia.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move confirmation, please.

THE PRESIDENT: The question is on the confirmation of James Robert MacConnell and Charles R. Ruffino as members of the New York School for the Blind.

All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominees are hereby confirmed.

The Secretary will read.

THE SECRETARY: As a member of the Buffalo Psychiatric Center, Morris Raiken of Buffalo.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move confirmation.

THE PRESIDENT: The question is on the confirmation of Morris Raiken of Buffalo as a member of the Buffalo Psychiatric Center. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

The Secretary will read.

THE SECRETARY: As a member of the Elmira Psychiatric Center, Robert C. Flynn of Penn Yann.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: More confirmation.

THE PRESIDENT: The question is on the confirmation of Robert C. Flynn as a member of the Elmira Psychiatric Center.

All those in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

The Secretary will read.

THE SECRETARY: As a member of the Helen Hayes Hospital, David John McConnell, M.D., of Warwick.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move confirmation, please.

THE PRESIDENT: The question is on the confirmation of David John McConnell, M.D., of Warwick, as a Member of Helen Hayes Hospital.

All those in favor, signify by

saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

The Secretary will read.

THE SECRETARY: As a member of the Pilgrim Psychiatric Center, Barbara Neira Marx of Smithtown.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move confirmation, please.

THE PRESIDENT: The question is on the confirmation of Barbara Neira Marx as a member of Pilgrim Psychiatric Center.

All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

The Secretary will read.

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

following nomination; president of the New York State Higher Education Services Corporation, Peter J. Keitel of Delmar.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Madam President, the final nominee of this very fine group today, it is a pleasure for me to yield to the Senator from Suffolk, Senator LaValle.

THE PRESIDENT: Senator LaValle.

SENATOR LAVALLE: Thank you, Madam President.

THE PRESIDENT: Your welcome.

SENATOR LAVALLE: Thank you, Senator Stafford.

First I would like to compliment the Governor on this nomination. It is an excellent one. Peter Keitel met with the Higher Education Committee today and I believe to the person each committee member has said either at the committee or to me personally that Peter Keitel is a professional and will make an excellent president of the Higher Ed Services Corporation.

Peter was the executive senior vice president of the corporation for many years,

has held numerous positions in student financial aid and higher education and I think will really be a wonderful president of the Higher Education Services Corporation, one who brings professional skills, who will hit the pavement running, who needs no training or no awareness because he has been there, has deep respect of the people who work within the corporation, and I must say has a great deal of respect in the higher education community and Higher Ed Services Corporation works with the institutions of higher education in our State so it is critically important that they as stakeholders understand and have a good feeling about who the president of that corporation is and I am sure that they will echo that over a period of time.

I move the nomination of Peter J. Keitel, Madam President.

THE PRESIDENT: The question is on the confirmation of Peter J. Keitel as president of the New York State Higher Education Services Corporation.

All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Peter J. Keitel is hereby confirmation as president of the New York State Higher Education Services Corporation.

And as President of the Senate I would like to acknowledge the presence of Mr. Keitel and wish you luck. We also would like to welcome and acknowledge the presence of his wife Susan Keitel, Elizabeth Keitel his daughter and Adrea Armolenko also his daughter.

Congratulations and best wishes for success.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, at this time I would like to announce a meeting of the Rules Committee at 3:10 p.m. in Room 332.

THE PRESIDENT: There will be a meeting of the Rules Committee at 3:10 p.m. In Room 332.

SENATOR MARCELLINO: Could the Senate stand at ease until that time.

THE PRESIDENT: The Senate stands at ease.

(Whereupon the Senate stood at ease at 2:49 p.m.)

(Whereupon the Senate reconvened at 3:29 p.m.)

ACTING PRESIDENT SEWARD: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I would like to call an immediate meeting of the Conference of the Minority in Room 314. Immediate meeting of the Conference of the Minority in Room 314.

Thank you.

SENATOR SEWARD: The Minority will conference immediately in Room 314.

(Whereupon the Senate stood at ease at 3:30 p.m.)

(Whereupon the Senate reconvened at 5:00 p.m.)

ACTING PRESIDENT KUHL: The Senate will come to order.

Senator Skelos.

SENATOR SKELOS: 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 at this time.

ACTING PRESIDENT KUHL: We will return to the order of reports of standing committees. There is a report of the Rules Committee at the desk.

I ask the Secretary to read.

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

Senate Print 4646, by Senator Seward, an act to amend the Real Property Tax Law;

5955, by the Senate Committee on Rules, an act to amend the Local Finance Law;

4064, by the Senate Committee on Rules, an act to amend the Tax Law;

1786, by Senator Padavan, an act to amend the Retirement and Social Security Law;

3859A, by Senator Seward, an act to amend the Insurance Law;

3878, by Senator Padavan, an act to amend the Administrative Code of the City of

New York;

4383A, by Senator Goodman; an act to amend the Retirement and Social Security Law;

5678, by Senator Seabrook, an act authorizing the City of New York;

5756A, by Senator Johnson, an act to authorize the Town of Babylon;

5877, by Senator Volker, an act to amend the Banking Law and others;

5905, by Senator DeFrancisco, an act to amend the Civil Practice Law and Rules;

5977, by Senator Sampson an act to authorize the City of New York;

5980B, by Senator McGee, an act to amend the Mental Hygiene Law and others;

6048B, by Senator Bruno, an act to amend the Public Authorities Law;

6055, by Senator Skelos, an act to amend the Local Finance Law;

6105, by Senator Volker, an act to amend the General Municipal Law;

6111, by Senator Larking, an act to amend the General Municipal law; and

Assembly Print 8886, by the

Assembly Committee on Rules, an act to amend the New York State Medical Care Facilities Finance Agency Act.

All bills ordered direct to third reading.

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

ACTING PRESIDENT KUHL: The motion is to accept the report of the Rules Committee.

All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The Rules report is accepted. The bills are before the house.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you take up the calendar non-controversial.

ACTING PRESIDENT KUHL: The Secretary will read the Supermental Calendar

Number 59A, a non-controversial reading.

THE SECRETARY: In relation to Calendar Number 835, Senator Seward moves to discharge from the Committee on Rules, Assembly Bill Number 7928, and substitute it for the identical Third Reading Calendar 835.

ACTING PRESIDENT KUHL: Substitution is ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 835, by the Assembly Committee on Rules, Assembly Print Number 7928, an act to amend the Real Property Tax Law.

ACTING PRESIDENT KUHL: Read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: In relation to

Calendar Number 1526, Senator Bruno moves to discharge from the Committee on Rules, Assembly Bill Number 5254 and substitute it for the identical Third Reading Calendar 1526?

ACTING PRESIDENT KUHL: Substitution ordered

Secretary will read.

THE SECRETARY: Calendar Number 1526, by Member of Assembly Pretlow, Assembly Print Number 5254, an act to amend the Local Finance Law.

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

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1648, by the Senate Committee on Rules, Senate

Print Number 4064, an act to amend the Tax Law, Chapter 877 of the Laws of 1975, and Chapter 880 of the Laws of 1975.

ACTING PRESIDENT KUHL: Read the last section.

THE SECRETARY: Section 18. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53, nays 1. Senator Dollinger recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1666, Senator Padavan moves to discharge from the Committee on Rules, Assembly Bill Number 5300 and substitute it for the identical Third Reading Calendar 1666.

ACTING PRESIDENT KUHL: Substitution is ordered.

Secretary will read the title.

THE SECRETARY: Calendar Number 1666, by Member of the Assembly Abate, Assembly Print Number 5300, an act to amend

the Retirement and Social Security Law.

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

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1667, Senator Seward moves to discharge from the Committee on Rules, Assembly Bill Number 578B and substitute it for the identical Third Reading Calendar 1667.

ACTING PRESIDENT KUHL: Substitution is ordered.

The Secretary will read the title.

THE SECRETARY: Calendar Number 1667 by Member of the Assembly Lafayette, Assembly Print Number 578B, an act to amend the Insurance Law.

SENATOR DUANE: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: In relation to Calendar Number 1668, Senator Padavan moves to discharge from the Committee on Rules, Assembly Bill Number 5299, and substitute it for the identical Third Reading Calendar 1668.

ACTING PRESIDENT KUHL: The substitution is ordered.

The Secretary will read the title.

THE SECRETARY: Calendar Number 1668, by Member of the Assembly Abate, Assembly Print Number 5299, an act to amend the Administrative Code of the City of New York.

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

SENATOR DUANE: Lay it aside.

ACTING PRESIDENT KUHL: The bill is laid aside.

THE SECRETARY: Calendar Number 1669, by Senator Goodman, Senate Print 4383A, an act to amend the Retirement and Social Security Law in relation to authorizing.

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

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1670, by Senator Seabrook, Senate Print 5678, an act authorizing the City of New York to reconvey its interest.

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

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1671, Senator Johnson moves to discharge from the Committee on Rules, Assembly Bill Number 8649A, and substitute it for the identical Third Reading Calendar 1671.

ACTING PRESIDENT KUHL: Substitution ordered.

The Secretary will read the title.

THE SECRETARY: Calendar Number 1671, by the Assembly Committee on Rules, Assembly Print Number 8649A an act to authorize the Town of Babylon.

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

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1672 by Senator Volker, Senate Print 5877, an act to amend the Banking Law and others.

SENATOR SKELOS: Lay that bill aside.

ACTING PRESIDENT KUHL: Lay the bill aside at the request of the sponsor.

THE SECRETARY: Calendar Number 1673, by Senator DeFrancisco, Senate Print 5905, an act to amend the Civil Practice Law and Rules in relation to the scope.

SENATOR DUANE: Lay it aside please.

ACTING PRESIDENT KUHL: The bill is laid aside.

THE SECRETARY: In relation to Calendar Number 1674, Senator Sampson moves to discharge from the Committee on Rules, Assembly Bill Number 6563, and substitute it for the identical Third Reading Calendar 1674.

ACTING PRESIDENT KUHL: Substitution is ordered.

The Secretary will read the title.

THE SECRETARY: Calendar Number 1674, by Member of the Assembly Boyland, Assembly Print Number 6563, an act to authorize the City of New York to reconvey a certain parcel.

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

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Aye 54.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1675 by Senator McGee, Senate Print 5980B, an act to amend the Mental Hygiene Law and others.

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

THE SECRETARY: Section 57. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1677, by Senator Skelos, Senate Print 6055, an act to amend the Local Finance Law in relation to providing.

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

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1679, by Senator Volker, Senate Print 6105, an act to amend the General Municipal Law in

relation to certain police officials.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Mr. President, is there a message at the desk?

ACTING PRESIDENT KUHL: There is.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Number 1679.

All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The message is accepted settlement. Bill is before the house.

Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1680, by Senator Larkin, Senate Print 6111, an act to amend the General Municipal Law.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Is there a message at the desk?

ACTING PRESIDENT KUHL: There is.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Number 1680. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The message is accepted.

The bill is before the house. The Secretary will read the last Section.

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1681, by the Assembly Committee on Rules, Assembly Print Number 8886, an act to amend the New York State Medical Care Facilities Finance Agency Act.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos, that completes the non-controversial reading of Calendar Number 59A.

What is your pleasure?

SENATOR SKELOS: Can we go to controversial, please, Mr. President.

ACTING PRESIDENT KUHL: The Secretary will read the controversial calendar beginning with Calendar Number 1667 by Senator Seward.

THE SECRETARY: Calendar Number 1667, substituted earlier today by Member of the Assembly Lafayette, Assembly Print Number 578B, an acted to amend the Insurance Law.

SENATOR DUANE: Explanation please.

ACTING PRESIDENT KUHL: Senator Seward, an explanation has been requested by Senator Duane on Calendar Number 1667.

SENATOR SEWARD: Certainly, Mr. President.

Under current provisions of the Insurance Law there is a requirement that anti-arson applications to be completed by commercial property insurance policy holders in cities of 400,000 in population or more at the inception of the policy and also every year thereafter on the anniversary date of the policy.

Now, this bill would authorize the Superintendent of Insurance to suspend or

waive the requirement for the annual anti-arson applications to be completed if the insurance company, the insurer, can demonstrate that the substantially equivalent information is available from other sources.

This basically is an effort to streamline the process, avoid unnecessary paperwork and undue burden on the insurer, the policy holder and all those involved without backing away in any way in terms of the anti-arson provisions because the information would be available anyway.

ACTING PRESIDENT KUHL: Is the explanation satisfactory, Senator?

SENATOR DUANE: Yes, thank you.

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

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1668, substituted earlier today by Member of the Assembly Abate, Assembly Print Number 5299, an act to amend the Administrative Code of the City of New York.

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

SENATOR DUANE: Explanation, please?

ACTING PRESIDENT KUHL: Senator Padavan, an explanation has been requested on Calendar Number 1668 by Senator Duane.

SENATOR PADAVAN: This bill, which has already passed the Assembly and which has a home rule message from the City of New York would place investigators who work in the district attorney's office in exactly the same configuration as detectives who work in the NYPD relative to pension opportunities, namely a pension at 25 years without reaching any age requirement.

SENATOR DUANE: Explanation satisfactory.

Thank you.

ACTING PRESIDENT KUHL: The

Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

THE SECRETARY: Ayes 54, nays 1. Senator Duane recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1672, by Senator Volker, Senate Print 5877, an act to amend the Banking Law and others in relation to -

SENATOR SKELOS: Lay it aside temporarily, Mr. President.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 1673, by Senator DeFrancisco, Senate Print 5905, an act to amend the Civil Practice Law and Rules in relation to the scope of disclosure.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1680, by Senator Larkin, Senate Print 6111, an act to amend the in General Municipal Law in relation to increasing.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT KUHL: Senator Larkin, if you have time from the phone, an explanation has been requested by Senator Stachowski on Calendar Number 1680.

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

Bill this is a modification of the bill that we passed earlier this year which you spoke about. This legislation will permit the industrial development agencies to finance

certain civic facilities. Dormitory participation in this is one of the things we worked on before. The dormitory authority fee is rescinded so that an individual who wanted to a not for profit can use either an IDA or a dormitory authority without excess expense.

The big thing here is now that this new law goes three years and 20 million dollars in projects. As you know the old law expired on July the first of 1999. We think it is very important because, for two reasons, non profit organizations play an essential role in providing the services which government can not do or will not provide. Non profit organizations increasingly account for a large portion of local hiring and purchasing particularly in our urban areas.

As I mentioned the last time, on April 28 we had a hearing here in the Capitol to determine the effects of Chapter 444, the laws of 1997. The conclusion was that the cap of 15,000,000 was insufficient especially for projects in major areas such as New York City, Long Island and Western New York. And additionally it was determined that extending

this law at two year intervals creates a substantial hardship for non profits in accomplishing the required paperwork and approvals prior to start of the exercise.

Here we are now back again with an agreement with the other house on a three year time frame at a 20 million dollar cap. This has the support of the Economic Development Council, HANYS, Commission on Independent Colleges and Universities, NYSAC and the New York State School Board Association.

ACTING PRESIDENT KUHL: Senator Dollinger.

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

SENATOR LARKING: Yes.

ACTING PRESIDENT KUHL: Do you yield, Senator Larkin, to a question from Senator Dollinger?

SENATOR LARKIN: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: As I read this bill, Senator Larkin, the bill not only provides an extender but it waives the fees to

hospitals and nursing homes when they make the loans. We are not charging them the equivalent of what lawyers would call points on the mortgage.

SENATOR LARKIN: That's correct.

SENATOR DOLLINGER: What is the loss of revenue impact of that, do you know?

SENATOR LARKIN: What we have determined is that there is major consequence. And we have discussed this directly, Richard, with the Dormitory Authority.

And the other thing about it is that in the discussions with both sides on it it was just felt that a minimum amount of fees that is now gained would be off set by the open competition between the both agencies.

SENATOR DOLLINGER: Again, through you Mr. President, if the Senator Larkin would yield.

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

SENATOR LARKIN: Yes.

ACTING PRESIDENT KUHL: Senator Dollinger, excuse me.

Senator Larkin, do you continue to

yield?

SENATOR LARKING: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator continues to yield.

Go ahead, Senator Dollinger.

SENATOR DOLLINGER: Thank you. Mr. President, through you, with respect to the one portion of the Public Authorities Law we are charging nine tenths of a point and with respect to the refinancing or refunding of other projects, new construction is a half point if we are refinancing.

My question is, how much anticipated lost revenue would there be. Is there a number we would lose and does that money go to -

SENATOR LARKIN: In discussion with the Dormitory Authority they said negligible.

SENATOR DOLLINGER: Thank you, Mr. President. That explanation was satisfactory.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55, nays 1. Senator Stachowski reported in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, can we stand at ease waiting for the return of Senator Volker, please?

ACTING PRESIDENT KUHL: The Senate will stand at ease for a few moments.

(Whereupon the Senate stood at ease at 5:15 p.m.)

(Whereupon the Senate reconvened at 5:25 p.m.)

THE SECRETARY: Print Number 1672.

ACTING PRESIDENT KUHL: The secretary will read Calendar Number 1672.

THE SECRETARY: Calendar Number 1672, by Senator Volker, Senate Print 5877, an

act to amend the banking law and others.

ACTING PRESIDENT KUHL: Senator Volker, an explanation Calendar Number 1672 has been requested by Senator Dollinger.

SENATOR VOLKER: Mr. President, this is a rather substantial bill. The Governor's Program Bill which was introduced on June 9th, which has a number of provisions in it. It is popularly known as the definite sentencing bill among the criminal justice people in the Capitol, but it also includes provisions relating to drug laws and some of the provisions relate to changes in the so-called Rockefeller Drug Laws, although it relates to changes in general in the drug laws.

It also has a provision in it relating to king pin drug offenders. It raises penalties and sets up a new, excuse me, classification for major drug offenders who operate both in this state and outside this state.

It sets up a provision which has been in a number of bills that have been sent to us by the Governor that allows for appeal

by prosecutors of both lenient sentences and bail. There is a provision in here relating to increasing penalties and broadening the stances on money laundering and, in fact, apparently equates it to Federal statutes on money laundering. I understand the idea is to dovetail it with Federal money laundering statutes.

But the prime piece of this bill that, the two pieces of this bill that are most, have been most talked about are the initial piece of the bill which talks about what's called truth in sentencing. This House has on several occasions passed bills, one has been known as Jenna's Law and the previous bill had talked about the use of so-called definite sentences. I won't get into the nature of how this arrives at because there are different levels of provisions here relating to felons, but primarily it provides for definite sentencing for all felony offenders, not just violent felony offenders as was included in so-called Jenna's Law which we passed last year, and if you remember the way the definite sentencing works, although it

says it allegedly gets rid of parole, it doesn't, because the way it works is that if you are sentenced to a -- if you're sentenced under the provisions for a felony offense, you would serve six-sevenths, a minimum of six-sevenths of the sentence before you would be eligible for parole and it sets up provisions for post-parole or post-conviction and sentencing supervision and provides up to three years of parole supervision.

The second part of this bill relates to various provisions that amend the drug laws of this state, but the one that has been most talked about is the provision that provides for an Appellate review of sentences that have been entered under the A-1 provisions of the Rockefeller Drug Laws. My recollection is, however, that there is one thing I think that should be understood and I think the media in reporting this was unclear, this only applies to possessors, it does not apply to sellers. So the appeals provisions would apply only to A-1 possessors of drugs and not to sellers as in some other bills with no prior felony records.

There have been other bills, and in fact Assemblyman Lentol and I have had a bill for some time that relates to a potential reform of the so-called Rockefeller Drug Laws. There have been many reportings about how the drug laws work. Usually they are semi-inaccurate because they talk about all drug laws as Rockefeller Drug Laws, which is not true, and they seem to indicate that the Senate has not been willing to talk about reform. We've been willing to talk about reform for years. Senator Bruno has been willing to talk about reform. The problem is, of course, coming together with the Assembly and the Governor. Basically, the provisions in this bill do reform sentencing statutes in the area of drugs, persistent violent felony offenders and second offenders. It is a very comprehensive bill.

It does one other thing of great note and that is it puts in statute for the first time the so-called D-tap provisions that are being used by prosecutors, I believe primarily in New York City. District Attorney Joe Hines has had a program for many years for

drug treatment of primarily drug offenders, obviously, but also he's used the program, in fact, for some other offenders, but the D-tap program is, as I say, is primarily for drug offenders and this for the first time would put into statute a D-tap program. So it not only relates to treatment, sentencing, prosecutorial appeals, it's a rather substantial bill.

ACTING PRESIDENT KUHL: Senator Dollinger, you requested the explanation, I believe, that would give you the floor. Do you wish to continue with questioning or do you wish to waive your -

SENATOR DOLLINGER: Mr. President, I have just a couple quick questions. It may not be quick -

ACTING PRESIDENT KUHL: All right. Senator Volker, do you yield to the question from Senator Dollinger? Senator Volker? Senator Volker?

SENATOR VOLKER: Certainly. Absolutely.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: Okay. Just for clarification through you, Mr. President, this is the Governor's Program Bill, correct?

SENATOR VOLKER: It certainly is the Governor's Program Bill, yes.

SENATOR DOLLINGER: Just a couple quick things, Senator Volker, because I've been leaping through this as you've been going through it.

One is, my understanding is if there is some change in the parole of deportable felons. I know there's a section that deals with it, but I'm not sure since I don't understand current law well enough what this deportable felon section does.

SENATOR VOLKER: I believe it -

ACTING PRESIDENT KUHL: Senator Dollinger, if I might interrupt your discussion.

SENATOR VOLKER: Sorry.

ACTING PRESIDENT KUHL: The stenographer can't hear you when you're walking away from the mike. If you want to face and look at Mr. Volker -

SENATOR DOLLINGER: I only do

that when I -

ACTING PRESIDENT KUHL: -- I would suggest you walk around on the other side of your desk and then the microphone will pick up.

SENATOR DOLLINGER: Okay.

ACTING PRESIDENT KUHL: I don't mind looking at that side of you. I won't follow up with why, but I just suggest it for the convenience of the stenographer so it can be recorded.

(Laughter)

SENATOR VOLKER: I wasn't sure if he was talking to me or you.

The provision of the, that you're talking about, I believe is a provision that it is basically just a technical remake of what is already in law and because this is a pretty comprehensive revision of the sentencing laws, I think it does not make any substantive changes as I understand it in the foreign parole situation, but what it does do, I think, is just to make technical changes and it is not a substantive change, at least that's my counsel tells me, I think that's

correct, if I remember right.

SENATOR DOLLINGER: The second question of Senator Volker will continue to yield, Mr. President.

SENATOR VOLKER: Certainly, yes I yield.

SENATOR DOLLINGER: The provision with respect to appeals for certain types of sentences, I know you reference that, but what does that do, does this expand the scope of a prosecutor to appeal what he considers to be a lenient sentence in a criminal case?

SENATOR VOLKER: It most certainly does and as you know, Senator Dollinger, that provision has been in a number of bills that have come before this house over the last couple years. It is basically the same provision as has been in about four or five other program bills that have come before this house. It allows for an appeal by the prosecutor of what he considers lenient sentences as well as bail decisions by a judge in felony cases. One thing about it, as I understand this provision relates to all felony cases, I believe, where I believe at

one point we received a bill that talked about violent felonies. I believe this appeal applies to all felony cases, if I'm not mistaken.

SENATOR DOLLINGER: For you, Mr. President, just so I understand.

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

SENATOR VOLKER: Yes, I yield.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR DOLLINGER: Just so I make sure I understand this, if you look at page 22 of the bill, and I don't want to pick apart, be too picky about this, but is that the section that deals with the unduly lenient sentences, appeal rights, the prosecutor's ability to appeal?

SENATOR VOLKER: Yes, it is.

SENATOR DOLLINGER: Okay. And so as I read it, that section says you can appeal if it's based solely upon the ground it was unduly lenient?

SENATOR VOLKER: Yes. That's correct. That's right.

SENATOR DOLLINGER: And it was actually less than the offer made by the district attorney at the time, do I read that correctly? Or is that an appeal right to the convicted party? I can't decipher that given the language.

SENATOR VOLKER: Yes. I think in reading it, I think you're right and I must say that the language is -- you are right. I think maybe the language could be a little bit clearer, but that is what it does say, I believe, it talks about that the sentence that was imposed was not less than that the people had offered and if it is, then I think that wouldn't be considered unduly lenient and then you couldn't make the appeal. So I guess it would be about the only limitation you would have on that sort of appeal.

SENATOR DOLLINGER: And the final thing is, Senator Volker, as I understand, again to you, Mr. President, if Senator Volker will continue to yield?

SENATOR VOLKER: Yes, I yield.

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

Senator continues to yield.

SENATOR DOLLINGER: The provisions that deal with the Rockefeller Drug Laws. I appreciate the fact, and I know Senator Bruno has made it clear that he's interested in re-examining those laws and re-evaluating, but just, if you could, could you briefly describe how this changes those provisions?

SENATOR VOLKER: Well, it's a little difficult to briefly describe, but the prime provision of this relates to post-sentencing and there is a provision in here, however, to look at how the sentencing is set up. It still would provide for a 10 to 20-year prison term as I understand it for A-1 felons, but if on appeal, a person could appeal a sentence as an A-1 felon and keep in mind this is only for possessors, this is not for sellers and these are people with no prior convictions.

SENATOR DOLLINGER: No prior violence.

SENATOR VOLKER: Not prior violent felonies. What would happen is,

because they would be subject to 15 to life provisions and they would have to file a report and they could be, they could get their sentence reduced to 10 to 20 years, as I understand it, unless there was, obviously, some showing of something that was incorrect at the sentencing, whatever, which has always been the possibility. But normally speaking, they would be subject to have it reduced to 10 to 20, to as low as 10 years, is in effect what it would be.

SENATOR DOLLINGER: A final question, Mr. President, of Mr. Volker?

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

SENATOR VOLKER: Continue to yield.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: As I understand it and as I've been briefed on this bill, this will actually increase the scope of judicial discretion for certain nonviolent felony drug offenses, that people who have no priors, people who have no prior violent, or

excuse me, no violent, prior violent felonies, who are convicted of possession, not selling, is purely convicted of possession, the discretion given to the sentencing judge would actually be broader under this bill that it is currently?

SENATOR VOLKER: Actually, the only discretion that would be given, it really wouldn't, if there's any, it wouldn't just be a violent felony offense, it would be virtually any offense, otherwise it would not increase the judge's discretion as we understand it. In other words, if the person had no prior offenses, then it would potentially increase the discretion of the judge. But if there is any prior offenses, then it would remain basically the same. I think that it's been reported that somehow this would make, and it would make a substantial change, the real substantial change, when you come right down to it, lies in the ability of a judge to review the cases that have already been determined in an Appellate review of those cases that have already been decided.

SENATOR DOLLINGER: So again to you, Mr. President, Senator Volker will continue to yield? This bill opens the door to those who have been convicted under the circumstances we describe, without prior felony offenses, who are convicted of being users, or possessors, of amount that would have qualified for substantial penalties, when I say status or whatever, under the Rockefeller Laws, this would give discretion to the judge in going back and reopening the sentencing portion of their criminal prosecution to apply a new standard that would give them more discretion. Is that a fair statement?

SENATOR VOLKER: It would. I think that one thing that should be pointed out is that it's been widely reported that there are thousands of new people that enter the prison system every year. Three hundred and twenty people were convicted last year under the various provisions of the Rockefeller Drug Laws. It is not a huge number as has been reported. And by the way, the numbers are coming down dramatically over

the last two years. The system appears to have probably more violent felony offenders in it than we've ever had before in its history. But you're right, it would have the ability of an Appellate Judge to review sentences that have already occurred. Some cases, for instance, you might have people that have been sentenced a considerable period of time ago who if, remember I think the one thing about it is if they're over ten years and if they got their sentence reduced to ten years, they would, in effect, be subject to be released.

SENATOR DOLLINGER: One final question, Mr. President, I know I may have prefaced my last question with that, but do you know how many people, Senator Volker, if you'll continue to yield, do you know how many people would actually be subject to that reopening and resentencing under this bill? You've said that as few as 320 new inmates come into this system, but do you know how many would actually be affected by this if you reopen the door to getting them that new phase of discretion applied to their sentences?

SENATOR VOLKER: No, Senator, I

really don't. In fact, I think Katie Lapp, the head of DCJS, I think is reviewing that. It's not as many, near as many as we had first thought, or many people had first thought, but it is, I suppose, some significant number, but not as many particularly because the amount of people who are in jail as possessors under Rockefeller Drug Laws is much, much smaller, much smaller than those that go in as sellers. So it is considerably smaller, but we're not sure they're looking at that right now and I suspect strongly that they will have a better idea. Of course, remember, that a lot of these people are obviously going in and out, but I think they'll have a better idea in a short period of time.

SENATOR DOLLINGER: Just briefly on the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger on the bill.

SENATOR DOLLINGER: I appreciate Senator Volker explaining the Governor's Program Bill. I know that there are parts of it from the language that I've looked at briefly that I think could be improved. My

hope is if this comes to a negotiation with our colleagues in the Assembly we'll get to that point, but I do want to add just one critical comment. The point that Senator Volker makes about reopening the door in the sentencing phase and applying broader discretion should not be lost in the context of the continuing march the development of extra prisons and jail cells in this state. Three hundred and twenty people in a single year could be affected by this bill who might get a greater, a broader discretion in their sentencing. Three hundred and twenty people is the better part of a quarter or a third of a prison and that's the kind of thing we ought to be looking at, the enormous costs associated with incarceration of those who would qualify. This is mostly users, possessors, that people who have severe drug problems who are addicted would be affected by this change. I don't know that this will be done. It's a very complicated bill, as Senator Volker says in the next, what I hope is the next hour that we're going to be in session, but I would certainly encourage

Senator Volker, if this bill passes this house, to continue to keep the door of discretion open. It's critically important for those people who have already, may have paid too severe a price based on the Rockefeller Drug Laws. But it seems to me a lot has changed since Governor Rockefeller was governor of this state and one thing that's changed is we've come to an awareness that those kinds of users don't deserve Draconian penalties for mere possession. My hope is that we will -- this is the first step in a progression to make those changes, reopen the door to discretion, give our trial judges the ability to properly mold justice to the cases of drug users who are addicted and who need treatment more than they need criminal penalties. Thank you.

ACTING PRESIDENT KUHL: Senator Onorato. Senator Onorato passes.

Senator Waldon.

SENATOR WALDON: Mr. President, would the gentleman yield for a question or two?

ACTING PRESIDENT KUHL: Senator

Volker, do you yield to questions from Senator Waldon? The Senator yields.

SENATOR WALDON: Thank you, Mr. President. Senator Volker, you know since I've been here in this House my position on discretion for judges. Would you just edify our House in regard to discretion for judges in regard to determinant sentencing in this proposal? Thank you.

SENATOR VOLKER: Well, what it does is, I think the one thing that people are not aware of, when we passed Jenna's Law, a lot of people, I think, thought it automatically meant that there would be longer sentences. In reality, the way it works is that a judge would know when he sentences a person exactly how long in effect that person is going to serve subject to the six-sevenths rule. The reason that's important is that the indeterminate sentences, for instance, the old sentence, let's say it was 6 to 12 years, a person after 6 years, the sentence could be reviewed. In some cases it was 7 1/2, whatever, it depends on the situation. So the answer is if a judge, for instance, says I

will sentence this person to five years, that means that person has to serve six-sevenths of that five years, and then would be subject to the potential for parole, subject to all the reviews, and then to post-sentencing provisions. So that, the limited discretion would be is that a judge would know when he or she sentences that person exactly what that person would serve subject to the parole provisions. And I assume you're talking about the sentencing provision, not the drug law provisions, and that's what this basically would so. So in one sense, it would limit a judgment and in another sense he or she would know exactly what they were sentencing a person to when they made the sentence.

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR WALDON: If I hear you right, Senator, what you're saying is though it may limit the judge in one way, it actually expands the judge's ability to make a

determination as to what the real sentence will be which may, in effect, on the back end of this process reduce, in terms of the number of years, and potentially reduce the numbers of people who may be in prison in the long run. Is that an accurate analysis?

SENATOR VOLKER: That is very accurate. In fact, a judge can look at a person's background, for instance, and could make a determination that one individual should, for instance, get 15 years, I'm just using it, and another individual should only get 10 because of their prior record or whatever, and there's a series of things that they could look at. And under this bill, then that judge would know when he made or she made that sentence, the person would be subject to the sixth-sevenths rule, so in some cases, there is a real possibility that a judge would sentence to a lesser amount than is now the case and under this bill, as under the Jenna's Law Bill, that judge would be free to do that based on the circumstances.

SENATOR WALDON: Senator Volker. Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Waldon on the bill.

SENATOR WALDON: I think that those of us who are on this side of the aisle should be very sensitive to this proposal and be cognitive to the fact that at least in my opinion this is better than what we have on the books now, and I would encourage your support of it. Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President. I intend to support this bill; I think it's an improvement. As a number of my colleagues have said, it's an improvement over present law and what's always mystified me when you deal with concepts like truth in sentencing or determinant sentencing is the way some years it's somehow viewed as, oh, they want determinant sentences, that's a conservative view, and oh, they're against it, that's a liberal view. I just don't think it fits those categories. A couple of years ago, I was thinking of proposing some determinant sentencing things myself and was told by

someone, oh, democrats can't do that. I said why not? It's not a liberal thing. I said, I'm old enough to remember when the Federal determinant sentencing law was pushed by Ted Kennedy all over the country. He came to New York and had hearings.

I think what we all are interested in is, number one, protecting the public. Number two, having a rational system that's fair and proportionate, proportionate to the crime and proportionate to what a judge can ascertain about the defendant's circumstances, likelihood of committing other crimes and no two defendants, even though they're guilty of the same crime, can have necessarily the same culpability, there are difference circumstances in any case.

In the drug possession case, we've all read those court decisions at every level of the courts in this state where judges have said our hands are tied, I am compelled to give a sentence that I think is grossly unfair and is an injustice and these decisions have called on the legislature to take action.

I am happy that the Governor

earlier this year proposed changes in the overall Rockefeller Drug Law. I'm encouraged by the expressed viewpoint of Senator Bruno to take up the issue and do something about it. I really regret that we're not here with even a broader bill that addresses a lot of those concerns and I would urge all of my colleagues in both houses to take a look at this, let's do something comprehensive.

Some of the problems I've had with various sentencing bills that we passed in this legislature and even more that we've passed as one House bills in this Senate, had been the idea to look at the crime of the week, or the crime of the year, and up the penalties for that and kind of put the whole thing out of kilter.

I was always reminded in law school I had one course taught by a local judge in the District of Columbia as an adjunct and he shook his head because he said he had two trials the week before and what they did then and what were then, I guess, misdemeanor crimes, is sometimes they use the same jury, requalify the same jury, and he said, without

realizing he ended up with fundamentally the same jury in the second trial. The first trial was for a simply assault. Somebody on a bus pinched somebody else. Not polite, very rude, probably sexist, an assault. He said next up before the same jury was somebody taking a shotgun, let off two blasts at somebody else, mis, and that was under the then-law prevailing there, was a simple assault. It had the same sentence. He said the jurors looked at him throughout the second trial like, what, are we all crazy here? You know, both things were wrong, but they weren't the same crime. And I think I've always been mindful of that lesson I learned many, many years ago. We should always make sure things are proportionate.

In the attempt over the years to address the outrage of the month, and I don't make light of them because they often address very, very serious criminal concerns and gaps in the system, we've tended to beef up here and we tended to impose mandatory sentences here and there, take away discretion from judges who actually hear the cases, and I

think over a couple decades of that have perhaps come up with a system that does, not only does justice in most cases, but some times does an injustice to certain people, costs us a lot of money by incarcerating people for whom things like drug treatment would be a lot more efficacious and cheaper on the public purse, and so I'm delighted that we're beginning to address it.

I have no problem with determinant sentencing within a fair range with discretion of the judge. Even as I have no problem with the provision that says a prosecutor can appeal and the illegal, which they can now, or unduly lenient sentence. The reality is there are going to be two or three such appeals a year, at that. Prosecutors have a lot of other things to work on in their appeals, they're only going to focus on cases that are clearly, clearly off the charts. Even as today defendants can appeal sentences to the Appellate Division, it's a rare sentence that the Appellate Court ever reduces, usually only when it was either illegal or just unduly harsh and very few of those today, given the

mandatory sentencing scheme. Most judges just apply the mandatory sentence and there's no way they'll -- So to let either side appeal cases that are way off the fringe, either in being ridiculously lenient such that it makes one raise one's eyebrows about what that particular sentencing judge was thinking of, and even raises questions of what's going on there, it doesn't bother me. Even if it certainly is appropriate when a judge seems to throw the book at somebody and it makes you suspect what was going on in that judge's mind. Those cases at either end ought to be appealed. Somebody ought to take a look at them. So I think, in sum, certainly the way this treats, gives an opportunity even for second offender nonviolent felonies, felons, in the cases of drug possession kind of stuff, gives them still another chance to avoid unduly harsh prison and even lets them qualify for alternative drug treatment. I think that's appropriate. I think a number of my colleagues on this side of the aisle when we first did the diversion program, when we first did it, you'll recall the Willard Program, our

concern, and I remember Senator Waldon and others articulating was that when we set up the Willard Program limited it to first offender nonviolent felons. We were concerned that gee, it was such a short program that the likelihood of it actually curing the addict was, it was less likely they'd actually cure these people and then we would be setting them up for a second bust to which harsh mandatory sentences. We're always talking about nonviolent drug possessors, users basically. They would be kind of set up for it. You know you cop a plea to that first one, get the Willard Program. If the Willard Program doesn't work, you're back there in six months and now you've got nowhere to turn, you don't qualify for that, and you actually set yourself up for a mandatory hefty sentence. So that's a good change. So there are good changes in here. Overall it produces a scheme that's more rational, fairer and proportionate and leaves an appropriate amount of discretion in the hands of the judge who actually gets to see the defendant, gets to evaluate the facts in the case. I just would urge this

legislature to go forward and remediate some of the injustices that the Rockefeller Drug Laws have produced in the past. I recognize there is some ability to do that here, but we ought to just bite the bullet and do the whole thing. So, Mr. President, I congratulate Senator Volker and the Governor for proposing this and I'm happy to support it. Thank you.

ACTING PRESIDENT KUHL: Senator Volker, close.

SENATOR VOLKER: I assume I'll close. Let me just say that, Senator Connor, that some people might say it's a little scary that you and I agree on a number of things, but it's not true. I mean, you know, a definite sentencing is a fascinating issue. Years ago I think Doug Barclay was the Chairman of Codes and we did some commission or it was joint codes group, we went across the state on the issue of definite sentencing, the Assembly and the Senate. It was fascinating because we were attacked from the right. We had a proposal on definite sentencing. We were attacked from the right and the left. The liberals thought that it

was a conservative plot and the conservatives thought it was a liberal plot because the liberals said what'll happen is all those New York City judges and all those people will let everybody out and the other people said the reverse. And we kind of shook our heads when it was over and we said, well, we weren't exactly plotting on anything. And it was an interesting story because it showed how there was so much division on both sides on the issue because you looked at it from the provision you wanted to look at it from. If you were on this side, you said well that will screw things up because it was change. The problem with change is it's always very difficult. You mentioned Willard. It's interesting because this House was pretty united in what you say. We wanted a longer term at Willard. I don't think it's a big secret. It was the Assembly that didn't want it. And I don't, you know, want to get into that. It seems as if they thought it was going to fail anyway or something and we thought that it should be at least a year or a minimum of nine months or whatever, and I

think both sides in this house felt that way and I think it's unfortunate because I think it would have made for a much better program and it's one of the reasons, I think, why the DAs have been so reluctant to certify people into the programs. Of course, one reason is that there's a suspicion that they're very nervous about some of the people that they allow the pleas for, that maybe they weren't quite as nonviolent as the pleas showed, but that's another matter.

Let me just finish on the Rockefeller Drug Laws because there's been a lot of talk about this and I think there's been more heat than light in the media. I was closer to the Rockefeller Drug Law issue than virtually anybody else for various reasons and I'm here in the Senate primarily because of the Rockefeller Drug Laws because Nelson Rockefeller and I clashed so viciously on it that, let's just say he helped me to get into the Senate by getting me out of the Assembly. He was very bitter over the changes in the Rockefeller Drug Laws. One thing I think that people should understand, the initial

Rockefeller Drug Laws were much tougher. In fact, Dom DeCarlo, the late Dom DeCarlo, who just left this year, and I fought very vehemently internally and I was a police officer just off the street within a year on this very issue because we said that, you know, it's pretty ridiculous. But the one thing that I think everyone should understand when you talk about mandatory sentencing, the real reason we went to mandatory sentencing of drug offenders is there was clear and pervasive evidence that New York City judges as a whole were sentencing drug offenders to one-third of what judges outside of New York City were sentencing to and there were many judges in New York City who couldn't bring themselves to send people to jail, and the rest of the state was very concerned about the impact of that. My personal opinion is, although I might have been certainly even willing at the time to give some discretion, I really think the Rockefeller Drug Laws as such and drug laws in general, along with persistent violent felony offender and second felony offender were a roaring success. I

know there's people who would disagree and I'm not saying that some discretion, and I'm certainly not saying that some discretion couldn't be allowed now, but we have made enormous strides in the drug laws. You could not have the decline in violent felony offenses you have today, in my opinion, without the decline in the drug culture. It's not that it isn't there, it is. That's my personal opinion, has been for a long time. But let's not think that the laws as they are now have not been amended. It's been amended many, many times and even the initial proposal by Nelson Rockefeller was rather dramatically changed from his first proposal and results of that, by the way, he was very, very bitter. I can tell you because I personally discussed it with him, face-to-face, very much so. In fact, we, as I said, we had a number of discussion and Nelson could be very forceful. But in any case, we certainly, and Senator Bruno has been saying it for some time, that we've been willing to discuss this. The biggest problem is that we have people who really want to destroy the whole drug law

system and a lot of us have a concern with that. We're willing to discuss changes and allow the possibility of some more leniency in the area of looking at cases in terms of whether there may have been too severe sentences, but many, I think many of us still believe that you better be very careful because we are talking about the curse of drugs which is something that nearly destroyed the inner cities of most of this country, and certainly New York City and is only now, I think, beginning to show itself under some real control.

So, Senator Connor, I think in many ways you and I agree maybe more than we realize in some of these areas, but it is still a very difficult issue, obviously, and I would hope that in the future we can deal with some sort of resolution of this whole area.

ACTING PRESIDENT KUHL: Secretary read the last section.

THE SECRETARY: Section 109, this act shall take effect January 1, 2000.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Montgomery to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President. I am certainly encouraged by the fact that both the Governor and our majority leader in this House, and, of course, Senator Volker, have really put on the table an opening to this extremely difficult issue. And with a sense of resolve that we should begin to move in a more progressive way as it relates to sentencing, giving some leeway to the discretion of the judges and what have you. I have a article in front of me that is one year old this month, August, where it talks about, as I've said before, the fact that there are over, almost 250,000 people on probation or parole and another approximately 120 people who are incarcerated. It's almost 400,000 people in our own state who are under the supervision of the Criminal Justice System directly and as we know, the majority of those people are people of color, specifically African-Americans. It poses a very major crisis in terms of what do we do to address

the fact that so many people of color end up being incarcerated in one way or another. So we absolutely have to look at it and I'm happy that Senator Volker has proposed. I'm going to vote against this bill only because I'm concerned that we need to really go much further, obviously, I think even Senator Volker would acknowledge that as he has said in his debate. And we certainly don't want to, I note in the bill where we have a violation also has a determinant sentence. An unclassified misdemeanor also has a determinant sentence and so forth and so on. So, I'm anxious to have us continue in this, along these lines. I'm happy to see it, but Mr. President, I'm afraid that if I, I need to make sure that what's in the bill or the bill does not contain some areas that are obviously not in keeping with the direction that I feel we should be going, so I vote no on the bill.

ACTING PRESIDENT KUHL: Senator Montgomery will be recorded in the negative. Senator Seabrook to explain his vote.

SENATOR SEABROOK: Mr. President, I think that the sponsor should certainly be

commended for moving this legislation because it is certainly important that we begin to talk about how we are going to deal with the old outdated and archaic Rockefeller Drug Laws. If this bill was to do that and be a part of that, then I could certainly be supporting of that because I think that there's a need in terms of repealing something that's tremendously outdated in this state and in this nation. But the sponsor must be commended for at least making the steps in the right direction in terms of putting this forward. But I would not want to be a part of a hopeless belief that this is going to solve all of those problems that have been created by that outdated Rockefeller Drug Law and that atmosphere which was created, because I don't think that that was the way to solve the problem, although I thought that there was a need in terms of doing some of that, but there's some other needs we really want to talk about dealing with this. So I would hope that this would force the other House in terms of putting some things together and this House in terms of really stretching beyond and

allowing their imagination to go beyond as to how these things are to be resolved. So I would hope that it would motivate others, would motivate me in terms of supporting this when it is truly a real reform, but I must commend the sponsor for what he has done, but I think that I would have to hold my vote until we really put this on the table, move in a more positive direction from the other side and accelerate from this side, I think that we can really come to solving some of those problems that this Rockefeller Drug Law has caused this nation and this state. So I'm going to be voting in the negative with a sense of hope an aspirations that we can move on to allow this bill to become the real thing.

ACTING PRESIDENT KUHL: Senator Seabrook will be recorded in the negative.

Senator Schneiderman to explain his vote.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I concur in the statements Senator Seabrook and Senator Montgomery just made, and

I do appreciate at least in our House for making an effort to try and deal with this issue of sentencing which is an extraordinarily tough issue. I think that the violent felony offender sentencing statutes have worked. I think some other statutes have worked. I can't say that about the Rockefeller Drug Laws and I do think it is time to address it. I don't think this bill really gets the job done, but I am, as much as I don't feel that this bill really is the right first step, I'm much more disappointed by the fact that the Assembly is not even addressing the issue this year when we've got an opening, and I think that's a shame and I certainly will -- I've made my views known to my colleagues over there, so I'm voting in the negative, but I think it's unfortunate that our House is willing to move forward on something I think that's very critical to the State and yet the Assembly is not at this point in the session.

ACTING PRESIDENT KUHL: Senator Schneiderman will be recorded in the negative.

Senator Marcellino will explain his

vote.

SENATOR MARCELLINO: Mr. President, I would just rise to again congratulate my colleague, Dale Volker and the Governor for their efforts in this behalf.

Also I agree with Senator Schneiderman's comments that it's unfortunate that our colleagues in the Assembly have not seen fit to at least take this measure up and debate it. This would be a good negotiating point and this would be a good first step in the process to get things moving and to get things talking about. I think it's positive.

Let's not lose sight of the fact, though, with the Rockefeller Drug Laws, as harsh as they are, they also gave law enforcement officials, DAs and others, leverage with a lot of people to force them to go into counseling and treatment that they otherwise would never have done. In some way, one can legitimately state that literally thousands of lives, if not more, were saved by these laws because people took counseling and treatment rather than a penalty and were willing to go that route. I'm sure these laws

had an effect in saving many lives. However, I agree with the bill and I agree with the sponsor. It's time to rethink them and time to look at them again and make some adjustments and the appropriate changes. This bill is a good first step. The Assembly should get on board and do the right thing and start talking about this issue. I'm voting aye.

ACTING PRESIDENT KUHL: Senator Marcellino will be recorded in the affirmative.

Senator Lachman to explain his vote.

SENATOR LACHMAN: Yes, to explain my vote, sir, Mr. Chairman, recently I read an op-ed piece by Senator John Dunn, who was the, I believe the author of the original Rockefeller Drug Laws in this Chamber and Senator Dunn in that op-ed piece came out against the Rockefeller Drug Laws for a very simply reason. He said it was an idea that failed. And he believed at the time a generation ago that it would succeed. But it hasn't succeeded. It was an idea that had

gone awry and had not succeeded. And I hope that this Chamber, in voting for this legislation, and I will vote for this legislation, and I commend Senator Volker and the majority and minority leadership and the Governor for sponsoring it because I think by voting yes on this, we open up the panoply of issues involved in this area which is long overdue and I hope that our voice will be heard in the Assembly as well. So I vote in the affirmative on this legislation.

ACTING PRESIDENT KUHL: Senator Lachman will be recorded in the negative. Senator Mendez. Oh. Senator Lachman will be recorded in the affirmative.

Senator Mendez to explain her vote.

SENATOR MENDEZ: Thank you, Mr. President. Thank you.

I do also rise to support this bill. Especially I have to congratulate the Governor and Senator Volker and Senator Joe Bruno and my minority leader for supporting this bill.

You know, if we vote against this bill, what are we basically doing? We voted

against it before. It doesn't do all the kinds of things we want done to correct the awful reality of the Rockefeller Drug Laws. But this is a beginning and through this legislation, some of those people who received undue harsh sentences will be able to get a break, as we say, so it's not a perfect legislation in terms if we looked upon it as the vehicle through which gets on with the Rockefeller Drug Laws. But it's a true beginning and I think that we have to start somewhere. See I don't believe that we should throw out the bath, the water on the babies and this is an instance of that. So I am really glad, Mr. President, to support this bill. It is a good bill and will do a lot of good things.

ACTING PRESIDENT KUHL: Senator Mendez will be recorded in the affirmative.

Could we have all of the negatives, please, raise their hands once more so that the secretary can record the negative votes. Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1672 are

Senators Duane, Montgomery, Schneiderman and Seabrook. Ayes 52. Nays 4.

ACTING PRESIDENT KUHL: The bill is passed. Senator Fuschillo. That completes the reading of the controversial calendar 59A.

SENATOR FUSCHILLO: Mr. President, can we return to motions and resolutions. I understand there's some housekeeping at the desk.

ACTING PRESIDENT KUHL: There is. We'll return to the order of motions and resolutions. The chair recognizes the delightful Senator McGee.

SENATOR MCGEE: Thank you, delightful Mr. President. Mr. President, I wish to recall my bill, Senate Print Number 5980B which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 1675 by Senator McGee. Senate Print 5980B, an act to amend the Mental Hygiene Law and others.

SENATOR MCGEE: Mr. President, I now move to reconsider the vote by which this

bill was passed and ask that the bill be restored to the order of third reading.

ACTING PRESIDENT KUHL: Motion is to reconsider the vote by which the bill passed at House.

Secretary call the roll and reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: Senator McGee.

SENATOR MCGEE: Mr. President, I now move to discharge from the Committee on Rules Assembly Print Number 8948A and substitute it for my identical bill.

ACTING PRESIDENT KUHL: The bill will be discharged and substituted.

SENATOR MCGEE: The Senate bill on the first passage was voted unanimously. I now move that the substitute Assembly bill have its third reading at this time.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 1675 by the Assembly Committee on Rules,

Assembly Print Number 8948A, an act to amend the Mental Hygiene Law and others.

ACTING PRESIDENT KUHL: Senator Fuschillo, are you moving to accept the message of necessity on this bill that's at the desk?

Motion is to accept the message of necessity on Calendar Number 1675.

All those in favor signify by saying aye, opposed nay.

Message accepted. Bill is before the house. The Secretary will read the last section.

THE SECRETARY: Section 2, this act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed. Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, can we stand at ease temporarily, please?

ACTING PRESIDENT KUHL: The

Senate will stand at ease.

(Senate stands at ease.)

(Senate resuming session)

ACTING PRESIDENT KUHL: Senator Fuschillo.

SENATOR FUSCHILLO: May we please return to reports of standing committees? I believe that there is a report of the Rules Committee at the desk.

ACTING PRESIDENT KUHL: We will return to the order of reports of standing committees. There is a report of the Rules Committee at the desk. I'll ask the secretary to read.

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

Senate Print 681A by Senator Larkin, an act to amend the Real Property Tax Law.

6104 by Senator Leibell, an act implementing agreements.

2286 by Senator Goodman, an act to amend the New York City Charter.

4832B by Senator Volker, an act to

amend the Public Health Law.

6050 by Senator Morahan, an act to amend the General Municipal Law.

6070A by Senator Johnson, an act to amend the Vehicle and Traffic Law.

6092 by Senator Velella, an act to amend the Tax Law.

6113 by Senator Hannon, an act to amend the Executive Law.

3880 by Senator Volker, an act in relation to allowing.

4971 by Senator Saland, an act to reopen the Special Retirement Plan.

5255A by Senator Oppenheimer, an act to amend Chapter 711 of the Laws of 1907.

5778A by Senator Skelos, an act to amend the Public Authorities Law; and

6115 by Senator Wright, an act to amend the Alcoholic Beverage Control Law and the Public Health Law.

All bills ordered direct for third reading.

ACTING PRESIDENT KUHL: Move to accept.

THE SECRETARY: The President

moves to accept.

ACTING PRESIDENT KUHL: Motion is to accept the report of the Rules Committee. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed nay.

(No response.)

ACTING PRESIDENT KUHL: Rules report is accepted. Bills are ordered directly to third reading.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, there will be an immediate meeting of the Finance Committee in the Majority Conference Room.

ACTING PRESIDENT KUHL: Immediate meeting of the Finance Committee. Immediate meeting of the Finance Committee in the Majority Conference Room, Room 332. Immediate meeting of the Finance Committee in the Majority Conference Room, Room 332.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, at this time can we take up the

non-controversial reading of the rules report?

ACTING PRESIDENT KUHL: The Secretary will read the non-controversial reading of Calendar Number 59B.

THE SECRETARY: Calendar Number 760 by Senator Larkin, Senate Print 681A, an act to amend the Real Property Tax Law.

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

THE SECRETARY: Section 2, this act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1678 by Senator Leibell, Senate Print 6104, an act implementing agreements between the State and an employee organization.

ACTING PRESIDENT KUHL: Senator Fuschillo. Yes, there is.

SENATOR FUSCHILLO: Move to accept.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Number 1678.

All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed nay.

(No response.)

ACTING PRESIDENT KUHL: Message accepted. Bill is before the House. Secretary will read the last section.

THE SECRETARY: Section 19, this act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1683, Senator Goodman moves to discharge from the Committee on Rules, Assembly Bill Number 7027 and substituted for the identical Third Reading Calendar 1683.

ACTING PRESIDENT KUHL: Substitution is ordered. The Secretary read the title.

THE SECRETARY: Calendar Number 1683 by Member of the Assembly Farrell, Assembly Print Number 7027, an act to amend the New York City Charter.

ACTING PRESIDENT KUHL: There is a home rule message at the desk. The Secretary will read the last section.

THE SECRETARY: Section 2, this act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1684, Senator Volker moves to discharge from the Committee on Rules, Assembly Bill Number 7692A and substitute it for the identical Third Reading Calendar 1684.

ACTING PRESIDENT KUHL: Substitution is ordered. The Secretary will read the title.

THE SECRETARY: Calendar Number 1684 by Member of the Assembly Tokasz, Assembly Print Number 7692A, an act to amend the Public Health Law, in relation to implementation.

ACTING PRESIDENT KUHL: Read the last section.

THE SECRETARY: Section 2, this act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1685 by Senator Morahan, Senate Print Number 6050, an act to amend the General Municipal Law, in relation to recreating.

ACTING PRESIDENT KUHL: There is a home rule message at the desk. The Secretary will read the last section.

THE SECRETARY: Section 2, this act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1687 by Senator Velella, Senate Print 6092, an act to amend the Tax Law, in relation to exempting.

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

THE SECRETARY: Section 2, this act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1688 by Senator Hannon, Senate Print 6113, an act to amend the Executive Law, in relation to the functions, powers and duties.

ACTING PRESIDENT KUHL: Senator Fuschillo.

SENATOR FUSCHILLO: Is there a message at the desk?

ACTING PRESIDENT KUHL: There is.

SENATOR FUSCHILLO: Motion to accept.

ACTING PRESIDENT KUHL: Motion is to accept the message of necessity on Calendar Number 1688. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed nay.

(Response of "Nay.")

ACTING PRESIDENT KUHL: The message is accepted. The bill is before the House. The Secretary will read the last section.

THE SECRETARY: Section 4, this act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

THE SECRETARY: Ayes 55. Nays 1.

Senator Duane recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1689, Senator Volker moves to discharge from the Committee on Rules, Assembly Bill Number 6987 and substitute it for the identical Third Reading Calendar 1689.

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

THE SECRETARY: Calendar Number 1689 by Member of the Assembly Seminerio, Assembly Print Number 6987, an act in relation to allowing.

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

THE SECRETARY: Section 2, this act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

THE SECRETARY: Ayes 55. Nays 1.

Senator Dollinger recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1690, Senator Saland moves to discharge from the Committee on Rules Assembly Bill Number 6962 and substitute it for the identical Third Reading Calendar 1690.

ACTING PRESIDENT KUHL: Substitution is ordered. The Secretary will read the title.

THE SECRETARY: Calendar Number 1690 by Member of the Assembly Manning, Assembly Print Number 6962, an act to reopen the Special Retirement Plan.

ACTING PRESIDENT KUHL: There is a home rule message at the desk. The Secretary will read the last section.

THE SECRETARY: Section 2, this act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

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

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1691, Senator Oppenheimer moves to discharge from the Committee on Rules Assembly Bill Number 8256A and substitute it for the identical Third Reading Calendar 1691.

ACTING PRESIDENT KUHL: The substitution is ordered. The Secretary will read the title.

THE SECRETARY: Calendar Number 1691 by the Assembly Committee on Rules, Assembly Print Number 8256A, an act to amend Chapter 711 of the Laws of 1907.

ACTING PRESIDENT KUHL: There is a home rule message at the desk. The Secretary will read the section.

THE SECRETARY: Section 2, this act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1692 by Senator Skelos, Senate Print 5778A, an act to amend the Public Authorities Law in relation to payment.

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

THE SECRETARY: Section 2, this act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Fuschillo, that completes the reading of the non-controversial calendar and the controversial calendar for those bills which we have messages that were high.

SENATOR FUSCHILLO: Mr. President, can we return to motions and resolutions and adopt the resolution calendar Supplemental Calendar Number 1, please.

ACTING PRESIDENT KUHL: We will

return to the order of motions and resolutions. The motion is to adopt the Supplemental Resolution Calendar which is on the members' desk. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed nay.

(No response.)

ACTING PRESIDENT KUHL: The resolution calendar Supplemental Calendar is adopted.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, can we stand at ease pending the return of the finance report?

ACTING PRESIDENT KUHL: The Senate will stand at ease.

(Whereupon, the Senate stands at ease.)

(Whereupon, the Senate reconvenes session.)

ACTING PRESIDENT KUHL: Senator Fuschillo.

SENATOR FUSCHILLO: Mr.

President, can we please call up Calendar Number 1693.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 1693 by Senator Wright, Senate Print 6115, an act to amend the Alcoholic Beverage Control Law and the Public Health Law.

ACTING PRESIDENT KUHL: Senator Fuschillo.

SENATOR FUSCHILLO: Is there a message at the desk?

ACTING PRESIDENT KUHL: There is.

SENATOR FUSCHILLO: Motion to accept.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Number 1693. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed nay.

(No response.)

Message accepted. The bill is before the House.

The Secretary will read the last section.

Explanation of Calendar Number 1693 has been requested. Senator Wright.

SENATOR WRIGHT: Thank you, Mr. President.

This bill is to deal with the issue of sale of alcohol and tobacco products to minors and provides for voluntary mechanism whereby merchants can avail themselves of new technology involving scanning and magnetic strips to verify and validate the age of the individuals who are purchasing either tobacco or alcohol products.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Yes, Mr. President. I find this a very intriguing bill. If Senator Wright would just yield to a couple of questions.

ACTING PRESIDENT KUHL: Senator Wright, do you yield to questions from Senator Dollinger?

SENATOR WRIGHT: Certainly, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: I note that the bill on page 4 creates a provision that deals with the affirmative defense of using this transactional scan in the context of a proceeding before the State Liquor Authority.

SENATOR WRIGHT: That is correct.

SENATOR DOLLINGER: But the final sentence in subdivision 7A says that notwithstanding any such affirmative defense shall not be applicable in any civil or criminal proceeding. Does that mean that they couldn't assert that as an affirmative defense if the civil action were brought against them for violation of the Dram Shop Act?

SENATOR WRIGHT: Senator, I'm not a practicing attorney, but that's my understanding, yes.

SENATOR DOLLINGER: All right. The only other question I have is the -- there are restrictions in this bill, Senator, again through you, Mr. President, that I understand restrict the use of the information gathered by the scan, by the strip scan, isn't that

correct?

SENATOR WRIGHT: That is correct. One of the concerns that the Senate has had from the beginning when the Leader first established the task force on privacy has been issues of privacy when we're collecting data and there are specific prohibitions relative to the information on how it's utilized.

SENATOR DOLLINGER: Thank you. The explanation is satisfactory. Mr. President, just on the bill briefly.

ACTING PRESIDENT KUHL: Senator Dollinger on the bill.

SENATOR DOLLINGER: I would suggest, Senator Wright, I think this is, at least as I read it quickly today, I think this is a good bill. I would just encourage you that if the affirmative defense of the use of this scanning tool is going to be available in prosecutions under the State Liquor Authority Act, if it's determined that there's success with that approach, I would expand the affirmative defense to include the affirmative defense in a Dram Shop Act proceeding as well so that if bars and restaurants where alcohol

is sold where frankly, at least from my point of view, the exposure and the risk is greater than if it's sold simply in a grocery store, but I would suggest that if you can, if this proves to be successful, expanding it to include a civil defense in a Dram Shop Act would be warranted as well. This is going - technology is going to give us more information, I think greater assurances to the sellers of alcohol that the people who are buying it are 21 years old instead of 20 or in the case of tobacco products, 18 instead of 17, so with that understanding, I'm going to vote in favor of this bill and maybe if it's successful, we'll look to an expansion of it.

SENATOR WRIGHT: Okay. I think we share a like objective, Senator, and perhaps once we have this enacted, we can then work jointly with the Assembly to take those provisions out they wanted inserted.

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

THE SECRETARY: Section 4, this act shall take effect September 1, 1999.

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR FUSCHILLO: Mr. President, may we return to the reports of standing committees. I believe there's a report of the Finance Committee at the desk.

ACTING PRESIDENT KUHL: We'll return to the order of reports of standing committees. There is a report of the Finance Committee at the desk. The Secretary will read.

THE SECRETARY: Senator Stafford from the Committee on Finance reports the following nomination.

As a member of the Board of Trustees of the City University of New York, Benno C. Schmidt, Jr., of New York City.

ACTING PRESIDENT KUHL: Senator Stafford.

SENATOR STAFFORD: Mr. President, it's a pleasure for me to yield again to the Senator, the Chairman of the Higher Education

Committee.

ACTING PRESIDENT KUHL: Senator LaValle.

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

You know, once again, I believe Governor Pataki has made an excellent choice in the nominee of Benno Schmidt. I had the opportunity to spend about an hour and a half with the nominee because he was going out of town with his family. I arranged for an opportunity for Senator Lachman, who had a discussion with the nominee and both of us reported to the Higher Education Committee where he was -- his nomination was unanimously supported, making the recommendation to the Finance Committee.

As many of you know, he had a very distinguished academic career at Yale, but I learned, and had not realized that he began with Columbia Law School and later became the dean at Columbia Law School, but was also, clerked for Justice Warren, Earl Warren. And we discussed many issues during our visit of an hour and a half and talked about tuition

and his response was a very strong one, believing in the strength of the Tuition Assistance Program. He talked about the importance of students being prepared for academic work and making sure that they had a sound footing where they could compete, students can compete equally. He believed that the importance of standards and having programs of excellent in each of the campuses and had a high hope and expectation that each campus could have multiple programs that would compete at a national level. And he talked about one of the goals and objectives that he would have in ensuring that City University had proper information and reports so that the policymakers, the board, could make good decisions.

I talked to him about the role of a board member and his role as vice chairman and he believed that the most important work had been accomplished in the selection of Chancellor Goldstein, Matt Goldstein, who served as president at Beirut, knows and understands the needs at City University and that as board members they should be involved

in establishing policy.

He has also indicated and made the same commitment to Senator Lachman that he would be back before our Higher Education Committee to discuss whatever the Committee viewed as being important, either about his report or any other issue at City University.

I, as I had indicated to the Higher Education Committee, I was not only impressed with his comments about higher education, elementary and secondary education, but I learned in just a one-on-one visit that he was a person who has values, who is committed to family life and is just a very decent human being. And so I believe Benno Schmidt will make an excellent addition to the City University Board of Trustees and will make an excellent Vice Chair. And so, Mr. President, I move the nomination of Benno Schmidt.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the nomination? Senator Lachman on the nomination.

SENATOR LACHMAN: Yes. It is true that Dr. Schmidt did reach out to me.

As Senator LaValle stated, to meet with him on Friday morning. He was going to come to my office. But it is also true that Friday morning I arose at 4:30 a.m. to come to Albany -

ACTING PRESIDENT KUHL: Senator Lachman, excuse me just a minute.

I'm always enthralled with any conversation that you have on the floor, but I can't hear you.

SENATOR LACHMAN: Okay.

ACTING PRESIDENT KUHL: I can see you, I can see your lips moving, but there is a definite chatter on the left side of this Chamber.

SENATOR LACHMAN: I will also speak louder.

ACTING PRESIDENT KUHL: Hold on just a minute until it quiets down in here.

Senator Morahan, could you take the conversation out of the Chamber if you wish to decide to have it?

Senator Lachman.

SENATOR LACHMAN: It is true, as Senator LaValle said, that Dr. Schmidt did

reach out to me Thursday afternoon, and he was scheduled to come to my Brooklyn District Office to meet with me. Unfortunately, I did not have the pleasure as Senator LaValle had to meet with him because I arose at 4:30 a.m. that morning to attend that very important and successful democratic conference meeting here in Albany.

However, I was surprised that Dr. Schmidt did call me shortly after our conference meeting was over and we had a half hour conversation on the telephone and it was a revealing conversation in many ways. As members of the Chamber realize, as Senator LaValle is aware, and Senator Trunzo, who is chairman of the Transportation Committee is aware, I rarely, but occasionally, rarely but occasionally permit nominees to go through without having the committee meet with these nominees. There have been several occasions in the Transportation Committee, I believe this is the first time in the Higher Education Committee. I think it is absolutely essential that nominees meet with a broad cross-section of the members of this Chamber, Democrats and

Republicans.

In my telephone conversation with Dr. Schmidt last Friday, he pledged to come before the Higher Education Committee and the Finance Committee as soon as he returns from Europe.

Now as Dr. -- as Senator Dr. LaValle has said, Benno Schmidt does have a very impressive record. He was the president of Yale University, which if I'm not mistaken, has produced the second highest number of Ph.Ds after the City University of New York. And he also had a distinguished career as dean of the Columbia Law School. Most of us know him as the author of the Schmidt report, dealing with the future of CUNY. This is a very complex report. It is not a simplistic report. It is not a report that either faction in the debates over remediation and funding are totally satisfied with. It has a vision in terms of the future involving access, involving excellence and when one of the appendices, there is a very strong push for greater funding for public higher education in the State of New York.

Now in my conversation with Benno Schmidt, he gave me the impression that in the area of remediation, he is open to the flexibility that has been exhibited by the Chancellor-elect, Dr. Matthew Goldstein, while he was president of Beirut College, he will shortly become the chancellor of the City University of New York.

Now, we have here a very distinguished gentleman who will serve as the vice chair if he is permitted to by this Chamber tonight. Strangely, by coincidence, over the weekend I had a call from Washington, D.C., from the previous vice chair who had been appointed by Governor Carey and reappointed by Governor Cuomo, the Honorable Edith Everett. And she told me that even though I might have some doubts, in her opinion, and if you don't recall, Edith Everett was the strongest fighter and battler for remediation in the City University, in her opinion, it's absolutely essential that someone with the character, the ability and the vision of Dr. Benno Schmidt be appointed a member and the vice chair of the CUNY Board

of Trustees. As Mrs. Everett said to me, I might not agree with everything he says or does, but I respect him and I know he will be independent in his judgment on the major issues.

In my opinion, this is probably one of the best appointments that the Governor has made to the CUNY Board of Trustees. I regret that I have not been able to meet him. I am looking forward to meeting him in the future. Several of my friends in key positions in the university union speak very highly of him after having met with him several times over the last three or four weeks. I will support his nomination as vice chair of the CUNY Board of Trustees.

ACTING PRESIDENT KUHL: The question is on the nomination of Benno C. Schmidt, Jr. of New York City to become a member of the Board of Trustees of the City University of New York. But before we take the vote, Senator Duane, did you wish to speak on the nomination?

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

ACTING PRESIDENT KUHL: Senator Duane.

SENATOR DUANE: Though I'm very clear that I'm swimming against the tide of what's happening in our state and what's happening in our nation, I just want to make sure that I have it on the record that I think ultimately if we talk about how it is that City University should be managed that we need to go back to the way it was originally envisioned and that is a school where everyone had access, including the very poorest of the poor people, including people who needed remediation. I know it's unfashionable, but I think that what needs to be on the agenda is a goal of free tuition and open enrollment at City Universities.

First of all, I think that's the point of it being a public institution is that all of the members of the public should be allowed to attend no matter what their financial circumstances and I request or give an invitation to any of the members of the Senate to come and stand with me on the corner of Chamber Street and Hudson Street any night

at five o'clock and see who it is who is going to Manhattan Community College. Or to stand by the subway station near any City University or community college at all and I think you'll see the same thing that I see. You will see people going to school after they have worked all day. Many of them are women, many of them are children. I don't know who takes care of their children while they're going to school at night, but I'm sure that they're doing the best they can to have child care so that they can provide even better in the future for their families. You see people stop off at McDonald's to pick up dinner to eat at their desks while they're in school. We're not talking about rich people, we're not even talking about middle income people. We're talking about people who work hours and hours in factories and then drag themselves to school in order to be able to better themselves and their families and you know what? I think we should let them go to school for free.

There isn't a university practically, the vast majority of universities

across this nation provide remediation and why it is that this has even become a topic of discussion for CUNY is beyond me. It seems like it's just mean-spirited and indeed, I think, racist. Remediation is a tried and true form of education for people who want to advance themselves in our society and we should support it across the board and we should pay for it because even if you don't care about it in terms of a person's ability to want to advance themselves in terms of investing in our society and making a better world for our kids, that would be the way to go, to make it possible for people to actually do better by our society by having the best possible education and for as long as they want to go to school.

Now, I haven't had the luxury of calls from people on behalf of Benno Schmidt. He didn't call me, he's not here to be able to say what his beliefs are on these issues, which I think are very important. I mean, I find myself conflicted. It could be, you know, a yes vote until we hear more from him or a no vote until he comes and talks with us.

But I also have to put this in the context of what's been happening of the terrible attacks on our City University system. And that's what they are are attacks and most of them are unfair and most of them have been bound to be completely unfounded and I think unfortunately Mr. Schmidt is finding himself, from my point of view, as being a person where I believe I need to take a stand on what it is that my philosophy is about the City University system, how it is that we need to invest in the City University system, how it is that we need to invest in the people who use the City University system and I am going to encourage my colleagues to vote no based on what I hope are beliefs as to how the City University of New York needs to go as we go into the next century. I think the stakes are that high. Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Stafford on the nomination.

SENATOR STAFFORD: Mr. President, very briefly I would only mention that Dr. Schmidt served as dean at Columbia Law School and I was on the board at the time and I can

only say, you know, and emphasize the caliber of gentleman he is. Thank you.

ACTING PRESIDENT KUHL: Senator Montgomery on the nomination.

SENATOR MONTGOMERY: Yes, Mr. President. I join my colleague, Senator Duane, in expressing concern that number one, we have not really had an opportunity to have a dialogue with Mr. Schmidt so that we can better understand how he feels about some of the issues that we feel are extremely important.

Number two, City University is the Harvard and Yale and Stanford and whatever other elite institutions we name, it's that for poor people in New York City and it has been that from the inception of that institution no matter what color were the people, the students in the institution from the beginning. It has always been the avenue, as Senator Duane has so aptly described, essentially freedom from poverty and a pathway to a more productive life and citizenship and citizenry in our city, state and nation.

So it is extremely important for us

to have an opportunity to talk to Mr. Schmidt. He should at least know what's important to those of us who serve constituents in that city and whose constituents are part of that university. So it's unfortunate that he is not here. I am impressed that he served as a clerk with Chief Justice Warren, who is one of my heroes, obviously. I'm impressed that he has served as dean of Columbia Law School and that he has been president of Yale. Obviously his credentials are unquestionable. But there are some very important political issues as it relates to City University and I would like to express my opinion on those to him face-to-face.

I hope that he will agree to come before us at some point and so that we can have that kind of discussion, but I think that I would like to express my concern that one, the City University is one of the most important issues that we have before us in the legislature and in our city and two, we need to have a dialogue with him. So I'm going to vote no on this nomination only because I would like to be able to talk to him about

some of those issues. Thank you.

ACTING PRESIDENT KUHL: Is there any Senator wishing to speak on the nomination? Hearing none, the question is on the nomination. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: All those opposed nay.

(Response of "Nay.")

ACTING PRESIDENT KUHL: The nominee is confirmed. Senator Fuschillo.

SENATOR FUSCHILLO: There will be an immediate meeting of the Majority in the Majority Conference Room.

ACTING PRESIDENT KUHL: Immediate meeting of the Majority. Immediate meeting of the Majority Conference in the Majority Conference Room, Room 332.

Senator Fuschillo.

SENATOR FUSCHILLO: The Senate stand at ease.

ACTING PRESIDENT KUHL: The Senate will stand at ease.

(Whereupon, the Senate stands at

ease.)

(Whereupon, the Senate reconvenes session.)

ACTING PRESIDENT KUHL: Members of the Majority Conference are encouraged to come to the Majority Conference Room as soon as possible. Members of the Majority Conference are encouraged to come to the Majority Conference Room as soon as possible.

SENATOR MEIER: If there be no further business, I move we adjourn until August 5th at 10 a.m.

ACTING PRESIDENT KUHL: On motion, Senator Skelos, the Senate is adjourned until tomorrow, August 5th, at 10 a.m.

(Whereupon, at 10:13 p.m. the Senate adjourned.)