NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

January 11, 2000

1:03 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.

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

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

THE PRESIDENT: In the absence of clergy, could everyone please bow your heads in a moment of silence.

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, January 10th, the Senate met pursuant to adjournment. The Journal of Sunday, January 9th, was read and approved. On motion, Senate adjourned.

THE PRESIDENT: Without objection, the Journal stands approved as read.

Senator Bruno.

SENATOR BRUNO: Madam President, I'd like to announce an immediate meeting of

the Labor Committee in Room 332.

THE PRESIDENT: There will be an immediate meeting of the Labor Committee in Room 332.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Volker, from the Committee on Codes, reports the following bills:

Senate Print 103, by Senator Volker, an act to amend the Penal Law;

538, by Senator DeFrancisco, an act to amend the Penal Law;

539, by Senator DeFrancisco, an act to amend the Criminal Procedure Law;

760, with amendments, by Senator Johnson, an act to amend the Penal Law;

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

853A, by Senator Balboni, an act to amend the Civil Rights Law;

1232A, by Senator Wright, an act to

amend the Penal Law;

1588, by Senator Johnson, an act to amend the Criminal Procedure Law;

2005, by Senator Padavan, an act to amend the Penal Law;

2320, by Senator Saland, an act to amend the Criminal Procedure Law and the Family Court Act;

3689, by Senator Rath, an act to amend the Civil Practice Law and Rules and the Executive Law;

3715A, by Senator Bonacic, an act to amend the Penal Law;

4163, with amendments, by Senator Johnson, an act to amend the Penal Law;

4259A, by Senator Hoffmann, an act to amend the Penal Law and the Criminal Procedure Law;

5706, by Senator Bonacic, an act to amend the Penal Law;

5787, by Senator Rath, an act to amend the Penal Law;

And 5831, by Senator Volker, an act to amend the Criminal Procedure Law.

Senator McGee, from the Committee

on Alcoholism and Drug Abuse, reports:

Senate Print 971, by Senator Skelos, an act to amend the Vehicle and Traffic Law;

1014, by Senator Skelos, an act to amend the Vehicle and Traffic Law;

4113A, by Senator McGee, an act to amend the Vehicle and Traffic Law;

4179, by Senator McGee, an act to amend the Vehicle and Traffic Law;

4952A, by Senator McGee, an act to amend the Vehicle and Traffic Law.

Senator Marcellino, from the Committee on Environmental Conservation, reports:

Senate Print 2543D, by Senator Marcellino, an act to amend the Environmental Conservation Law;

4810, by Senator Maltese, an act to amend the Environmental Conservation Law;

5401, by Senator Marcellino, an act to amend the Environmental Conservation Law;

And 5916A, by Senator Johnson, an act to amend the Environmental Conservation Law.

Senator Trunzo, from the Committee on Transportation, reports:

Senate Print 860, by Senator Balboni, an act to amend the Vehicle and Traffic Law;

2765, by Senator Kuhl, an act to amend the Highway Law;

2948, by Senator Rath, an act to amend the Vehicle and Traffic Law;

3665, by Senator Maziarz, an act to amend the Vehicle and Traffic Law;

4408A, by Senator Trunzo, an act to amend the Public Authorities Law;

And 5577, by Senator Trunzo, an act to amend the Public Authorities Law.

All bills ordered direct to third reading.

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

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Meier.

SENATOR MEIER: Madam President, I move that the following bill be discharged from its committee and be recommitted with instructions to strike the enacting clause: Senate 5439.

THE PRESIDENT: So ordered.

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

I'd like to move, on behalf of Senator Breslin, that the following bills be discharged from their respective committees and recommitted with instructions to strike the enacting clause: Senate 2846 and Senate 2847.

Thank you, Madam President.

THE PRESIDENT: So ordered.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time adopt the Resolution Calendar.

THE PRESIDENT: All in favor of adopting the Resolution Calendar signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is adopted.

Senator Bruno.

SENATOR BRUNO: Madam President, can we take up the noncontroversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 1, by Senator Bruno, Senate Print 7, an act to amend the State Finance Law, in relation to changing the state fiscal year to May 1st through April 30th.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

The Secretary will read.

THE SECRETARY: Calendar Number 6, by Senator Bruno, Senate Print 6, concurrent resolution of the Senate and Assembly proposing amendments to Article 7 of the Constitution.

THE PRESIDENT: The Secretary will call the roll on the resolution.

SENATOR DOLLINGER: Lay it aside.

THE PRESIDENT: The resolution is laid aside.

SENATOR DOLLINGER: Thank you, Madam President.

THE PRESIDENT: Senator Bruno, that completes the reading of the noncontroversial calendar.

SENATOR BRUNO: Madam President, can we at this time take up the controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 1, by Senator Bruno, Senate Print 7, an act to amend the State Finance Law, in relation to changing the state fiscal year to May 1st through April 30th.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, might we have an explanation on that bill?

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

SENATOR BRUNO: Thank you, Madam

President.

The bill before us relates to the budget process here in this state, and it recognizes that the people of this state are tired of excuses for late budgets. Fifteen years in a row we have had late budgets in this state. The people of this state deserve more.

So this legislation before us starts the budget process in the middle of November, dealing with the revenues and the expenditures of major areas such as health care, education. And it designates that the Governor would submit his budget by, instead of the end of January, January 15th. It shortens the 30-day amendment period from 30 days to 15 days.

And it allows the deliberations to go forward between the Assembly and the Senate on what is available to budget. If we can't come to an agreement by March 1st, then the Comptroller would establish what is available for us to budget.

Conference committees then would meet after the separate houses pass their own

resolutions or their own separate budgets. We would then go to conference committee the middle of March, March 15th, and that process would take place. If we come to an agreement, we'll have a budget by April 1st, April 2nd.

If we don't come to an agreement - and this is what is operative in this legislation, is that by May 1st, if we can't come to an agreement, the people of this state would have a budget, and it would be last year's budget that had been negotiated in public, in an open forum, that would become the budget for the people of the state until we did something different.

It also includes, in this budget reform package, establishing 5 percent of the General Fund as a reserve to be responsible and prudent, as a rainy day fund. And it also establishes that as a result of the conference-committee approach to the budget that we have a three-year fiscal plan that deals with the ramifications of what we legislate and create as a budget for the people of this state.

It's an excellent proposal. The

Assembly has a proposal, they have a task force that is presently out, has been studying the budget process for weeks. I talked to the Speaker a short while ago, and he indicates that they expect a report out in a week or two. So we look forward to working with them to implement a budget reform proposal together.

Thank you, Madam President.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Thank you, Madam President.

I'm going to vote for this. If anyone hasn't noticed -- you got me. If anyone hasn't noticed that the process is broken, then they haven't been around for the last 15 or 20 years. And we do have to take steps to restore credibility.

When I saw the original proposal, I thought, aha, I can think of a great amendment, because what do you do in the default process if you have a projected deficit? I learned yesterday that I guess the Comptroller had the same comment.

And to his credit, Senator Bruno

has added a provision for across-the-board cuts, which was going to be my proposal. Because I don't think in the default process there should be any policy choices. The whole point is you're not making a budget. You want to make policy choices, you want to prefer one thing, you want to set priorities, that's what you do when you make a budget. If you don't make a budget, you're stuck with the policy choices that were made the last time out.

But we will be offering -- Senator Dollinger will be offering an amendment, and Senator Stachowski will -- and if he's not here by then, I'll offer it -- to address a couple of concerns.

One of which, I have to say, Madam President, Senator Bruno's bill does something that I think perhaps was unanticipated, the way Majorities think around this Capitol. But it perpetuates sort of a three-men-in-a-room mentality. Because if we look at the current revenue-forecasting process, all four leaders and their staffs are involved in the current process.

Under Senator Bruno's proposal,

only the two Majorities and their staffs would participate in the financial information review, in the avails meeting in December, and in the consensus forecast. And I think that's the wrong direction.

I mean -- and I can't speak for Assemblyman Faso, but I suspect he has learned, as I have, what it means to be in the Minority, and that even though you participate in these processes, you obviously don't call the shots. But it is important. I think it's important to the credibility of the process. It's certainly important to the public perception of the Legislature that all the members of both houses have representation in this process.

We have it now. We have it now in the revenue-forecasting process. And this bill would change that. This bill would not allow participation by the Minority staffs and the Minority Leaders.

So our amendment -- and I know Senator Bruno is a fair man, so this may be the first time an amendment is accepted in a long while -- we would simply provide for the

participation of both Minorities' staffs in the financial-information review in November, in the December avails meeting, and in preparing the consensus forecast.

So Senator -- I would yield to Senator Dollinger -- well, oh, Senator Stachowski is here. I would yield to Senator Stachowski to present his amendment.

THE PRESIDENT: Senator Stachowski.

SENATOR STACHOWSKI: Madam President, I believe I have an amendment at the desk.

THE PRESIDENT: Do you wish to waive the reading, Senator, and explain it?

SENATOR STACHOWSKI: I'll waive the reading. And a short explanation, please.

THE PRESIDENT: Go ahead.

SENATOR STACHOWSKI: Madam President, my amendment merely, as Senator Connor has mentioned, would ask that, as currently is the practice, that the Minorities in both houses would be part of the economic forecast, and in this case also add the Minorities to the economic report.

It's a practice that goes on currently. I don't think that when the Majority Leader drafted his bill he meant to exclude the Minorities from the economic forecast. I've got to believe it was an oversight. And this amendment would take care of that oversight and leave the economic-forecast part of the budget process as it currently is, with getting a diverse view.

And of course, then again, the only thing I can think of is maybe he took us out because our forecast was the most accurate just this past year. So that could be the reason. I don't know.

But other than that, I just think it was an oversight. And hopefully this amendment will pass, and I urge its adoption.

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

SENATOR CONNOR: Party vote in the affirmative.

SENATOR BRUNO: Party vote in the negative.

THE PRESIDENT: The Secretary

will call the roll on a party vote.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 21. Nays, 33. Party vote.

THE PRESIDENT: The amendment is defeated.

Senator Dollinger.

Senator Bruno first, excuse me.

SENATOR BRUNO: I would like to, on that amendment, just explain, Madam President, that some great thoughts and some great ideas come forward in this chamber as we deliberate. And as I listened, I had a great idea, that the Minority be included in the discussions when we get to the avail question.

And we're going to incorporate that, and I'm going to ask the staff to put together some kind of an amendment or some legislation so that when this bill is amended eventually, as it will be, that we incorporate the thoughts that are representative in this chamber.

Thank you, Madam President.

SENATOR CONNOR: Thank you.

(Applause.)

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

Is it possible after 40 years to say we're on a roll?

(Laughter.)

SENATOR DOLLINGER: No, I didn't think so.

Madam President, I also have an amendment at the desk. I'd waive its reading and ask that I be heard on the amendment.

THE PRESIDENT: Go ahead, Senator.

SENATOR DOLLINGER: Madam President, this bill that's about to roll off the line here in the Senate is a good bill. It has got lots of good things in it. I just have a little suggestion via this amendment that would put a final little bit of spit and polish on this car before we roll it over to the Assembly line. Which is I think what happens, it goes from the Senate to the Assembly line.

This is an amendment that will set

up a time frame under which we trigger the creation of the joint conference committees. Under this amendment, 21 days prior to the start of each new fiscal year, the Senate and the Assembly shall adopt budget resolutions indicating the preference of each house as to the next fiscal year's budget.

The adoption of these budget resolutions become the triggering event that calls for the convening of the joint conference committee on the budget. It's simply a technical amendment that says we won't allow the failure of the houses to pass budget resolutions to stall the deliberation of the joint conference committee to get the budget done on time.

Senator Bruno, I commend you, as I have previously on this floor, for chartering the whole concept of joint conference committees. This is something we had never done before. It was certainly not done under your predecessor. It happened when you came, it has continued to happen. In my judgment, it ought to happen more frequently. But I'm pleased that it does happen.

But I think the critical thing we have to do is avoid the possibility of stalemate, that both sides or one side would simply say, "We're not satisfied," or "We don't want to put forward our budget agenda," and therefore they don't pass the budget resolution. And as a consequence, we end up stalled in the creation of joint conference committees because there is no budget resolution from the Senate or no similar budget resolution from the Assembly.

This bill would be self-policing. Because I have no doubt that if we amended this law and put in this provision, if for some reason the Senate didn't pass their budget on time, the Minority would be doing what occasionally we do, raising perhaps a suggestion that you weren't doing your responsibilities on time.

Similarly, if the Assembly didn't do it on time, I have no doubt that the Minority there would provide a political check to make sure that the budget process works.

But it won't work unless we put in a trigger date that would require both houses

to pass their form of budget resolution 21 days prior to the start of the fiscal year and give the joint conference committee plenty of time to iron out those issues.

I think this bill is a good step. This is the spit and polish that will make it even more appealing to our colleagues in the Assembly -- and, frankly, give us the ability to drive the budget process better in the future.

I move the amendment, Madam President.

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

SENATOR CONNOR: Party vote in the affirmative.

SENATOR BRUNO: Party vote in the negative.

THE PRESIDENT: The Secretary will call the roll on a party vote.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 22. Nays, 34. Party vote.

THE PRESIDENT: The amendment is defeated.

Read the last section.

THE SECRETARY: Section 11. This act shall take effect upon the effective date of the amendments to the Constitution contained in a concurrent resolution.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

THE PRESIDENT: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 6, by Senator Bruno, Senate Print 6, concurrent resolution of the Senate and Assembly proposing amendments to Article 7 of the Constitution.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Can I ask for an immediate meeting of the Children's and Families Committee in Room 332.

THE PRESIDENT: There will be an immediate meeting of the Children's and Families Committee in Room 332.

Call the roll on the resolution.

SENATOR DOLLINGER: Explanation,

please.

THE PRESIDENT: Senator Bruno, an explanation has been requested by Senator Dollinger.

SENATOR BRUNO: Madam President, this resolution is what establishes the budget that would go into place on May 1st by default. If the Legislature, through its conference process, doesn't get together by that date, then the people of this state would have an automatic budget that would go into place on May 1st.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. Just a couple of questions, if I could, through you, to the sponsor.

THE PRESIDENT: Senator Bruno, do you yield?

SENATOR BRUNO: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

Through you, was this constitutional amendment submitted to the Attorney General for his review and comment?

SENATOR BRUNO: I believe our counsels -- who are extremely capable, competent, qualified, as all of our counsels have been through the ages -- have talked with whomever they thought was appropriate to make sure this met the constitutional test. I don't know that they specifically got a sign-off by the Attorney General.

SENATOR DOLLINGER: Okay. Through you, Madam President.

And, Senator Bruno, excuse me, because I don't have the history in the house that you do. But is it customary that we would do an amendment to the Constitution, a resolution amending the Constitution, without some written approval from the Attorney General?

SENATOR BRUNO: Senator, based on your remarks and your question, we have just had a sign-off by the Attorney General, who says that this is the way to go.

Thank you, Senator.

(Laughter.)

SENATOR BRUNO: We aim to please, Madam President. That happens to be a matter of fact.

Does that answer your question?

SENATOR DOLLINGER: It does, Madam President.

THE PRESIDENT: Senator Dollinger, do you wish to be heard?

SENATOR DOLLINGER: Yes, Madam President.

I'll just make one very brief comment on the bill. I made it in the Finance Committee, I think, when we talked about this bill. My concern about this bill is that under it we are ceding an enormous power to the Governor when we allow him to take the default budget and alter the operation of law of certain portions of the budget.

The way the amendment reads -- and we talked about this, I believe, in the Rules Committee or the Finance Committee when we reviewed it -- is that this bill authorizes the Governor to modify the operation of law in order to meet the requirements of the default

budget, which he has complete prerogative over.

I would just suggest that in a house which prides itself on its prerogatives and which prides itself on its coequal status as one of the three legs of the stool that makes this government work, I would suggest that two of those legs are, if they pass this resolution and this constitutional amendment, are ceding an enormous power to the Executive, and one that I daresay, when the Executive begins to modify the default budget without the approval of any member of either body, when he unilaterally begins to repeal and to modify state law without the power and approval of this body, I would suggest that that's a dangerous, dangerous way to go.

I think that we already have one of the most powerful governors in the nation in terms of his prerogatives of line-item vetoes and other things. But we are giving him an enormous power to unilaterally change laws that are created only with the majority of this house's concurrence. And I would suggest that that's a very dangerous thing to do.

This bill has some very good things in it, but I think that's far too much power to cede any one person. I'll vote no.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: By way of information, Madam President, the Governor only has that prerogative if we are in a deficit situation when that budget kicks in, and only if the Legislature has failed to negotiate and enact a budget on its own. So that is a great compulsion for us to be successful in our negotiations.

Thank you, Madam President.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Madam President, if Senator Bruno would yield to a question.

THE PRESIDENT: Senator Bruno, do you yield for a question?

SENATOR BRUNO: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Connor.

SENATOR CONNOR: Thank you, Madam President.

Is it true to say that under this

concurrent resolution, should this become part of the Constitution, the Governor would have no discretion in reducing -- in going to the default budget in situations where it was necessary to reduce the expenditures because of a forecast? He would have no discretion, it would just be an administrative thing to across the board reduce it by a percentage to account for the deficit?

SENATOR BRUNO: As you stated, it would be so.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President -

THE PRESIDENT: Is this on the bill, Senator?

SENATOR PATERSON: On the bill.

THE PRESIDENT: Go ahead.

SENATOR PATERSON: We have a quadrennial referendum on issues and presumably policy when we hold elections in this state. What I'm afraid of is that a change in leadership around the state would give an unfair advantage to those who are in position to block a budget from passing,

thereby instituting this alternative procedure, which then becomes a policy rather than something that actually assists us.

Though the legislation may have been intended as a stopgap maneuver to make sure that our debt is paid on time, the phrasing of "the failure of the Legislature to pass the budget" connotes that there was actually a human failure -- in other words, that there was some kind of incompetence or inability to actually put a budget together - when actually what it is is a protracted different in policy.

Now, I think that there are a number of ways to speed up the budget process, as I've said over and over, including making everyone sit here until it passes, which would be far preferable than putting into procedure something that would actually fulfill the policy needs of some and would actually hurt what would be the ideological point of view of others.

So I don't see any way that I can vote for legislation such as this, because - while it may disappoint some that I can't vote

for it -- the fact is that it creates a notion that we are solving a problem that's being caused by human failure rather than that it's being caused by the inability of humans to agree.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Madam President, I -- while I'm not firmly opposed to a default provision, the way this constitutional amendment is written I find rather confusing, because it allows the Governor to make the determination for the fiscal year that monies and receipts available are less than monies and receipts available for the preceding year.

When I thought in the reform -- in the reform legislation we just did, we threw the revenue in the absence of an agreed-upon consensus revenue forecast. Under Senator Bruno's legislation, the Comptroller makes the revenue forecast as a binding revenue forecast.

And I would think that this provision should say, instead of saying "on a determination made by the Governor," it should say "on a determination made by the

Comptroller that there's insufficient funds" irreducibly.

Later the Governor is bound in doing that? Okay, it's in there. Thank you.

THE PRESIDENT: The Secretary will call the roll.

Senator Schneiderman, excuse us.

SENATOR SCHNEIDERMAN: Thank you, Madam President. If Senator Bruno would yield for one final question.

THE PRESIDENT: Senator, do you yield?

SENATOR BRUNO: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you.

Am I correct in understanding that if there is a surplus, that money would all go into a reserve fund? The Governor would not have the authority under this to raise spending or have discretion to raise spending in a default situation, but would have authority, if there was a deficit, to cut spending; is that correct?

SENATOR BRUNO: That is correct, Senator.

SENATOR SCHNEIDERMAN: So in essence, what we're enacting here is a one-way ratchet towards smaller government which may in fact be a political agenda; is that correct?

SENATOR BRUNO: That is incorrect, Senator.

(Laughter.)

SENATOR SCHNEIDERMAN: Well, one out of two isn't bad, I suppose.

On the bill, Madam President.

Thank you, Senator Bruno.

On the bill -

THE PRESIDENT: Go ahead, Senator. On the resolution?

SENATOR SCHNEIDERMAN: On the resolution, excuse me.

I do have the same concern about ceding power to the Governor. We've had governors who were not terribly -- of both parties who were not terribly cooperative with the Legislature and pursued other agendas.

I also do have a concern that this

is -- some people believe that it's been the policy of some in government to create structural deficits for strategic political purposes and to make it impossible to advance spending on issues that some of us believe are very important, on programs that we believe are very important for the long-term growth and social health and stability of our nation. And I am concerned that there is a one-way-ratchet aspect of this.

I think we are wrestling around with very difficult issues here. I'm going to vote against the resolution. But again, I have to acknowledge that this is the most serious effort to address these problems that we've seen in a long time, and I do have to commend Senator Bruno and the Majority for that.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you very much. Actually just on the bill, Madam President.

It just -- it seems to me that there should be some in-between, just sort of a gentlepersons' agreement on the timing of

the bill and actually taking the drastic step of changing the Constitution. There are many things which we could do by statute and not go to the lengths of changing the Constitution. But really, this is just a matter of us doing our jobs. And that's really what the issue is here.

Thank you, Madam President.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: I'll yield to Senator Connor, Madam President.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Madam President, this is sort of a work in process as I think this out. But it just hit me -- and I know it's difficult to come up with a default budget, you know, that doesn't create problems.

The obvious one is if one party to the negotiations feels they made out particularly well last year and this year is going to be a tough year for whatever they advocate, then stop the process and rest on your laurels from the year before.

But I suppose what this really says, if you think about it, is in 1994 George Pataki -- had this been law when George Pataki won an election -- he became governor in 1995. He at least says that he then proposed a budget that was radically different than in the past. Certainly we had a long budget battle then. There was clearly a change in philosophy on the second floor. Yet the Democrats controlled the Assembly and weren't happy with the Governor's proposals. And under this, they would have had to merely stand pat and they get Mario Cuomo's last budget? No?

And then when you go forward, as you go forward, because none of those tax cuts that we just heard the Governor go on and on and on about -- what is it, six pages in the back of the book? -- would have ever taken effect. And by the way, I didn't agree with -- I certainly opposed a lot of what Governor Pataki proposed that year. Yet it was the recognition that the public had elected him Governor.

And I think when we try and tinker

with this, it's just not as easy as we think. I think particularly in that case, where there's a new Governor and/or a change -- I know this hasn't happened in a while, Madam President, but in the theoretical possibility that there's a change in control, partisan control of one of the houses of the Legislature, it allows the other house, if it's in other hands, to just -- or the Governor, or whatever, any one of the three players -- to just call a halt and get the benefit of their political position of a year before.

Democrats could have stopped Pataki in his tracks in '95 and gotten the benefit of the choices they got under Governor Cuomo as a default budget. And if you look at that year's cuts in Medicaid, in Medicaid cost containment, the new tax cuts, that could have all been thwarted had this been law.

So I commend the Majority for bringing this out, but I think it requires further thought. Because that really poses not just how are we going to solve the budget problems, that proposes serious governmental

philosophical problems. I daresay I don't think the Majority in this house would have been happy having the last Cuomo budget perpetuated for another year. At least that's not what they were saying in 1995.

THE PRESIDENT: Senator Onorato.

SENATOR ONORATO: Madam President, would Senator Bruno yield to a question, please?

THE PRESIDENT: Senator Bruno, do you yield?

SENATOR BRUNO: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator.

SENATOR ONORATO: I'm a little confused regarding what happens if both houses agree to the budget and the Governor himself rejects the resolved budget of both the Assembly and the Senate and the Governor rejects the budget in total. What happens then?

SENATOR BRUNO: Then of course our present prerogative is for us jointly to override the Governor's veto. And then you

have a budget for the people of this state.

But if we fail to do that, then this budget would go into effect on May 1st.

SENATOR ONORATO: Regardless of the fact that both houses agreed to the budget?

SENATOR BRUNO: Yes, because we won't have a budget for the people of this state that is the law on behalf of the people of this state.

But we always have the prerogative of overriding the Governor's vetoes if, as you describe, we all had agreed on a budget.

SENATOR ONORATO: Thank you.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, just one final question to make sure that I fully understand this. Through you to the Majority Leader, if he would yield.

THE PRESIDENT: Senator Bruno, do you yield?

SENATOR BRUNO: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator

Dollinger.

SENATOR DOLLINGER: Under this proposal, if the default budget takes effect, would the Legislature have the ability to cut additional spending during the course of the year?

SENATOR BRUNO: Yes.

SENATOR DOLLINGER: Where is that in the amendment?

SENATOR BRUNO: That's the prerogative of the Legislature at any time after a budget has been enacted in this state.

SENATOR DOLLINGER: Would the Legislature -- through you, Madam President, if Senator Bruno would continue to yield.

Would the Legislature have the prerogative of sending additional budget bills to the Governor that increased spending beyond the default budget?

SENATOR BRUNO: With the Governor's consent, yes.

SENATOR DOLLINGER: Correct.

Just so I make sure I understand it, the default budget occurs and the Governor has no role in that; his only job then becomes

as an administrator to balance off his revenues and his expenses as he deems fit, without legislative approval. And if there's more money and then we still default, then the extra money beyond last year's expenses go into a fund to be used for some other day?

SENATOR BRUNO: That is correct. That's exactly right. You have a great understanding of this legislation.

SENATOR DOLLINGER: Well, I'm just trying to make sure I do.

But the Governor would have the ability, if he vetoed both the budget bills, and there were more -

THE PRESIDENT: Senator, are you asking the Senator to continue to yield?

SENATOR DOLLINGER: Yes, I am, Madam President. Excuse me.

SENATOR BRUNO: Thank you, Madam President.

SENATOR DOLLINGER: It's a work in progress. A thought in progress, too.

SENATOR BRUNO: I thought he was thinking out loud.

THE PRESIDENT: Senator Bruno, do

you continue to yield?

SENATOR BRUNO: Yes, I do, Madam President.

THE PRESIDENT: Senator Dollinger, do you have a question?

SENATOR DOLLINGER: I do, Madam President, if Senator Bruno will continue to yield.

THE PRESIDENT: Go ahead.

SENATOR DOLLINGER: If the Governor vetoes the budget and it has additional spending in it, that money goes into the fund and it would be up to the Legislature, then, if the Legislature could send him back additional budget bills, at the end of the process to spend that additional money?

SENATOR BRUNO: Yes. Yes.

SENATOR DOLLINGER: Madam President, I spoke earlier about the bill because I thought it gave the Governor too much power in the process of manipulating and changing laws that this body enacted. He can do it unilaterally in positions of deficit.

I think in the dynamics that we

just discussed, we're also giving the Governor an enormous power to control us in a position where we would have a surplus. We are fundamentally altering, in my judgment, the power of the Legislature by this amendment.

That may be the Majority's intent. But in the years that I've been here, I've never heard that before. This is a revolutionary concession of power to the Governor. I still think it's a bad idea.

THE PRESIDENT: The Secretary will call the roll on the resolution.

(The Secretary called the roll.)

THE PRESIDENT: Senator Paterson, do you wish to explain your vote?

SENATOR PATERSON: Madam President, to explain my vote.

THE PRESIDENT: Go ahead.

SENATOR PATERSON: The irresponsibility of this resolution, though it may be intended to cure a problem, does not err in its fiscal inaccuracy, but it is really unfair to the voters of this state.

As I said before, every four years we have a referendum on position and

presumably policy. Any kind of action that we would take in this Legislature which in any way would diminish what would be the will of the voters -- and after that, Senator Connor got up and gave a very good example of it, the 1994 elections -- would actually be a tool that would establish permanent government rather than continuing government. Which is what I think we go to the polls every year to aver, that we want our elected officials to change with whatever would be the elements that would supersede what happened the previous year and to enact those changes into firm policy.

This bill is a step in the opposite direction. It actually would negate the opportunity to use any kind of flexibility for that purpose, based on a presumption that we can't pass a budget on time -- for which there are many alternatives, none of them that would conflict with our electoral process.

I vote no, Madam President.

THE PRESIDENT: Senator Connor, do you wish to be heard?

SENATOR CONNOR: I'd like to

explain my vote further and just point out something I forgot to mention before.

As I read all this, if this all became law and we went to a default budget, legislators would never get paid. But nothing in here obviates the law that says if we don't adopt the budget -- it does?

SENATOR BRUNO: Yes.

THE PRESIDENT: The Secretary will announce the results.

Senator Mendez.

SENATOR MENDEZ: Madam President, to explain my vote.

I oftentimes think that perfection occurs only in heaven. For 15 long years, both houses, and the Executive branch as well, have been juggling and screaming and cajoling, and the end result has been a lengthy, tortuous process that has not benefited the residents of New York State.

I really -- I am not a lawyer. All these lawyers here that are constitutional lawyers, so God bless them. I suppose that I'm a pragmatist, Madam President. But I believe that this is a wonderful first step.

If something goes wrong with the same three activities that this change has been offered to all of us, we'll go back to the drawing table and redress and -- and redress whatever is wrong.

So I for one, Madam President, I want to congratulate Senator Bruno. I am very happy with this. Because hopefully it would force all the 261 legislators, okay, to really get down to business and get done with the work that we're supposed to get done every year.

Thank you, Madam President. I vote yes.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: We just heard some debate that gave many, many potential defects in this bill. And they're all obviously considerations that we have to have. But none of them, and all of them together, don't even amount to anything close to the deficit that we've experienced over the last 15 years in not being able to have a budget on time.

This is an excellent bill which has some teeth in it so something bad happens if we don't do our job. Without that, we will still go on for years to come without having budgets on time.

Now, this bill is long overdue. And what's beautiful about this bill, in my judgment, is that it's a bipartisan bill. It puts the Comptroller, who happens to be a Democrat at the present time, in charge of how much money we have to spend. This isn't a bill concocted by Republicans to try to maintain all control. And who knows, several years down the road there may be different people in different parties in different positions.

The fact of the matter is that there's ample opportunity for all parties to be involved in this process. But there is definitely, definitely a club hanging over all of our heads if we don't do our job.

It's a great bill. And there's no reason that both parties should not run to the Assembly to try to get the leadership there to put a similar bill in place so that we could

actually have a budget process that is not dysfunctional.

THE PRESIDENT: Senator, you will be so recorded as voting in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 6 are Senators Connor, Dollinger, Duane, Hevesi, Onorato, Paterson, Sampson, Santiago, Schneiderman, Seabrook, Stachowski, Smith, and Senator Stavisky.

Ayes, 44. Nays, 13.

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

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

THE PRESIDENT: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Spano,

from the Committee on Labor, reports the following bills:

Senate Print 830A, by Senator Marcellino, an act to amend the Labor Law;

1143, by Senator Lack, an act to amend the Labor Law;

1509, by Senator Stafford, an act to amend the Labor Law;

2214, by Senator Farley, an act to amend the Labor Law;

3704, by Senator Maltese, an act to amend the Labor Law and the Penal Law;

3909, by Senator Spano, an act to amend the Labor Law and the Civil Service Law;

4124A, by Senator Alesi, an act to amend the Workers' Compensation Law;

And 4467A, by Senator Spano, an act to amend the Labor Law.

Senator Alesi, from the Committee on Commerce, Economic Development and Small Business, reports:

Senate Print 550, by Senator DeFrancisco, an act to amend the Economic Development Law;

2063, by Senator LaValle, an act to

amend the Public Authorities Law;

3483, by Senator Alesi, an act to amend the Economic Development Law and others;

3484, by Senator Alesi, an act to amend the Economic Development Law;

3485, by Senator Alesi, an act to amend the State Administrative Procedure Act;

3965, by Senator Alesi, an act to amend the Economic Development Law;

4367, by Senator Alesi, an act to amend the State Administrative Procedure Act;

4507, by Senator Alesi, an act to amend the State Administrative Procedure Act;

And 4690, by Senator Alesi, an act to amend the Executive Law.

All bills ordered direct to third reading.

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

Senator Skelos.

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

THE PRESIDENT: No, there is not, Senator Skelos. We are awaiting a report of

the Children and Families Committee.

SENATOR SKELOS: Yeah, there will be one more committee report, and we'll stand at ease pending the report of that committee.

THE PRESIDENT: The Senate stands at ease.

(Whereupon, the Senate stood at ease at 1:51 p.m.)

(Whereupon, the Senate reconvened at 1:58 p.m.)

SENATOR SKELOS: Mr. President, I believe there's another committee report to be read at this time.

ACTING PRESIDENT NOZZOLIO: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Saland, from the Committee on Children and Families, reports:

Senate Print 587B, by Senator Skelos, an act to amend the Domestic Relations Law and others;

1031C, by Senator Saland, an act to amend the Education Law;

1531, by Senator Johnson, an act to

amend the Domestic Relations Law;

And 4887, by Senator Skelos, an act to amend the Domestic Relations Law.

All bills ordered direct for third reading.

ACTING PRESIDENT NOZZOLIO: Without objection, all bills will be reported -

SENATOR SKELOS: I believe there were some members of the Minority that were at the committee meeting that wish to vote on the prior bill.

Senator Markowitz.

ACTING PRESIDENT NOZZOLIO: Senator Markowitz.

SENATOR MARKOWITZ: Mr. President, I request approval to be recorded in the negative on Calendar 6, please.

ACTING PRESIDENT NOZZOLIO: Without objection, so recorded.

SENATOR MARKOWITZ: Thank you.

Thank you, Dean.

SENATOR OPPENHEIMER: Mr. President.

ACTING PRESIDENT NOZZOLIO:

Senator Oppenheimer.

SENATOR OPPENHEIMER: I wonder if I could be recorded in the negative on Resolution Number 6 today.

ACTING PRESIDENT NOZZOLIO: Senator Oppenheimer recorded in the negative, without objection.

SENATOR OPPENHEIMER: Thank you.

ACTING PRESIDENT NOZZOLIO: Senator Skelos.

SENATOR SKELOS: Mr. President, there being no further business, I move we adjourn until Tuesday, January 18th, at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT NOZZOLIO: On motion, the Senate stands adjourned until Tuesday, January 18, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 2:00 p.m., the Senate adjourned.)