NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 20, 2000

3:07 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 repeat 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 Young, from Blessed Sacrament Church in Bolton Landing, New York.

REVEREND YOUNG: Let us pray.

Dear God, we enjoy Your increased sunshine -- and hope -- as we celebrate spring. Spring has always been historically a symbol in mythology and religion of hope. As the days warm up and offer our citizens relief from the heating bills, and opportunities of outdoor recreation, we again see Your very good guidance and love and generosity to all of the world that You've created.

Your gift of intelligence has been given to all of those who wisely then do their duty as elected officials in the very

dedicated way that they represent the people of New York State. We know that they will wisely, too, advocate for legislation that will fulfill Your will to enhance our lives. May we call upon Your blessing to help them in this great body of the Senate of New York State.

Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, March 19th, the Senate met pursuant to adjournment. The Journal of Saturday, March 18th, was read and approved. On motion, Senate adjourned.

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

Senator Skelos.

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

THE PRESIDENT: There will be an immediate meeting of the Environmental

Conservation Committee in the Majority Conference Room.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

On behalf of Senator Wright and Senator Spano, I move the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: Senate Print Number 1225, Senate Print Number 1260, and 4237.

THE PRESIDENT: So ordered.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

On behalf of Senators Spano, Libous, Larkin, and Kuhl, I offer the

following amendments to the following bills.

On page 14, 219, 3514B; that's for Senator Spano.

Senator Libous, on page 21, Calendar Number 326, Senate Print 6288.

On behalf of Senator Larkin, page 29, Calendar Number 435, Senate Print 5709.

On behalf of Senator Kuhl, on page 30, Calendar 444, and Senate Print 4102.

And I ask that these bills retain their place on the Third Reading Calendar.

THE PRESIDENT: The amendments are received, Senator Farley, and the bills will retain their place on the Third Reading Calendar.

SENATOR FARLEY: Thank you, Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, if we could take up the noncontroversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 8, by Senator Skelos, Senate Print 1014, an

act to amend the Vehicle and Traffic Law, in relation to increasing the period of time.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 10, by Senator McGee, Senate Print 4179, an act to amend the Vehicle and Traffic Law, in relation to providing for the permanent revocation.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of September.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 44. Nays,

1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 11, by Senator McGee, Senate Print 4952A, an act to amend the Vehicle and Traffic Law, in relation to requiring suspension and revocation.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 122, by Senator Fuschillo, Senate Print 2030, an act to amend the Vehicle and Traffic Law, in relation to periods of license revocation.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 123, by Senator Marcellino, Senate Print 2791, an act to amend the Vehicle and Traffic Law, in relation to increasing the parameters of driving while ability-impaired.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 125, by Senator Wright, Senate Print 4552, an

act to amend the Vehicle and Traffic Law, in relation to creating the crime of aggravated driving while intoxicated.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 132, by Senator Maziarz, Senate Print 654, an act to amend the Vehicle and Traffic Law, in relation to the offense of operation while license or privilege is suspended or revoked.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 304, by Senator Velella, Senate Print 1214, an act to amend the Vehicle and Traffic Law and the Criminal Procedure Law, in relation to authorizing the discovery of blood samples.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 305, by Senator Johnson, Senate Print 1432, an act to amend the Vehicle and Traffic Law, in relation to limiting options.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 308, by Senator Wright, Senate Print 3404, an act to amend the Vehicle and Traffic Law, in relation to the suspension and revocation.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 311, by Senator Fuschillo, Senate Print 6517, an act to amend the Alcoholic Beverage Control Law, in relation to use of a driver's license.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 365, by Senator Nozzolio, Senate Print 1093 -

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 367, by Senator Fuschillo, Senate Print 2031, an act to amend the Vehicle and Traffic Law, in relation to increasing fines and license revocation periods.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

370, by Senator McGee, Senate Print 4822, an act to amend the Vehicle and Traffic Law, in relation to requiring the revocation for 18 months.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 393, by Senator Wright, Senate Print 6481A, an act to amend the Public Authorities Law, in relation to maintaining certain pension and benefit rights.

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, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 421, by Senator Wright, Senate Print 4355B, an act to amend the Penal Law, in relation to the crimes of vehicular assault and vehicular

manslaughter.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 7. This act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

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

SENATOR SKELOS: Madam President, if we could go to the controversial calendar at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 308, by Senator Wright, Senate Print 3404, an act to amend the Vehicle and Traffic Law, in relation to the suspension and revocation of registrations.

SENATOR DUANE: Explanation,

please.

SENATOR SKELOS: Lay it aside temporarily.

THE PRESIDENT: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 365, by Senator Nozzolio, Senate Print 1093, an act to amend the Vehicle and Traffic Law, in relation to the application for court orders.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Nozzolio, an explanation has been requested by Senator Paterson.

SENATOR NOZZOLIO: Thank you, Madam President. Could you tell me who requested the explanation?

THE PRESIDENT: Senator Paterson, Senator Nozzolio.

SENATOR NOZZOLIO: I'll be glad to try to explain this to Senator Paterson.

Senator Paterson, this measure is to mandate that all drivers involved in fatal or serious-injury accidents submit to blood alcohol content, BAC, tests when there is a

reasonable cause to believe that an alcohol-related offense has been committed.

That this measure basically empowers the police, when they believe that there is a reasonable cause to appreciate that someone may have been under the influence of alcohol when they resulted in a serious injury or death, then that is certainly allowed under this measure.

And that the individual who is so asked then would be required to submit to a compulsory chemical test to determine their blood alcohol content.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you. Would the sponsor yield to a question or two?

THE PRESIDENT: Senator Nozzolio, would you yield to two questions?

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: Thank you, Madam President.

Are police officers, don't they now

have the power to ask for the test?

SENATOR NOZZOLIO: Madam President, certainly under current law police officers have the authority, but that authority is very discretionary.

That this is -- this takes away that discretion to the officer and says that if there's any suspicion of an alcohol- or chemical-related problem, that that test must be taken.

SENATOR DUANE: Through you, Madam President.

THE PRESIDENT: Senator Duane, go ahead. You have a second question.

SENATOR DUANE: What are police officers required to do now when they suspect there's alcohol involved?

SENATOR NOZZOLIO: Madam President, pardon me, because I could not tell if that was a question or hear it if it was a question.

THE PRESIDENT: Senator Duane, could you please repeat your question?

SENATOR DUANE: Yes, certainly, Madam President.

What are police officers required to do now when they suspect there's alcohol involved?

SENATOR NOZZOLIO: The -- as stated in my previous answer, Madam President, that the police officers have the authority to make application to compel a test. However, that does not put any burden on the police officer of compulsory.

We're saying that when there is an injury, when it results in a serious fatality, we're taking that circumstance, if there is any suspicion at all by the police officer, that police officer must require a test at that juncture.

SENATOR DUANE: And one final question, through you, Madam President.

THE PRESIDENT: Senator Nozzolio, would you yield to an additional question?

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: Are there any examples that the sponsor could cite of police

officers not checking for alcohol when they've suspected that there's alcohol?

SENATOR NOZZOLIO: Yes, Madam President. In 1996, Doris Monica from Webster, New York, had her son, Randy, killed by a drunk driver. The drunk driver was never prosecuted because he was unconscious upon arriving at the hospital and the blood evidence was never collected.

That, as such, that death certainly pointed out to me a loophole in the law, that had the test been collected, in effect there would certainly have been grounds for a prosecution. Because of that lack of collection, there was no prosecution, and the individual who died, died so without having his family know that the individual responsible for that death was prosecuted.

SENATOR DUANE: Thank you.

Madam President, on the bill.

THE PRESIDENT: Senator Duane, on the bill. Go ahead.

SENATOR DUANE: Thank you.

I'm going to vote no on this. I don't see any need for this legislation.

First of all, I believe that police officers, when they do suspect that alcohol is involved, do test for it. I'm not aware that this is a big problem.

I believe that officers, through training and by their own procedures, are required to do this. If they're not -- though I don't think that's true -- I believe that's the remedy that we should be pursuing rather than legislation. Although, as I say, I am sure that they are now required, by both training and procedure, to administer a test.

The example that's cited is actually I don't think a particularly good one for this, because if a person is unconscious, they're supposed to be given medical attention first. If the police officer then did not follow up the case at the hospital and get the blood alcohol tested, then the police officer made a mistake.

I don't believe that we should make it that the police officer broke the law. That said, I think that they should have done that and their supervisor should have followed up with them.

But I don't see any need for this legislation, and I would encourage my colleagues to vote no. I think it's just the wrong way to go, the wrong remedy. Thank you.

THE PRESIDENT: Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President. Would the sponsor yield to a question?

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

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President.

Senator, in the example that you cited of the individual who was unconscious and therefore no blood sample was taken from him, did the police officer, under current New York State law, have the ability to seek and obtain a court order to extract blood from the individual?

SENATOR NOZZOLIO: Yes, Madam President. As I described to Senator Duane,

who asked the same question, the same answer to Senator Hevesi, that yes, police officers have the authority to do that.

Senator, I distinguished that from -- the authority to do it from the requirement to do it. They're two different things.

And that's what we're seeing as a loophole in the law today, and that's why we're asking for the statute to be changed to close the loophole.

SENATOR HEVESI: Thank you.

Madam President, would the sponsor continue to yield?

THE PRESIDENT: Senator Nozzolio, do you continue to yield?

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Hevesi.

SENATOR HEVESI: Senator, in trying to decide whether or not to vote for this legislation, we need to make an evaluation as to whether or not making this requirement mandatory removes some discretion,

some prosecutorial discretion, that may otherwise be necessary.

And while I can appreciate in the example that you've cited that maybe it wasn't necessary -- although, as Senator Duane points out, certainly in that example, and I think you would concede this, the police officer or somebody acted with some degree of negligence.

So my question to you is, is there any type of example where -- any other example other than the case you cited where a police officer did not seek a court order for some other reason other than negligence?

SENATOR NOZZOLIO: Madam President, I must disagree with the characterization made by my esteemed colleague.

We're not trying to remove prosecutorial discretion here. On the contrary, we're trying to provide another prosecutorial tool from which to gain prosecution. That the discretionary aspects of the law create a gray area, and that police officers are well intentioned -- I'm never going to criticize the actions of a police

officer. But, rather, let's make the job easier for them. Let's take away the discretion in this area.

If they do have any suspicions whatsoever, let's put a clear statement of policy by this chamber and by the entire state government that our laws, when there is -- and let's characterize what we're saying here. We're saying here in a very severe automobile accident, where there is a loss of life or very serious injury, that there is in effect a presumption.

That if there is any suspicion whatsoever that this could have been caused by an alcohol-related driver, a driver under the influence of alcohol, that that driver would in effect be tested and that the evidence would be preserved so that a prosecution could be obtained.

That that's what this measure does. It's trying to, in effect, provide prosecutors with the tools necessary to do their job. And that that's why the bill is before us.

SENATOR HEVESI: Madam President, on the bill.

THE PRESIDENT: Senator Hevesi, go ahead on the bill, please.

SENATOR HEVESI: Madam President, with all due respect to Senator Nozzolio, there's no other example or case except a case where a police officer hasn't, in my opinion, done his job, when he knows or has a reasonable suspicion that there's been alcohol involved in a particular vehicular incident and doesn't seek a court order for a blood test, a blood alcohol test.

So this legislation doesn't do anything. Doesn't do anything. And I raised this issue in committee, and I didn't receive an adequate response in the committee meeting. And I don't believe we've received an adequate response here.

Though the legislation is well intended, and I suppose I'll support it, it's superfluous. I don't know what this bill does. And Senator Duane rightly points out the fallacies with the logic behind this bill. The bill doesn't do anything.

But in that it might help somebody, some police officer think twice before

deciding, even though he has probable cause to believe there's alcohol involved, before deciding that he's not going to seek a court order -- for what reason, I don't know -- but if this legislation is on the books, maybe police officers will be even more vigilant to seek court orders to get blood alcohol tests on these individuals.

So I guess I'll support this legislation, but the bill really doesn't do anything, Madam President. And I would like to see, in the future, these issues worked in out in committee, as opposed to getting on the floor -- as opposed to getting on the floor and having this discussion, which we really could have had in committee had there been an adequate response.

So I'm going to vote yes on the bill. And my colleagues are free to vote any way they want, but I don't believe this legislation does anything.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, Senator Hevesi has somehow managed to, in supporting the bill and voting for the

bill, convinced me to vote against it.

The fact is that I don't see any way that a police officer discharging their duties aptly would not call for some kind of a drug or alcohol test in the circumstances that are described.

We have to understand that just by the use of the word "discretionary" we're describing the suspicion, the subjectivity of the police officer's determination that there is a suspicion in the first place. There's no rule that defines what a suspicion is. That is a determination that's made individually by the officer.

I wouldn't want to handcuff the officers one way or the other by putting them in a position to be second-guessed when it's pretty clear that we have not had any problem in this state with the police failing to discharge their duties at times like that when they should call for such a test.

So therefore, the attempt to mandate something that is prima fascia suspicion -- granted, due to subjectivity in the first place -- in my opinion doesn't make

any sense.

And I'm convinced by Senator Duane that it would not be effective, and would encourage a no vote on this bill.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 30th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 365 are Senators Connor, Duane, Paterson, and Smith. Ayes, 52. Nays, 4.

THE PRESIDENT: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 370, by Senator McGee, Senate Print 4822, an act to amend the Vehicle and Traffic Law, in relation to requiring the revocation for 18 months.

SENATOR DUANE: Explanation, please.

THE PRESIDENT: Senator McGee,

Senator Duane has requested an explanation.

SENATOR McGEE: Thank you very much, Madam President.

This bill increases the minimum license revocation period from one year to 18 months for a refusal to submit to a chemical test for drivers under the age of 21 or drivers of a commercial vehicle.

At the present moment, the current law requires a one-year license revocation upon conviction of a DWI or DWAI for persons under the age of 21 or for operators of a commercial vehicle.

Quite honestly, if penalties are to be an effective deterrent in this case, it's important that any penalty for refusing a chemical test be higher than the penalty for a conviction that would have resulted from taking the chemical test.

Increasing the penalties for people who refuse to submit to a chemical test will certainly send the message to those who believe they can wiggle out of a DWI or DWAI arrest by not taking the Breathalyzer test.

I would point out that this is a

good bill. This is a bill that has another stipulation, that it reports to the -- at the present moment, the report of any type of accident involving that type of thing goes to the Commissioner of Motor Vehicles. This also asks that information be forwarded from the County Coroner's office, as determined -- when the results of the accident is determined, that this would be sent on to the DWI coordinators so that there could be a correlation between a death and the cause of death being alcohol or substance abuse.

I would point out that in 1997, 2,209 teens from the age of 15 to 20 were killed in crashes involving alcohol. And, Madam President, may I point out that one death is too many. 2,209 teenage deaths is much, much too many.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President. Would the sponsor yield to a couple of questions?

SENATOR McGEE: I certainly will.

THE PRESIDENT: Senator McGee, will you yield for two questions?

SENATOR McGEE: I will.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: Thank you very much.

I'm wondering why, if this bill is good enough to impact those under the age of 21 and those who drive commercial vehicles, why shouldn't this legislation apply to all? If a 32-year-old is driving their Maserati and they refuse to submit to a chemical test, why shouldn't they be covered by this legislation as well?

SENATOR McGEE: That's certainly something that we can look into. At the present moment, this bill calls for 18 years of age or -- excuse me, 21 years of age or drivers of a commercial vehicle.

I enjoy your suggestion. It's certainly something we'll look at. Thank you.

SENATOR DUANE: Thank you.

On the bill, Madam President.

THE PRESIDENT: Senator Duane, on the bill.

SENATOR DUANE: Just for the

record, this isn't the first time the issue has been raised. It was raised in the committee meeting.

And I don't think it's appropriate for us to merely go after younger drivers or those who drive commercial vehicles. I think everybody in the State of New York with a driver's license should be held to the same standard. And I would encourage a no vote.

Thank you.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

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

THE PRESIDENT: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 308, by Senator Wright, Senate Print 3404, an act to amend the Vehicle and Traffic Law, in

relation to the suspension and revocation of registrations.

THE PRESIDENT: Read the last section.

SENATOR DUANE: I'm sorry. Explanation, Madam President.

THE PRESIDENT: Senator Duane requests an explanation, Senator Wright.

SENATOR WRIGHT: Thank you, Madam President. I believed an explanation had been requested.

The bill before you amends the Vehicle and Traffic Law and links mandatory suspension and revocation of registration with mandatory suspension and revocation of licenses.

The logic behind this is relatively simple. In the past there have been numerous instances where there has been a revocation of a license and the individual would continue to drive a registered vehicle. We're trying to increase and enhance the deterrence involved in this so that both are now mandatory.

This has previously passed the Senate on two separate occasions.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Would the sponsor yield to some questions, please?

SENATOR WRIGHT: Yes, I will.

THE PRESIDENT: Senator Wright, will you yield for questions?

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: Thank you, Madam President.

I'm wondering why it is that the legislation calls for taking away the registration. Why not just the driver's license? After all, there may be a family member or family members who need to use a car. There could be a spouse, a husband or a wife who doesn't have a drinking problem, and this would cause them to not be able to get to their place of work or to get to school or, for that matter, to get to the supermarket or a store in a rural area. It seems like unjust punishment of more than just the perpetrator of the drinking and driving violation.

SENATOR WRIGHT: Thank you, Madam President. I'm glad the Senator brought that to our attention.

Because the current statute provides for the mandatory revocation of a license, this would add the registration as an additional component. And we specifically provide for conditional registrations. Being a representative of those rural communities, we understand the importance of that and provided for a conditional registration to be considered.

SENATOR DUANE: I'm sorry, Madam President, I didn't hear the last sentence. If the -

THE PRESIDENT: Senator Wright, could you repeat your last sentence for Senator Duane?

SENATOR WRIGHT: We provided for a conditional registration.

SENATOR DUANE: Through you, Madam President, if the sponsor would continue to yield.

THE PRESIDENT: Senator Wright, will you yield to an additional question?

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: Even if there is some kind of a provision or a hardship provision in this bill, won't that still cause time and expense to the family member who, again, shouldn't be punished? They are probably being punished enough by living with someone with a drinking problem who drives while they drink. Why should they have to go through an additional, onerous time and expense to be able to get to their work or get to their school or drive their children to school or however it is that they may need to use the car if there's only one car in the family?

SENATOR WRIGHT: Well, the current process will put them through that expense and that problem regardless of whether or not registration is involved.

I think everyone recognizes that the proceedings in a mandatory suspension of license have a significant impact upon the

family. That's the intent, to ensure that there is a deterrent, that there is everyone paying attention to it and trying to discourage that particular behavior.

SENATOR DUANE: Through you, Madam President. I'd like to get a clarification, if I may.

THE PRESIDENT: Senator Wright, will you yield for an additional question?

SENATOR WRIGHT: Certainly.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: Madam President, I don't understand what the sponsor means by they'd have to go through the same trying to get the hardship provision or conditional - the same as what? I don't understand what that is.

SENATOR WRIGHT: I'm afraid I don't understand your question, Senator.

SENATOR DUANE: Through you, Madam President.

The sponsor said that under current law, the spouse would already have to go through this or someone would still have to

already go through this process, but I don't think that that's true.

SENATOR WRIGHT: Well, under current law, Senator, it provides for a mandatory suspension of the license. You were relating the impact and the negative effect that proceeding would have upon a family. And I acknowledged that in fact that may well be the case, and I do not see that being further compounded by the registration being linked to the licensure.

SENATOR DUANE: Through you, Madam President. Yes, the person whose license has been revoked does have to -

THE PRESIDENT: Senator - Senator Wright, will you yield for a question from Senator Duane?

SENATOR WRIGHT: I will yield for a question, yes.

THE PRESIDENT: Senator Duane, if you have a question, you may ask it.

SENATOR DUANE: Yes. It is true that the person that's had their license revoked would have to go through a lot to try to get their license back.

However, what I'm pointing out is that this legislation would cause, for the registration to be removed or taken away, that the person that doesn't have the drinking problem in the family, that hasn't been involved in a drinking and driving incident, would have to go through the time and expense to get the registration back.

And that seems unfair, since they are not the person that has actually done the wrongdoing and yet they're punished anyway. Under present law, you don't have to go through any kind of process to get your registration back, because your registration is not taken away.

SENATOR WRIGHT: I missed the question, Madam President.

THE PRESIDENT: Senator Duane, you were authorized and Senator Wright yielded for a question.

SENATOR DUANE: Yes, so -- okay. The person that's drinking and driving who loses their license does have to go through a big deal to get their license back. I understand that, and I'm for that.

However, under current law, registrations are not taken away. And so the person who is in the family -- the spouse or the child who needs the car to get to work or get to school or get to the grocery store - under this law would have to go through the expense and time of getting the registration back.

And what I'm saying is, is that I don't think it's fair that that person should be punished for an infraction which they didn't commit, which their spouse or some other family member committed. So we're punishing someone that did nothing wrong.

I'm totally fine with taking the license away, but I think it's wrong to take away the registration of what might be the only vehicle that the other members of the family use to get on with their lives.

SENATOR WRIGHT: Senator, I understand your position. I simply don't share it.

THE PRESIDENT: Read the last section.

SENATOR DUANE: Well, I -- let me

just speak on the bill, then.

THE PRESIDENT: Senator Duane, on the bill.

SENATOR DUANE: Thank you, Madam President.

Although I guess I really did make my point. But I just want to reiterate that I don't think it's right for us to cause additional hardship to someone who may already be living under the burden of, you know, living with a drunk. And so we're just making their punishment even worse for, you know, being in that family.

And I just think that that is too harsh and wrong, and I would urge my colleagues to vote no and to only punish the actual perpetrators of a drunken driving offense.

Thank you, Madam President.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 308 are Senators DeFrancisco, Duane, Marchi, Onorato, and Schneiderman. Ayes, 51. Nays, 5.

THE PRESIDENT: The bill is passed.

Senator Morahan, that completes the reading of the controversial calendar.

SENATOR MORAHAN: Thank you, Madam President. May we return to the reports of the standing committees. I believe there's a report of the Environmental Conservation Committee at the desk.

THE PRESIDENT: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Marcellino, from the Committee on Environmental Conservation, reports the following bill direct to third reading: 7003, by Senator Johnson, an act to amend the Environmental Conservation Law.

THE PRESIDENT: The bill is reported direct to third reading.

Senator Morahan.

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

THE PRESIDENT: No, there is not, Senator.

Senator Morahan.

SENATOR MORAHAN: Madam President, will you please recognize Senator Connor.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Thank you, Madam President. Madam President, I have a motion to discharge at the desk. And I ask that it be called up now.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senate Bill Number 3804, by Senator Connor, an act to amend the Election Law, in relation to campaign receipts and expenditures reporting.

SENATOR CONNOR: Thank you, Madam President. If I may explain.

This is a motion to move to the floor for consideration by the Senate my

campaign finance reform proposal that I filed last year.

I know there are those who are going to say it's procedural, but read The New York Times. In a couple of editorials in the past month, they have finally caught on to the fact that the only way, the only way a bill like this can get on the floor when the committee chair won't put it out is through this motion. So call it what you will. The only way we can get to consider and vote on this proposal is by this motion.

Basically, there are three different proposals floating around this Capitol to reform the campaign finance laws, the state campaign finance laws. An issue, Madam President, that I'll note has captured, on a national level, the attention of many, many people in both political parties.

The Assembly has a proposal; it's good. The Governor has a proposal; it's good. My proposal is better. It's stricter. It follows much more along the lines of the federal limitations, but it eliminates some of loopholes there as well as in our state law.

My bill, Madam President, would cap contributions to candidates at $1,000 from individuals and $5,000 from PACs. The limits now can go as high for a statewide candidate as $29,000 from an individual or a PAC. For State Senate candidates, they can go to $7,900 from individuals or PACs. And for the Assembly, I believe it's $4,500.

My proposal would also cap contributions to campaign and party committees at $20,000 for individuals and $25,000 for PACs. Madam President, the present limit is $79,000 per individual. That's $158,000 a couple. It's $79,000 for a PAC to a campaign committee, to the Republican Senate campaign committee, to the Democratic Senate campaign committee, to the corresponding committees in the Assembly as well as to the state committees.

Is it any wonder that there's a perception afoot among the rank and file in both parties -- indeed, the Republican Party seems, among the rank and file, to have - this issue seems to have resonated with the rank and file there in recent weeks, more so

than anywhere. Is it any wonder that there's this perception? $158,000 a couple. This would reduce it: 20,000 for individuals, $25,000 for PACs to party committees.

My proposal would also cap total contributions by any individual to any and all campaigns or candidates in New York State at $50,000. Someone who gives to all campaigns in New York State $50,000 in the aggregate per year is, Madam President, indeed a public-spirited citizen.

(Laughter.)

SENATOR CONNOR: Someone who gives $125,000, Senator Morahan said, is either nuts or looking for something. Or at least that's the public perception.

My bill would also eliminate the party's housekeeping funds as a conduit for soft money that somehow or other gets used in campaigns. What's the limit on housekeeping? There is none. There is none. A corporation, an individual, anyone, they can give a million dollars to a party housekeeping account. There's no limit. Unlimited contributions raise the perception of unlimited influence.

And that's the perception that's afoot out there. Whether a reality or not doesn't matter, Madam President. When you get a corporation pumping a half a million dollars into a party housekeeping fund, the public perception is "what's for sale?" And that's a public perception that we have a responsibility to rebut.

My bill would also require subsidiary corporations to identify themselves under the aegis of their parent company when reporting campaign contributions. Thus the loophole can be closed. A person that controls 20 corporations can't have each little corporation giving the maximum amount. As if there was a fiction that the same person wasn't contributing corporate funds.

My bill would also prohibit the use of campaign funds for anything other than political campaigns. Right now we have a restriction on personal use, yet campaign funds can be used now to buy cars, to travel the world, as long as it's loosely connected with anybody who holds a public or party office.

This would close that loophole. It would end that perception that people are raising campaign funds to finance their next vacation or their next junket. Raise campaign funds, use it on campaigns only.

The bill would also permit only one authorized campaign committee for candidate per election. What's the problem here? Myriad committees. Try tracing the money. By the way, this bill would eliminate transfers as a result as well. No transferring from one committee to the other committee to the other committee, forcing the public and the press to play "Where's Waldo?" and look for where the money started, look for where it ended up.

We'd end that. One committee. Disclosure would mean exactly what it means: You disclose the contributions and expenditures. And one report, and nobody has to play trace the contributions back through the maze.

And finally, I would increase the civil penalty in this bill for failing to file financial disclosure forms to a thousand dollars, to something meaningful, a meaningful

amount.

Madam President, the public, the public is now paying attention. The public doesn't like what they see. We have a responsibility to end the perception that somehow or other very large campaign contributions or unlimited contributions to housekeeping funds are somehow or other buying an advantage by the contributor. I like to think that's not the case. But I know the perception is people believe it.

And we have an obligation, Madam President, to reform the loophole-laden Campaign Finance Law. Oh, it was a good start in 1974 and '5 after Watergate to now have laws. But clever, clever political operatives, clever election lawyers have filled it full of Swiss cheese, made it look like Swiss cheese, full of holes. For every rule, there are ten loopholes. I know, Madam President. I know the loopholes. We all know the loopholes.

Let's close them. Let's reassure the public, let's reassure the public that we have meaningful campaign contribution limits,

meaningful disclosure laws, and a meaningful system of campaign financing that reassures the public that those who want to participate out of an interest in government, out of public-spiritedness, are allowed to, but that no one who would give blank checks is allowed to play in our political game in New York State.

Madam President, I urge my motion.

THE PRESIDENT: On the motion. All in favor of accepting the motion to discharge signify by saying aye.

SENATOR CONNOR: Party vote in the affirmative.

SENATOR MORAHAN: Party vote in the negative.

THE PRESIDENT: The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 20. Nays, 36. Party vote.

THE PRESIDENT: The motion is defeated.

SENATOR CONNOR: Madam President.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: While I'm terribly disappointed that my motion failed, there are alternatives. And I would like Senator Hevesi to be recognized, because he would like to move the Governor's campaign finance reform proposal.

THE PRESIDENT: Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President. I believe there's a motion to discharge at the desk. I would ask that it be called up.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senate Bill Number 6750, by Senator Hevesi, an act to amend the Election Law, in relation to campaign finance reform in New York State.

THE PRESIDENT: Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President.

Let's all gauge the sincerity of this institution to campaign finance reform on this day. I'm going to start out by commending Senator Connor for crafting the piece of legislation that he just discussed at

some length that would go a tremendously long way to cleaning up what is the most abhorrent, ridiculous system probably anywhere in the United States.

And frankly, if you segmented Senator Connor's legislation, took each individual component, put it up on a dartboard and started throwing darts at it, if you hit something, you're going to make the state's system better.

We are an embarrassment here in New York State, an absolute embarrassment. We've been talking about this for a long time now and had some kind of a ray of hope. And I guess we'll now gauge the sincerity of the Legislature to act on it, because we're still trying to gauge the sincerity of the Governor -- who last year on the final day, the final regularly scheduled day of our legislative calendar announced that he was advocating and introducing a program bill that would be a sweeping reform of the state's Election Law. And it went nowhere.

And the reason we are here today discussing the motion to discharge that's

before us -- which, Madam President, is Senate Print 6750, which I sponsor -- it is word for word identical to the Governor's Program Bill 92. It's the exact same bill.

The reason we're moving it today is because this house didn't want to do anything with Senator Connor's legislation, so terribly predictably, and so now we're left with the situation where we may have absolutely no reform and no discussion, which is even worse, this year.

So we have decided to do a motion to discharge on what is essentially the Governor's program bill, primarily -- even though Senator Connor's bill is by far a better bill than the Governor's bill - because the Speaker of the New York State Assembly has said that if the Senate passes something that is similar to legislation that he has passed, that automatically we would go to conference committee and begin a real discussion and a real negotiation about campaign finance reform.

All right? So I can assure, before I even talk about the Governor's bill -- and

I'm looking forwarding to advocating the Governor's position on campaign finance reform. But I can assure the members of this body who are reticent to vote yes on this motion to discharge because they're afraid that this version will become law, that this version that I'm bringing up here will not become law. It will become the basis of a discussion as to how we should reform the state's unbelievably inadequate campaign finance regulations.

So I would encourage, at the outset, every member of the Majority to vote yes on this -- not even if you're interested in seeing the exact provisions of the Governor's bill, but if you're interested in talking about this. Talking about this.

And I'm the ranking Democrat on the Senate Elections Committee. We haven't had any real legislation come out of that committee. In fact, last year Senate Elections -- and I have the greatest respect for the chair of that committee, my Queens colleague Senator Maltese, a terrific Senator -- we met once. We did some

perfunctory legislation that made some technical corrections, had some impact on reporting requirements. And to do that when we have such a crisis on our hands, and have for so long, is embarrassing. It's really embarrassing.

So I stand up today proud to support Governor Pataki, a Republican colleague in the statehouse, for his courage for advancing some principles that he had previously been silent on. But I applaud him for them nonetheless. I'm not going to take a shot at him. The same way I'm not going to take a shot at him as he's now advancing gun legislation for the first time in his tenure as Governor. That's great; let's have a discussion about it.

So his legislation is now before us, a motion to discharge on it. Let's talk about it. Senator Connor's bill reduces the campaign expenditure limits to much more reasonable and acceptable levels, a thousand dollars for an individual. But the Governor's legislation reduces contribution limits down to $7,500 for statewide candidates. It's now

$45,000. It's ridiculous, absolutely ridiculous. Reduces contributions for State Senators that we can receive down to $4,000, as opposed to $12,000 or $13,000, where it is now.

And interestingly, the Governor's bill puts a spending cap on the offices of the Mayor, the Comptroller, and the Public Advocate in the City of New York. Why is that significant? Because the Governor reduces, under state law -- follow me on this -- those amounts that are able to be raised from $45,000 down to $7,500.

But you know what? You don't need that $7,500 limit in the City of New York, because candidates in the City of New York are limited to $4,500. Because in the City of New York we have a campaign finance system that is the model system in the United States. So again, a stark contrast, an almost unbelievable contrast -- the worst state system and probably the best city system going.

So in the City of New York, if I decided I wanted to run for mayor in the next

election cycle, I'm limited, if I opted into this program, to $4,500 in contributions if I'm running for mayor. My limit as a State Senator is about $13,000.

Plus in the City of New York, we can't take money from corporations. I can take money from corporations for my Senate race in my Senate district.

And the City of New York requires a whole slew of reporting requirements, including the occupation, the address, the employer, all kinds of information so we know exactly where the money is coming from.

And you know what's happened as a result? Democracy in its purest form. There are more candidates running for vacant seats or soon-to-be-vacant seats in the New York City Council, for Borough President, and the three citywide offices in the history of the City of New York, because we have leveled the playing field in New York City.

So I support public financing. I know Senator Connor supports public financing, and most of the members of this conference. But we didn't even dare to put it in this

legislation, knowing that that would be dead on arrival. But it shows us another example of just how far we need to go.

So again, I go back to advocating for the Governor's bill, which again doesn't go as far as Senator Connor's bill. More disclosure on independent advertising and independent expenditures. You know what that is? That's the Texas oilman who spent $2.5 million on anti-John McCain ads, attacking him -- ridiculously, incorrectly -- on his environmental record.

Governor Pataki has a section in his bill which would require reporting of those independent expenditures, which are another form of soft money. Which the state, in its lengthy history, has decided never to address.

And the housekeeping exemption, which Senator Connor discussed. There is no limit to the amount of money you can spend on housekeeping. Senator Connor's bill has limits on housekeeping. It eliminates all the exemptions.

You know what you can spend

housekeeping money on now? This is unlimited contributions. Somebody wants to give a million dollars into a housekeeping account, that money can be spent on a permanent headquarters to maintain a staff. This is a political operation. Spent on voter registration and spent on fundraising. In other words, that unlimited, unrestricted contribution can go to support my candidacy through fundraising or voter registration efforts. Unrestricted money. Anybody can give.

And please, somebody tell us that there's nothing being bought. Not just the perception. I'll go so far on this day as to tell everybody I believe in many instances, since the limits are so ridiculous, that there is a direct -- not just the perception, there is a direct influencing effect of those campaign contributions.

Maybe nobody says it, because that would be absolutely illegal. But you'd better believe there is a perception in the mind of whomever is giving the money that they'd better get something in return for it. And if

they don't get something in return for it, that that contribution will not be forthcoming and support for different candidates will be withheld or pursued on the basis of what is delivered legislatively as a consequence of a campaign contribution, which may not happen at the time that the contribution -- I'm sorry, that the legislation was passed. The contribution may come later, and suddenly we'll see a huge contribution after some special interest got a favorable judgment out of this legislative body.

And whether or not it's a direct influence -- a direct payoff, if you will - the perception is absolutely awful. It's why thousands and thousands of Democrats flocked to open primaries to vote for John McCain. Everybody knows what a travesty this is. It's an absolute travesty.

In-kind contributions. Right now, under current law, in-kind contributions, you're only required to tell the exact amount, the total, the aggregate of how much an in-kind contribution was given. Not to splice it out, whether it was for phone banks,

whether it was for literature or lit distribution. There's no disclosure here.

And lastly -- and almost this is one of the most embarrassing failures of the current law -- the penalties are wholly insufficient, to the extent to which individuals may choose intentionally not to file on time.

And why may that be the case? I mean, we're all political pros here. You know that if you've taken campaign money -- and I've spoken about this on other legislation that's come before this body. If you take campaign contributions in the very final days of your campaign -- because you are hungering, desperate for cash, because you're fighting for your political life -- you take money from somebody who you shouldn't have taken money from, okay, even if that requirement has to be reported at some time, you take money from that individual, you don't want to put it on your filing that comes 15 days before the primary or the general election. Why? Because your opponent will see it and they'll attack you on it, and you may lose the

election as a consequence. So what do you do? You don't file on time. Take the hit. That's disgusting. That's outrageous.

And the Governor increases penalties for that type of activity, to prevent it. Governor Pataki. Republican Governor Pataki.

So I support the Governor's bill. I don't think it's a phenomenal bill. Senator Connor's bill is a phenomenal bill. We didn't have that. Every member of the Majority just voted no on his bill. So now you're asked to vote on the Governor's bill. And even though I'm not in love with the Governor's bill, it is the jumping-off point, it is the jumping-off point for a dialogue and a discussion on this issue.

And so I fully anticipate the members of the Majority -- I'm not trying to be antagonistic here, but I'm frustrated. I'm frustrated because I don't believe we're going to see action on this campaign finance issue this year. I really don't think we're going to see it. And one of the ways you're going to demonstrate that we're not going to see it

is to vote no on this. Because you know if you vote yes on this and the bill comes out and it passes, we will have a real discussion, a real dialogue, and you know the people of New York State want it. You know they want it, because you know they're right on it.

So let's have a vote for courage here, for standing up and doing something that maybe is not politically expedient. A lot of these things may hurt individual members politically. Do we have the courage to stand up today and do what's right as opposed to doing what's politically expedient? The vote we're about to cast is a vote on doing what's right over political expediency.

And I urge all of my colleagues to make the right decision on this next vote.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes. Thank you, Madam President. I rise to support Senator Hevesi's motion.

A few years ago I read an extraordinary book, short book, called the Wealth Primary that documented very carefully

how we are losing voters, particularly young voters, because of the perception in this country that candidates are chosen and elections are decided long before people go to the polls, in something called the "wealth primary." It's a fact. We all know it.

We're not going to do Senator Connor's bill, which is a far superior bill. We should at least do the Republican campaign finance package that the Governor introduced at the end of last session.

And I rise in support of this and also to mention that when Senator Hevesi introduced this, because there was no Republican sponsor moving the Governor's Republican campaign finance package, I checked back and confirmed that the Speaker of the Assembly -- and this is weeks ago, before he and the Governor became buddies -- weeks ago confirmed that if this bill, the Governor's package, passes this house, they're going to conference committee on it.

So Senator Hevesi has now done us a favor. He's introduced word for word the same bill. Let's pass the Governor's bill. Let's

get this to a conference committee. And let's not be sitting around waiting, waiting, waiting to do something about this critical issue.

And I think everyone in this house should vote yes on this motion.

THE PRESIDENT: On the motion. All in favor of accepting the motion to discharge signify by saying aye.

SENATOR CONNOR: Party vote in the affirmative.

SENATOR MORAHAN: Party vote in the negative.

THE PRESIDENT: The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 20. Nays, 36. Party vote.

THE PRESIDENT: The motion is defeated.

Senator Morahan.

SENATOR MORAHAN: Madam Chairman, there being no further business to come before the Senate, I move we adjourn until Tuesday, March 21st, at 3:00 p.m.

THE PRESIDENT: On motion, the Senate stands adjourned until Tuesday, March 21st, at 3:00 p.m.

(Whereupon, at 4:10 p.m., the Senate adjourned.)