NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

February 26, 2001

3:10 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: With us today to give the invocation is the Reverend Peter G. Young, from Blessed Sacrament Church in Bolton Landing, New York.

REVEREND YOUNG: Let us pray.

Dear God, as we gather on this Monday, well-rested and refreshed from a week of leave from our Albany assignments, we can sense the priority legislation issues with enthusiasm. The privileges to serve and to represent our constituents stimulates our calendar of bills.

To respond to their needs, we call on You, O God. We can't do responsibly the work of the Senate without Your guidance and wisdom. We pray that You will do this and guide us and help us in this work.

Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Friday, February 23rd, the Senate met pursuant to adjournment. The Journal of Thursday, February 22nd, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President. On behalf of Senator Balboni, I wish to call up Senate Print Number 858A, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 43, by Senator Balboni, Senate Print 858A, an act to authorize the congregation Shira Chadasha.

THE PRESIDENT: Senator Fuschillo.

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

THE PRESIDENT: The Secretary will call the roll upon reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President. I now offer the following amendments.

THE PRESIDENT: The amendments are received, Senator.

Senator Dollinger.

SENATOR DOLLINGER: Madam President, thank you. I give written notice,

as required by Rule XI, that I will move to amend the Senate rules by adding a new rule, XV, in relation to ethical standards of members, officers, and employees of the Senate.

THE PRESIDENT: Senator, it has been received and will be filed in the Journal.

SENATOR DOLLINGER: Thank you.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: All the housekeeping has been accomplished at this time?

THE PRESIDENT: Yes, it has, Senator.

SENATOR SKELOS: May we please take up Resolution 590, by Senator Johnson, have the title read, and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Johnson, Legislative Resolution Number 590, commemorating the 125th Anniversary of St. John's Evangelical Lutheran Church, to be

celebrated Sunday, March 4, 2001.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, Senator Johnson would like to open up the resolution for cosponsorship, so if we could put everybody on the resolution. If anybody wishes not to be on it, they should notify the desk.

THE PRESIDENT: Any member who does not wish to be on this resolution, please notify the desk.

Senator Dollinger.

SENATOR DOLLINGER: Madam President, I just rise for a point of order.

With respect to the amendment that Senator Fuschillo just read, what level of - which reading does that bill take its place

on? My understanding is that was an amendment to a bill that was on third reading in the calendar, and that those amendments, my understanding is they -- according to the rules, they would be placed on the first reading. Or does that bill keep its place on -

SENATOR SKELOS: Madam President, I think we are beyond that part of the calendar. The amendment has been offered. We've moved to resolutions. So if we could now stand at ease for one minute.

SENATOR DOLLINGER: Point of order.

THE PRESIDENT: Your point is not well taken, Senator.

The Senate stands at ease.

(Whereupon, the Senate stood at ease at 3:15 p.m.)

(Whereupon, the Senate reconvened at 3:17 p.m.)

THE PRESIDENT: Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 56, by Senator LaValle, Senate Print 1204, an act to amend the Executive Law, in relation to continuing education.

SENATOR DOLLINGER: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 70, by Senator Trunzo, Senate Print 763, an act to amend the Vehicle and Traffic Law and the Public Authorities Law, in relation to authorizing cities.

SENATOR DOLLINGER: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 72, by Senator Velella, Senate Print 67, an act to amend the General City Law and the Penal Law, in relation to creating the crimes of urinating or defecating in public.

SENATOR DOLLINGER: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 81, by Senator Wright, Senate Print 807, an act to amend the Real Property Tax Law, in relation to the taxation of certain state lands.

SENATOR DOLLINGER: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 83, by Senator Meier, Senate Print 1311, an act to amend the -

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 85, by Senator Rath, Senate Print 1454, an act to amend the General Municipal Law -

SENATOR SKELOS: Lay it aside for the day.

THE PRESIDENT: The bill is laid aside for the day, Senator.

THE SECRETARY: Calendar Number 100, by Senator DeFrancisco, Senate Print 438,

an act to amend the Surrogate's Court Procedure Act, in relation to computation.

SENATOR DOLLINGER: Lay it aside.

THE PRESIDENT: The bill is laid aside.

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

SENATOR SKELOS: Madam President, if we could go to the controversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 56, by Senator LaValle, Senate Print 1204, an act to amend the Executive Law, in relation to continuing education.

SENATOR DOLLINGER: Explanation, please.

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

Senator Skelos.

SENATOR SKELOS: If we could lay it aside temporarily.

And I would ask all the members to please come into the session as their bills

are called up, so that we can debate them.

THE PRESIDENT: The bill is laid aside temporarily.

The Secretary will read.

THE SECRETARY: Calendar Number 70, by Senator Trunzo, Senate Print 763, an act to amend the Vehicle and Traffic Law and the Public Authorities Law, in relation to authorizing cities.

SENATOR PATERSON: Explanation, please.

THE PRESIDENT: An explanation has been requested, Senator Trunzo.

SENATOR TRUNZO: Madam Chairman, this legislation authorizes New York City, Nassau and Suffolk Counties, at local options, to authorize, empower, and direct the Long Island Railroad and the Metropolitan North Commuter Railroad to develop and implement demonstration programs imposing monetary fines on the registrants of vehicles for the failure of operator of said vehicle to obey the railroad crossing signals indicating the approach of a train.

This is a very important piece of

legislation. There are a lot of accidents at railroad crossings. And what this intends to do is to have a five-year testing program on having cameras located at these railroad crossings.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you. Good afternoon, Madam President. I was wondering if Senator Trunzo would yield for a question.

THE PRESIDENT: Senator, will you yield?

SENATOR TRUNZO: Yes.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Madam President, I'm wondering whether or not the remote control device would in any way change the right of the aggrieved party to appeal a ticket that one might receive at a point that they're operating a vehicle and the remote control device is used.

SENATOR TRUNZO: I can't quite hear you, I'm sorry, Senator. The door, when it opens, I can't hear very well.

SENATOR PATERSON: I'm sorry, Senator. Madam President, I'm asking about the appeal procedure for vehicular violations, whether or not that's changed at all by the use of the remote control device.

SENATOR TRUNZO: No, there is no appeal decision on this. What they're doing, they're taking a picture of your car, the license plate, and that you cross the railroad track. The cameras would do that automatically as you're crossing the railroad track if the gates are down, take the picture of your vehicle -- not anything inside, they don't see you or anything, just the vehicle. And whoever is registered is the one that will get a fine.

THE PRESIDENT: Excuse me, Senator.

Will the members please take your conversations out of the chamber. It's difficult to hear.

Go ahead, Senator. Senator Paterson.

SENATOR PATERSON: Madam President, I had a little trouble hearing the

end of Senator Trunzo's answer. Would it be much of an inconvenience if you'd ask Senator Trunzo to explain that one more time.

THE PRESIDENT: Of course, Senator.

SENATOR TRUNZO: Yes, Madam President.

Basically, what this does, there's no appeal on the decision. It's a study that's going to have to be done. Because if the gates are down, a camera would be at those gates -- it would be posted already that there is a camera -- and it would take a picture of the vehicle, the license plate of it. It does not look into the vehicle as to who the driver is or isn't.

And, you know, a violation can be handed based on the fact that the camera has picked up your license plate as you're crossing the railroad tracks when the gates are down.

SENATOR PATERSON: Thank you, Madam President. That actually satisfies my concern on this issue. I just have one additional point of fact that I'd just like to

raise about the legislation -- I think that will complete the discussion on this bill - if Senator Trunzo would yield again.

THE PRESIDENT: Senator Trunzo, do you yield?

SENATOR TRUNZO: Yes, I yield.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Madam President, I'm wondering, what is the penalty for a violation? Are there points taken off the license? If a picture is taken of a vehicle passing in front of the train tracks, or a similar violation, what is the penalty?

SENATOR TRUNZO: At this time it is -- it was $250. It's up to $400 at the first offense. The second, within 18 months, is then $350 to $500. The third, within 18 months, is $600 to $750. That's the penalty to try to discourage people from crossing those railroad tracks.

There's been an awful lot of accidents throughout the -- especially in the downstate area. They have so many of those railroad crossings that that's the problem

that we've been having. Deaths, people have been dying.

This bill has been introduced since 1996 by Senator Levy. It's passed every year since then, including last year, unanimously.

SENATOR PATERSON: Well done, Madam President. I hope it passes unanimously this year.

THE PRESIDENT: Thank you, Senator.

Read the last section.

Senator Duane, excuse me.

SENATOR DUANE: Thank you, Madam President. If the sponsor would yield, please.

THE PRESIDENT: Senator, do you yield?

SENATOR TRUNZO: Yes.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: Thank you.

I'm wondering why this bill is a demonstration bill rather than just putting it into effect.

SENATOR TRUNZO: I didn't quite

hear you, Senator, I'm sorry.

SENATOR DUANE: I'm wondering why this bill is calling for a demonstration project rather than having the bill be just put into law in perpetuity.

SENATOR TRUNZO: Well, we want to see whether or not it really works. Like I understand that even in the City of New York, we have traffic lights, people who try to pass their -- a traffic light that's changing, it takes a photo of the car and they get a ticket.

It's the same thing with the railroad crossing. The study is mandatory for the Long Island Railroad and Metro North Railroad, and the counties of Nassau and Suffolk and the City can do it or not do it.

But during that five-year period, we may be able to see how many people really -- how many accidents really do occur, how many have been fatal. Like in 1996, there were 44 accidents, eight people were killed. In '97, it was 42 and seven people died. In 1998, there were 34 accidents. There are a tremendous amount of accidents that happen at

these railroad crossings.

And, you know, we'd like to make it statewide. But doing this as a study within the metropolitan area would be some way of giving us the actual facts as to whether or not it's feasible or not.

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

THE PRESIDENT: Senator, will you yield?

SENATOR TRUNZO: Yes.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: I'm wondering if I understood the sponsor to say that it was mandatory for Nassau and Suffolk. Because I understood that it was just that they were now allowed to put this experimental program in.

SENATOR TRUNZO: Nassau, Suffolk, and New York City can opt into it. The railroads, it's mandatory that they do a study of certain stations, railroad crossings.

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

to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR TRUNZO: Yes.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Have those stations been predetermined?

SENATOR TRUNZO: No. There's been no gates predetermined yet.

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

THE PRESIDENT: Senator, do you yield?

SENATOR TRUNZO: Yeah, one more time.

THE PRESIDENT: The Senator yields for one question, Senator Duane.

SENATOR DUANE: I'm wondering if the sponsor knows what other states have put this plan into effect to use the photos at railroad crossings.

SENATOR TRUNZO: I didn't quite get your question, Senator.

SENATOR DUANE: I'm wondering if any other states have put this photo-IDing system into effect at railroad crossings.

SENATOR TRUNZO: At this time, Senator, we don't know of any other state doing it. It's possible it may be done in other states.

But again, this is something we feel very strongly -- Senator Levy, in his days, felt very strongly about it. And we just kept carrying it forward, with the hope that Assemblyman -- and I forget who the cosponsor is in the Assembly -- Lafayette would carry this bill in the Assembly.

SENATOR DUANE: Through you, Madam President. Actually, the sponsor anticipated my last question. I was wondering who the Assembly sponsor is of the bill.

SENATOR TRUNZO: Your last question?

SENATOR DUANE: Last question.

SENATOR TRUNZO: Okay, yes.

SENATOR DUANE: Is this your final answer?

No, the last question is you don't

know who it is, who the Assembly sponsor is?

SENATOR TRUNZO: Yes, Senator. Assemblyman Lafayette.

SENATOR DUANE: Thank you. Thank you, Madam President.

THE PRESIDENT: Thank you, Senator.

Read the last section.

THE SECRETARY: Section 4. This act shall take effect in 30 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

THE PRESIDENT: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Madam President, can we return to motions and resolutions. I believe I have a privileged resolution at the desk. I would ask that it be read in its entirety and move for its immediate passage.

THE PRESIDENT: Motions and resolutions.

The Secretary will read.

THE SECRETARY: By Senator Bruno,

Legislative Resolution Number 589, memorializing Governor George E. Pataki to proclaim April 6, 2001, as Missing Persons Day in the State of New York.

"WHEREAS, It is the intent of this Legislative Body to create public awareness concerning the devastation occurring as a result of the unexplained disappearance of a loved one; and

"WHEREAS, Friday, April 6, 2001, is the observance of the 23rd birthday of Suzanne Gloria Lyall, a University at Albany student who has been missing since March 2, 1998; and

"WHEREAS, A bright, creative, and talented computer science student, Suzanne Lyall touched countless lives with her poetry, radiant personality, and cheerful, infectious smile; and

"WHEREAS, The youngest of three children of Doug and Mary Lyall, Suzanne Lyall, of Ballston Spa, New York, disappeared at the age of 19 in the prime of her life, while preparing for a brilliant future; and

"WHEREAS, In 1999, legislation was enacted which required all colleges to adopt

plans for investigation of reports of missing students and violent felony offenses occurring on their campuses; and further required that such plans include agreements with local police agencies for coordination of these investigations; and further required the Division of Criminal Justice Services to operate a toll-free, 24-hour telephone number that members of the public may call to obtain information as to resources available to the public to assist in the location and recovery of missing persons; and

"WHEREAS, In 2000, the New York State Senate passed legislation known as 'Suzanne's Law,' which provides for increased penalties for certain crimes committed on school grounds; and

"WHEREAS, The State of New York intends to make April 6, 2001, a day of recognition for the need to further enhance efforts to locate missing persons in New York, noting the missing persons epidemic in this state and the impact this epidemic has on the families, people close to a missing individual, and the community as a whole; and

"WHEREAS, Currently there are an estimated 4,000 people labeled missing in New York State, of whom approximately 700 are 18 years of age or older; and

"WHEREAS, it is the consensus of this Legislative Body that we should attempt to bring comfort to the family members of missing persons in the State of New York who suffer from continuous grieving and who are condemned to carry the burden of uncertainty as a result of not knowing the true circumstances of their loved one's disappearance or whereabouts; and

"WHEREAS, This Legislative Body reaffirms its ongoing crusade by observing April 6, 2001, as Missing Persons Day in the State of New York; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to memorialize Governor George E. Pataki to proclaim April 6, 2001, as Missing Persons Day in the State of New York; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to the Honorable George E. Pataki, Governor of

the State of New York."

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President, colleagues, you've heard this resolution. And this resolution really asks the Governor to declare April 6 as Missing Persons Day. And this really is to commemorate Suzanne Lyall, who on March 2nd, as we heard, was returning to the SUNY campus here in Albany from her job at Crossgates Mall, almost three years ago - disappeared, has never been heard from since.

Her mom and dad are here, Doug and Mary Lyall. Since that time, you can only imagine the suffering and the anguish. Suzanne is one of three children. But they have spent a large part of their life over these last several years doing everything and anything that they can to help other families who are suffering tragedies, help other people.

We are discussing with them a memorial here in New York State that would be designated on behalf of missing persons here in New York.

We've already passed legislation

that related to their efforts that creates a hotline. Because what they found for weeks was when they reached in to get information, there were so many agencies out there that it was hard to have continuity. We now have a hotline that a person can call.

We did other things on campus as relates to their efforts. And we passed Suzanne's Law, which has not passed the Assembly. But they have been diligent, they have over 25,000 signatures now. So we're hopeful that by passing this again, we focus attention on April 6, Missing Persons Day, the birthday of Suzanne Lyall.

And again, I want to thank my colleagues for their support. But I want to thank Doug and Mary for being so unselfish with their time and with their efforts, and just recognizing how difficult it is every time you have to revisit all of the things that have happened when a child leaves work, you talk to that child on the phone, as they did, and then don't hear a word in almost three years.

So our thoughts and our prayers are

with you. And I appreciate your support for this resolution. And we will be discussing with the Governor naming April 6 as Missing Persons Day.

Thank you, Madam President.

THE PRESIDENT: Senator Farley.

SENATOR FARLEY: Thank you, Madam President. I rise in support of this resolution.

This isn't something that's so terribly unusual. This is the second young woman that has been -- I think it was Karen Wilson, I forgot her name, that was absconded with and never heard from, never been found, nothing has happened. For the Lyalls, there's been no closure to this tragedy. And also for the Wilson family, no closure. Happened right here at the university where I teach at.

And it's truly a tragedy, and particularly for young women that go away to school, that they're never heard again from their families. So I think this is so important.

And of course the Lyalls are neighbors of mine in a neighboring district

which I share with Senator Bruno. And the tragedy that they have had to deal with, with never knowing where their beautiful and lovely daughter is or whatever happened to her, is really a tragedy.

And we're trying to move forward - in this house, at least -- to do something about these abductions and these missing people. And unfortunately, the other house hasn't seen to pass it.

But I applaud Senator Bruno in going forward with this resolution to declare April 6 as Missing Persons Day.

My very deep sympathy to the Lyalls.

THE PRESIDENT: The question is on the resolution.

Senator Stafford.

SENATOR STAFFORD: Madam President, I just rise -- as I mentioned to the leader, and Senator Farley just mentioned, Karen Wilson was from Plattsburgh. And I believe this was at the same area, the same school.

And we all remember the anguish and

the heartache and how tragic it was and is for the Wilsons, and we're sure it is also for the Lyalls.

So it is most fitting that we pass this resolution today.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time return to the controversial calendar and call up Calendar Number 56, by Senator LaValle.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 56, by Senator LaValle, Senate Print 1204, an act to amend the Executive Law, in relation to continuing education.

SENATOR PATERSON: Explanation,

please.

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

SENATOR LAVALLE: Senator Paterson, this is a bill that we passed last year that simply clarifies for the Department of State something that they are unsure of, that would allow them to approve continuing education courses for licensed and certified real estate appraisers that must have in their cycle 28 classroom hours every two years, that would allow for distance learning and the benefit of the computer-based programs that they have.

As you well know, Senator, the Bar Association has for attorneys just gone online so that we can take our continuing ed courses via the Internet.

And this would allow the same thing and give the Department of State the clarification that they need in order to approve these courses for the appraisers. As I understand it, I think real estate brokers already have that ability. We're doing this for the licensed and certified real estate

appraisers.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if Senator LaValle would yield for a couple of questions.

THE PRESIDENT: Senator, do you yield?

SENATOR LAVALLE: Yes.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Senator, the same thing that exists in CLE, the continuing legal education, is now going to be extended to the real estate appraisers. And you've assured us that the real estate brokers are already able to do this.

SENATOR LAVALLE: That's correct.

SENATOR PATERSON: What is the criteria for which we would decide that a profession becomes eligible? Would it be the fact that we want to encourage people in those areas to keep abreast of what would be the changing issues that relate to their profession? Or is it that the profession itself makes it difficult -- adds to the

difficulty of appearing in a geographic location to conduct classes?

SENATOR LAVALLE: Here, of course, Senator, we're not really making that kind of policy decision.

But just to go back, we as a Legislature, for each of the licensed professions -- there are 38 in the State Ed Department -- here we're not talking about State Ed Department courses, but we're talking about Department of State-licensed and certified professions such as the real estate appraisers.

But all we're really saying is that the continuing ed programs that we as a Legislature approve on a regular basis for each of the professions -- we want people in each profession to move forward and have greater education. But today, the world has so changed with the use of the computer and the Internet, it makes it more convenient for people to not only satisfy the minimum requirements that are required under continuing education, but, you know, even to go beyond that because of the convenience that

is now offered by the computer.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if you would ascertain for me whether or not Senator LaValle would yield for another question.

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

SENATOR LAVALLE: I'm not sure there's much more I can add to the head of the pin, but I will try, Senator Paterson.

THE PRESIDENT: You may proceed, Senator.

SENATOR PATERSON: Madam President, of the 38 licensed and certified professions on the head of a pin, how many of them -

SENATOR LAVALLE: There are 38.

SENATOR PATERSON: Right, 38.

-- how many of them are engaged in continuing education formats where the computer and the distance training is utilized?

SENATOR LAVALLE: See, here, Senator, we as a Legislature are not -- we're

not involved in that, because the State Education Department, I believe, has the discretion to approve that.

Here the Department of State was, for whatever reason, uncertain, because there was a -- I believe in the statute the term "classroom" was interposed. And so they say, Well, this is really not classroom instruction, so we had better go to the Legislature so that we have all our i's dotted and our t's crossed.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, I appreciate that. There was some ambiguity, because the rules specifically included "classroom" as a designation, and in this case we're going to use a different type of training.

I was just trying to determine whether or not we're going to have to do this again in any other areas, and to suggest to Senator LaValle if he would yield for another question.

THE PRESIDENT: Senator, do you yield?

SENATOR LAVALLE: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: I think I'll make this the last question for Senator LaValle.

THE PRESIDENT: You may proceed with the last question, Senator.

SENATOR PATERSON: I wanted to know if perhaps the Department of Education has any other issues like this, so that we might sum them up in one piece of legislation. That's why I wanted to know how many of the licensed professions are receiving this distance training, so that -

SENATOR LAVALLE: Senator, this is a rather easy question, because this bill applies specifically to the Department of State. And I may have brought confusion into the discussion by trying to show an analogy of Department of State and 38 licensed professions and continuing education.

That's in another world. This bill does not deal with this. This deals

specifically with the Department of State that licenses and certifies real estate appraisers.

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

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

SENATOR PATERSON: I thank Senator LaValle for the clarification.

The question that I was just raising was the issue of what tends to be a procedure here, which is to address these situations individually. Senator LaValle assures us that this is a unique case where it is coming up in this specific situation probably because of the designation and the terminology really more than the intent.

But as a general rule, which apparently the Department of Education has promulgated, there is a desire to make it as convenient as possible for those professions who receive continuing education in a fashion that does not conflict with the day-to-day duties that they discharge now. And the advent of computerization and other equipment that accommodates distance learning is very

good, it makes it easy for the student. I hope that it will even gravitate -

THE PRESIDENT: Excuse me, Senator.

If the members could please take their conversations out of the chamber.

Go ahead, Senator.

SENATOR PATERSON: I don't know, Madam President, the members may be right. I don't really know how much I'm adding to this discussion. But suffice it to say -

THE PRESIDENT: We like to hear you, Senator. Go ahead.

SENATOR PATERSON: What I was just saying is that I'm hoping that this will even work itself down to the lower frequencies of education where people do have other concerns and it is difficult for them to learn and to improve themselves through our educational system.

So I think it's a good idea that probably should be expanded to the greatest degree that we could possibly achieve.

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 PRESIDENT: Senator Dollinger, to explain your vote.

SENATOR DOLLINGER: Just to explain my vote, briefly.

While Senator LaValle and Senator Paterson were sort of counting the heads on the top of the pin, I want to make sure we don't lose sight of one aspect of this. And that is by increasing the availability of education to appraisers, we are doing something which does have an impact right back in my community. We have had a major fraud case in Rochester, New York, that involves excess appraisals of real property and bank loans for greater -- for amounts that exceed the value of the real estate under which the property was sold.

So the notion of real estate appraisers getting additional education and training to refine the property values that are used as the key to our banking system and

home mortgage system -- to the extent that this bill gives them access to more training in more places, it's a good thing. Don't forget that real estate appraisers have an enormous impact on the viability of the home loan banking service, both right here in New York State and elsewhere.

And it's funny that we would mention home loan banking when a representative of the Federal Home Loan Banking Board, former Senator Franz Leichter, happens to be in the chamber.

So the importance of appraisals for loan purposes, for mortgage loan purposes, is critically important. It makes our banking system work. And real estate appraisers provide a critical ingredient in that, and this bill is an attempt to increase their capacity and skill. I vote aye.

THE PRESIDENT: Senator, you will be recorded as voting in the affirmative on this bill.

The Secretary will announce the results.

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 72, by Senator Velella, Senate Print 67, an act to amend the General City Law and the Penal Law, in relation to creating the crimes of urinating or defecating in public.

SENATOR PATERSON: Explanation.

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

SENATOR VELELLA: Yes, Senator, this bill is one that we've debated I believe four or five years running now.

And it is basically the same bill. It has three parts. It allows a municipality -- it's enabling legislation that allows a municipality to set up urban commercial zones. If they choose to set up this urban commercial zone, they can regulate the conduct of individuals within that zone such as lying or sleeping on the sidewalks, with certain exceptions that over the years have been put in there for persons who are lying on the sidewalk due to a medical emergency -- and a lot of these exceptions are

little technicalities that you've raised, Senator, so we've put them back into the bill -- a disabled person using a wheelchair, operating or patronizing a commercial establishment pursuant to a permit that is functioning on the streets, sitting on a chair or bench supplied by a public agency, sitting on a sidewalk or a bus stop or other transportation site, sitting on a sidewalk while engaged in artistic activity, engaging in activities regulated by the National Labor Relations Act, such as picketing.

And these are exceptions that would be provided should the city -- a city so decide to establish one of these zones.

The second part of this bill would allow municipalities to make it a misdemeanor for a second offense and a violation on a first offense for intentionally urinating or defecating in a public place or on a public sidewalk.

The third part prohibits aggressive begging, which is defined as "occurs when a person begs by word, gesture, signs or other means with the intent to intimidate another

person into giving money or goods by engaging in threatening conduct which by its nature places a reasonable person in fear of harm to his personal property." This would be a Class B misdemeanor.

Those are basically the three major points, Senator. I know you are intimately familiar with this bill, and I welcome your remarks and support.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, there's always something new to learn about this legislation, and that's why I wondered if Senator Velella would yield for a question. And obviously he must be still learning, or he wouldn't have been reading his text.

SENATOR VELELLA: Senator, the only reason I was reading is I know you are so sharp I didn't want to take the possibility of making a mistake and misstating something so that you would seize upon that. That is why I read it.

But I certainly would yield to your question.

SENATOR PATERSON: Senator, we have under the law, Madam President, Section 240-25, which is aggravated harassment in the first degree; we have fraudulent accosting, which is Section 165.30 of the Penal Law. We have different sections of the law right now that I thought would have applied. And we kind of had this discussion last year, so I thought I'd look some of them up.

Would you explain to me so that perhaps I might vote for this bill where these overarching areas of the law that kind of cover the individual who is just kind of out there in the street and may be wandering around aimlessly and is engaging in disorderly conduct, which is 240-20 of the Penal Law, where do these legislations leave a hole that is covered by this legislation?

SENATOR VELELLA: Senator, hope springs eternal. And I really believe that perhaps if I explain this properly, you will vote for it for the first time in five years. But I'm not 100 percent sure that my explanation would be satisfactory.

But this is an attempt to scoop up

all those sections, put them in one place and have one-stop shopping so that people who conduct themselves in this rude and offensive manner will be able to find in the law that section that they can be punished for for doing that.

THE PRESIDENT: Excuse me, Senator Velella.

Senator Duane, point of order.

SENATOR DUANE: Thank you, Madam President. Just because it is somewhat noisy in here and I know that the rules call for comments to be directed towards the President of the Senate, I think it would be helpful to hear the Senator's responses if he spoke facing you and into his microphone, if that's possible.

THE PRESIDENT: That would certainly be agreeable to me. Thank you, Senator.

You may proceed, Senator Velella.

SENATOR VELELLA: So this will scoop up all those sections -

(Laughter.)

THE PRESIDENT: Senator Velella,

if you could direct your remarks to me, please.

SENATOR VELELLA: I apologize, Madam President.

THE PRESIDENT: That's all right. I'm sure that it was unintentional.

SENATOR VELELLA: Madam President, the intention here is to scoop up all those parts of the law that Senator Paterson said kind of apply and make sure they're very clear, concise, so that the reasonable person will know the type of conduct expected.

THE PRESIDENT: Very direct, Senator, thank you.

Senator Paterson.

SENATOR PATERSON: Thank you, Madam President. I am more than impressed with the manner in which Senator Velella brings to this discussion so that I can really picture what this legislation is designed to do.

If he would yield for an additional question.

THE PRESIDENT: Senator, do you

yield?

SENATOR VELELLA: Yes, Madam President.

THE PRESIDENT: Thank you, Senator Velella.

Senator Paterson, you may proceed.

SENATOR PATERSON: First, I'd have to commend Senator Velella, because that was what my discussion with Senator LaValle was about. And Senator Velella, astute as he always is, has decided to bring all these pieces of legislation together so we don't have to go through this any other time.

But I want to suggest an alternative to Senator Velella. And the alternative is that rather than penalizing a lot of the homeless for the fact that they are homeless -- they don't have any place to go, and eventually they're going to break this law naturally -- that perhaps what we might do, and it was suggested by Speaker Peter Vallone of the New York City Council, is to make available public toilets, public restroom facilities that could be utilized and would at least eliminate the possibility of having this

problem any more than we already do -- than we already do.

As in to eliminate this problem, Senator Velella. I wondered what your thought on that was.

SENATOR VELELLA: Madam President, Senator Paterson totally misunderstands the direction and intent of this legislation. It is not to punish homeless people. It is to keep our city streets safe and clean.

This is exactly -- the idea of this bill came from Mayor Dinkins, who in the Democratic National Convention came to the City of New York, scooped up all these people and basically created one of those commercial enterprise zones in downtown New York City so that the delegates of the Democratic Party from across this country came to New York City and said, Wow, this place is really great, they've got clean streets, they don't have people lying in the sidewalks, they don't have people defecating in the streets. And the Mayor was right.

This is a bill that had its genesis

in the mind of Mayor Dinkins. And I'm happy to have been supportive of it. And I think that's what we need to do. We need to get out this clear message.

Now, as far as providing the facilities, yes, Speaker Vallone did do something a while back about doing this. We had those little cubicles that they put up in downtown Manhattan for public toilets. And Senator Waldon, when he was here, was the one who raised this issue. And yes, we did it. You know what happened? They stole them. They stole the toilets off the streets. So we couldn't keep them there.

So now what we're trying to do is say we're going to establish some standards of conduct. We have to look at some new techniques of ideas of providing these services. But people will be taken up if they do this and brought to homeless shelters. We provide homeless shelters. We just can't provide the toilets with an armed guard so that they can use them.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam

President, I'm going to resist the temptation to ask Senator Velella who "they" is that stole all the porto-toilets, the criminals.

On the bill, Madam President, I think that actually Senator Velella has a good idea, and it comes from having some experience with these basically misdemeanors and other violations that are sometimes so specific that they confuse the whole process in the criminal court system. And I do actually appreciate the fact that he'd like to tie them all in, or scoop them all up, and put them in one law that would govern this entire process.

I would like to point out the Coalition for the Homeless and other groups were really not particularly pleased with what went on for a short period of time in July of 1992 when Mayor Dinkins -- who is a very good friend of mine -- but there was that attempt to create what was probably a safe environment for the delegates, probably at the risk of the rights and independence of others.

For that reason, I'll listen more to the discussion. But my inclination is to vote against this legislation, because what I

think we're doing in the end is taking a problem whose magnitude is heightened, really, by our inability to treat people who have less than we have and is really just exacerbating the use of law to try to take the place where our other agencies of government have been remiss.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR DUANE: If the sponsor would yield, please, Madam President.

THE PRESIDENT: Senator Velella, do you yield?

SENATOR VELELLA: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Thank you.

I notice in the bill that on page 2, line 5, the section reads that "such activities are determined to create public nuisance, safety hazards, or inconvenience to persons." I'm wondering if the sponsor would

define "inconvenience" for me.

SENATOR VELELLA: You are wondering if the sponsor would what?

SENATOR DUANE: Define "inconvenience."

SENATOR VELELLA: Senator, we constantly pass laws that use common English words that are interpreted by the courts. Inconvenience will be determined by the court to be that which the court determines it to be.

And what the police officer who writes up the citation -- remember, we're not indicting these people and committing them to prison for the rest of their lives. The police officer will make the common-sense decision as to whether or not this person is acting in such an aggressive and antisocial way so as to inconvenience the average citizen by a reasonable interpretation -- and that word is in here. And the courts will determine it.

If they find that the offense or that the conduct was not inconveniencing anyone else, under a reasonable standard -

which is dominant throughout our law -- then that person would be found not guilty and would not have to answer for a violation of that law.

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

THE PRESIDENT: Senator, do you yield?

SENATOR VELELLA: Yes.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: I'm wondering if the sponsor could enlighten me with other areas of law where the standard is inconvenience.

SENATOR VELELLA: Senator, I did not -- I'm sorry. Madam President, I'll respond to that question by just saying I have not memorized the entire body of law in the State of New York, and I apologize for not being able to quote it off the top of my head.

But there are many, many areas of the law in which our language is interpreted, and that is why we have so many court

decisions and things are litigated.

Inconveniencing the people, based on this statute, will be interpreted by the courts, and it will be given a reasonable standard as we use throughout the law: the prudent, reasonable man's test.

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

THE PRESIDENT: Senator Velella, do you yield?

SENATOR VELELLA: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR DUANE: If a homeless person, say, loses -

SENATOR VELELLA: Could the Senator speak into the microphone? I'm having a problem hearing him.

THE PRESIDENT: Senator, are you speaking into the microphone?

SENATOR DUANE: Madam President, I'm a very tall person. So perhaps the Senate rules should call for higher microphones for someone of my stature.

THE PRESIDENT: Senator, if you could just speak as clearly as possible, you may proceed.

SENATOR DUANE: Thank you, Madam President.

If a homeless person should lose their shoe, say, on a narrow sidewalk in one of these commercial areas and they need to bend over and put their shoe on, thereby blocking the sidewalk for a few moments, would that be considered to be inconvenience?

SENATOR VELELLA: Madam President, I don't see the dilemma. By the standards that I just defined to the Senator, that would not be reasonable to be an offense. If you lost your shoe and you bent over to pick it up, any cop that gave you a ticket would have to be an idiot. That's not reasonable. It's not an offense.

See, the -- it works.

SENATOR DUANE: Madam President,

I actually, even though I wouldn't want that person to be arrested, I would feel it was inconvenient to have to walk into the street to go around that person. But if the Senator -

THE PRESIDENT: Senator, are you speaking on the bill?

SENATOR DUANE: I am.

THE PRESIDENT: You may proceed on the bill, Senator Duane.

SENATOR DUANE: I'm still, Madam President, trying to just hone down this inconvenience. I was hoping -

THE PRESIDENT: Do you have a question, Senator Duane?

SENATOR DUANE: Yes. I was hoping the Senator -

THE PRESIDENT: You may proceed with a question if the Senator yields.

Do you yield, Senator Velella?

SENATOR VELELLA: Yes, Madam President.

THE PRESIDENT: All right. You may proceed with a question, Senator Duane.

SENATOR DUANE: I was hoping that

the Senator could just give me an example of inconvenience and how it would fit in this bill, because I'm having a very difficult time envisioning such a scenario.

SENATOR VELELLA: Well, sitting or lying on the sidewalk to block the sidewalk, to interfere with the traffic of the commercial area, pedestrian traffic or vehicular traffic, under conditions that would not be reasonable, would be a violation of the law.

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

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

SENATOR VELELLA: Yes, but we're getting toward the end of my continuing to yield.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Thank you.

If a person is doing exactly what the sponsor has just said a person could be doing to be captured by this law, what is -

what would happen under present law? Would nothing happen to the person under present law?

SENATOR VELELLA: Madam President, at the present time sitting or lying in the street, obstructing pedestrian traffic, is not defined in the law as something that could be punishable.

Under this bill, it would become punishable as a violation the first time - you go to court and pay a fine -- or as a - only a civil penalty will be imposed if you obstruct, and after a warning. You have to be asked to move along and intentionally violate the statute.

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

SENATOR VELELLA: Yes.

SENATOR DUANE: I'm assuming that the sponsor is talking about a person who, with intent to cause public inconvenience or annoyance, obstructs pedestrian or vehicle traffic, that that's what he's trying to get at. And I'm wondering if the sponsor is aware

that in fact that's already covered under law, something called disorderly conduct.

SENATOR VELELLA: Is that a question to me?

THE PRESIDENT: Senator Velella.

SENATOR VELELLA: Yes, I am aware.

And as I pointed out a few minutes ago to Senator Paterson, it's an attempt to marshal all of these laws together and establish a code of conduct in our municipal commercial zones where the municipality decides that they want to and elect to enact this legislation. That is what we are attempting to do here.

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

SENATOR VELELLA: Final question, Madam President. Final question.

THE PRESIDENT: Senator Velella yields to one question.

SENATOR DUANE: Thank you, Madam President.

And so the sponsor's intent is then

just to layer laws? In other words, there aren't enough layers of laws, and the sponsor wants to make sure that we have enough layers to encompass the people that he's envisioning capturing under this law.

SENATOR VELELLA: Is there a question?

SENATOR DUANE: "Is it layering" is the question, Madam President.

SENATOR VELELLA: The answer to that is no, it's an attempt to marshal the laws.

THE PRESIDENT: Thank you, Senators.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. I just have one question, if Senator Velella would mind yielding.

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

SENATOR VELELLA: Certainly.

THE PRESIDENT: You may proceed, Senator Montgomery.

SENATOR MONTGOMERY: Thank you.

My question for Senator Velella is

this. It seems that there is a case that was tried before the Second Circuit Court of Appeals which essentially established that the New York State law forbidding loitering for the purpose of begging is unconstitutional.

Does this then not make your bill questionable as it relates to the constitutional aspect of it, the begging part, the so-called aggressive begging?

SENATOR VELELLA: Madam President, I commend the Senator on finding that case and bringing it to our attention.

And I would differentiate it by pointing out to you, Senator, that our bill is not to punish begging, it is to punish those who aggressively beg and put citizens in imminent fear of bodily harm to themselves.

There's a big difference between someone asking for some money and someone asking for some money putting you in imminent fear of danger. And if you've walked the streets of our cities, you know there are people that do do that and prey on the impression that if you don't give them something, there is going to be -- there is

going to be some kind of physical damage done to you or to your vehicle or to your property or to you.

So we are trying to punish those who would aggressively beg, as opposed to those who are begging. And I don't believe the courts would find that offensive.

SENATOR MONTGOMERY: Thank you, Madam President. Just briefly on the bill.

Unfortunately, I don't see any other purpose for this legislation -- albeit, as Senator Velella points out, it's not really meant to target the homeless and defenseless people. But I don't really see any other rationale for it. In fact, the people that I have seen -- first of all, I don't recall seeing anyone defecating on the sidewalk. It doesn't mean that they haven't done it, it doesn't mean that Senator Velella hasn't seen it, but certainly I haven't, thank God for that.

I would hope, however, that we could assist the city in expanding the access to toilets. As I believe Senator Paterson has pointed out, that would resolve some of the

problem that this bill deals with.

I don't, however, see any other purpose except to criminalize people primarily who are mentally ill, homeless, or some combination of both of those things, without ready access to facilities that would allow them to appropriately address their biological, physiological needs.

So I am voting against this. I certainly don't like -- as I've said in the past, I don't want people to be urinating and defecating and whatever else they're doing in my front yard. But at the same time, I certainly don't want to see the State Legislature establish a penal law to essentially give the police license to arrest people because they don't have a bathroom or they don't have access to a restroom.

And we know that homeless shelters put people out after they have their morning breakfast; they cannot come back until the evening. So essentially we have a situation where there's no ready access to necessary facilities. So what we're doing with this legislation is establishing a crime for not

being able to access such.

So I'm voting against this bill. And I hope that Senator Velella -- I know that he's tried to upgrade it and address certain things that have been raised. My issue is that we should not criminalize people. And so I would hope that the Senator would agree to withdraw the bill and come up with another approach to addressing essentially homeless, mentally ill people in our cities across the state.

Thank you.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. If the sponsor would yield for just a few brief questions.

THE PRESIDENT: Senator Velella, will you yield for a few -

SENATOR VELELLA: Yes.

THE PRESIDENT: You may proceed.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

I'm looking at Section 2 on the first page of the Senate print of the bill,

and I just want to make sure I understand. Does this bill limit its effect to individuals who have already been told or notified by a police officer that they're in violation of the ordinance?

SENATOR VELELLA: Yes.

SENATOR SCHNEIDERMAN: So if a police officer is walking down the street and sees someone who he perceives as scruffily dressed or perhaps someone who doesn't seem to be as well-to-do as someone else and notifies that person who is sitting on the sidewalk, that person is in violation. But if the same police officer sees a very well-dressed, well-to-do banker-type or a yuppie sitting there and doesn't notify him, is it correct that the first person would be in violation but the second person, just because the police officer walked by him, is not in violation?

SENATOR VELELLA: Madam President, the bill does not address -- does not address the dress code of the individual violating the law. So that whether you had a suit on, shorts on, or rags on, the law would apply equally to all parties. And if you are

blocking the roadway or the street or the sidewalk and you are advised by a police officer that you are breaking the law and you should move on, whether you have a tuxedo or torn, ragged clothes, the law would apply to you.

It is not, and I clearly say again, addressed to homeless people. I have a home. There are many times when I am in downtown Manhattan walking in the streets and nature calls. I don't stop on the spot and go to the bathroom. You don't have to be homeless to look for a place to go to the bathroom. It does not affect whether you have a home or not. That kind of conduct is not acceptable in the city of New York or in any city in our state.

And that's what we're trying to address, just some civility, some common decency and respect for your fellow man. And that's what it is. Whether you're homeless or not, you can't go to the bathroom on our streets.

SENATOR SCHNEIDERMAN: Through you, Madam President, if the sponsor would

continue to yield.

THE PRESIDENT: Senator, do you continue to yield?

SENATOR VELELLA: Yes.

THE PRESIDENT: You may proceed.

SENATOR SCHNEIDERMAN: Thank you.

And I'm sure that Senator Duane and I would be happy to provide you with a list of facilities in downtown Manhattan that are open to prevent this problem from occurring for you again should you be walking there.

The point of my question, though, really is the discretion that this confers on police officers. If a police officer sees two people sitting on the street and tells one of them "You're in violation" and doesn't, for whatever reason, tell that to the second person, is it not true that the way the statute is drafted, the first person is in violation, the second person isn't, just because the police officer, for whatever reason, decided not to put him on notice that he was violating it?

SENATOR VELELLA: Well, you have that problem in any law. If you have a group

of people throwing rocks and the police officer grabs one or sees one rather than the other, or jumps on it and grabs that one person, yes, the other ones get away with what they're doing.

If ten people pass a stop sign or a red light and the police officer only catches one, because of the ability to catch them or because of the conditions, that means that nine got away with it.

Unfortunately, both of them, under your description, should be cited if they were told to leave. If they're not told to leave because the police officer cannot physically get to every person blocking the sidewalk, then you might have some other statutes that might apply, such as, you know, rioting, if they're doing something wrong, or unlawful assembly of some type. I don't know right off the top of my head.

But the police officer warning a person, asking them to move on, I think is a reasonable notice. And if you can't get to everybody that's doing it, well, somebody might get away with it, but we'll catch him

the next time.

SENATOR SCHNEIDERMAN: Through you, Madam President.

My concern, though, is that unlike all the other statutes that you have cited, I don't believe that it's a requirement that you first be notified by a police officer not to throw rocks, to be violating the law by throwing rocks. There's no requirement that you have to be notified by a police officer not to riot for you to be rioting. I think you're confusing two issues.

I understand there's some people who get away with things and don't get caught. But the problem here is that I'm not aware of any of these statutes having a requirement that if you're not notified by a police officer that you're violating the statute, you're not in violation of the statute. This confers discretion in a way that I've never seen before.

And I just would like you to explain why there's that distinction, why in no other area do you have to be notified by a police officer that you're violating a law and

if a police officer happens not to notify someone, they're not in violation.

SENATOR VELELLA: Responding to your question, I would just like to point out that we built those safeguards in so that folks who have asked this question - Senators, Assemblymen in the other house, the Governor's office, citizens -- will know that there is a safety valve.

We're not going to have a police officer walking down the street stopping somebody who is tying their shoe and citing them for breaking the law. They're going to have to give them a warning.

And we have to believe that our police officers will use discretion and effectually deal with this law honestly. They're going to tell people: "You have to move along." If they don't move along after they've been directed by a police officer, then they're violating the law.

Those are the very safeguards, Senator, that I believe you would insist on having in any type of law like this, so that people aren't just haphazardly selected out of

the crowd and told, "You violated the law, you go to court and answer for this." You've got to be warned, you've got to disobey the direction of the police officer, and you've got to be blocking the roadway or the passageway.

SENATOR SCHNEIDERMAN: Thank you. Through you, Madam President, on the bill.

I do not see that this provides a safeguard. I think that that escalates the potential for arbitrary or discriminatory actions by police officers under this proposed statute.

I don't think -- I just am not aware of any other area of criminal law where, if a police officer gives you a notice, it changes the underlying offense. And I think that's a very, very dangerous provision.

I understand the offensiveness to many people of this type of conduct. I certainly don't think that this is a provision that is intended in any sort of malicious way. But I think it is something that would provide for the opportunity and in fact create all sorts of conflicting opportunities for

inconsistent enforcement, based on the community, the neighborhood, the discretion of the police. The police in our society are not without, you know, prejudices and angers that everyone feels.

I think this makes it far too discretionary, and I am going to once again vote against it. But I certainly enjoy the annual discussion of this, and look forward to discussing it for many years, as I don't think it -- hopefully it will not be passed in the other house.

Thank you, Madam President.

THE PRESIDENT: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President. Madam President, if the Senator would yield to a question.

THE PRESIDENT: Senator, do you yield?

SENATOR VELELLA: Certainly.

THE PRESIDENT: You may proceed, Senator.

SENATOR HASSELL-THOMPSON: Thank you, Madam President.

My question is, is there an age limitation attached? And I'll give you an example why, when you talk about aggressive begging. One of the issues that has been occurring in school systems is bullying by older kids of younger kids. And this description that you provide speaks to a type of aggressive begging that is intimidating to children.

So I'm curious as to how this would affect -- what impact this would have on an age group.

SENATOR VELELLA: Senator, it was not my intent -- although if this were helpful in preventing bullies from extorting money from innocent young children, I would be more than happy to say that I was the sponsor of it.

But all of our laws, all of our laws do not differentiate on the age. That would be the juvenile court. So if someone was cited for doing this and violating it, they would go into the juvenile court. And if that in fact were determined to be some wrongful conduct under the juvenile statutes,

they might be a YO or they might be adjudicated a juvenile delinquent or something like that. We're not making criminals of young children.

But if this were to help in some way to stop bullies from extorting money from other, innocent children, I think it would be a help.

SENATOR HASSELL-THOMPSON: I'll defer other questions. Thank you.

Thank you, Senator.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Duane, to explain your vote.

SENATOR DUANE: Thank you, Madam President.

I don't usually have difficulty finding a bathroom in commercial areas in my district or surrounding areas. And generally

I can go into, you know, a restaurant or some other place of public accommodation and be allowed to use a bathroom. The same cannot be said for a person who is disheveled or who is homeless and can't bathe on a regular basis or who may be mentally ill. So already, this legislation is more geared towards people who are not like me. Or, from what I can tell, the rest of us here.

Each and every example which was raised -- one who follows another person in or about a public place, or places another person in fear, is already guilty of harassment in the first degree. Someone who acts with the intent to cause public inconvenience is already guilty of disorderly conduct. And someone who accosts a person in a public place with intent to defraud is guilty of fraud - or fraudulent accosting, I guess. And any kind of physical menacing is already covered under menacing, at least in the third degree.

So I fail to see why this legislation is necessary at all. The only reason that I can think of that this legislation is being put forward is because it

points to our failures in the area of mental health and housing. Because let's not kid ourselves about who this legislation is intended to capture in our criminal justice system. It's people who are either homeless and poor or mentally ill, either or both. It's not intended to go after people like us or our siblings or our children. This bill is to be used against homeless people and people who are mentally ill.

Let's look at what the real issues facing our state are and not just pass superfluous other criminal bills. Let's really address real needs for real people.

Thank you, Madam President.

THE PRESIDENT: The secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 72 are Senators Breslin, Connor, Duane, Gonzalez, Hassell-Thompson, Mendez, Montgomery, Paterson, Santiago, Schneiderman, A. Smith, and Senator Stavisky.

Ayes, 48. Nays, 12.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 81, by Senator Wright, Senate Print 807, an act to amend the Real Property Tax Law, in relation to the taxation of certain state lands.

SENATOR DOLLINGER: Explanation.

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

SENATOR WRIGHT: Thank you, Madam President.

The bill provides that certain lands in the town of Parish, in the county of Oswego, shall be subject to real property taxation.

SENATOR DOLLINGER: Through you, Madam President -

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: -- would Senator Wright yield to a couple of questions, please.

THE PRESIDENT: Senator, do you yield?

SENATOR WRIGHT: I will, Madam

President.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: In the sponsor's memo you indicate that the parkland represents a disproportionately high share of the total acreage in the town. How big is the park?

SENATOR WRIGHT: 2,418 acres.

SENATOR DOLLINGER: How big is the town?

SENATOR WRIGHT: That I don't know, Senator.

SENATOR DOLLINGER: Through you, Madam President, if Senator Wright will continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR WRIGHT: I do.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Then how can we evaluate whether it's a disproportionately large portion of the town? Just since I'm not familiar with the community, is it many square

miles or a hundred square miles?

My concern is, Senator Wright, to sort of get an idea of how big a portion of the real property tax this property would pay.

SENATOR WRIGHT: Well, Senator, the town officials indicated to me it was disproportionate, so I took them at their word.

SENATOR DOLLINGER: Okay. Through you, Madam President, if Senator Wright will continue to yield for another question.

THE PRESIDENT: Senator Wright -

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: What is the total amount of tax levy raised in the town of Parish?

SENATOR WRIGHT: I don't know that.

SENATOR DOLLINGER: Through you, Madam President, if Senator Wright will continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR WRIGHT: Certainly.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: You point out that the fiscal implication -- you make reference to a fiscal implication of $30,000. How much of the community's tax revenue that's generated does that sum represent?

SENATOR WRIGHT: Well, I don't know the percentage, Senator, but $30,000 is real money in the town of Parish.

SENATOR DOLLINGER: Through you, Madam President, if Senator Wright would continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR DOLLINGER: I assume that that $30,000 would be real money to any community in the State of New York. Isn't

that a fair statement?

SENATOR WRIGHT: I would certainly agree.

SENATOR DOLLINGER: Okay. Through you, Madam President, if the Senator will yield just to one more question.

THE PRESIDENT: Senator, do you yield?

SENATOR WRIGHT: Certainly, Madam President.

THE PRESIDENT: Go ahead, Senator Dollinger, with a question.

SENATOR DOLLINGER: Does the $30,000 include school taxes?

SENATOR WRIGHT: I believe that calculation was based on all real property taxes levied, yes.

SENATOR DOLLINGER: Okay. Through you, Madam President, just on the bill.

THE PRESIDENT: You may proceed, Senator.

SENATOR DOLLINGER: This proposal by Senator Wright, I know that there are a number of other towns that are listed in that

section of the statute, all of them located in Chenango, Jefferson, Lewis, Livingston, Ontario, Oswego, Otsego, Rensselaer, Steuben, and Yates counties. We have declared that certain parcels of state land involved in the state reforestation or state parks or game farms, game management areas, that these are areas which are currently exempt from taxation because of course they're owned by the sovereign, by the State of New York.

And so what we've done is we've carved out from those areas all the property that's owned by the State of New York in these particular areas, mostly in rural, upstate counties.

And I would suggest that this bill represents an interesting idea but one that ought to have more widespread application. After all, in the city of Rochester I can think of two or three state office buildings, massive structures that exist in the state of New York for which the State of New York pays no property taxes. They don't pay anything to the schools, they don't pay anything to the counties.

And I would suggest that the rationale for Senator Wright's bill -- which I'm not going to dispute, and I appreciate he's obviously doing his best to represent the town of Parish. But the rationale for this bill -- that is, that the carrying cost of this land, it being exempt from taxation, is somehow a penalty to the town of Parish that we in the state of New York should rectify by paying its taxes.

I would suggest if this is a reforestation area, it probably doesn't use a lot of police services, it probably doesn't use a lot of fire services, and one thing I would guess for absolute sure is it doesn't send anybody to the schools, because there's no one there who lives there who would send their children to schools. Yet the State of New York is going to pay a portion of the school taxes that would be charged to those who live in the school district that's represented by the town of Parish.

If that theory is applicable to the town of Parish, as we have already determined it's applicable in ten other counties north of

Poughkeepsie -- but doesn't include, for example, the county of Monroe, where I reside -- I would suggest that if that theory is valid, what we should do is embark on a program in which the State of New York would begin to pay property taxes and school taxes on all the properties that it owns in this state. That rather than single out simply the town of Parish, which has no costs associated with the state land in it, we should look instead to a community like Rochester, which has the Rochester Psychiatric Center -- 1,400 employees, 500 current residents. It uses substantial police and fire services and all kinds of services that are provided by the local community. In addition, it actually has residential housing on the site, so in addition it uses school services, all of which are within the city of Rochester.

Senator Wright's bill sets an interesting process in motion. That the State of New York, if it's going to pay property taxes on its property located in communities, we should do it everywhere. And I would suggest that benefiting the small towns

upstate when we don't know how much of the property taxes this site will actually contribute, when I know for a fact that there are at least two major buildings in the city of Rochester that would be valued in the millions of dollars and pay hundreds of thousands of dollars in school and property taxes, I would simply say what's good for the town of Parish in Oswego County should be good for the city of Rochester in Monroe County. I would suggest to my colleagues from the city of New York it would be a good idea for the city of New York.

I noted with some interest the sale of the World Trade Center in New York City, two huge facilities owned by public authorities, exempt from taxation. For years and years and years, didn't pay any property taxes, yet used huge resources from the City of New York. I would just suggest that the thing to do here is to take Senator Wright's noble idea, which is that the sovereign should freely pay property taxes in a community in which its buildings are located -- I would suggest that what's good for the town of

Parish is good for the city of Rochester, it's good for the city of New York.

We ought to start this as a trend where the State of New York will pay property taxes like every other property owner. And frankly, it would be an enormous boost to those of us who represent cities to have public authorities in New York State and the state itself pay property taxes. To single out the town of Parish when we don't know how big the property is, we don't know how much of the assessment the value is located there, we don't know how much this represents to the total tax collection, I think it's premature to do it in the town of Parish. We should do it everywhere, Madam President.

I'm going to vote against this bill because I think it discriminates against the community I represent. I would like to see a policy where we do this statewide and that we pay property taxes through publicly owned facilities from the State of New York.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President. If the sponsor would yield,

please.

THE PRESIDENT: Senator, do you yield?

SENATOR WRIGHT: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR DUANE: Thank you, Madam President.

I'm wondering if the Governor or Commissioner Castro have endorsed this bill.

SENATOR WRIGHT: I haven't posed that question to them, Senator.

SENATOR DUANE: Thank you.

If the sponsor would continue to yield, Madam President.

THE PRESIDENT: Senator, do you yield?

SENATOR WRIGHT: I'll continue to yield.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Thank you, Madam President.

Does the sponsor see the money for this legislation coming out of the state

surplus?

SENATOR WRIGHT: No. Frankly, I see it being paid out of the General Fund, as current appropriations for taxable properties in the state are paid by the State of New York.

SENATOR DUANE: Thank you, Madam President. If the sponsor would continue to yield.

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

SENATOR WRIGHT: I will.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: I'm wondering if the sponsor is concerned that this may increase people's state taxes.

SENATOR WRIGHT: Frankly, I am not. I don't believe that $30,000 will have an adverse effect on the state budget.

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

THE PRESIDENT: Senator, do you yield?

SENATOR WRIGHT: I will.

THE PRESIDENT: You may proceed.

SENATOR DUANE: Is there a home rule message for this legislation?

SENATOR WRIGHT: There is not. I'm told that a home rule message is not required. But there is a formal request and resolution from the town government.

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

THE PRESIDENT: Senator, do you yield?

SENATOR WRIGHT: I will continue to do so.

THE PRESIDENT: You may proceed, Senator.

SENATOR DUANE: How much will this legislation, if enacted, reduce the property taxes of the residents of Parish?

SENATOR WRIGHT: That would be a determination of the town board when they adopt a budget, contingent upon their revenue and expenses.

SENATOR DUANE: Thank you, Madam

President. If the sponsor would continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR WRIGHT: I will.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: If the sponsor could tell us what the genesis of this bill was.

SENATOR WRIGHT: The genesis was a request from the town board last year. It was introduced here in the Senate, passed in the Senate, in turn was reintroduced at the request of the town board again this year because they are adjacent to the town of Redfield, which is a neighboring town deriving a similar benefit under the existing statute.

SENATOR DUANE: Through you, Madam President, is the sponsor saying the genesis of the bill is that a neighboring town already profits by this kind of legislation?

SENATOR WRIGHT: I believe that's what the Senator did say, yes.

SENATOR DUANE: And through you,

Madam President, if the sponsor would continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR WRIGHT: I will.

SENATOR DUANE: Is there an Assembly version introduced for this bill?

SENATOR WRIGHT: Yes, there is.

SENATOR DUANE: Could the sponsor tell me who the Assembly sponsor is?

SENATOR WRIGHT: I believe you'll find it on the memo. It's Assemblywoman Sullivan.

SENATOR DUANE: And one final question for the sponsor. Is the $30,225 a yearly savings or payment?

SENATOR WRIGHT: Well, that's a projection made by the Senate Finance Committee and the New York State Office of Real Property Tax Services. As required under the Senate rules, they provide a fiscal note.

SENATOR DUANE: Through you, Madam President, just a clarification. So that's per year, but in perpetuity, if this goes through?

SENATOR WRIGHT: That is my assumption, yes.

SENATOR DUANE: Thank you, Madam President.

THE PRESIDENT: Senator Brown.

SENATOR BROWN: Madam President, through you, if the sponsor would yield for a question.

SENATOR WRIGHT: Certainly, Madam President.

SENATOR BROWN: Madam President, I wanted to know how long this land in the town of Parish has been state land.

SENATOR WRIGHT: Madam President, I don't have an exact date. But it's my belief, to the best of my knowledge, that it -- sometime on or about post-World War II, late 1940s.

SENATOR BROWN: Through you, Madam President, if the sponsor would continue to yield for a question.

THE PRESIDENT: Senator, do you yield?

SENATOR WRIGHT: I certainly will.

THE PRESIDENT: You may proceed, Senator.

SENATOR BROWN: So then as state land since approximately the 1940s, this property has been tax-exempt for 60 years?

SENATOR WRIGHT: To the best of my knowledge.

SENATOR BROWN: Thank you.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: Yes, I wonder if the sponsor would yield for a couple of questions.

THE PRESIDENT: Senator, would you yield?

SENATOR WRIGHT: I will.

THE PRESIDENT: You may proceed.

SENATOR STAVISKY: How were these towns selected, Senator -- Madam President?

SENATOR WRIGHT: I have no sense of history in terms of the existing towns reflected in the statute, other than they were authorized by the State Legislature and signed into law by the Governor.

SENATOR STAVISKY: Madam President, through you, how was the Town of

Parish then selected? Did it conform, Madam President, to the selection process for these other outstanding municipalities?

SENATOR WRIGHT: I believe, as I responded to a prior Senator's question, I indicated it was at the request of the town.

SENATOR STAVISKY: Madam President, through you, I notice that it says "exclusive of the improvements erected thereon." Madam President, I'd like to know if there any improvements in the town of Parish on this property.

SENATOR WRIGHT: Madam President, none that I'm specifically aware of. That's standard language utilized in the real property statute. Nonetheless, there may be an occasional lean-to or something that has been constructed on this wildlife area.

SENATOR STAVISKY: Madam President, one more question. And that is, would the town of Parish also be exempt from any school taxes, any water taxes, sewer taxes or whatever local taxes are imposed?

SENATOR WRIGHT: Well, Senator, I can assure you that there are no sewer or

water taxes being imposed in this wildlife refuge in the town of Parish. Unlike the city of Rochester in Monroe County, where you have a nice large office building generating several hundreds if not thousands of jobs, that is clearly not the situation here in Parish. So consequently, there is very little that will be generated other than the taxation that's authorized in this legislation.

SENATOR STAVISKY: Madam President, on the bill.

THE PRESIDENT: You may proceed, Senator, on the bill.

SENATOR STAVISKY: It seems to me that all of us have state facilities in the areas which we represent, whether it be colleges or universities or schools or office buildings in various institutions, armories, mental institutions, hospitals, and so on.

And if we're going to exempt wildlife towns, towns made up primarily of wildlife, it seems to me that we ought to continue and take this to its logical conclusion, which would be to exempt -- or, rather, to provide taxation -- much in the way

that impact data is collected from military institutions, that the state ought to start collecting taxes from all of these tax-exempt institutions, whether it be the World Trade Center in Senator Duane's district, I believe, or Queens College in my district.

Madam President, I am suggesting that this is unfair and we should vote no.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: I don't want to ask any questions, because I think we're getting too tangled up in what percentage of the revenues come from this land and is it a sewer tax, a water tax.

I'm against the principle. I'm against the concept. I've been the mayor of a community that had state facilities for many years. We were saying -- and indeed, in my Senate district I have prisons, I have hospitals. You name it, I've got a lot of state stuff. And for years we were saying that it would be appropriate that some kind of pilot would be offered in place of the taxation that normally would fall to these

state institutions, pilots being in lieu of taxes, payments that are made in lieu of taxes. And I still firmly support that.

What I don't support here is singling out one area and saying that all the rest of us, many of whom have these institutions, have also state land that is wildlife, we have them in our Senate district. And to do it for one is simply unequal, unfair.

And that's why I'm going to oppose this, because I think it's really contrary to the principles that we have believed in for a long time. And if we are going to change our belief, it has to be for all. It can't be just for one.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. Through you, if the sponsor would yield for a few questions.

THE PRESIDENT: Senator, do you yield?

SENATOR WRIGHT: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

Senator, has this bill been considered by the Finance Committee?

SENATOR WRIGHT: It's before the house, Senator. I believe it has.

SENATOR SCHNEIDERMAN: But it did go through Finance before? It has a fiscal impact, and my question is did this -- has this bill been examined by Finance and reported out of Finance?

SENATOR WRIGHT: Frankly, I don't know. I'm not a member of the Finance Committee.

SENATOR SCHNEIDERMAN: Well, I might suggest that that may be the appropriate course, committing the bill to Finance, as it has a substantial fiscal impact.

Through you, Madam President. And I appreciate the fact that the Senator is trying to be responsive to a constituent request. But I understand from your earlier responses that you're not aware of any

particular system of analysis or prioritization that has resulted in this particular list of communities being exempt from the requirements that all the rest of the communities in the state are subject to that provides that state land is not subject to taxation.

Let me -- I can rephrase that. Is there any system that you're aware of that has resulted in this list of communities getting this benefit?

SENATOR WRIGHT: To my knowledge, that list reflects lands that are either reforestation or wildlife properties.

SENATOR SCHNEIDERMAN: But through you, Madam President, aren't there other communities in the state that have reforestation, wildlife preserves?

SENATOR WRIGHT: There may well be.

SENATOR SCHNEIDERMAN: And is there some reason why reforestation and wildlife preserves, as opposed to all other facilities and land owned by the state, were singled out for this treatment?

SENATOR WRIGHT: Well, I frankly believe it's the same reason that the Town of Parish is looking for assistance. And that is those lands are not developed, those lands do not create jobs. Unlike all of the other examples used this afternoon, where you're talking about hospitals, colleges, state office buildings, et cetera -- they produce employment, they produce economic impact, they produce positive benefits to the community. Unlike a wildlife refuge, unlike reforestation projects, which are basically fallow land left without taxation, left without a positive impact on a small rural community.

They would gladly trade that land for a prison. They would gladly trade that land for an office building, for a college, for a hospital, for an armory, for all the other examples, because they would like to have the positive benefit to their community.

Unfortunately, a wildlife refuge does not provide that to these communities, so they're seeking what they can to support their tax bases.

SENATOR SCHNEIDERMAN: Thank you.

Through you, Madam President.

Then I don't understand, and I hope maybe you can help me understand, why what appears to be a very small subset of these areas in the state -- because it's a very small list of towns -- is receiving this special privilege. Was there any system of analysis to determine why these communities should receive this privilege while others are denied it?

SENATOR WRIGHT: Well, again, frankly, Senator, it appears to be the will of the State Legislature and the Governor at the time these particular provisions were enacted.

SENATOR SCHNEIDERMAN: But you're not aware of any particular criteria that was used?

SENATOR WRIGHT: I'm not aware of any, no.

SENATOR SCHNEIDERMAN: Are you familiar with all of these towns, Senator?

SENATOR WRIGHT: I am not.

SENATOR SCHNEIDERMAN: I'm sorry, through you, Madam President. Has any consideration ever been given to the

possibility that there is a -- and I don't mean to presume, because I don't know these communities. But if, as I suspect, these communities are predominantly or overwhelmingly populated by white New Yorkers, has there been any consideration ever given to the fact that there are civil rights implications in giving them exemptions while not giving them to any of the communities largely inhabited by people of color?

SENATOR WRIGHT: None that I'm aware of.

SENATOR SCHNEIDERMAN: But, Senator -- or through you, Madam President.

THE PRESIDENT: Senator, do you continue to yield?

SENATOR WRIGHT: Certainly, Madam President.

THE PRESIDENT: You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Title 6 of the federal Civil Rights Act prohibits us as a state legislature from taking any action that has a disparate impact on protected classes of people, which in the context of New York State

has been held repeatedly to mean that we can't pass statutes that primarily benefit white communities and do not benefit communities where there are a majority or a substantial population of black and Hispanic citizens. Is that something that has been taken into account in any way in assessing this list?

SENATOR WRIGHT: I have no knowledge of that, Senator.

SENATOR SCHNEIDERMAN: Okay, thank you. I'd like to thank the sponsor for his responses.

On the bill. I must say I don't understand, other than the fact that the good sponsor is trying to be responsive to a request of constituents in the community -- I don't understand how we can stand here and say this small list of areas of the state is going to receive this special benefit.

There are a lot of areas of the state that I'm sure are equally worthy, are poor, are in need. There are a lot of different kinds of facilities and parks scattered all throughout the state. And for us to bestow this benefit without any

criteria, without any system of evaluation, I think raises serious concerns.

I do think it should have been committed to the Finance Committee, by our own rules. And I do think that there is a serious issue of possible discriminatory impact, given the selection of rural areas that I gather are overwhelmingly white.

So I respect the fact that you have to respond to your constituents. But in this case I think they're asking for something that it really should be beyond our power to give. And so I will vote no.

Thank you, Madam President.

THE PRESIDENT: Senator Lachman.

SENATOR LACHMAN: Yes, on the bill, Madam President.

THE PRESIDENT: You may proceed, Senator, on the bill.

SENATOR LACHMAN: I have it on not perfect authority, but from an Ancient Mariner, that when King Arthur, seated around the Round Table, looked directly at Sir Lancelot, he said: "How is this knight different from all other knights?"

And I would interpret that, Senator Wright, in your bill as saying why isn't this applicable to other areas in the State of New York.

Now, I did vote for your bill last year. I think it's a noble gesture. And it could be a good bill if it were applicable to other areas in the State of New York. But it is not. And therefore, I will be voting against the bill this year.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, would the Senator be willing to yield for a few questions.

THE PRESIDENT: Senator Wright, do you yield?

SENATOR WRIGHT: I'll be pleased to take questions from Senator Paterson.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Thank you, Senator. I've appreciated your candor on this issue and a great deal of honesty in answering the questions.

This bill would not be considered a

local bill under our rules, would it?

SENATOR WRIGHT: Well, I don't know what definition you would apply in describing a local bill. Obviously it's at the request of a specific local government.

SENATOR PATERSON: In other words, this bill wouldn't require a home rule message, it wouldn't be regarded as a sale or need a two-thirds vote to pass?

SENATOR WRIGHT: No. No, I've been informed that it does not.

SENATOR PATERSON: Senator, even though it does not, under our rules, just the spirit of the whole idea of why we have two-thirds votes on certain bills is that there's an issue that we want to have a greater majority than our normal preponderance majority, because though the bill may have a great impact on the individuals in that particular area, we as a body want to protect ourselves against what would be, in a sense, serving the interests of the few as opposed to serving the interests of the many.

And that brings me to the spirit of the question. Earlier when you were asked, I

believe by Senator Dollinger, about the local officials who gave you the information, I would have done the same thing that you did, which was to respond to those interests in my district where I was told that it had a disproportionate impact on the fiscal sovereignty of the town.

My question is, how would you assess, for the purposes of a legislative body, the Senate -- we're now voting on this, and we are voting with the state interest, not the local interest that we all have when we bring our bills to the Legislature. How should we assess this piece of legislation with respect to how it affects our constituents around the state?

SENATOR WRIGHT: Well, Senator, I think that's like many other issues that we take up and we all look at with a balanced point of view and try to treat all areas of the state uniformly but not identically. There are numerous examples where, for example, metropolitan areas benefit for subsidies of mass transit and rail, which my area does not benefit from.

I think when we look at the total context of what we do here, each and every day we try to walk away with a sense of fairness to all regions of the state, a balance, trying to treat people all in the same fashion, if not identical fashion.

SENATOR PATERSON: Thank you, Senator.

Madam President, if the Senator would continue to yield.

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Then I certainly would agree with Senator Wright that his constituents have, by force of or by caveat of the Legislature or law signed by the Governor, that their taxpayer dollars provide broad revenue bases for other sources that don't affect that particular area. And so that that would not be a good reason why someone such as myself would oppose legislation, even in spite of the fact that I do have a state facility in my district that

doesn't -- that's tax-exempt at that moment.

But to get to the core of this question, I would wonder if it would not be a good idea to try to approximate what the average cost would be for certain state facilities, particularly factoring in some of the issues that have already been discussed here -- the issues of game management, of game farming, of game refuge, where there are fish hatcheries, where there's reforestation, as it is in the present case.

But in other words, to have some kind of determination, either by study or by task force, as to what that standard is in the future so that we might have a better basis to determine what you referred to earlier, Senator, as what would be a balance.

What I'm saying here is that I'm not sure exactly what the balance is, because I don't know what the standard is. Would you think that in the future that might be a better way to assess it so that even in the case of this legislation you don't have to be questioned as scrupulously by your colleagues when this is something that it might be very

obvious to officials in your area needs to be done?

SENATOR WRIGHT: Well, I appreciate the question, Senator. I haven't had this much attention in several months. I've enjoyed the exchange this afternoon.

More to the point, I think it's perhaps a standard we talked about earlier this afternoon, that being common sense. There is a distinction between buildings, there is a distinction between state office buildings, colleges, hospitals, prisons, armories, et cetera, that create employment and have large workforces. There is a distinction between state parks and a wildlife refuge or wildlife management preserve areas, because state parks employ people.

When you're talking about reforestation property, when you're talking about wildlife preserves, what you're talking about is simply fallow land, left there. From my own personal experience, I know that it is a significant portion of the town of Parish, having driven through that town, having been involved with that county for some twenty

years now.

Now, I can't give you the exact personal of square miles or acreage, et cetera, but it is a disproportionate impact on a small, rural town. And I think that's a standard we can all justify and live with, and those are the kind of judgments we make every day here.

And I'm confident in your ability and the ability of your colleagues to make that judgment this afternoon without an extensive study.

SENATOR PATERSON: Thank you, Madam President. Thanks to Senator Wright for his responses.

SENATOR WRIGHT: Thank you.

SENATOR PATERSON: On the bill.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: Madam President, Senator Wright took the word of town officials who have integrity in his area that this situation was one that created a disproportionate impact on the citizens of that region. And in kind, I take the word of Senator Wright that this is important

legislation which might cure what is an imbalance of resources that are invested by the local township in this case.

However, where I see the problem is in the way that we assess these particular geographic locations, and the encumbrances that they feel, as a Legislature. I don't see a pattern or a practice from the other 22 towns that were chosen that in my opinion reflects balance. I think that it is more reflective of what the ability was to pass legislation and to get bills signed into law.

I don't think that if you look, as Senator Schneiderman pointed out, as Senator Dollinger pointed out, as Senator Stavisky pointed out, at the greater regions around this state such as areas that Senator Oppenheimer represents, where there are state facilities that are not returning any of the tax dollars to the local areas that support them, even though they would seem to qualify under this criteria, I just don't think that we as a Legislature are treating the entire citizenry of the state fairly.

I think certainly we're all trying

to be fair to our own constituents and should advocate that way. And with a proper assessment, I actually think that Senator Wright would be sustained. I think that this is legislation sincerely proposed and sincerely drawn. But in the end, its effect, if we pass it, is actually as disproportional as the problem that it aims to cure. That there are other facilities and regions around the state that are put in the position where the local dollar is having to in many ways foster the survival of state facilities that have gone beyond the ambit of what the state usually does and into some of these areas of game farming or game management or reforestation, as Senator Wright describes.

And until we get to a point where we really have a standard that we can all live by, I don't know that anyone really knows what disproportionate is until we can assess it. I think when we look in our own districts, in our own areas, it certainly feels like it's disproportionate. But I guess all of us, even as state taxpayers, think that our income taxes are disproportionate. The only way to

really measure it is through an apt comparison with what are the responsibilities of our neighbors.

And until that time, I think very good legislation may to some degree be opposed because we haven't created a standard. And I think that continuing to pass laws such as this are just going to open up what will be not a test or a question of what is valid and what is fair, but a feeling that others got something that we deserve and now we have to find a way to get it.

I don't think that's the way to make laws, and I don't think that's the way to govern, in spite of the fact that there are regions -- and we may be looking at one of them right now -- that deserve this protection and deserve this reward.

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 PRESIDENT: Senator

Oppenheimer.

SENATOR OPPENHEIMER: Just briefly.

THE PRESIDENT: To explain your vote.

SENATOR OPPENHEIMER: I can empathize very much with Senator Wright's constituents and the communities that are seeking relief. Lord knows we spent a lot of time when I was the mayor, with the heads of government in Westchester trying to figure out how we could get more money out of the state to repay us for some of the costs. In his case, it's open space.

I would argue or put forth the idea that, where municipalities are expending considerable money on police and fire protection and garbage collection and snow removal and light replacement, that those communities are really bearing the brunt of the expense of having this state land within their communities. And I would think that they, even more than this wildlife preserve, would deserve some support from the state. And I hope in time that it would come, but I

cannot see giving it to one area and not another.

I'll vote no.

THE PRESIDENT: Senator Dollinger, to explain your vote.

SENATOR DOLLINGER: Thank you, Madam President. I will also join Senator Oppenheimer in voting no. I made my views known earlier. I concur with Senator Oppenheimer.

I would only add one other fact, which is that in the city of Rochester, the buildings that are tax-exempt that are owned by the State of New York are used by everyone in the surrounding community. They're used by people in our suburbs, they're used by people in other counties. These are mostly regional centers. The regional state office building downtown has the Workers' Compensation Board that covers many counties. This Rochester Psychiatric Center I think is a catch basin for as many as 19 counties.

So in the particular circumstances of the city of Rochester, the beneficiaries of the state office building located in the city

of Rochester are people from all different communities -- from the suburbs, from counties far away from Rochester. But the party that has the detriment of providing services to that building and providing the fire and all the other services is solely the City of Rochester, because that's where it's located.

And it seems to me it's not unreasonable to ask people that live in other counties who get the benefit of having a building in the city of Rochester owned by the State of New York, it's not unfair to say: Wait a second, you should pay. We should collectively -- those who live in the suburbs should pay part of the taxes that would be payable to the City of Rochester to support schools, fire and police services.

This is all about the fairness of our taxation system. And it seems to me that Senator Wright, in his advocacy for the town of Parish, I understand the justification. But any analysis of this problem, you'd have to conclude that those of us who have major state office buildings in our communities have a much better case than Senator Wright's

constituents for fair and honest treatment in paying real property taxation. The fairness that compels Senator Wright to do this I think is even more powerful when you look at the cities and the communities that have major state office buildings.

I again go back to it. This is good for the town of Parish; it should be good for everyone. I'll vote no.

THE PRESIDENT: Senator Dollinger, you will be recorded as voting in the negative.

Will the Senators voting in the negative please raise your hand.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 81 are Senators Brown, Connor, Dollinger, Duane, Gentile, Hassell-Thompson, Hevesi, Lachman, Montgomery, Onorato, Oppenheimer, Paterson, Sampson, Schneiderman, A. Smith, M. Smith, Stachowski, and Senator Stavisky.

Ayes, 42. Nays, 18.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 83, by Senator Meier, Senate Print 1311, an act to amend the General Municipal Law, in relation to authorizing.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 100, by Senator DeFrancisco, Senate Print 438, an act -

SENATOR PATERSON: Explanation.

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

SENATOR DeFRANCISCO: This bill, which passed 57 to nothing last year, and similar votes in the prior two years, simply allows for fiduciary commissions to be based

on real estate that passes directly to a beneficiary, which is not permitted presently.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if Senator DeFrancisco would yield for a question.

SENATOR DeFRANCISCO: Yes.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Senator, it never occurred to me what we're actually correcting. In other words, when this type of situation happens now, you're saying that the commission can't pass directly to the beneficiary?

SENATOR DeFRANCISCO: No, what I'm saying -- no, no, no. If someone passes away and specifically bequests or devises real estate to an individual, that real estate - or does it by operation of law, but primarily devises directly to an individual, then that is not considered as part of the property of the estate for the fiduciary to receive a commission for their work on.

And as a result, we're one of the

minority of states that do not allow commissions because there still is work by the executor or the trustee in maintaining the land, making sure its taxes are paid, until there's finally a transfer.

So what this basically does is bring us in line with many other -- most other states, except for about four, that allow executors who have the obligation to handle the property, even if it directly goes by will to a beneficiary, to obtain a commission for the services of handling the land.

SENATOR PATERSON: And, Senator, if you would yield for another question.

THE PRESIDENT: Senator, do you yield?

SENATOR DeFRANCISCO: Yes.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Now, normally what basis is it upon which the commission is determined?

SENATOR DeFRANCISCO: The value of the property that is part of the decedent's estate.

SENATOR PATERSON: Then if I have this right, now, then that amount, that value would be taken off the total value and would not be part of the commission?

SENATOR DeFRANCISCO: That is correct. The commission would not - presently is not on that type of real estate that is devised specifically to a beneficiary.

SENATOR PATERSON: Right. Because the way the property was bequeathed, it really did not really need for any action to be taken, so there really shouldn't be a commission.

SENATOR DeFRANCISCO: That's the thinking of the way that the law presently is, that it's merely a matter of signing the deed over to the beneficiary and that's the end of it.

However, that isn't really the case. In fact, when you understand that some estates, probate proceedings are contested and that the property has to be maintained by the executor during that period of time. And basically most other states recognize that fact; no matter how it transfers to the

beneficiary, it's something that -- some work that has to be done by the fiduciary for a commission.

And the State Bar Association has a memo in support of this.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, can I call for a quorum of the house, pursuant to Rule IX.2(f), please.

THE PRESIDENT: The Secretary will call a quorum.

Senator Paterson.

SENATOR PATERSON: Madam President, I believe that Senator Dollinger, under Section IX.2(f), has called a quorum. And in that section it says that the presiding officer will forthwith direct the Secretary to call the roll. So I don't see any reason why he's not calling one right now.

SENATOR VELELLA: Madam President, can we instruct that the Secretary ring the bells and bring the members into the house.

SENATOR PATERSON: A brilliant

idea.

THE PRESIDENT: The Secretary will ring the bells and bring the members into the house.

The Secretary will read.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Here.

THE SECRETARY: Senator Balboni.

(No response.)

THE SECRETARY: Senator Bonacic.

(No response.)

THE SECRETARY: Senator Breslin.

SENATOR BRESLIN: Here.

THE SECRETARY: Senator Brown.

SENATOR BROWN: Present.

THE SECRETARY: Senator Bruno.

(Senator Bruno was indicated as being present.)

THE SECRETARY: Senator Connor.

(No response.)

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Here.

THE SECRETARY: Senator Dollinger.

(No response.)

THE SECRETARY: Senator Duane.

(No response.)

THE SECRETARY: Senator Espada.

(No response.)

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Present.

THE SECRETARY: Senator Fuschillo.

(No response.)

THE SECRETARY: Senator Gentile.

(No response.)

THE SECRETARY: Senator Gonzalez.

(No response.)

THE SECRETARY: Senator Goodman.

(No response.)

THE SECRETARY: Senator Hannon.

(No response.)

THE SECRETARY: Senator Hassell-Thompson.

(No response.)

THE SECRETARY: Senator Hevesi.

(No response.)

THE SECRETARY: Senator Hoffmann, excused.

Senator Johnson.

(No response.)

THE SECRETARY: Senator Kruger.

(No response.)

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: Present.

THE SECRETARY: Senator Lachman.

SENATOR LACHMAN: Present.

THE SECRETARY: Senator Lack.

(No response.)

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Present.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Here.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Present.

THE SECRETARY: Senator Libous.

(No response.)

THE SECRETARY: Senator Maltese.

(No response.)

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: Present.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Here.

THE SECRETARY: Senator Markowitz.

(No response.)

THE SECRETARY: Senator Maziarz.

(No response.)

THE SECRETARY: Senator McGee.

SENATOR McGEE: Present.

THE SECRETARY: Senator Meier.

SENATOR MEIER: Present.

THE SECRETARY: Senator Mendez.

(No response.)

THE SECRETARY: Senator Montgomery.

(No response.)

THE SECRETARY: Senator Morahan.

SENATOR MORAHAN: Here.

THE SECRETARY: Senator Nozzolio.

(No response.)

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: To explain my presence.

(Laughter.)

THE SECRETARY: Senator Oppenheimer.

(No response.)

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Present and accounted.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: Present.

THE SECRETARY: Senator Rath.

(No response.)

THE SECRETARY: Senator Saland.

(No response.)

THE SECRETARY: Senator Sampson.

(No response.)

THE SECRETARY: Senator Santiago.

(No response.)

THE SECRETARY: Senator Schneiderman.

(No response.)

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Present.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Present.

THE SECRETARY: Senator A. Smith.

(No response.)

THE SECRETARY: Senator M. Smith.

SENATOR MALCOLM SMITH: Here.

THE SECRETARY: Senator Spano.

SENATOR SPANO: Here.

THE SECRETARY: Senator Stachowski.

(No response.)

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Here.

THE SECRETARY: Senator Stavisky.

(No response.)

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Here.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Here.

THE SECRETARY: Senator Volker.

(No response.)

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: Present.

THE SECRETARY: Senator Balboni.

SENATOR BALBONI: Present.

THE SECRETARY: Senator Bonacic.

SENATOR BONACIC: Here.

THE SECRETARY: Senator Connor.

(No response.)

THE SECRETARY: Senator Dollinger.

(No response.)

THE SECRETARY: Senator Duane.

(No response.)

THE SECRETARY: Senator Espada.

(No response.)

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: Present.

THE SECRETARY: Senator Gentile.

(No response.)

THE SECRETARY: Senator Gonzalez.

(No response.)

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Here.

THE SECRETARY: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Here.

THE PRESIDENT: Senator Skelos, a quorum is present.

SENATOR SKELOS: Thank you, Madam President. If we could continue with the controversial calendar.

THE PRESIDENT: Read the last section.

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

January.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

THE PRESIDENT: The bill is passed.

Senator Skelos, we have some housekeeping.

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

THE PRESIDENT: Yes, there is, Senator.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Yes, thank you, Madam President. I would like to move that the following bills be discharged from their respective committees -- shall I start again?

THE PRESIDENT: Yes, please, Senator.

SENATOR HASSELL-THOMPSON: Thank you, Madam President.

Madam President, I move that the following bill be discharged from its respective committee and be recommitted with

instructions to strike the enacting clause. And that bill number is 2747.

THE PRESIDENT: So ordered, Senator.

SENATOR HASSELL-THOMPSON: Thank you, Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: There being no further business, I move we adjourn until Tuesday, February 27th, at 11:00 a.m.

THE PRESIDENT: On motion, the Senate stands adjourned until Tuesday, February 27, 11:00 a.m.

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