NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:08 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: In the absence of clergy, may we bow our heads in a moment of silence, please.

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, March 11, the Senate met pursuant to adjournment. The Journal of Saturday, March 10, 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 Marcellino.

SENATOR MARCELLINO: Thank you, Madam President. On behalf of Senator Maltese, on page number 17 I offer the following amendments to Calendar Number 179, Senate Print Number 2679, and ask that said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: The amendments are received, and the bill will retain its place on the Third Reading Calendar.

Senator Paterson.

SENATOR PATERSON: Madam President, has the chair received the resolution message from the Assembly calling for a joint legislative session at noon tomorrow, March 13th, Tuesday, in the Assembly parlor, for the purpose of addressing the nominations of Regents?

THE PRESIDENT: Senator Paterson, that was received in the Clerk's office this morning.

SENATOR PATERSON: Thank you, Madam President.

THE PRESIDENT: You're welcome.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a privileged resolution, 786, by Senator Maziarz. May we please have the title read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Maziarz, Legislative Resolution memorializing Governor George E. Pataki to proclaim March 16, 2001, as "Liberty Day" in the State of New York.

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, if we could take up the noncontroversial calendar.

THE PRESIDENT: The Secretary will read.

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

SENATOR CONNOR: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 130, by Senator Maltese, Senate Print 1841, an act to amend the Environmental Conservation Law, in relation to penalties.

SENATOR CONNOR: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 136, by Senator Rath, Senate Print 1456, an act to amend the Real Property Tax Law, in

relation to exemption.

SENATOR CONNOR: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 138, by Senator Maziarz, Senate Print 1518A, an act to amend the General Municipal Law, the Public Authorities Law, and the Civil Service Law, in relation to paid leave.

SENATOR CONNOR: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 143, by Senator Velella, Senate Print 64, an act to amend the Social Services Law, in relation to persons and officials.

SENATOR CONNOR: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 146, by Senator Saland, Senate Print 587, an act to amend the Family Court Act, in relation to extensions.

SENATOR CONNOR: Lay it aside.

THE PRESIDENT: The bill is laid

aside.

THE SECRETARY: Calendar Number 147, by Senator Saland, Senate Print 588, an act to amend the Family Court Act, in relation to procedures for the temporary removal.

SENATOR CONNOR: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 162, by Senator Meier, Senate Print 1449, an act to amend the Social Services Law and others, in relation to penalties.

SENATOR CONNOR: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 163, by Senator Morahan, Senate Print 833, an act to amend the Education Law, in relation to certain BOCES programs.

SENATOR CONNOR: 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 calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 43, by Senator Balboni, Senate Print 858B, an act to authorize the Congregation Shira Chadasha, in the Village of Great Neck.

SENATOR CONNOR: Explanation.

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

SENATOR SKELOS: Lay it aside temporarily.

THE PRESIDENT: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 130, by Senator Maltese, Senate Print 1841, an act to amend the Environmental Conservation Law, in relation to penalties for unlawful taking.

SENATOR CONNOR: Explanation.

THE PRESIDENT: Senator Maltese, an explanation has been requested by Senator Connor.

SENATOR MALTESE: Yes, Madam President. This is an act to amend the

Environmental Conservation Law in relation to the penalties for unlawful taking, importation, transportation, possession or sale of endangered or threatened species.

The purpose is to increase the penalties applicable to unlawful acts against the endangered and threatened species.

This legislation would provide that a violation involving the unlawful taking, importation, transportation, possession, or sale of endangered or threatened species are punishable as follows.

A first conviction is a Class B misdemeanor, punishable by a fine of up to $5,000 and/or imprisonment up to 90 days. A second or subsequent conviction is a Class A misdemeanor, punishable by a fine of up to $10,000 and/or imprisonment for one year.

This bill also provides for the discretionary payment of rewards up to half the fine, but not to exceed $2,500, to persons giving information leading to a conviction. Department employees, their relatives, and law enforcement officials are declared ineligible for such reward payments.

The justification is that existing payment for violations involving endangered and threatened species, with the sole exception of bald and golden eagles, are too low to provide the level of protection warranted. The penalties for bald and golden eagle violations were appropriately raised to their current levels in 1989.

This bill would provide the same level of protection for the state's other endangered and threatened species, including, among others, the peregrine falcon, the least tern, the osprey, and the humpback whale.

This particular bill was passed unanimously in 1998, 1999, and the year 2000.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if Senator Maltese would yield for a few questions.

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

SENATOR MALTESE: Yes.

THE PRESIDENT: Go ahead, Senator Paterson.

SENATOR PATERSON: Being that the

bill may have passed the Senate for the last three years, it never became a law. And my interest is why that might be the case. And specifically, I'm interested in how many occasions would the law you're proposing actually address this issue where the present legislation does not.

In other words, I understand what you've set forth here in the legislation. But I don't understand how it corrects the present law.

SENATOR MALTESE: Madam President, as to the first, why it was not passed into law, obviously the omission or the sin of omission was not that of the Senate, which very prudently and wisely passed the bill, but it was referred to Environmental Conservation in the Assembly. It does have a Democratic Assembly sponsor, Assemblyman Seminerio, and it did not -- it was not taken up on the floor of the Assembly.

As far as the specific instances where it would be applicable, and where I assume the question would say why -- where the appropriate penalties were too low now,

environmental organizations have approached us, have asked us to put the bill in. I assume that they are familiar with the rationale as to why it's too low.

My own view would be that in order to be a deterrent, the penalties should be severe, and that's probably the idea behind making these penalties more severe.

SENATOR PATERSON: Madam President, if Senator Maltese would yield for another question.

THE PRESIDENT: Senator, do you continue to yield?

SENATOR MALTESE: Yes.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Senator, I understand your point of view that it would be better for the other house to pass the bill. But I think you and I would agree that that point of view is somewhat subjective.

And all I was laying out for you was the necessity that we as the Senate take this bill up and discuss it in such a manner that perhaps it would weigh upon the Assembly

the duty to actually pass the bill.

My question is related to what environmentalists feel about this legislation. And I can understand that there's always a good reason to increase the penalties that a violation of the law would produce.

But my specific question is, how many instances does anyone estimate that this would actually come up?

It covers an endangered species that, while they may be endangered, I don't think that we see them that often in New York. And I'm just asking how many times has this come up, so I can get an idea of what the value of passing this legislation is.

SENATOR MALTESE: Madam President, I think wherever the Legislature can act to protect endangered or threatened species, it's a salutary act and sends the type of message that we wish to to everybody concerned with the environment and with conservation.

It would seem that endangered or threatened species don't come up that often in the State of New York. But I'd like to -- we

have consulted with the senior attorney for the DEC Fish, Wildlife and Marine Resources Department, and they advised us that the state agency has filed a list of their regulations with the Secretary of State, and that their list in New York State mirrors the federal list.

And I am tempted to read the eight pages of endangered species. And I will pass over mollusks, insects, fishes, amphibians, reptiles -- all of which have sufficient subheadings -- and go right to birds, which include the peregrine falcon, the spruce grouse, the black rale, the piping plover, the Eskimo curlew, the roseate tern, the black tern, the short-eared owl -- as opposed to the long-eared owl -- the loggerhead shrike, and mammals, which include the Indiana bat, the Allegany wood rat, the sperm whale, the shy whale, the blue whale, the finback whale, the humpback whale, the right whale, the gray wolf, and the cougar.

Now, I have not gone in as yet to threatened species, but I would be glad to go into those in response to any questions.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you, Senator Paterson.

I'm very, very supportive of this bill. And some of those threatened species are some of my best friends. But I can't understand what -- I would need to ask a question of the Senator, if he will yield -

SENATOR MALTESE: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Oppenheimer.

SENATOR OPPENHEIMER: -- as to what is the problem with this bill in the Assembly. Maybe we can do some lobbying on your behalf in the Assembly.

SENATOR MALTESE: Madam President, all I can say is that I make it a habit never to interfere in the internal problems or relations of the Assembly, except to say that there are some recent events that have taken place in the Assembly where Assemblyman Seminerio, while he is my hero, is not the hero of the present Speaker.

(Laughter.)

THE PRESIDENT: Senator Oppenheimer, do you have another question to follow up?

SENATOR OPPENHEIMER: Thank you for your concise and very accurate assessment. If I may, on the bill.

We've been having some very fine successes with some of the threatened and some of the endangered species. For instance, as many of you probably know, we now have peregrine falcons that used to be -- they had almost disappeared from this area. They are now back nesting on our bridges across the East River and across the Hudson River. And we also have -- you look like you're about to hit the gavel.

THE PRESIDENT: Not concerning you, Senator. I'm just wonder if the buzz is outside or in.

It's nowhere now, so you may proceed.

SENATOR OPPENHEIMER: I'll continue.

We just -- we've had so many

wonderful successes. And -- but we are still losing specie at an alarming rate. I know in my county where there was a time when one would see many toads in our back yards, and many turtles of all specie. They are no longer there.

And I feel very strongly that any protection we can offer to these species is beneficial to all of humankind, because we are all tied up in a very intricate web of interrelationships. And if any one section of that picture is pulled away, you find that, in time, all the other levels of the chain or the picture will dissolve.

So I think it's important that even though sometimes we name these species and you sort of sit back and chuckle and say, Well, who really cared about that toad -- "toad" being the animal -- I think we have to take a more encompassing view of our environment and the whole ecology by which we all live and what we can do to maintain it, because we all have a very direct importance in what happens to any one specie.

Thank you.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if I could continue to ask Senator Maltese to yield for a question.

THE PRESIDENT: Senator, do you yield?

SENATOR MALTESE: Yes, ma'am - yes, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR PATERSON: Senator, the first promulgating of rules related to endangered species occurred in the 1960s, when the Secretary of the Interior had a list of species that were thought to be threatened in this country. However, there was a feeling here in the state that a lot of these species that were indigenous to New York were not part of the list, and so in 1971 the first law was proposed by Assemblyman Glenn Harris. It was then known as the Harris Law, adopted in 1972. And this augmented Section 11-0535 of the Environmental Conservation Law.

But getting back to the question that I asked you before, I'm trying to figure

out what are the endangered species that were not included nationally that are of specific interest to New York residents. And you read me a list of endangered species, all of which were on the Secretary's original list in the '60s.

So I'm just trying to find out again what are the specific species that you're referring to that might help us to persuade the Assembly that this needs to be a law. Because we're in our fourth year of not persuading anybody other than this house that it should be a law.

SENATOR MALTESE: Madam President, obviously the good Senator has researched the law, and I certainly solicit and welcome his support for convincing the Assembly, where the Majority party in the Assembly, with the wherewithal to pass the bill, shares the same principles as my good colleague.

At the same time, what we attempted to do here is add a section to the law that would cure one of the defects of the prior legislation, which was where information is

given, where people come forward and advise the Department of Environmental Conservation of a breaking of the law, there was a feeling that the reward as such would somehow -- which in many cases encouraged people to come forward -- would not apply to employees of the department, their relatives and any peace officer, police officer, or other authorized law enforcement.

So that, in addition to its beneficial aspect as far as protecting threatened or endangered species, that also changes the law and makes the law better because it prevents employees or staff members who have the obligation to perform these duties from sharing in the largesse of the state on behalf of endangered or threatened species.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if the Senator would continue to yield.

SENATOR MALTESE: Yes.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Madam President, if -- we passed a bill in 1972, we repealed it and adopted some amendments to the bill in 1983. And even the Department of Environmental Conservation admits that there is a decrease in the worldwide number of species.

So some of these species that we are calling endangered are probably in actuality extinct. In other words, we should have done this years ago, but we didn't. Or we tried to do it some years ago, and it was ineffective. If the DEC doesn't know who all the species are, I don't know that I can ask Senator Maltese to actually know.

But, Senator Maltese, wouldn't it be more appropriate at this time to perhaps conduct a study of this whole situation and determine what are the actual species so that we know whether or not there really is an impact that this legislation would have, so that we're not back here in another 10 or 15 years debating another bill when perhaps what we really need is some kind of curative action taken by the DEC more than the Legislature?

SENATOR MALTESE: Madam President, in this case I concur with my good colleague. I don't know that I concur as far as initiating a study, which would involve the expenditure of possibly a great deal of money.

The New York State Legislature and the New York State DEC apparently has come up with a working system to ascertain what these endangered or threatened species are, and they follow or mirror the federal government. But since the federal government apparently is very much involved, the problem is that in seeking to ascertain that the lists were in fact filed, as required by other sections of the law, with the Secretary of State, the Secretary of State's office and the State DEC gave us literally 15 pages of single-spaced threatened and endangered species, as I indicated, ranging from mollusks to insects and what have you.

So I don't know, my good colleague, Madam President, whether we should ask the federal government to intercede or risk possibly another 15 pages of regulations and rules and regulations which would not have any

beneficial effect as far as protecting endangered or threatened species.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if Senator Maltese would continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR MALTESE: Yes. Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Madam President, I hope that you don't find this question to be a little obtuse. But I'm wondering if the definition of the taking of endangered species or threatened species would include the pollution of their habitat by anyone whose actions would have a likely result in their being harmed.

In other words, other than the physical acts of individuals, does it in any way address the environmental pollution? Which is often probably the most tragic catalyst of the fate of probably half the

species on the list that Senator Maltese read to us earlier.

SENATOR MALTESE: Madam President, this particular legislation doesn't address those problems. I would be very willing to discuss the further protection with my good colleague, as far as the protection of certain areas that would house these endangered or threatened species.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if Senator Maltese would continue to yield.

SENATOR MALTESE: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: I just noticed here, Madam President, that in 1989 -- I was only up to 1983 before. But in 1989, we passed legislation that would increase the penalties for the taking of endangered species and threatened species six years after we'd done it before, and we had a list of species in that particular legislation.

I wanted to know if -- Senator Maltese I know must be familiar with that. But in the 12 years that has elapsed since that time, we have yet a new group of species that we're adding to that list, Senator?

SENATOR MALTESE: Madam President, I'm advised that -- and as to the 1989 date, I prefaced my remarks with the fact that that 1989 legislation was in fact passed.

I think that the DEC has advised us that they do incorporate the federal endangered species list with their state list, that there is no specific time frame that they need to file this list with the Secretary of State. The last time the endangered species list was updated was in 1999.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if the Senator would continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR MALTESE: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: Actually, Madam President, that legislation related to the taking of the bald eagles and the golden eagles. And it brings me to my next question.

This series of laws that we have passed from 1972 into the early 1990s, where we have either expanded the list of endangered and threatened species or we have increased the penalties, have we restored any endangered species to wildlife status since that time? Has this legislation been effective in curbing the illegal taking or harm to valuable animals, mammals, and insects and other members of the chordate population? Has this been effective in restoring their status?

SENATOR MALTESE: Madam President, I don't have that readily -- I don't have that information readily available from the DEC. But I know from reading some of the books and periodicals, my daughter, who follows this very closely for me, has indicated that there are a number of, I guess.

In what category, I know insects. I know we have a category of butterflies that has gone from threatened or endangered. And I

imagine the same is probably true with certain fishes. I don't know the birds -- certainly some of the programs the federal government has initiated with respect to falcons. And since there was a movie called "The Maltese Falcon," I particularly am interested in the protection of certain falcons.

(Laughter.)

SENATOR MALTESE: And I understand that the same is true of other birds or insects or animals or mammals or mollusks or what have you on the endangered or threatened species list.

SENATOR PATERSON: Thank you, Madam President. Senator Maltese has been very responsive. If he would yield for another question.

THE PRESIDENT: Senator, do you yield?

SENATOR MALTESE: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: Senator, what is the current fine that we're amending? I understand the way you want it to be now.

What's the current fine?

SENATOR MALTESE: Madam President, it appears to increase the fines up to $5,000. But I don't seem to have readily available the current fine. It speaks of increasing the fine and increasing the penalties.

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

THE PRESIDENT: Senator, do you yield?

SENATOR MALTESE: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Paterson.

SENATOR PATERSON: Then, Senator, I would assume that you don't have readily available what the penalties are for violation of the similar section that follows the one we're addressing today, Section 11-0536 of the Environmental Conservation Law.

SENATOR MALTESE: Madam President, that is -- wait a second. What was that section again, Madam President? If you

could repeat the section.

SENATOR PATERSON: 11-0536.

SENATOR MALTESE: You are correct. Madam President, the Senator is correct. I do not have available the current fine on the Section 11-0536.

SENATOR PATERSON: Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: If Senator Maltese would yield for a question.

THE PRESIDENT: Senator, do you yield?

SENATOR MALTESE: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: Well, Senator, Section 11-0536, which follows the taking of endangered or threatened species, covers in effect the same issue except that it relates to the importation of endangered or threatened species. And it has the accompanying fine, which I believe is $2500.

So if we're going to raise section 11-0535, Madam President, then I would think

that to be inclusive we might amend this legislation and raise the penalties for both 11-0536 and 11-0536, which relates to the importation of these species.

And if Senator Maltese would yield, I'd like to know what he thinks about this idea.

SENATOR MALTESE: Madam President, I'd be glad to yield.

I think it's a fine idea. And unless this legislation passes in the Assembly, I look forward to next year debating the increase in the fines as relating to the section the good Senator spoke about, Section 11-0536.

THE PRESIDENT: Senator Breslin, do you still wish to have the floor?

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you.

THE PRESIDENT: If you still wish to have the floor.

SENATOR HASSELL-THOMPSON: Yes, I do. Thank you. If the Senator will yield for a question.

SENATOR MALTESE: Yes, Madam President.

SENATOR HASSELL-THOMPSON: Thank you, Senator.

Madam President, the question I had was, have the endangered species-related crimes increased or decreased in the last five years to warrant this kind of action? And if it has decreased, do you have a sense of why that may be so?

SENATOR MALTESE: Madam President, as I indicated earlier, I did not have those facts and figures readily available, but that I believe the passage of this legislation is important to send a message. And the message would be to protect our threatened and endangered species.

So there does seem to be more of a perception and more of a reality now that people are more interested in protecting our natural resources and threatened and endangered species. And this, then, would seem to be more of a deterrent to protect those endangered and threatened species.

THE PRESIDENT: Senator

Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. Will the sponsor yield for a question, please.

SENATOR MALTESE: Yes, Madam President.

SENATOR DOLLINGER: Through you, Madam President, the issue of taking of endangered species has involved our Native American compatriots. I know at the federal level it has. Do you know if there's an exception or an affirmative defense in this bill or in this section of the Environmental Conservation Law that deals with Native Americans who have long held traditions involving either the bald eagle or other potentially endangered species?

SENATOR MALTESE: Madam President, we seem to have gone astray here. And we can spend, I think, all the time of this legislative body discussing many of the problems of the Native Americans as they relate to endangered species and the state of this country at the time that it was inhabited by Native Americans and the depredation and

desolation that has been caused to the habitat of so many of our wildlife in New York State and the country.

But that perhaps is a topic for another day. And I would decline at least at this moment to respond to the question of the good Senator.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Through you, Madam President, I'll phrase it another way with a different aspect to it, if Senator Maltese will yield for a question.

THE PRESIDENT: Senator, do you yield?

SENATOR MALTESE: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR DOLLINGER: Is there a provision in this bill that requires an intent to actually take an endangered species? Because my question deals with what happens if someone is involved in trading or bartering or any one of the other acts in this statute but they don't know that the particular animal is

on the endangered or threatened species list. Is there an affirmative defense of lack of knowledge of their threatened or endangered status?

SENATOR MALTESE: Madam President, the answer is no.

SENATOR DOLLINGER: Final question, Madam President, if Senator Maltese will continue to yield.

SENATOR MALTESE: Yes, Madam President.

SENATOR DOLLINGER: I know that there are federally imposed penalties for the taking of endangered or threatened species. Are these penalties more or less than the penalties under federal law for the same conduct?

SENATOR MALTESE: Madam President, I don't know the answer to that.

But I would guess that the original legislation was probably patterned after the federal legislation. And I believe this increase would probably be, at this stage, more. Since New York State is more of an environmentally enlightened state, I would

again feel that our penalties would be more than the federal penalties.

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

I'm going to vote in favor of this bill, as I think I've voted for it in the past. I know Senator Maltese raises the question of maybe we've gone too far afield in dealing with the Native American issue. I would point out that I believe there are a number of federal cases that deal with the prosecution of Native Americans for the taking of endangered species, from eagles to rattlesnakes to whales, including -- Senator Maltese's memo in support of this talks about the humpback whale as one of those who is on the endangered species list.

And it seems to me if we were going to approach this in a holistic way and recognize that Native Americans do have a role here in New York State, that we would examine that and make some kind of affirmative defense.

Secondly, the question of whether there's an affirmative defense for those who

lack intent. Senator Oppenheimer talked about toads in the back yard. Senator Maltese mentioned mollusks in our freshwater bodies here in this state. It would seem to me that it would be enlightening to have some kind of intent provision, to require some kind of understanding on the part of the perpetrator that when we charge them with a felony that they knew that this was a species that was either endangered or threatened under New York law.

I don't think that that's an unreasonable thing to require. We require it -- through most of our criminal law, we require an understanding that the goods you're dealing in are criminal by their mere possession. I think that an affirmative defense should exist that allows someone to suggest that they did not know that this particular animal, like the least tern, which I'm not familiar with, that that was on the endangered species list.

I think these issues provide a greater understanding of how we deal with the problem of trafficking, illegal trafficking in

endangered and threatened species. I think the bill is a good idea. I think it's got a ways to go before it will solve a problem that needs to be solved and that probably will benefit most of the people in this state.

Thank you, Madam President.

THE PRESIDENT: Senator Duane.

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

THE PRESIDENT: Senator, do you yield?

SENATOR MALTESE: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Thank you. I'm wondering if the Environmental Conservation Law now, or as amended by this law, has any kind of notice provisions.

SENATOR MALTESE: Madam President, I don't understand. Notice provisions?

SENATOR DUANE: Through you, Madam President, if I may clarify.

THE PRESIDENT: Senator, do you yield?

SENATOR MALTESE: Yes.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: I mean, how will people know that these species have been added to the list and that the law, the penalties have changed?

SENATOR MALTESE: Madam President, like so many laws and statutes passed by this body and other bodies, it is - I've often argued that there are too many laws on the books and too many statutes on the books. But on the other hand, the list, as I had mentioned earlier, goes on and on.

I think that the lack of knowledge on the part of a potential perpetrator would be taken into consideration by any judge that would have the case coming before him.

So if the good Senator Duane's argument is that somebody would be unlikely to know about the list submitted by the DEC and filed with the Secretary of State, I think that's absolutely accurate. Until this

morning, I was not aware of the procedure myself as far as what was on the list.

And quite frankly, as a result of our discussions, I'm going to seek to inquire as to the method of inclusion or exclusion on the list of endangered, threatened, and special concern fish and wildlife species of New York State. And I invite my colleagues on the other side of the aisle to do the same thing.

SENATOR DUANE: Thank you, Madam President. Would the sponsor continue to yield, please.

THE PRESIDENT: Senator, do you yield?

SENATOR MALTESE: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Because as we now all agree there isn't really a place for the list of endangered species and the upping of the penalties, I am concerned, then, about a person being held accountable for wanton disregard. I'm wondering if the sponsor could

clarify more closely how, in a case like this, when there isn't a way for someone to get quick and accurate information about the various species and the penalties, how you would be able to prove wanton disregard.

SENATOR MALTESE: Madam President, through you, it would seem that unless wanton disregard is specifically in the criminal code or specifically in the statute itself, common sense would prevail and that common sense would be in the view of a potential juror or jurist as to what would constitute wanton disregard.

SENATOR DUANE: Thank you, Madam President. Just a final question, if the sponsor would indulge me, because I don't know the answer to this.

And that is, I was wondering if he could tell me -- I'm sorry -- what kind of animal is a least tern. Because I've not heard it before.

SENATOR MALTESE: Madam President, I didn't hear that.

SENATOR DUANE: What kind of animal is the least tern?

SENATOR MALTESE: It's probably some type of a strange animal, but I have no idea.

SENATOR DUANE: Thank you, Madam President.

SENATOR MALTESE: Senator Duane, Senator Connor has indicated he knows. I would be glad to yield to Senator Connor to explain what a least tern is, if you care to follow it up.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Certainly, Madam President. Terns are those little pointy-beaked birds that run around on beaches. And they have pointy beaks because they go for shellfish and other things.

And there are actually some -- the differentiation within the species of terns is such that you'll find a specific kind of tern like on Long Island beaches and a different one in southern New Jersey.

And many of them end up on the endangered species lists because they're so rare. I know in Cape Cod they have a particular kind of tern. So I couldn't tell

you which exactly spots a least tern has, but I know that -- I'm sure it's one of New York's species. And it's less than other terns, I suspect.

SENATOR MALTESE: Madam President, I'm afraid that this discourse and debate has taken a turn for the worst.

(Laughter.)

SENATOR OPPENHEIMER: Madam President.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: Since I believe one good turn deserves another, if the good Senator would yield for a question.

THE PRESIDENT: Senator, do you yield?

SENATOR MALTESE: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Oppenheimer.

SENATOR OPPENHEIMER: I was wondering, if this were to appear before us again next year, if the Senator would entertain taking into account other species,

the plant species. Because, as we all know, we -- what I was trying to say earlier was that there's a whole ecosystem out there which involves plant life and insect life and fish life and animal life, and we all are so interdependent.

And I think the plant aspect of this would be a good addition and make the whole bill more holistic.

SENATOR MALTESE: Madam President, I share the concern of Senator Oppenheimer. But at the same time, that's somewhat limited by the concern of Senator Duane.

It would seem to me that it is difficult enough even for dedicated environmentalists to follow the mammals that are either endangered or threatened. When we start going into mollusks and insects and then plants, it becomes more and more difficult and possible and more and more probable that someone would inadvertently break the law by rummaging around in his back garden, in his backyard garden.

So I would be very cautious about

criminal penalties involving plants and raising them to the same level as mollusks or insect or mammals.

SENATOR OPPENHEIMER: Okay. Thank you very much, Senator.

And on the bill just a moment.

We have seen the great value of the laws back in 1989 and subsequent laws. And I was thinking of another specie that we have seen a remarkable return, come back really in large numbers, also nesting on our bridges in the Hudson River, and that is the bald eagles.

So I think anything we can do to try and hold our ecosystem together is certainly worthy of support, and I would be delighted to support this bill.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: Madam President, on the bill. Sorry, Senator.

I want to commend the Senator for this legislation, on behalf of all of the peregrine falcons who inhabit the bridges in Queens County -- particularly the Throgs Neck Bridge, incidentally. I think that this is a very good idea, and I'm delighted to join in

support with my colleagues.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Yes, Madam President, if I may close for the Minority. And I do appreciate, Madam President, Senator Maltese's patience and his contribution by answering questions.

And I have to say, I was joined by my able assistant, and my first question to her was the one I asked Senator Paterson, Madam President, who through you asked Senator Maltese. I said: "What are the current penalties?" And she said, "I don't know."

So none of us seem to know what the current penalties are, and I didn't mean it to be a trick question.

I think we're missing a point here. I think we're missing a big point here. Protecting endangered species is not simply about hunters afield and what they shoot at; it's about big business and commerce and big dollars.

Let me tell my colleagues something they may not know. There are a number of uniformed DEC officers assigned to the

New York City office of the Department of Environmental Conservation. And the reason they're there, and the reason I know they're there is because they spend a lot of time in my district, because I represent the islands in the harbor and a large portion of upper New York Bay as well as the Hudson and East Rivers. One of the things they do, of course, is health-related. They patrol the harbor and inspect boats that may be clamming and looking for shellfish in closed waters where there's a health problem, because we don't want them getting into our food stream, obviously.

And there's money involved in that. There are plentiful clam beds in New York Harbor in polluted waters. If you were allowed to harvest them, you could literally fill sacks and sacks and sacks of clams and introduce them in the commercial stream, at grave peril to the health of consumers.

Besides patrolling New York Harbor and Jamaica Bay, where there are actually, obviously, wildlife, endangered species, birds, terns -- my able assistant here pointed out that there's also a common tern, but I

thought that that collapsed with the collapse of the Communist empire. But she's not talking about the Comintern, which was their trading system, but rather -- as you might guess, the common tern is far more plentiful than the least tern, but it does exist.

The common tern is endangered? So it's not so common either.

The fact of the matter is, though, these DEC officers patrol Jamaica Bay and the national recreation area there and so on, because there are, in fact, water birds who once upon a time were slaughtered for their feathers.

The other place they patrol, Madam President, are some of the finest boutiques on Fifth Avenue and throughout Manhattan where very expensive furs are sold. Very expensive furs, worth tens of thousands of dollars - somehow or other, illegally imported. Why? Because it's worth it if they can get away with it -- from endangered species, from species that are on the federal endangered species list from around the world, from other continents, from Africa and India and other

places in Asia as well as in Latin America. As we see rainforests, for example, in Latin America receding under -- being burned for agricultural purposes and other purposes.

So while we tend to look at this as, oh, don't shoot the bald eagle -- and by the way, frankly, even because of some of the religious practices of Native Americans, it had very little to do with the bald eagle and the peregrine falcon and other species being endangered. It was all about insecticides and fertilizer runoff, mainly insecticide runoff, that caused those species -- which happily are rebounding, but, you know, nonetheless remain -- you can still count the number of nesting couples in New York, certainly, and in the United States in many of these species.

But the real thing is about the big bucks, the $150,000 fur coat from the endangered species. And I respectfully suggest that if the present penalties under state law are less than Senator Maltese is proposing, then we ought to raise them. But I think in some cases we ought to raise them even more.

You know, this bill embraces not just the taking of an endangered species, it embraces the possession of an endangered species, which would include any part of its body, i.e., its furs. And I suggest that somebody who pays $100,000 for a coat, a genuine coat made from the fur or furs of an endangered leopard, an endangered-species type of leopard or whatever, knows what they're doing. And frankly, a $5,000 fine is less than the sales tax on that coat.

Certainly the people who import it, the people who sell it know exactly what they're doing. Its lofty price is precisely because it is an endangered species, and rare.

Another type of enforcement against the violation of the endangered species law that comes from the -- and that we see enforced in New York City are in various cultures.

The ground tusks, for example, of certain endangered species are valued in traditional medicines or are valued as supposed aphrodisiacs and other things. And the ability of people in our state to buy

this -- very, very expensive -- obviously creates part of the demand for people on other continents to take these animals, to poach, to slay them. Everything from elephant tusks to rhinoceros tusks to you name it.

So this just isn't about preserving certain species in New York State. It's about making sure New York is taken out of that worldwide, high-profit market. People get murdered. Gameskeepers in other continents are murdered by these poachers because the profits are so enormous from taking one of these species.

It includes the alleged medicinal and magical powers of the upland gorillas.

You know, earlier in this debate I heard a couple of my colleagues on the floor here say, Remember the Seinfeld episode about the humpback whale and the golf ball? And I said I actually didn't see it, because I've never seen a Seinfeld episode, because I don't watch a lot of TV. When I do, I tend to watch things like Discovery.

And there are obviously gorillas endangered. We all know the stories and

movies of the people who have tried to protect them, people who have given their lives. Poachers have killed them, the naturists who were out there, wildlife protectors. And it's pretty grotesque, but to cut off the hands, perhaps, of the gorilla because it's regarded as having magical properties.

These things, believe it or not, find their way into New York State and into New York City, and people market them and make great profit on it.

So what I suggest, Madam President -- I'm going to vote for this bill.

But I suggest that passing this bill year after year after year does absolutely nothing. One, because it never becomes law. And, two, I think the problem is much greater than this.

Oh, sure, a $5,000 fine to a hunter that shoots, mistakenly or otherwise, a protected bird is significant.

But we haven't addressed the big bucks involved in the people who are importing the rhinoceros tusks or the forbidden furs, the endangered species, the furs of endangered

species and are, I can assure you, Madam President, selling it at enormous profits in New York City.

And I suggest real enforcement is called for. These are dangerous people doing this, because there's big bucks at stake. And I suggest that the sponsor -- I most respectfully suggest, because I know he is sincere in wanting to do something about this -- negotiate with his counterparts in the Assembly, and let's come up with a bill that really makes a lot of sense. There ought to be different fines in here.

And, Madam President, not to correct a colleague of mine who referred to this as making something a felony -- as I read it, we're talking about B and A misdemeanors here. I would suggest that there ought to be felonies in the bill, felonies for the importers or sellers of these so-called high-ticket items, which are in fact endangered species.

So I'm going to vote for this. I really doubt it addresses in a significant enough way what the real problem is here. The

real problem is this is not about a cute little rare bird or an endangered mollusk. This is about the big-bucks traders in furs and other body parts of endangered species which drive others in -- you know, a poacher in some places in Africa and Asia can, with one kill, make far more money -- and the poacher being at the low end of this distribution system -- far more money than the average worker could make in years and years and years.

We have to take the economic incentive out of this trade. And we can only do that if, when you catch somebody in possession of one of these objects or selling or bartering one of these objects or offering it for sale, if the fine far exceeds any expectation of profit they might have.

Madam President, I urge everyone to vote yes on this. But more importantly, I urge the sponsor and every one of my colleagues who's concerned to sit down with the Assembly and let's get real legislation to catch up with what's going on here. This is a very serious worldwide problem.

Thank you, Madam President.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Duane, to explain your vote.

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

I am going to vote yes on this legislation because of the convincing arguments that have been made about it. And I agree that more needs to be done on the issue.

I also want to point out that something that I agreed with the sponsor is that he feels it's important to leave whether or not someone is guilty of wanton disregard up to judicial discretion. And I'm glad to hear that, because we do spend so much time with determinate sentencing here in this body. And instead to focus on judicial discretion I think is very important.

And as we move forward debating

things like the Rockefeller Drug Laws and the second-felony determinate sentencing, I think that if we keep in mind that it's a good policy for us to keep judicial discretion in mind, that will be very helpful as we reform those ill-conceived laws.

And I'll be voting yes, Madam President. Thank you.

THE PRESIDENT: You will be so recorded as voting in the affirmative.

Senator Mendez.

SENATOR MENDEZ: Thank you, Madam President. I am going to support this legislation. And I really want to thank Senator Maltese for his patience during this debate.

And what is fascinating to me is that in dealing with species, endangered species in this debate here today, I was fascinated by the kind of little details and information that were given here that, to tell you the truth, I was happy to learn about.

Let me tell you that I have always felt that I am an environmentalist at heart. I still feel awe at looking at a mountain.

And I am so happy that among the endangered species, Madam President, the beetle that I don't know its -- I don't know its scientific name, but that beetle that is destroying all those beautiful trees that we have in Central Park and all over the City of New York, I am so happy that that beetle is not an endangered species, because we hope that soon we will make it totally passe.

Thank you. I vote in the affirmative.

THE PRESIDENT: You will be recorded as voting in the affirmative, Senator Mendez.

Senator Espada.

SENATOR ESPADA: Thank you, Madam President. To explain my vote, please.

I would say shame on the Assembly Majority if it doesn't take this matter up with the seriousness that this chamber has taken this matter up today. It's made it very clear that the DEC -- that the citizens and, for that matter, noncitizens of New York State, obviously the entire legislative body here, Majority and Minority, all take this

matter to be very serious.

Indeed, I think we all benefited from the embellishment that was provided by Senator Connor in terms of the criminal element that is present in this trade, in this misconduct. And if anything, it makes it clear that the civil penalties that are attached to this bill may not be steep enough -- ranging, I guess, from $2,500 to $5,000 or so.

The bill does provide for the protections that are needed, and I would urge all members to vote in the affirmative. Thank you very much. I shall vote yes.

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

The Secretary will announce the results.

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could return to Calendar Number 43, by

Senator Balboni.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 43, by Senator Balboni, Senate Print 858B, an act to authorize the Congregation Shira Chadasha in the Village of Great Neck.

SENATOR DOLLINGER: Explanation, please, Madam President.

SENATOR BALBONI: Madam President, this bill would seek to permit the Congregation -

THE PRESIDENT: Senator Balboni, go ahead.

SENATOR BALBONI: I'm sorry, Madam President, through you. This bill would seek to allow the Congregation Shira Chadasha to file an application for a real property exemption pursuant to 420A of the Real Property Tax Law, and ask that the County of Nassau Assessor's office consider their application for the exemption from approximately $29,000 worth of real property taxes.

THE PRESIDENT: Senator Lachman.

SENATOR LACHMAN: Yes, through you, Madam President, would the distinguished Senator from Nassau County accept a question or two.

SENATOR BALBONI: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Lachman.

SENATOR LACHMAN: Okay. Prior to coming to the Senate, I was a member of a U.S. Department of Education accreditation committee called the Association of Advanced Rabbinical and Talmudic Schools. And I would always ask people who came for exemptions or exceptions why. And I would also ask you not only why, but when was this deadline missed and for what reason.

SENATOR BALBONI: There are two partials involved in this particular transaction, Senator.

The first partial was closed on in September of 1998. That was after the date that the tax rolls were established.

The second piece, which was a parsonage, which is why it's 420A of the Real

Property Tax Law, as opposed to the other section, was then closed on in September of 1999, once again after the closing of the tax rolls for Nassau County.

SENATOR LACHMAN: Would the Senator yield for an additional question.

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: Yes.

THE PRESIDENT: You may proceed, Senator Lachman.

SENATOR LACHMAN: What is the fiscal implication of this for the county or for the city of Great Neck?

SENATOR BALBONI: The period of time in which the -- this congregation paid real property taxes for which it has a prima facie exemption is approximately $29,000.

SENATOR LACHMAN: Now, it would appear to me that today's legislation, Shira Chadasha, is similar to the exemption you had requested and we passed last week for Chabad Lubavitch.

SENATOR BALBONI: To the extent that it is an application by a religious

organization in my Senate district, yes, it is.

SENATOR LACHMAN: Okay. Now, this would appear to be a case-by-case approach.

About -- within the same week, last week, I believe Senator Wright asked us for permission to do just the opposite in terms of Oswego County, in a small town called Parish, where the property tax should be applicable. And he wanted an exemption for that issue. And we granted that, as we granted the Lubavitch and as we will probably grant this congregation.

But I do know that in 1997 Governor Pataki, in his approval message for one of these exemptions, stated that he would prefer to have an all-encompassing standard rather than a case-by-case approach to these issues.

Now, I believe that two years ago we passed 21 of these bills, last year we passed 22 of these bills on a case-by-case approach. Madam President, could the Senator yield -

THE PRESIDENT: Senator, do you

yield?

SENATOR LACHMAN: -- for another question.

SENATOR BALBONI: Yes, I do.

THE PRESIDENT: You may proceed, Senator Lachman.

SENATOR LACHMAN: Are you aware, Senator Balboni, that there is a bill known as the Hannon-Abbate bill -- and Abbate does not mean Catherine Abate, it means Peter Abbate in the Assembly -- that would set statewide standards that would be applicable to all such cases, rather than our sending to the Governor individual cases when it is necessary?

SENATOR BALBONI: Senator Lachman, I am not aware of the particular piece of legislation that has been sponsored by the incredibly fine gentleman from Nassau County, Senator Kemp Hannon, who as you know is a star in healthcare and does many wonderful things on behalf of his constituencies.

SENATOR LACHMAN: Through you, Madam President, will the Senator continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: Yes, I do.

THE PRESIDENT: You may proceed, Senator Lachman.

SENATOR LACHMAN: Could you in the future, Senator Balboni, see yourself reviewing the Hannon-Abbate legislation, which for the last four years has passed the Assembly, but not the Senate, and which looks upon this not on a case-by-case approach but in a broader approach for all such endeavors?

SENATOR BALBONI: Senator Lachman, I appreciate this moment in time. Because if this colloquy was continued on the floor of the State Assembly back in 19 -- say, '90 to '96, you'd be ruled as being nongermane, which was often done to me.

We in this house, as you know, we allow great latitude in having these types of discussions. And therefore, in the spirit of that, I will answer you.

This is a very easy litmus test for your support or your opposition to this particular measure. It should be three

questions. The first is, did a religion organization purchase a piece of property. Secondly, was that purchase on or after the date in which the tax tolls were fixed. And, three, does that organization have a prima facie right to an exemption.

If those answers are yes, then there should be support for the bill, notwithstanding an objection. Because I'm sure, as you will know, that our laws today are so complex, many of our constituents are faced with what people of common sense would refer to as ministerial obstacles. This is one such ministerial obstacle.

What I'm doing today, hopefully with your vote in the affirmative, is to remove this ministerial opposition and obstacle so that these people who deserve the opportunity to have their application considered on the basis of the fact that they're a religious organization in fact get the opportunity to do so.

To the extent that there's another issue, another bill that may come before the house, I'll reserve my judgment on that

particular bill when it arrives before us.

SENATOR LACHMAN: Madam Chair, on the issue.

Okay, we're not going back to the future; we're in the present. And we have always been proud of the fact that the Senate is a different institution than the Assembly, not only in terms of civility but in terms of process and procedures. And I still believe in that, and I think everyone in this chamber believes in that. So I appreciate your taking these questions and responding to them as best as you could.

However, if we have legislation that has been espoused and legislation that has been prepared by a Senator in the Senate and by an Assemblyman in the Assembly that has passed one house four times in a row and has not passed this house, I would urge Senator Balboni, together with Senator Hannon, to, if possible, come out with joint legislation with the Assembly that would not pass such exemptions on a case-by-case basis but via a state standard that is applicable to all such deserving institutions.

And I do believe this is a deserving institution, and I will vote yes. Thank you.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if Senator Balboni would yield for some questions.

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: Yes, I do, Madam President.

THE PRESIDENT: Thank you.

Senator Paterson, you may proceed.

SENATOR PATERSON: Senator Balboni, I was listening to your exchange with Senator Lachman. And he pointed out that in the Governor's approval message in 1997 that he discussed the idea of setting up a statewide task force to try to eliminate these types of things from happening on a case-by-case basis.

And we passed 23 chapters such as this in 1999, and another 20 last year. So I don't know how they would have ruled you in the Assembly, but I'm glad here in the Senate

that you consider this germane. Because my question is, with this being the case, isn't it possible that we take more of a cursory look at these types of legislation when in fact, though the problem may only be ministerial, we don't have a real standard other than to look at them as we kind of do relying on the local municipality and then just passing the bills?

SENATOR BALBONI: Madam President, I think there's a question in there somewhere, so is it that we should take a more cursory look?

SENATOR PATERSON: No, the question is that before passing the bills case by case that we should establish a statewide law to pass them so that there will be a standard that somebody else can review rather than the Legislature.

SENATOR BALBONI: Senator Paterson, have you gotten a chance to review the actual terms of the legislation?

SENATOR PATERSON: Of this legislation?

SENATOR BALBONI: Yeah.

SENATOR PATERSON: Yes.

SENATOR BALBONI: Okay. So then you are of course familiar with the fact that what this legislation does is it allows, permits the assessor of the County of Nassau to accept the application. Nothing more. It doesn't say you must grant the exception. It doesn't say that you must certify that this in fact is an eligible religious organization.

It merely says because of a ministerial objection, this particular application should be considered by the assessing organization, which is in the County of Nassau -- or I should say institution, the county assessor.

Now, is that the type of analysis that you wish this body to perform, as to whether or not this particular religious organization is in fact duly authorized, duly incorporated and therefore eligible for a real property taxation exemption? If so, I would suggest that your -

SENATOR PATERSON: Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR BALBONI: Oh, you're receiving advice from counsel? Would you guys stop ganging up on me? This is not that hard. This is not that hard.

I would really suggest that what we have here is, like I said before, the removal of a ministerial obstacle to allow a governmental procedure that is so much better equipped, every locality is so much better equipped than we are at the state level to actually rule on whether or not somebody has a meritorious application for real property tax exemption.

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

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: Madam President, I do indeed.

THE PRESIDENT: Go ahead, Senator Paterson.

SENATOR PATERSON: Madam President, I don't know how the individual assessors and municipalities feel on granting

or not granting the applications. I was wondering if the Senator did.

SENATOR BALBONI: Which Senator? Is that me?

SENATOR PATERSON: Yes, Senator.

SENATOR BALBONI: Madam President, I'm sorry, I do not understand the question.

THE PRESIDENT: Senator Paterson, could you clarify your question, please.

SENATOR PATERSON: Well, Madam President, it was Senator Balboni that just told us that this was actually a simple matter.

It was just to put this case, along with the 43 others that we've done in the past two years, in the hands of the local municipality and assessor.

SENATOR BALBONI: Right.

SENATOR PATERSON: That presumes that we have an idea of whether or not the local municipalities or assessors feel about granting or not granting an application that's filed past the actual tax status date.

Now, I don't know how they feel

about that. And so my question to the Senator is did he know, not only what his own assessor feels about this particular case, but what all the other ones did about the other cases. Which might have been the reason that even the Governor of the State of New York said that we should pass a statewide bill, and why two other legislations at least, Senate Bill 7527 and Assembly Bill 2714, were introduced in the past couple of years, because we don't really know whether or not the local assessors think that this is a good idea to put in their hands, whether or not they think it's ministerial or whether or not they think that perhaps the issue should be carried over to the next taxable year.

SENATOR BALBONI: Madam President, that is certainly a compound question.

SENATOR PATERSON: No, it's a simple question.

SENATOR BALBONI: And I could possibly answer by saying no. Of course, I'll go on.

You're under a misimpression.

First off, when you said that I felt that this discussion was germane, please be advised it is my opinion it is not germane. However, I am going to answer it because it's the spirit and the flavor of this house to do so. It's a courtesy. So that's the first misimpression I don't want you to have.

The second misimpression is the fact that it's in any way relevant that in - from my standpoint that I know what the local municipal institution feels about a particular matter that comes within their jurisdiction. See, as you are very well aware, we have multiple layers of government. And though we can work with them, it's very often difficult to try to prescribe to them matters that are within their discretion. They are the individuals who can examine the tax rolls, they are the individuals who can take a look at all of the extraneous matter that is on the records, and they can make that determination.

This would truly be cumbersome and inherently dangerous if we should try to supplant, either with colloquy on the floor or through statutory enactment, what the local

municipality is charged to do.

SENATOR PATERSON: Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: If the Senator would continue to yield.

THE PRESIDENT: Do you continue to yield, Senator?

SENATOR BALBONI: Sure, Madam President.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Under the law as it stands now, there has to be a legislative action to supplant the matter of government. It doesn't happen by itself. That's the reason that we're here debating this legislation.

And there are some prerequisites by which the local assessor can act. One is the understanding of what the nature of the property is for, that it's either religious, educational, related to hospitals and so forth.

I assume that in this case the

nature of the use of the property relates to the religious institution the Congregation of Shira Chadasha; is that correct?

SENATOR BALBONI: Yes.

Madam President, I would suggest to the distinguished Senator that what might be of use in this particular debate is a review of the administrative law doctrines as it relates to the actions by municipalities. As you are aware, the enactments by the State Legislature are not subject to Article 78 review. That's because -- and we're also not subject to mandamus.

However, reviewing jurisdictions, and particularly in the local municipalities that have discretionary aspects or discretionary components to their enactments, are in fact subject to Article 78. Why? Because if they act arbitrarily or capriciously, their decision can then be reviewed.

That is relevant because the action here is one of a discretionary nature upon review of the particular facts and circumstances in the individual case.

What we are doing here is extending a deadline that is statutorily enacted. What they are doing is a making a case-by-case analysis predicated upon the facts and circumstances surrounding this particular application. There are two different standards; we have two different roles to play. That's why this bill needs to be done today.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if the Senator would continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: I continue to yield.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: Senator, what I'm getting from what you just said, based on what the administrative law provides the - what it defines as the duties of the assessor and perhaps the law as it stands now, am I not correct in stating that the municipality really doesn't need an application on the part

of the congregation that's before us today to go in and inspect that property, does it?

SENATOR BALBONI: I don't know what authority you cite for that. There is a statutory requirement that if the tax rolls are closed at a certain date, they're closed. By way of this Legislature and amendments of Section 420A of the Real Property Tax Law, we allow that application to be considered.

And it is in our purview to be able to do that. It is not in the purview of the local municipality. They cannot amend state law; we can.

SENATOR PATERSON: Madam President, if the Senator would continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: Yes, I do.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Senator, it's in the exact section that you just referred to that permits me to ask you this question. Because it says right in the section -- I

can't see it, so I won't try to read it to you.

SENATOR BALBONI: Do you have the section in front of you?

SENATOR PATERSON: I do have the section in front of me.

SENATOR BALBONI: Okay, would you like to tell me what line you're reading from?

You want to continue this over coffee later in your office? Would you like to do that?

THE PRESIDENT: Senator, do you have another question?

SENATOR PATERSON: Okay, it's Section 11 of Section 420A of the Real Property Law. And -

SENATOR BALBONI: Senator, might I add that at this point in time you have me at a disadvantage. I don't have Section 11 in front of me. And I have failed to commit it to memory, I apologize.

You're going to hand it to me?

SENATOR PATERSON: I don't know if this is proper service.

SENATOR BALBONI: Yeah, is this

propers service? Your Honor, is this proper service?

SENATOR PATERSON: Now, I think it's line 11. If you take a look at it, to me, what I -- you know, when it was read to me earlier, what I thought I heard was that it said that the local municipality or the assessor can inspect the property of the party of this particular institution without need for an application, whether it was before or even after the tax status date.

SENATOR BALBONI: I'm not sure where you're getting your advice from, but that's not how I read this.

I read this as the -- I'll read it. "Where the assessor receives no such application, the assessor may nevertheless grant the exemption, provided the assessor personally inspects the property and certifies in writing that it satisfies all the requirements for exemption set forth in the section."

Well, that does not satisfy the requirements set forth in this exemption - and I'm speaking to your counsels now -

because you haven't made the roll date by which the rolls are closed or set. That's a requirement for the section. And therefore that is a legal precedent that must be established prior to the acceptance of the application.

What this speaks to is the ability of the assessor to do an independent review of the property, notwithstanding any extension of the real property roll date, roll establishment date, whatever the heck you call that. Here you go, Senator. Status date, thank you.

SENATOR PATERSON: Madam President, if Senator Balboni would continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: Madam President, I will continue to yield if you can give me some idea as to the breadth of your inquiry. Is this going to be twenty questions more, five questions more?

THE PRESIDENT: Senator -

SENATOR DOLLINGER: Madam

President, point of order. Senator Balboni's -- I do believe that response is out of order. His answer is either yes or no. He yielded to a question. I'd just ask Senator Balboni -- to confine him to that answer.

SENATOR BALBONI: I'm sorry, Madam President, I don't understand what the point of order was.

THE PRESIDENT: Senator Dollinger, would you please wait to be acknowledged. And I will acknowledge you now. Would you like to have the floor?

SENATOR DOLLINGER: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR DOLLINGER: I believe that Senator Balboni's response to a yield to a question is either yes or no. And with all due respect, I think that that's consistent with the order and practice of this house, and I'd simply ask him if he'd continue to be in order in that respect.

SENATOR BALBONI: Madam President, I'd just point out that that is not a valid point of order.

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

You may proceed, Senator Balboni.

SENATOR BALBONI: Thank you very much, Madam President.

THE PRESIDENT: Senator Paterson, could you clarify your -

SENATOR PATERSON: Do I have to, Madam President?

THE PRESIDENT: Senator, do you have a question?

SENATOR PATERSON: Yes, I already said that. But you asked me if I wanted to -

THE PRESIDENT: Senator Balboni, will you yield for a question?

SENATOR BALBONI: Sure, if the Senator would give me an indication as to how long he intends to go with this. Just an indication. That won't hurt you. Is it five minutes, ten minutes, how long?

SENATOR DOLLINGER: Madam President.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: I believe

Senator Balboni is out of order if he doesn't answer the question either yes or no. He has a clear right to say no if he so chooses.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: I believe - thank you for recognizing me. I believe there is a legitimate debate going on between Senator Paterson and Senator Balboni. I don't believe we need members popping up like tops every 30 seconds unless they have a legitimate point of order.

So if we could proceed with the debate, I think we're doing a great job. And I would urge members to come into the chamber, because this debate will someday go down in the annals of the New York State Legislature as one of the finest that we've ever heard.

(Laughter.)

THE PRESIDENT: Senator Balboni, do you yield for a question, please.

SENATOR BALBONI: Senator, got any idea? Five questions, two questions? What do you think?

THE PRESIDENT: Senator Balboni, do you yield for a question, please.

SENATOR BALBONI: I yield for one more question.

THE PRESIDENT: Thank you, Senator.

Senator Paterson, you may proceed with a question.

SENATOR PATERSON: Senator, there's administrative relief, there's judicial relief, and there are other ways in which the entity can seek remedy other than coming to the Legislature. That's what I read the current law to be.

Now, you may disagree with that. But since the bill is now before the house, then are you aware of any outside involvement in any activities that would be profit-making related to the same cause by any board members of the entity or officers of the not-for-profit corporation?

SENATOR BALBONI: No.

SENATOR PATERSON: Thank you. If the Senator would yield for a question.

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

SENATOR BALBONI: One more.

THE PRESIDENT: Senator, do you have a final question, Senator Paterson?

SENATOR PATERSON: Oh, I have plenty of questions. It depends on how many of them he'll answer.

THE PRESIDENT: I believe Senator Balboni has yielded for a final question.

SENATOR PATERSON: All right. I'll leave Senator Balboni alone, Madam President, if you want me to.

THE PRESIDENT: Thank you, Senator.

SENATOR PATERSON: But my final question is if there were such violation of Section 420A of the Real Property Tax Law, then it's likely that this decision to go forward and grant this application for consideration by the local assessor, or by the local municipality in this case, would really rest on an action taken by the Legislature where we don't have any of the ability, we don't have any of the propriety, we don't have any of the opportunity to look at the property the way the assessor would.

And so, Senator Balboni, don't you

think it would be more prudent for us to pass a statewide law on this issue rather than involving ourselves in matters that we don't have requisite knowledge and in a sense allowing for the granting of applications that really only an assessor or a municipality should consider?

SENATOR BALBONI: Madam President, through you.

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: The particular measure before us has one function and one function only. It is to address, as I said before, a ministerial obstacle. Nothing more, nothing less.

We retain within the office of the county assessor the ability to discern the facts and circumstances surrounding this individual application. We retain within the office of the assessor the discretion with which to either grant the application or deny it. It would be the discretion that is exercised by that office that would in fact be reviewable either by an Article 78 or by a lawsuit by other interested parties, not the

act of the Legislature.

Senator Paterson, I will end with these comments. You are free to vote as you will. However, I would suggest that you take a look at this not so much as a poster child for a statewide exemption standard bill, but rather on the congregants of this particular religious organization that deserve a real property tax exemption based upon their religious activity.

Thank you, Madam President.

THE PRESIDENT: Read the last section.

Senator Paterson.

SENATOR PATERSON: On the bill.

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

SENATOR PATERSON: I want to thank Senator Balboni for his responses and his granting me a free vote on this issue.

But I think that Senator Balboni to some degree has misapplied the connotation of the term "ministerial," which to me means that an action was taken beyond a certain prescribed limit but that the damage of

granting something after the fact is somewhat incongruous, that there really is no difference as to whether or not we did it before the deadline or after the deadline.

What Senator Balboni is using the term in this particular case is to address something that I think is a little more meticulous and a little more serious than just the fact that this particular institution, which I am sure is completely in compliance with all of the regulations, which richly deserves the $29,000 tax exemption because they purchased property after the tax status date.

But what I think the issue in this particular legislation is, Madam President, is the fact that this goes on all the time. That we've had to come back to the Legislature over and over again to put the local assessors and municipalities in the position where they can perhaps grant favorably these particular applications.

So it isn't that this particular institution made a mistake. And I apologize if their individual case being analyzed today

is in any way inuring to the detriment of their character and integrity. It should not. They apparently have great character.

But what is really the issue at hand is the fact that they didn't make as much a mistake as much as the law doesn't provide them with a remedy other than to come back to the Legislature.

My reading of the statute is that perhaps the law does require -- would have a remedy if they went right back to the municipality and sought judicial review if it was not granted. Senator Balboni doesn't see it that way.

But nonetheless, if we as a Legislature are going to consume a great deal of our occupation looking at these particular situations, relying on information that we have no idea whether or not it is or isn't true in other cases -- not like this one, which has a very dedicated local Senator who I'm sure wouldn't bring it before us unless it should be granted -- then it is my position, Madam President, that it is a little more than ministerial.

It is really what is in a sense a misapplication of the law. The formulators didn't realize that so many times after the tax status date that these properties would be bought and that the entities would be assessed taxes at that particular time.

What we need to do is to change the law, to change the standard, rather than to sit here, as we too often do, forcing organizations, not-for-profits and entities, to come back to us over and over again for the proper remedy that they may deserve.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: I wonder if the sponsor would yield, in the spirit of the forthcoming Passover season, to four questions.

SENATOR BALBONI: Sure.

THE PRESIDENT: You may proceed with four questions, Senator.

SENATOR STAVISKY: Four questions. And I'm not going to ask why this bill is different from all other bills.

My first question, through you, Madam President, what is the fiscal impact of

this bill? How much tax revenue is Nassau County, considering its current fiscal status, foregoing?

SENATOR BALBONI: Senator, as you may or may not be well aware, there is multiple jurisdictions that tax on a real property basis.

SENATOR STAVISKY: I understand that.

SENATOR BALBONI: Therefore, it's not just the County of Nassau.

In fact, there is a general tax - I do not have the county breakdown.

SENATOR STAVISKY: I'm talking about the property tax.

SENATOR BALBONI: Yes. A general tax and a real property tax, and the school tax, the town tax, the village tax and the county tax.

I don't know how much specificity you want, but the overall number is $29,488.86 is the entire amount of both.

SENATOR STAVISKY: Per year?

SENATOR BALBONI: Yes, per year.

And 65, 66 percent of that is the

school tax. Of that are the remaining jurisdictions, including the village, town and county.

SENATOR STAVISKY: Thank you. And I would assume that it would be a large percentage for the school tax, since this is obviously a high-tax area.

My second question deals with the county legislature, where I see in the bill it requires approval by the county legislature.

Madam President, if I may inquire, has the Nassau County Legislature considered this bill yet?

SENATOR BALBONI: No, it has not.

SENATOR STAVISKY: All right. And my third question deals with -- I'm just curious. My third and fourth questions, I am curious. Why, Madam President, are so many of these bills in Nassau County? And as part of that, I am curious, more than anything else, as to why so many of them are synagogues.

SENATOR BALBONI: As you know, the County of Nassau is one of the few remaining jurisdictions that has countywide assessing. I'm not sure that that has an

impact, but it's an individual characteristic.

And you would have to ask the temple as to whether or not its particular board -- or how it works with its attorneys. I am not sure why it is.

SENATOR STAVISKY: Okay. Thank you, Madam President.

THE PRESIDENT: Senator Brown was next.

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

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: Yes, Senator Brown.

THE PRESIDENT: You may proceed, Senator Brown.

SENATOR BROWN: Thank you, Madam President. Madam President, has this congregation paid any taxes at this point?

SENATOR BALBONI: I'm sorry, Madam President, I couldn't hear the question.

THE PRESIDENT: Senator, could you repeat your question.

SENATOR BROWN: Has the congregation paid any taxes at this point?

SENATOR BALBONI: Yes, they have.

SENATOR BROWN: So then they would be reimbursed for the taxes -

SENATOR BALBONI: That is correct, Senator.

SENATOR BROWN: On the bill, Madam President.

I certainly support Senator Balboni's efforts here. I believe that when we get a request of this nature from our constituents, we should try to honor that request.

From listening to the debate, though, I think the deeper question is why don't we just move to a process -- and the legislation was referred to by Senator Lachman -- where we wouldn't have to have these bills come before us, you know, throughout the course of the legislative session.

It's my understanding that a similar bill in the Assembly has not passed yet. I don't know why it hasn't passed in the

Assembly. But earlier in this legislative session, we talked about trying to change rules in this house to make our operations more efficient. It seems to me that if we could pass the legislation that Senator Lachman referenced that we would be more efficient, because these bills that come up periodically during the course of the session, that I'm sure perhaps each and every one of us from time to time will get a request from a group in our district, we would then not have to bring to the floor of this Legislature if we were able to pass such legislation.

To me it's a commonsense measure that should be able to be passed. We talk about the frustrations that citizens have in trying to get things done at the state level. And to me, just in listening to this and recognizing the fact that we have to continually deal with these issues that come up -- and certainly they are of no fault to any Senator that brings them, that is trying to respond to a legitimate request on behalf of a constituent -- it seems like it would just make common sense for us to be able to

pass legislation that would give the municipality the ability to respond to such matters at the time a congregation or other tax-exempt entity purchased a piece of property and then goes to the municipality requesting an exemption.

And to me, that's the larger question that has been raised based on Senator Balboni's legislation that we are considering today that I think we all support. But the larger issue is why don't we remove this ministerial impediment that Senator Balboni has described in this case.

Thank you, Madam President.

THE PRESIDENT: Senator Onorato.

SENATOR ONORATO: Madam President, will Senator Balboni yield for a question -

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: Yes, I will, Madam President.

SENATOR ONORATO: -- from a nonattorney.

THE PRESIDENT: You may proceed.

SENATOR ONORATO: Based on what I've been hearing here so far, this is going to give the congregation permission to apply retroactively; they might have missed a deadline on it.

SENATOR BALBONI: That's absolutely correct.

SENATOR ONORATO: In the event that this legislation does not pass or the Governor refuses to sign it, as he has indicated he didn't want any more of these bills coming up periodically, will they be eligible to reapply in the next calendar year?

SENATOR BALBONI: Yes, they would, Senator. But they would lose the ability to do a retroactive application; therefore, would lose the money that they've already paid.

SENATOR ONORATO: Thank you.

THE PRESIDENT: Senator Dollinger.

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

Most of my colleagues have asked Senator Balboni all the critical questions

that I would have asked, including Senator Brown, who asked the question about whether they had actually paid the taxes.

Because it would seem to me that if they hadn't paid the taxes and they had done what oftentimes not-for-profit groups do, which is just ignore the tax bill, then what in essence we'd be doing, Senator Brown, is we'd be encouraging institutions like this to avoid one of the fundamental rules of property taxation, which is you pay the tax first and then you protest and get it back. Which I'm sure you're familiar with in your work in the city of Buffalo.

But I'm going to vote against this bill, Madam President, as I have done repeatedly. Because every time a bill comes up for a Nassau County institution, not for profit, Senator Balboni and Senator Marcellino and others who have brought these bills up always give the following rationale: They engage in charitable activities that makes them tax-exempt and they've done everything that they're required to do in order to get a tax exemption.

Except, Senator Balboni, that just isn't true. The last comment, the third point that you made isn't true. They didn't do what was required to get a tax exemption. They didn't file for a charitable tax exemption on the taxable status date, which is what our law requires.

And with all due respect to Senator Balboni, saying that that's merely ministerial is like saying it's merely ministerial that you file your income taxes on April 15th. I would suggest, Senator Balboni, when one of your clients goes into the IRS and the IRS says, You're being charged with tax evaluation because you didn't file your tax returns on time, and you suggest to them, Oh, that's a merely ministerial error that they didn't file their income taxes on April 15th, I would suggest that the tax court and every court in this land would say: No, no, that's a statute of limitations. That's something you must do on that date or you lose the right to do it forever.

And what's happened here is we are in essence creating a religious, charitable,

malpractice get-out-of-jail-free card for every institution in Nassau County that forgets what the law is, doesn't consult with legal counsel, doesn't ask when the taxable status date is, and when they miss it, through the good efforts of their State Senator, whoever it may be from Nassau County -- it only seems to happen there, although it probably happens all over the state, and I'm convinced it does -- but nonetheless, we come up and we say, It's okay, you can forget the law, you don't have to apply, just bring it to the attention of your Republican State Senator at some point and it will be taken care of.

I've suggested for the better part of the last two years that that doesn't make good public policy. What it actually does, Senator Balboni, in my personal opinion, is it encourages more institutions who would otherwise qualify to simply not file on the exemption in the hopes that somehow the intervention of the State Legislature will resolve this and take them off the hook.

That's not good public policy, Madam President. It encourages something that

we would like to discourage. We would like to discourage charitable institutions from simply disregarding their tax bill and not filing for an exemption. That's what we want them to do, they're entitled to do it, they're entitled not to have to pay property taxes. And the best message we can send to them and their lawyers is to simply file for your tax exemption before the taxable status date, do it on that time frame and you will be entitled to relief from any property taxes that you've paid.

I continue to vote against this. The reasons articulated by Senator Brown and others, and Senator Lachman, about let's do a statewide bill, let's give every single assessor the same power that we're giving the assessor in Nassau County through this bill - that is, the ability to provide a partial property tax exemption when the property is traded part of the way through a calendar year so that they can get the benefit from the day they buy it forevermore, as long as they hold it.

I go back to one other point,

though. If we do this bill, it has to be a both-ways bill. Because if you sell a charitable piece of property after the tax status date, it should immediately go on the tax rolls. Instead, under the current plan, if a charitable institution like this religious organization sells a property midway through the taxable status year and it is used for a profit-making activity, it enjoys the not-for-profit tax exemption through the remainder of the tax year.

That's the best way, make it a both-ways bill. Senator Lachman has talked about it. These kinds of bills don't need to address our time and attention. And I would suggest that the better approach is to do a statewide, both-ways bill for a property tax exemption for charitable institutions. I will vote for it then.

Until then, I'm going to vote no on this bill and no on all bills like it.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, will Senator Balboni yield for a question.

THE PRESIDENT: Senator, do you

yield?

SENATOR BALBONI: Yes, Senator.

THE PRESIDENT: You may proceed, Senator Skelos.

SENATOR SKELOS: Just to clarify, Senator Dollinger mentioned that if you fail to file in a timely basis that all you have to do is go to your Republican Senator and you'll get the exemption.

SENATOR BALBONI: That's correct, Senator.

SENATOR SKELOS: Is there a sponsor in the Assembly?

SENATOR BALBONI: Yes, there is.

SENATOR SKELOS: Who is the sponsor in the Assembly?

SENATOR BALBONI: You know, Senator, I'm glad you brought that up. It is Assemblyman Tom DiNapoli.

SENATOR SKELOS: Is he a Republican or a Democrat?

SENATOR BALBONI: Last -- let me check. He is a Democrat, in the Democratic Majority in the Assembly. Thanks for bringing it up.

Because I'll tell you what, it's one thing to disparage me in this chamber, saying that I provided a religious organization with a get-out-of-jail-free card. But it's another thing to take on my good friend Assemblyman Tom DiNapoli, a good Democrat from the other house who is not here to defend himself. That's really outrageous conduct. I object to that.

And the other thing is, what has this congregation ever done to you?

Thank you, Madam President.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 4. 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: To explain my vote just briefly.

I want to thank Senator Balboni for giving Assemblyman DiNapoli's campaign speech, which I have no doubt he may use at some point

in Nassau County.

But I think the issue that I simply want to point out to Senator Balboni, I think Senator Balboni is doing something good for his community. I don't deny that that's the right thing to do. I think faced with the same circumstances, we would do that here.

But we go back to this issue of - and it's true, a Republican Senator in this chamber, a Democratic Assemblyperson in the other chamber seem to get these bills passed all the time. I would suggest if that's the pattern, then there are other people in this state, 42 percent in this chamber who aren't going to have that possibility.

I would suggest that if we're going to do these bills as a matter of course, we do them for everyone, regardless of whose name appears on the bill, Madam President.

But I will vote in the negative, as I have on all these bills in the past and, as I said, will continue to do so in the future.

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

The Secretary will announce the results.

THE SECRETARY: Ayes, 58. Nays, 1.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 136, by Senator Rath, Senate Print 1456, an act to amend the Real Property Tax Law, in relation to exemption.

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 138, by Senator Maziarz, Senate Print 1518A, an act to amend the General Municipal Law, the Public Authorities Law, and the Civil Service Law, in relation to paid leave.

SENATOR PATERSON: Explanation.

SENATOR DUANE: Explanation, please.

THE PRESIDENT: Senator Maziarz, an explanation has been requested by several members.

SENATOR MAZIARZ: Thank you, Madam President.

This bill would authorize state and local government employees who are certified by the American Red Cross as disaster volunteers to take paid leave from their jobs for a limited period of time to volunteer for Red Cross disaster leave assignments.

Thank you.

THE PRESIDENT: Senator Duane.

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

THE PRESIDENT: Senator, do you yield?

SENATOR MAZIARZ: Surely, Madam President.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Through you, Madam President, are there any instances where state and local officers have refused to grant this leave during a Red Cross disaster?

SENATOR MAZIARZ: None that I'm aware of, Senator.

SENATOR DUANE: Through you,

Madam President, if the Senator would continue to yield.

THE PRESIDENT: Senator Maziarz, do you yield?

SENATOR MAZIARZ: Yes, I do, Madam President. Thank you.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Would the sponsor then describe the genesis for this bill?

SENATOR MAZIARZ: This bill was actually proposed by the Red Cross American - American Red Cross chapters across the state of New York. Every American Red Cross chapter in the state of New York has endorsed this bill. Their statewide association recommended this bill. It is currently in effect in 41 other states.

And in 1995, Senator, this Legislature -- Assembly, Senate, and Governor Pataki -- signed similar legislation authorizing New York City firefighters to receive this particular benefit.

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

to yield.

THE PRESIDENT: Senator, do you continue to yield?

SENATOR MAZIARZ: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: In light of the fact that the Red Cross themselves asked for this, did they supply the sponsor with circumstances under which state or local agencies had refused to grant this leave? Or did they just do it to be in concert with the rest of the states in the nation?

SENATOR MAZIARZ: I believe that they would like to see this bill adopted in all 50 states, Senator. That's why they brought it to my attention.

SENATOR DUANE: Thank you.

Through you, Madam President. So this bill would then be considered anticipatory?

SENATOR MAZIARZ: Yes.

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

THE PRESIDENT: Senator Maziarz, do you yield?

SENATOR MAZIARZ: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Could the sponsor tell me how one goes about becoming a Red Cross disaster volunteer?

SENATOR MAZIARZ: Certainly, Senator.

The Red Cross chapters across this state hold various training programs, I think the most popular one of which is a CPR training. But they hold lifeguard certification training, and they hold disaster relief training. And these are open to the public.

As I stated, I think I stated earlier, every chapter conducts them. And one would simply sign up, see an advertisement in a newspaper or in some other form of media, go and sign up and go down and take the course.

SENATOR DUANE: Through you, Madam President, I need to get a qualification

from the sponsor, if I may.

SENATOR MAZIARZ: Surely, Madam President.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: Did the sponsor indicate that -- I know there are separate courses for CPR, lifeguard. Is there a separate course, did he say, for disaster relief training?

SENATOR MAZIARZ: Yes, there is, Senator.

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

THE PRESIDENT: Senator, do you yield?

SENATOR MAZIARZ: Yes, Madam President.

SENATOR DUANE: I'm wondering if the sponsor has any idea how many state workers presently have this classification.

SENATOR MAZIARZ: I have no idea, Madam President. Through you, Madam President.

SENATOR DUANE: Through you, Madam President, does this legislation have the support of the Governor and his commissioners?

SENATOR MAZIARZ: Through you, Madam President, in response, Senator Duane, I have not spoken directly to the Governor or to his commissioners. But one would have to assume, since he signed a similar bill in 1995 granting this benefit to New York City firefighters, that he would be receptive.

I know that Governor Pataki is certainly extremely sensitive to providing necessary relief during periods of disaster. We've seen that recently during the weather-related disasters, during the disasters on Long Island and so forth.

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

THE PRESIDENT: Senator Maziarz, do you yield?

SENATOR MAZIARZ: Surely, Madam President.

THE PRESIDENT: You may proceed,

Senator Duane.

SENATOR DUANE: Do employees of the state or local governments now, or as a result of this legislation, will they have to file a notice with the state that they are designated Red Cross disaster relief volunteers?

SENATOR MAZIARZ: No.

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

THE PRESIDENT: Senator Maziarz, do you yield?

SENATOR MAZIARZ: Yes.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: If there is no way to file such a designation with the state, how would an employer then be able to prove that an employee is going to the disaster and not, for instance, taking a trip someplace else?

SENATOR MAZIARZ: Through you, Madam President. The Red Cross must request a particular individual, in writing, to the

chief executive officer of a municipality or to the head of a particular state agency.

And of course the Red Cross will maintain the records. They know who is certified and who's not, and in what regions of the state that they're located in.

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

THE PRESIDENT: Senator, do you yield?

SENATOR MAZIARZ: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Is the Red Cross required to provide that the state employee actually fulfill their work requirement as a disaster relief worker? Or is the onus on the state agency to check with the Red Cross to make sure that the state worker has fulfilled their duties to the Red Cross?

SENATOR MAZIARZ: The onus is on the Red Cross, Senator.

SENATOR DUANE: Through you,

Madam President. In what format does the Red Cross make its report to the state agencies?

SENATOR MAZIARZ: Through you, Madam President, I'm not sure I understand the question. The Red Cross keeps a roster of individuals that it has certified in its various categories, one of which is disaster relief.

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

THE PRESIDENT: Senator, do you yield?

SENATOR MAZIARZ: Surely, Madam President.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Then there really is no way for the state agency to know for sure that that state worker fulfilled their duties unless the state agency asks the Red Cross if in fact that person showed up on the disaster relief job; is that correct?

SENATOR MAZIARZ: No.

SENATOR DUANE: Then, Madam

President, would the sponsor continue to yield.

SENATOR MAZIARZ: Yes.

SENATOR DUANE: Then I don't understand how it works. If the sponsor would please again go over how it would work that we would prove that the worker had actually performed their disaster relief duties.

SENATOR MAZIARZ: The Red Cross would have to submit in writing to the chief executive officer of a municipality or to the head of a state agency or public authority that they require the services of employee X,Y,Z for a particular disaster relief. Of which employee X,Y,Z has been certified in.

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

THE PRESIDENT: Senator, do you yield?

SENATOR MAZIARZ: Yes.

THE PRESIDENT: Go ahead, Senator.

SENATOR DUANE: But what I'm trying to get at is while a worker may be

certified to do the job and in fact may have led the agency to believe that they had gone on the job, I still don't understand how it is that you could prove that that worker actually did the disaster relief and didn't, for lack of a better term, play hooky and get off with free time from their agency.

SENATOR MAZIARZ: Through you, Madam President, the onus is on the Red Cross. The Red Cross knows who they have as being certified. It's up to the Red Cross to request, in writing, to the particular agency or municipality for the services of a particular individual.

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

SENATOR MAZIARZ: Yes.

THE PRESIDENT: Senator, do you yield?

SENATOR MAZIARZ: Yes.

SENATOR DUANE: Does this bill cover legislative employees?

SENATOR MAZIARZ: Yes.

SENATOR DUANE: If an agency or an office was understaffed due to, say, a

hiring freeze or sudden attrition, is the agency required to allow the disaster relief worker to go and work? Or does the agency or the office have the right to request that their employee not leave to work on disaster relief?

SENATOR MAZIARZ: Through you, Madam President, it is completely discretionary on the part of the agency head or the head of the municipality.

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

THE PRESIDENT: Senator, do you yield?

SENATOR MAZIARZ: Yes.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: And does that also include high-security jobs like state correction officers, state police, et cetera?

SENATOR MAZIARZ: Yes. Through you, Madam President.

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

to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR MAZIARZ: Yes.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: If an employee is granted a leave to volunteer with the Red Cross and they're injured while providing that disaster relief, how would benefits such as workers' comp be dealt with in a situation like that?

SENATOR MAZIARZ: Well, it would be the responsibility of the Red Cross.

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

THE PRESIDENT: Senator, do you -

SENATOR MAZIARZ: Yes.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: So the Red Cross, then, is paying workers' compensation taxes for situations like this?

SENATOR MAZIARZ: Actually, Senator Duane, in a very serious way, this did come up during the negotiations of this bill. And the Red Cross does carry insurance on all of its disaster relief workers.

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

SENATOR MAZIARZ: Yes.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Is it a similar situation with long-term disabilities that are due to an injury, that the cost of that or covering the disability insurance would be covered by the Red Cross?

SENATOR MAZIARZ: Yes.

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

SENATOR MAZIARZ: Yes.

THE PRESIDENT: The Senator continues to yield.

SENATOR DUANE: Are the disaster relief workers only to be assigned within

New York State, or could they be deployed anywhere in the nation?

SENATOR MAZIARZ: Well, depending upon their abilities and their training, they could be assigned anywhere within the nation. But that is an extremely rare occurrence.

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

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

SENATOR MAZIARZ: Surely, Madam President.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: What about out of the country, Canada, Mexico, and even beyond? It is possible that the workers would be deployed to those areas?

SENATOR MAZIARZ: Through you, Madam President, I would think it -- and it really never came up during the discussions on this bill, Senator. But I would think that wherever there's a disaster and the Red Cross needs assistance, I would think that this

would apply.

SENATOR DUANE: And through you, Madam President, I asked previously about the Governor and the state agencies, but I'm wondering whether NYCOM or any combination of municipalities have weighed in on this legislation.

SENATOR MAZIARZ: There have been no memos in opposition that I'm aware of, Senator.

SENATOR DUANE: Thank you.

Thank you, Madam President.

SENATOR MAZIARZ: Thank you, Senator.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: I think Senator Hassell-Thompson was first.

THE PRESIDENT: You're yielding to Senator Hassell-Thompson?

SENATOR HASSELL-THOMPSON: I'm yielding -

THE PRESIDENT: She was next, in my mind, but -

Senator Stavisky.

SENATOR STAVISKY: Thank you,

Madam President. I just have a couple of questions.

Through you, Madam President, what about some of the organizations that may wish to provide disaster relief other than the American Red Cross? Would the employees be permitted to work through other organizations, or does it have to be through the American Red Cross?

SENATOR MAZIARZ: No, this has to be through the American Red Cross, Senator.

SENATOR STAVISKY: The reason, Madam President, that I asked the question is I remember when there was a disaster in Mexico, if I'm not mistaken, or Honduras, there were Latin American or Hispanic organizations that wanted to send aid and wanted to send workers to help with the disaster relief when the earthquakes occurred down in Central America. And I -- so they would not be permitted, Madam President?

SENATOR MAZIARZ: No. This bill deals strictly with the American Red Cross.

SENATOR STAVISKY: And if I should choose -- if there were a problem in

Israel, for example, the Federation of Jewish Philanthropies could not send disaster workers, Madam President, is that correct?

SENATOR MAZIARZ: I mean, they could. But a public employee in New York State could not get time off to assist.

SENATOR STAVISKY: Madam President, a couple of other questions.

The legislation talks about a municipal corporation. Are teachers included? Through you, Madam President.

SENATOR MAZIARZ: Yes. Yes. Yes.

SENATOR STAVISKY: Teachers would be included.

How about EMS workers who may not have taken the Red Cross training but at the same time would certainly be qualified, Madam President, to participate? If the Senator would yield to that question, would answer that question.

SENATOR MAZIARZ: I'm not sure I exactly heard the question. But if they're not certified by the American Red Cross, they're not covered under this legislation.

SENATOR STAVISKY: They would not be covered by this legislation.

SENATOR MAZIARZ: No. No.

SENATOR STAVISKY: Madam President, if the Senator would yield for another question.

THE PRESIDENT: Senator, will you yield?

SENATOR MAZIARZ: Certainly.

SENATOR STAVISKY: Since teachers would presumably be included, who is going to pay the cost of providing a substitute teacher for the day or for the twenty days, which turns out, I suspect, to be a month?

SENATOR MAZIARZ: The particular school district would. Much like they do now for jury duty or the City of New York does for New York City firefighters.

SENATOR STAVISKY: Madam President, we have exempted many people from jury duty.

SENATOR MAZIARZ: No. No. No, I'm sorry, Senator Stavisky, to correct you, but -

SENATOR STAVISKY: I'm not

talking about teachers, I'm talking about -

THE PRESIDENT: Senator, do you wish the Senator to yield for another question?

SENATOR STAVISKY: Yes. Yes, I do.

SENATOR MAZIARZ: Nobody is exempt from jury duty anymore, Senator.

SENATOR STAVISKY: That's what I'm -

SENATOR MAZIARZ: Not even the Governor. He's served on jury duty.

SENATOR STAVISKY: I did too.

THE PRESIDENT: Senator Stavisky, do you wish Senator Maziarz to yield for another question?

SENATOR STAVISKY: Madam President, yes, I have one other question that -- as a matter of fact -

THE PRESIDENT: Senator, wait a minute, please.

SENATOR STAVISKY: Sorry.

THE PRESIDENT: Senator, do you yield?

SENATOR MAZIARZ: Yes, I do,

Madam President. Thank you.

THE PRESIDENT: You may proceed with another question.

SENATOR MAZIARZ: We get off on these tangents, Senator.

SENATOR STAVISKY: No, I'll tell you, Madam President, where I'm going. What would be the fiscal impact, Madam President, on the localities if the employees took advantage?

SENATOR MAZIARZ: Actually, Senator, again, I think some of these questions aren't asked in a very serious vein, but that is one issue that we talked about with the New York State Conference of Mayors and the New York State Association of Counties and some of the state agencies, some of the executive branch agency heads.

And it -- we suspect that it would be very, very minimal. But it would all depend, of course, on the number of disasters and the number of people that the American Red Cross required at a particular disaster.

But right now, there has never been an instance that the American Red Cross could

give us where an individual covered in a different state under the similar legislation took off more than 18 days.

SENATOR STAVISKY: Thank you, Madam President.

SENATOR MAZIARZ: Thank you.

THE PRESIDENT: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: On the bill, Madam President.

I would like to commend the Senator on this particular bill. As someone who has served on the Red Cross board and also who has been fortunate enough to have had firefighters become certified by the Red Cross and to participate two years ago in the upstate ice storm, and some other employees, I think that it is totally something that we should be supporting.

It is incumbent upon us also to understand that the Red Cross continues to reach out to all groups who want to become certified and who want to become a part of a disaster relief program. And unfortunately, there just are not enough people who are

willing to volunteer. I mean, that's the heart of this issue.

And so that when we have the opportunity to make it possible for those employees who choose to go and who choose to be trained, I think that it is incumbent upon us to look upon that as something appropriate.

So therefore, Senator, I commend you and give my support to this legislation.

SENATOR MAZIARZ: Thank you.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. Will the sponsor yield just to two quick questions.

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

SENATOR MAZIARZ: Certainly, Madam President.

THE PRESIDENT: You may proceed with two questions.

SENATOR DOLLINGER: Senator, the first question I have deals with the phrase used in the bill of "specialized disaster relief operations." Is that a defined term of

art in this portion of the General Municipal Law, and why did you pick the phrase "specialized"?

I mean, are you assuming that these are going to be something other than normal services provided in disaster relief?

SENATOR MAZIARZ: Yes. The Red Cross actually provided and helped us with that language, Senator. And the reason that they did it is because they would look for a different type of disaster relief volunteer for a TWA-800-type crash than they would for an ice storm disaster in the North Country.

So they actually suggested that language.

SENATOR DOLLINGER: So it's my understanding that this bill would not apply to all disaster relief operations, such as putting sandbags to hold back the water; this would be specialized disaster relief services. You're talking about the particular types of water recovery or underwater recovery of the type involved in the 800 flight operation?

SENATOR MAZIARZ: Yes. Yes.

SENATOR DOLLINGER: Thank you,

Madam President. And just one other question, if I can have Senator Maziarz yield.

SENATOR MAZIARZ: Surely, Madam President.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Does this determination about a disaster, does it depend on a declaration by the Governor that there is a natural disaster or a disaster relief area? Is that a necessary predicate to invoking this provision, that the Governor actually declare it to be a disaster?

SENATOR MAZIARZ: It's not covered in this section of the law, but it is covered in another section of the law where, yes, it is, the Governor or the chief executive officer of a municipality can declare a disaster.

SENATOR DOLLINGER: Okay. So just so I'm clear, Madam President, as a condition for this period of leave you would need one of those, either of the state -

SENATOR MAZIARZ: Both.

SENATOR DOLLINGER: -- to declare

it to be a disaster area and therefore call in the Red Cross?

SENATOR MAZIARZ: Yes, absolutely.

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

I concur with Senator Hassell-Thompson, both in her commendation of Senator Maziarz -- this is a good bill. It does have restrictions on when natural disasters occur, you're going to require the Governor to declare them.

I think the provision of specialized disaster relief services is critical too, because otherwise you're going to have people just going out and putting up sandbags. That's an important service in times of a natural disaster, but it's not the kind of specialized services that we take somebody out of the state service, with skills in disaster relief, and in essence have the government pay for their services while they're performing disaster relief.

I think with those kind of restrictions on the bill, the bill makes

eminent sense and is a good idea. I'll be voting in the affirmative, Madam President.

THE PRESIDENT: Read the last section.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: I had just one comment on the bill, and I wanted to answer a question also that Senator Duane had asked, if I may, Madam President.

THE PRESIDENT: Senator, do you have a question?

SENATOR HASSELL-THOMPSON: No, I don't have a question, I wanted to answer the question that Senator Duane had asked on the bill. On the bill.

THE PRESIDENT: Senator, you'd like to speak on the bill, then.

SENATOR HASSELL-THOMPSON: On the bill.

THE PRESIDENT: All right, you may proceed on the bill.

SENATOR HASSELL-THOMPSON: I'll get this right.

Senator Duane was concerned about how would we know whether the employees

actually performed on the job and were not - and the answer to that is they are put together as part of a team. They are monitored. And at the end of that team period, they receive a certificate and a commendation for their participation.

So it is not -- you know, they don't -- this is not absenteeism. There is a strict monitoring. And people who choose to do this also know that they're going into some very dangerous territory, and so that people do not just willy-nilly volunteer and then don't show up for these.

And so in answer to that, I can vouch for the fact that there is a monitoring that does occur.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 143, by Senator Velella, Senate Print 64, an act to amend the Social Services Law, in relation to persons and officials.

SENATOR DUANE: Explanation, please.

SENATOR DOLLINGER: Explanation.

THE PRESIDENT: Senator Velella, an explanation has been requested by Senator Duane and Senator Dollinger.

SENATOR VELELLA: The bill requires that emergency medical technicians report instances when a child who appears before them in their professional capacity appears to be an abused or maltreated child.

THE PRESIDENT: Senator Paterson.

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

THE PRESIDENT: Senator Velella, do you yield?

SENATOR VELELLA: Yes.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Senator, you

don't think that the pressure of becoming one of the -- the newest profession that we've added to the list of others who are obliged to report these cases of child abuse or maltreatment to the statewide registry for child abuse, that this would not distract them from the major responsibility that an EMT has, which is to treat the medical situation, would you?

SENATOR VELELLA: You're correct, Senator, I do not believe that.

SENATOR PATERSON: Okay. Senator, what do the emergency medical technicians and others in that field where they have first-line contact with victims feel or any concerns that they've had about this bill that you may have addressed?

SENATOR VELELLA: We've gotten strong support of this bill from the EMT community. They are very much in favor of it. And they would like to be able to make these reports in a formal capacity.

SENATOR PATERSON: Madam President, if the Senator would continue to yield.

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

SENATOR VELELLA: Yes.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Senator, I want to distinguish the EMTs in this legislation from legislation similarly first passed in 1973 -- it was originally an Assembly Bill sponsored by Assemblyman Duryea, who later became the Speaker. And since that time, we've amended the legislation eight times and added five professions -- this would be the sixth -- to those that have this obligation to report these issues.

But in the latest case, I see a distinction that I find to be somewhat significant and wanted to get your reaction to it. Because the EMTs often go into the home, and, similarly, there is a certain percentage of cases in the home where the victim can be treated right on-site, does not have to go for any hospitalization at that point, where then the questions that the EMT might ask to ascertain some of the information that we want

referred along would presumably be asked in front of the abuser.

Do you not think, Senator, that this puts the EMT in a rare, unique kind of situation, unlike that of many of the other professions involved?

SENATOR VELELLA: Senator, let me first correct you. I know Perry Duryea. He was a friend of mine. And he was not the Speaker after 1973. He was the Speaker prior to that.

SENATOR PATERSON: You're right. You're absolutely right.

SENATOR VELELLA: I was a member of that house at the time.

And let me just say that exactly the point you were talking about is one of the reasons why they should be included. Because very often those type of people who will abuse children tend to rely on the emergency services and not bring them into hospitals, not bring them into formal settings where they will have more professional staff and a better opportunity to have someone analyze and look at and assess the situation.

But an EMS worker can maybe do that a little easier out in the field, and pick up someone that may be abused and report it, rather than having the parent or the person doing the abuse not bring them to an emergency room and rely on the on-the-spot, in the house emergency services that might be given.

So I think you make a good argument for the bill in making that point.

SENATOR PATERSON: Madam President, if the Senator would continue to yield.

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

SENATOR VELELLA: Yeah.

THE PRESIDENT: You may proceed, Senator.

SENATOR PATERSON: Actually, Madam President, Senator Velella is right. And I'm likely to vote for the bill. And the point is that we would want those who would be in the best situations to examine child abuse to be able to report it. So you're absolutely right; somehow we've got to find a way to get the EMTs into this legislation.

But my concern was for the safety of the EMTs, being that they might be asking these questions in front of a potentially violent person. Do you have an opinion about that?

SENATOR VELELLA: Well, you know, I think it's like any other person who has to inquire into these type of sensitive, either family or potentially dangerous situations.

The technician would have to use some discretion. I mean, if somebody's standing there with a baseball bat ready to hit you in the middle of the head, you don't antagonize them and ask them questions that are going to infuriate them. So you just use discretion, and that's the better part of valor, and you leave the room and you make your report.

Now, remember, this is the initiating process. This is not the evaluation, the determination. This is "reasonably suspect." They may be wrong. They may be right. But at least what we want to do is have these technicians make that initial start, that initial point to begin.

So that if in fact there is abuse there, it will be detected.

We certainly don't expect them to put themselves in danger personally by asking foolish questions. Because sometimes when you ask foolish questions, foolish things happen. More people ought to be aware of that. Foolish questions get foolish results.

SENATOR PATERSON: Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: I'll take everything Senator Velella has said under advisement, and ask if he'll yield for a question that he may determine whether it's valid or not.

THE PRESIDENT: Senator Velella, do you yield?

SENATOR VELELLA: Senator, I always assume your questions are valid and will yield to you.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: So what we're doing, Madam President, is we're understanding

now that the EMTs are going to have to use some discretion. They may not be able to ask all the questions that we would like them to ask. But if they see something that is awry or get a feeling about a situation, we're mandating them to report that to the registry.

Just to make sure that they're equipped even to make that determination, is there anything in this legislation or any suggestion you would have eventually related to the training of EMTs? I don't know how long they're trained now, but perhaps additional training in that particular area.

SENATOR VELELLA: I'm sorry, Senator, could you repeat the question?

SENATOR PATERSON: It just relates to the training of the EMTs, since we're having them go into areas that previously we have not required of them.

SENATOR VELELLA: You make a very good observation. It is not mentioned in the bill before you because it's already in other parts of the statute. For those people who are covered and required to make these reports, there are guidelines within the

statute to show them what to look for and what the criteria should be.

So we are just incorporating them by reference into those guidelines. It doesn't appear printed on the bill, but it is printed in the law that we're inserting them into.

SENATOR PATERSON: Madam President, what I will assume is that once the legislation passes, that that would then add to the training that these workers receive.

And with that pretty straightforward issue, I ask Senator Velella if he would yield to another question.

SENATOR VELELLA: Yes, I will.

SENATOR PATERSON: Senator, I read recently that less than 40 percent of hospital attendants -- attending physicians, techs working in the emergency room, nurses, and the like -- are asking women who come into the hospital with questionable injuries the four questions that they are mandated to ask them related to the possibility of abuse. And for some reason, these medical personnel are not asking these questions. And that's

something that is right now a matter of research in institutions in the New York City area.

My question to you is, since we're now adding the EMTs, those technicians, to that list of people who are supposed to be asking these questions -- and now assuming that they're not in a dangerous situation and they could ask these questions -- do you have any suggestion as to what we might be able to do in order to encourage the professionals who are mandated to do so to actually ask those questions?

SENATOR VELELLA: Senator, I don't have to tell you that our role here is to establish the laws, the criteria, and enforcement goes out to another branch of government.

I think that you and I have a responsibility as legislators to champion the cause and, when possible and whenever we can, to call attention to those people that are responsible and do their job probably as best they can under stressful conditions. That these are not issues that are taken lightly by

the State Legislature. That abuse, whether it be of a child, of a spouse, whatever it is, abuse is not going to be tolerated. That's why we pass these laws. And we expect professionals to respond to the laws that we set down.

And if in fact we find that they are not, then we'll have to just do something to impose professional criteria so that they will take it more seriously. I don't know what these criteria might be. But certainly when we get the results of this evaluation, you and I ought to sit down and decide how we can help encourage professionals to act responsibly.

I'm sure it's not by deliberate act that they don't ask them. I'm sure it's because they're overtaxed and it's the pressures of work. We have to make it be a serious thing.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if the Senator would yield for another question.

THE PRESIDENT: Senator, do you

yield for a question?

SENATOR VELELLA: Yes.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Yeah, that would be hard for you or I, Senator. And I apologize if I put you in the situation of trying to make a determination before the adequate information is there.

But the question I have -- and I guess this is my final question -- is what right now is the criteria for treating a situation where in this bill an EMT or in the existing law other professionals are not in compliance and it is shown that they knew but withheld information about the abuse or maltreatment of children?

SENATOR VELELLA: Yeah, there is a provision in the law for failures to report, and there are penalties in the law. It becomes an A misdemeanor for knowingly, deliberately -- and that's in the law now, Section 420 of the Social Services Law, under the Child Protective Services Act. And that section makes it a misdemeanor to knowingly

and willfully fail to report something that you know happened in terms of abuse.

Now, that does not mean that you should have known. It means you willfully decided not to. You see the child beaten, bloody, and you see obvious signs of abuse - burn marks, whatever they may be, those are prescribed in the statute, in the main statute, that those would be the warning signs -- and you choose not to report that, you deliberately fail to report it. Not negligently. Deliberately and intentionally.

SENATOR PATERSON: Thank you, Senator Velella. Madam President, on the bill.

I think that this bill is worthy of passage and this classification should be added to the others that mandate that the professionals working in this particular area pass along the information to the child abuse hotline or proper authorities of maltreatment, of child abuse, of something that they sense is suspicious.

I just want to again raise that caution that because of the fact that the EMTs

are often in situations where they are not as well protected or armed as the police might be, where they are not distinctly at a distance from the potential perpetrator as the doctor may be, that they are nonetheless in a situation where there could be some harm.

And I hope -- it certainly is not Senator Velella's intent, and I certainly hope no one in the future would ever intend that a questioning of the situation or something that might lead people to think that the EMTs did not follow procedure would not be construed that way if the EMT thought that they were in some kind of danger.

Otherwise, there's certainly very good reason to pass this legislation because, as Senator Velella said, there is immediate contact and very close contact with the victim, sometimes in situations where the EMT may observe some kind of criminality that some of the others would not have had that opportunity.

So I'm going to vote for the bill, but just with the caution that this is a group of people sometimes going into very dangerous

situations to treat the -

THE PRESIDENT: Senator Onorato.

Excuse me, Senator Paterson.

SENATOR VELELLA: Madam President, excuse me. If I might, since the hour is getting late, we can continue this debate tomorrow. I'd ask that we lay the bill aside for the remainder of the day and we'll go back to it again tomorrow.

THE PRESIDENT: On your request, Senator Velella, the bill is hereby laid aside.

SENATOR VELELLA: Thank you.

THE PRESIDENT: Senator Meier.

SENATOR MEIER: Madam President, may we lay aside the balance of the bills on the active list.

THE PRESIDENT: The balance of the bills are laid aside, Senator.

SENATOR MEIER: Madam President, there being no further business, I move we adjourn until Tuesday, March 13th, at 3:00 p.m.

THE PRESIDENT: On motion, the Senate stands adjourned until Tuesday,

March 13th, at 3:00 p.m. Senate is adjourned.

(Whereupon, at 5:37 p.m., the Senate adjourned.)