NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 19, 2001

3:07 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

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

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

THE PRESIDENT: 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 18, the Senate met pursuant to adjournment. The Journal of Saturday, March 17, 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 Bruno.

SENATOR BRUNO: Madam President, I believe I have a privileged resolution at the desk. I ask that it be read in its entirety and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 906, commemorating Good Joes Day, 2001.

"WHEREAS, Saint Joseph is everyone's Patron Saint and not just the Patron Saint of those who are fortunate to bear his name; and

"WHEREAS, The New York State Legislature is appreciative of the vital contributions of those good members known as Joseph; and

"WHEREAS, The Society of Good Joes

is celebrating its 43rd year in memory of the late Joseph Addonizio, and its members have banded together under a common name in the spirit of camaraderie and good fellowship; and

"WHEREAS, Tradition holds that Saint Joseph is the Patron Saint of the working person, of all those who labor with the dignity that only true humility imparts; and

"WHEREAS, On Saint Joseph's Day, in March, the swallows return to Capistrano, heralding the conclusion of a long, cold winter and the advent of a new spring; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations and recognize this great day, Monday, March 19, 2001, in commemoration and deliberation of all Good Joes in the State of New York, to be celebrated on Tuesday, March 20, 2001, in the honor of all Good Joes of this Empire State; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to Mrs. Rose Addonizio."

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Madam President, I think it's appropriate that I might say a word or two about Good Joes.

And I say that very humbly, because there are some good Joes and there are some great Joes. And Joe Addonizio was one of the great Joes that 43 years ago started the tradition of Good Joe Day in the Legislature.

And we have some Good Joes now in the Assembly -- Joe Lentol, Joe Robach. Who else? Joe Morelle. Joe Crowley, in Congress, presently serving.

And, Madam President, they're all Democrats. But they're still good Joes.

(Laughter.)

SENATOR BRUNO: And I am proud

that I represent this side of the aisle in the Legislature as a Joe.

Whether I'm a good Joe a great Joe, Senator Paterson, I'm going to leave to your good judgment. And I wouldn't ask for a vote on it.

But St. Joseph is a patron saint to all hard-working people. And Joes are known to be objective, impartial, well-intentioned, committed, and, in the Legislature, excellent, outstanding legislators.

So, Madam President, thank you for your attention, and my colleagues, thank you for your support on Good Joes Day. And I believe there are some refreshments in Assemblyman Lentol's office, and everyone is invited to participate. Thank you.

And we're opening up this resolution to all of you non-Joes who are Good Joes today.

THE PRESIDENT: Any of the members who do not wish to be included on the resolution, please notify the desk.

Senator Paterson.

SENATOR PATERSON: Madam

President, on behalf of the Minority Leader, Senator Connor, we believe the Majority Leader to be a Great Joe. And we're hoping that he will demonstrate it as time goes on, and we gladly would like to be on this resolution for all the great Joes in Albany.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President, is there any housekeeping at the desk that we can take up at this time?

THE PRESIDENT: Yes, there is, Senator Bruno. Thank you.

SENATOR BRUNO: Could we take it up at this time, Madam President.

THE PRESIDENT: Yes, we will.

Senator Meier.

SENATOR MEIER: Thank you, Madam President.

On page Number 19, I offer the following amendments to Calendar Number 191, Senate Print 1302, and I 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.

SENATOR MEIER: Thank you, Madam President.

On behalf of Senator Balboni, I request that on page Number 9, I offer the following amendments to Calendar Number 44, Senate Print Number 859A, and I 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 MEIER: Thank you, Madam President.

THE PRESIDENT: Senator Bruno, we have a substitution.

SENATOR BRUNO: Can we take the substitution up at this time, Madam President.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 21, Senator Stafford moves to discharge, from the Committee on Finance, Assembly Bill Number 7121, and substitute it for the identical Senate Bill Number 3456, Third Reading

Calendar 220.

THE PRESIDENT: The substitution is ordered.

Senator Bruno.

SENATOR BRUNO: Madam President, can we ask for an immediate meeting of the Housing Committee in Room 332.

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

Senator Bruno.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 106, by Member of the Assembly Lentol, Assembly Print Number 1437, an act to amend the Civil Practice Law and Rules, in relation to requiring.

SENATOR PATERSON: 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 PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 147, by Senator Saland, Senate Print 588 -

SENATOR PATERSON: Lay it aside.

THE SECRETARY: -- an act to amend the Family Court Act, in relation to procedures.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 158, by Senator Wright, Senate Print 1087, an act to direct the Department of Public Service.

SENATOR PATERSON: 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 PATERSON: Lay it aside, please.

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 PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 195, by Senator LaValle, Senate Print 2082, an act authorizing the Office of Real Property Services.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 200, by Senator Trunzo, Senate Print 2032, an act to amend Chapter 672 of the Laws of 1993.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number

220, substituted earlier today, Assembly Budget Bill, Assembly Print Number 7121, an act to amend Chapters 50, 53, and 55 of the Laws of 2000.

SENATOR PATERSON: 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 start with the controversial calendar, starting with Calendar Number 220.

THE PRESIDENT: The Secretary will read Calendar 220.

THE SECRETARY: Calendar Number 220, substituted earlier today, Assembly Budget Bill, Assembly Print Number 7121, an act to amend Chapters 50, 53, and 55 of the Laws of 2000.

SENATOR STACHOWSKI: Explanation.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Madam President, thank you. I apologize for talking to one of my colleagues. I usually am right here.

THE PRESIDENT: An explanation has been requested, Senator.

SENATOR STAFFORD: I believe I explained this the other day, so I'll be very, very brief. And possibly there may be some discussion, because I remember there was some discussion last Tuesday.

So what I will say, Madam President, complimenting all those involved in the Executive branch, including yourself and the Governor, in my years here, which aren't few, this is one of the smallest, if not the smallest deficiency appropriation, deficiency budgets that I've seen here in the Capitol. And it certainly shows that everyone involved is being very frugal.

Now, this budget does provide for some appropriations that do not affect our bottom line; in other words, call for no state appropriations from the General Fund. And these are the appropriations concerning the Retirement System. And this is an appropriation that is of three -- a little over $3 million. And it's for administrative costs associated with the pension reform

measures enacted last year.

Also, we have an appropriation for $420 million, which involves the Internal Service Fund.

And they gave me a new memo. I wish I had the same memo that I had from last Tuesday, but I'll work through it. I'll work through it.

Also for the General Fund, however, we have a $23.5 million appropriation. That involves the workmen's compensation -- now they're giving me the one from Tuesday. They're going to confuse me. This involves the Workmen's Compensation Fund, and that is from a court order, or results from a court order. And we're going to have to pay back money to the insurance funds.

And also, we have a $96.8 million appropriation for the State University Hospital income reimbursement account. And that, of course, involves funds that have been collected but we have to appropriate. But that does not involve the General Fund.

And finally, we have a $19.6 million appropriation for extraordinary

costs, and this is for snow and ice control. And of course I'm pleased to see this necessary, because of course we live on snow up where I come from.

And we're having a very good year, I might add. Some would almost say too good, but I wouldn't. Even in Lake Placid, where they were going to possibly call a state of emergency, everyone was smiling. And in Plattsburgh, they weren't smiling quite as much. But, yes, the people who are selling snow tires and galoshes were having a good day.

So with that, I would conclude my remarks. And I see that Senator Stachowski has worked over the weekend.

THE PRESIDENT: Senator Stachowski.

SENATOR STACHOWSKI: Madam President, I'd just like to briefly speak on the bill.

I asked Senator Stafford a series of questions last week. And even though, as much as I would like to take up everybody's time with those same questions, I'm just going

to make a few remarks so that if there were people on my side that didn't get an opportunity to ask the questions they had in mind last week, maybe my comments will refresh their memories and they'll think about the questions they maybe weren't quite clear on.

But I recall asking Senator Stafford about the hospital money and how that would -- why we had to do that. And he pointed out it was because of the charges the hospitals had, and without this movement of appropriation they couldn't spend this money and therefore be in a position to continue operating.

And as we pointed out last week, in a large area -- for example, up here, and since we are in Albany and upstate, that with Syracuse Med being such a major hospital for a lot of Central New York -- and it affects so many people's districts because they have smaller hospitals that may not have some of the procedures or equipment necessary to do some of the more difficult procedures that may come into their hospital. Oftentimes people are Medivacked to Syracuse Med to handle those

kind of cases.

I know that's a common practice in Oneonta, for example; people at Fox Hospital will be sent to Syracuse for heart procedures of certain types. And I would imagine from Senator Meier's area, too, that they would be sent to Syracuse if there was a more difficult type of procedure. So that it's important that we keep those hospitals operating.

I know that the insurance part we discussed at length, because Senator Stafford pointed out that by giving this money back, we will be saving money. And how we'll save money is that the reserve will get bigger and that the next round of workmen's comp fees should be less as a result of this court case, giving money back.

So that hopefully we'll see that in the near future, and that the businesses that are constantly calling all of us complaining about their high cost of workmen's compensation coverage will somewhat be lessened, again, by this part of the deficiency budget.

And in DOT, obviously, most of us

have seen more snow and ice than maybe we'd care to see.

In Buffalo this weekend we had a lot of snow that, quite frankly, I wasn't ready for. I had figured, well, St. Patrick's Day parade coming. But it seems like God has an interesting sense of humor.

Every year in Buffalo, right around the St. Patrick's Day parade, He has a storm. I don't know why. Maybe because all the snakes are out of Ireland. I'm not sure. But He has a snowstorm or an ice storm almost every year.

And so we're glad that there's more money to remove the snow and ice. And we saw all the plows out on the Thruway, cleaning up that western New York section all the last weekend.

So those are the things we're paying for. And obviously the first part is another piece; the Department of Audit Control needed some funding to take care of some of the additional workload they had because of the retirement and the elimination of the 3 percent contribution by various employees.

And I'd like to again thank Senator Stafford for all the wonderful answers he gave to me last week. And that's why I didn't feel that it was necessary for myself personally to ask that whole series of questions again, because I remembered all his answers. And hopefully I did a good job in somewhat repeating them today, rather than taking us all through those questions. Because I assumed that some other members from my side would have questions for him, and I didn't want to take their time with my repetitive questions, so I just figured I'd do a slight summation of what our conversation was last week so that if they had any questions and maybe they didn't think of them off the top of their head, that would rekindle the memory of the question they had and therefore they could ask them themselves.

And thank you, Madam President.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: Madam President, I have a couple of questions dealing with the deficiency aspects of the SUNY hospital problem. If the Senator would

respond to -- is it a coincidence that -

THE PRESIDENT: Senator, do you yield, first of all, Senator Stafford?

SENATOR STAVISKY: Oh, sorry.

THE PRESIDENT: Senator Stafford, do you yield, sir?

SENATOR STAFFORD: Yeah.

THE PRESIDENT: Thank you.

Go ahead, Senator.

SENATOR STAVISKY: There's a close correlation between the $96.8 million and the $116 million in the deficit aspect. Is that coincidence?

SENATOR STAFFORD: I didn't get -- I'm sorry, I didn't hear your question.

SENATOR STAVISKY: My question, Madam President, involves the number - involves the $116 million deficit compared to the $96.8 million sudden windfall we have. The fact that the two numbers are not that far apart, is that a -- I assume that is a coincidence.

SENATOR STAFFORD: Well, Senator, you'll find -- and of course I realize you've been here a number of years and you've learned

a great deal, and you'll continue to. You'll find that one man's floor is often another man's ceiling. Now -

SENATOR STAVISKY: As long as it's not a glass ceiling.

(Laughter.)

SENATOR STAFFORD: I won't go there.

(Laughter.)

SENATOR STAFFORD: I think you could say that probably there is a possibility, but the numbers aren't the same. And I would say that this that's being asked to be appropriated is what we feel is available and what we feel is necessary.

SENATOR STAVISKY: Is this a one-shot revenue feature or is this -- Madam President, if the Senator would yield for another question.

THE PRESIDENT: Senator Stafford, do you yield, please?

SENATOR STAFFORD: I do.

SENATOR STAVISKY: My question is, how do you explain the sudden windfall of monies?

SENATOR STAFFORD: Well, you mentioned "one-shot." I don't use those terms. Because often what people say is a one-shot, you can debate that. Because they often say it's not going to be coming back, we won't get it next year, we won't -- you just -- that just is a phrase that I think is overused and I think is sometimes used just to convenience those who are trying to possibly put forth an agenda, so to speak. None of us have agendas, of course.

But I think, again, the money's available there, and we are appropriating these funds. We're so fortunate that we can.

These hospitals, as has been mentioned -- Senator Stachowski and I agree on the importance of these hospitals, teaching hospitals. And as a matter of fact, we have always found that we keep them going.

But as I mentioned here, when I was here 36 years ago, we would have the hearing for the State University and a fellow by the name of Murphy who was here from the -- had been with HEW, and he came to work for Chancellor Gould, and he would sit and explain

our hospitals, explain the problems we were having, and no one understood him. Because he of course was an expert, because he came from Washington. And he came here, and he would tell us why we were -- needed these expenditures.

We agreed with him then, I agreed with him then. I agree still that it's so necessary. And the Governor has provided this legislation. And I would say that it's certainly money, when we pass it, very well spent, and we should be very proud of the hospitals that these funds affect.

SENATOR STAVISKY: I think we're all very proud of the SUNY hospitals, particularly since they encompass the entire state.

How is the $96.8 million going - if the Senator would yield for another question.

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

SENATOR STAFFORD: I certainly do.

THE PRESIDENT: Thank you. You

may proceed with your question.

SENATOR STAVISKY: Thank you.

How are the monies going to be appropriated? Is there a formula, or does it all go to one hospital, or is it a third, a third, and a third?

SENATOR STAFFORD: I think one thing that the Governor has done, and all the people who work with him, they've moved toward allowing the individuals, the officials responsible, to make the appropriate decisions.

I know we were always concerned years and years ago that we would have a budget and the first thing you knew, you had someone making a decision that had little experience in the field, and the decision was made without all of the information being provided.

Now we have a situation where we have the Chancellor and his staff and we have the hospitals and their staff -- the hospitals have a staff, and I should say the presidents of the hospitals, the presidents of the universities where the hospitals are, having

dialogue, information exchanged, decisions made.

And we've always found that the decisions have been objective in the past few years and have been decisions that were professional. And I would suggest that this is going to continue.

SENATOR STAVISKY: On the bill, Madam President.

I commend both Senator Stachowski and Senator Stafford for their explanation of the entire deficiency appropriation, particularly as it refers to the SUNY hospitals.

I sincerely hope that people are not getting sicker all of a sudden, that we have the additional revenues, that the trend continues in terms of additional enhanced revenue.

And I commend both the Finance Committee for coming up with the revenues, and I certainly intend to support the bill.

THE PRESIDENT: Senator Onorato.

SENATOR ONORATO: Madam President, will the Senator yield for one

question from me.

THE PRESIDENT: Senator, do you yield?

SENATOR STAFFORD: By all means.

THE PRESIDENT: Thank you.

You may proceed, Senator.

SENATOR ONORATO: Senator Stafford, does this represent the entire deficiency budget of last year, or is there any further ones coming out after this one?

SENATOR STAFFORD: Well, once again -- I hate to go back to what I mentioned earlier, but I will again go back and -- from my experience, one thing in government you never say is never. If you do, you'll find that sometimes that wasn't exactly right.

But my suggestion here would be that there will be one deficiency appropriation, and it would appear that this is the bill.

SENATOR ONORATO: Thank you, Senator.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam

President, if the sponsor will yield to a question.

THE PRESIDENT: Senator, do you yield?

You may proceed, Senator Dollinger.

SENATOR DOLLINGER: I'm concerned, Senator Stafford, about the provision dealing with workers' compensation and the rebate of the excess assessment on premiums that we collected and now we are reimbursing to the state's insurance carriers.

Through you, Madam President, my question is, have you seen a copy of the memorandum of understanding that's referred to in the bill? And if so, could you make a copy of that available to me on the floor now, so I could just take a look at it?

SENATOR STAFFORD: Now, you know better than that, Senator, to be asking me that. Now, I'll be glad to sit down with you and we can discuss this and we'll see what's available.

But let me first answer your question this way. Where we were in workmen's compensation six years ago and where we are

today, I think we both have to agree that a great deal of work has been put into the field -- oh, do you have the memorandum?

SENATOR DOLLINGER: No, I don't have the memorandum. I have the bill, Senator Stafford. It refers to the memorandum. That's why I asked.

I didn't mean to interrupt. Please continue.

SENATOR STAFFORD: No, I interrupted.

Now -- don't scowl. Don't scowl.

Now, we just have done such -- we. The Governor and all involved in the Executive branch, and the Legislature has been a part of it.

Do you remember -- in fact, we even had a late budget once when one of the issues was workmen's compensation, and we were able to pass legislation. The Governor, with his leadership, has made our system more efficient and has also provided the necessary benefits to those involved.

Now, the companies receiving the rebates, so to speak, will be of course

required from the court case -- again, see, I say that, from the court case, because I think you're interested in the judiciary.

SENATOR DOLLINGER: I am, Senator, as you properly surmised.

SENATOR STAFFORD: Right. But following the decision of the judge, the funds will be, of course, made available to the appropriate companies.

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

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Does the memorandum of understanding between the State of New York's Insurance Department and these carriers, does it include any additional prospective relief, Senator? Is there anything beyond the refund of the $23 million that we are also required to do for these carriers in the future?

SENATOR STAFFORD: Well, once again, being a person who is interested in the judiciary and who knows how important it is

when you're negotiating a case, you find that it would be wrong to go much further than making a broad stroke with a conceptual brush here. Because if we were to get into specifics, we wouldn't, of course, be doing our job.

But the answer is no.

SENATOR DOLLINGER: And again through you, Madam President, if Senator Stafford will continue to yield.

SENATOR STAFFORD: Correct.

THE PRESIDENT: Senator, do you yield? I think that was a yes I heard.

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President, through you.

Is there anything in the memorandum of understanding between the State Insurance Department and certain workers' compensation insurance carriers that requires that the amount of the repayment to these carriers be rebated to the people that paid the premiums on these policies?

Is there anything that in essence takes the benefit of this settlement and makes

sure that it goes back to the policy payors rather than to the insurance companies?

SENATOR STAFFORD: I -- actually, I will go back to an answer that I gave to Senator Stachowski last Tuesday.

He was very, very perceptive, as you are, and got right to the heart of the matter and got right to the point and asked, just as you are, about the benefits going back to those who are covered by workmen's compensation.

And as I mentioned to him, that with these refunds -- and by the way, one of the reasons that the memorandum can't be available too is because of the negotiations And I should, in courtesy, point that out to you. I meant to.

But when the companies receive these benefits, then of course there will be actuarial work done, and the people receiving benefits will benefit from these changes.

SENATOR DOLLINGER: Through you, Madam President, just one final question, if I may.

THE PRESIDENT: You may proceed.

SENATOR DOLLINGER: Thank you.

Through you, Madam President, the bill language says that the agreement is between the State Insurance Department and certain workers' compensation carriers. It's my understanding that the memorandum of understanding does not include the State Insurance Fund, which insures about 50 percent of the total workers' compensation premiums in this state.

My question is, does this description of certain workers' compensation carriers include every other workers' compensation carrier that paid into this fund, or is it only a group of them, which would then leave us open to the option that the carriers who haven't sued us would at some point sue us to reclaim their portion of the fund?

I'm trying to find out whether this is the exclusive settlement with all the non-State Insurance Fund carriers in the state, so that we'd have a complete settlement of this entire dispute.

SENATOR STAFFORD: Well, once

again, I certainly understand your asking questions here. And they're good questions. And it shows a keen insight into the problems, so to speak. But once again, it would be wrong for me to get into real detail here because of these negotiations.

But I will answer your question.

SENATOR DOLLINGER: Thank you.

SENATOR STAFFORD: And under the law, any company that is not part of the litigation, there is a provision in the law whereby there would be audits and then decisions would be made.

SENATOR DOLLINGER: Through you, Madam President, I want to thank Senator Stafford -- as always, cogent, on the nose. I appreciate the what appears to be complete response to my questions.

However, Madam President, I'm still going to vote against this measure, despite Senator Stafford's comments, because at least from my point of view, I would have felt more comfortable having seen the memorandum of understanding between the Insurance Department and the workers' compensation carriers in

order to determine the possible prospective additional relief that might be available.

I appreciate the fact that Senator Stafford has suggested that once there's a - this rebate or this premium is repaid to the carriers that there would be a reauditing of their expenses and then the State Insurance Department could make an adjustment in the rates they charge.

I would, however, suggest that the better approach would be to simply require, in the memorandum of understanding, that the total amount of the additional funds erroneously paid to the State of New York would then be rebated back directly to the people that paid the premium.

These are not necessarily the current customers of the insurance carriers, but they were the customers of the insurance carriers during the last four or five years when these assessments were, as Senator Stafford properly points out, and I think we were told by the courts, we erroneously imposed them.

So from my point of view, Madam

President, I think there are a number of other questions about various aspects of this, but I think to have the memorandum of understanding, to be able to be absolutely assured that we have no prospective problems with this relief package, and to be assured that the rebate of these premiums ends up in the hands of the premium holders, I would like to see those additional protections. They may be in the memorandum of understanding. I don't know; I haven't even seen it.

But in the absence of that, Madam President, I'm uncertain about where this money actually ends up. It ought to go back to the people that paid it. And so therefore I will be voting in the negative, Madam President.

Thank you.

THE PRESIDENT: Senator Smith.

SENATOR MALCOLM SMITH: Thank you very much, Madam President. Through you, Madam President, if the sponsor would yield for a couple of questions.

THE PRESIDENT: Senator, do you yield? Thank you.

You may proceed, Senator Malcolm Smith.

SENATOR MALCOLM SMITH: I believe -- through you, Madam President -- the sponsor indicated sometime last week that in the last I guess his ten years of experience, this has been the lowest deficiency budget that we had to vote upon.

SENATOR STAFFORD: Madam President, I would ask for the question again. I didn't hear it.

SENATOR MALCOLM SMITH: I believe the sponsor -- through you, Madam President, I believe the sponsor, in part of his explanation last week, discussed the fact that in his ten years, this has been the lowest deficiency budget that he's been involved with.

SENATOR STAFFORD: No, I said 36 years, Madam President.

SENATOR MALCOLM SMITH: Madam President, through you. Would the sponsor explain whether or not this is roughly around the same period in time each year that a deficiency budget is put forward?

SENATOR STAFFORD: Oh, no. I have -- as far as doing anything the same time here in Albany, I've never found that to be the case. I've found it varying from various times.

And I think, generally speaking, we're in the ballpark, you know, as far as the time that the deficiency budget comes up. But no, it -- there are many vagaries and vicissitudes, you know, when it comes to legislation.

SENATOR MALCOLM SMITH: Madam President, through you.

THE PRESIDENT: Senator M. Smith, do you have another question?

SENATOR MALCOLM SMITH: Yes.

If in fact this is -- there have been many others, and I understand from counsel that there have been some times when there's been no deficiency budget, could the sponsor -- or would the sponsor explain whether or not there is any cost above and beyond the deficiency budget they are asking for right now?

And basically, Madam President, in

order to prepare this deficiency budget, is there a cost associated with the preparation of this deficiency budget or is it already built into the agency's budget from the prior year?

SENATOR STAFFORD: Well, first let me -- Madam President, let me mention about not having a deficiency budget. About the only times I can remember us not having a deficiency budget is when we had such a big deficiency I don't think they wanted to send it up. And that was before the last six years. That wasn't during this period.

And as far as the costs, they're regular costs. And I would say there's no additional costs, really, what we would say, as far as government is concerned.

SENATOR MALCOLM SMITH: Madam President, through you, I guess what I'm trying to find out from the sponsor is in business you can anticipate what your costs would be, based on prior experiences, whether it's four years or five years behind that.

My question to the sponsor is, in the preparation of this deficiency budget,

does the agency or the agencies build in the prior year what it's going to cost them to then do an analysis and preparation of this deficiency budget? Or is it now built into the deficiency amount in which they are now requesting?

SENATOR STAFFORD: Well, I hear your question. And now that it's clear in my mind, I can even be more helpful and explain that, really, the preparation of the budget, of the deficiency budget, is done by those who work in this field. And I don't think this involves any real additional work that would cost more for the state.

And actually, I would point out that I don't think there's much more cost in a deficiency budget than there is in the bills that we all introduce. And some of the bills that I see introduced here, I sometimes wonder whether we should have had the expense of those bills being printed.

I have to say, Madam President, that I used to introduce a lot more bills myself, though. I -- let me make that clear.

SENATOR MALCOLM SMITH: Madam

President, through you. If we could approach the State University of New York -- and this is Item 3 in the budget -- we talk about forms of revenue which the State University of New York feels that they have to -- or they cannot spend, so therefore there is need for this additional appropriation. Could the sponsor give us a description of what those categories are in which the revenue is generated from.

SENATOR STAFFORD: This gets confusing. And of course it's very easy for me to get confused.

But I would suggest to you what this is, it's money that has -- no, don't, you'll get me confused. What this is is money that's been collected but it takes a law in order for it to be spent.

SENATOR MALCOLM SMITH: Madam President, through you. I believe the sponsor was explaining to me that the $96 million that's being requested is exactly what has been received.

SENATOR STAFFORD: This is what the Executive branch, which of course includes

the State University, includes the presidents of the units that have the hospitals, those responsible, it's an appropriation of what they thought was reasonable and what makes sense to spend from this fund.

SENATOR MALCOLM SMITH: Madam President, through you.

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

SENATOR MALCOLM SMITH: Let me ask the question a different way.

THE PRESIDENT: Just a minute, please.

Senator, do you continue to yield, please?

SENATOR STAFFORD: Yes.

THE PRESIDENT: Thank you.

Go ahead, Senator.

SENATOR MALCOLM SMITH: Perhaps I could ask the sponsor the question a different way. And that is assuming -- assuming the estimators, as he put it, that generated this estimate of $96 million, if for any reason that appropriation isn't spent or more than what they estimated is spent, how do we handle

that?

SENATOR STAFFORD: I also should have mentioned -- you know, when I talk about my memos here, it's the exact memo that I had last week, except I don't have my notes on it. So I thought it was a different one. So I want to make it, in fairness to these good people that support me.

And I would also point out, this - these funds come from a higher patient volume, and of course they have additional funds. If any additional funds are spent other than what we're appropriating, we would have to have a budget bill to appropriate those funds.

SENATOR MALCOLM SMITH: Madam President, through you, if the sponsor would continue to yield.

THE PRESIDENT: You may proceed, Senator.

SENATOR MALCOLM SMITH: If in fact we would have to have an additional budget bill passed, Madam President, through you, perhaps in the 36 years that the sponsor indicated we've had these many budgets, could he give me an idea of what the cost has been

associated with producing a second deficiency budget?

And in fact, if efficiency is where we're looking to go with it, would it not be better to do an estimate, using whatever kind of econometric model he wishes to come up with a number, so we don't have to be doing this over and over again every year?

SENATOR STAFFORD: Madam President, I believe I can really give a good answer toward what your question is. And that is, we could also do this in the regular budget, so that would of course not have a deficiency.

But let me go back to the deficiency budget again. I think in fairness I should respond. And I hear exactly what you're saying: Here we are, having to have more additional work and additional costs.

As I said before, the numbers are there. And those that are working in this field really do this as part of their work. And it doesn't take any additional hours or any additional costs to do this.

And once again, to emphasize my

point, really, it's not much more than printing the bill. And I point out again, all of us here, I find, introduce bills. And, really, the costs of each bill, I think sometimes we would have less costs if less bills were introduced. But of course I'm saying this to explain it's really just another bill.

SENATOR MALCOLM SMITH: Madam President, through you, one final question.

THE PRESIDENT: You may proceed, Senator.

SENATOR MALCOLM SMITH: What I'm trying to understand from the sponsor -- and I know he indicated it does not cost any additional money in the preparation there of this bill.

I guess my only question is, if in fact we have to take time away from these particular budget analysts doing what is necessary for the current year's budget, to take time and, as one would call it in business, downtime to go back to a prior year's budget, couldn't there and shouldn't there be a more efficient way to project what

a potential deficiency budget may be and actually build that into the bill and, at such time as it is needed, it can then be utilized? As opposed to coming back and doing the paperwork and having to go through this process all over again.

SENATOR STAFFORD: Madam President, this is administration. And what you do here, and what's done so well -- and this is what our Executive branch, Governor Pataki and all those working with him, they're able to, I'm sure, have those that work in the budget field make decisions in the ordinary course of the day -- or evening, or night, as is often the case -- and then have the bill printed.

And as far as additional costs, I would suggest that really what we're doing here is looking for something that isn't there.

SENATOR MALCOLM SMITH: Madam President, through you. Just going down to DOT Item 4, I note that on the bill it talks about extra costs for snow and ice control incurred by DOT. Is this deficiency amount -

again, $19 million, it says, appropriated for operations. Does that preclude or exclude potential damages that may have come through the expense of dealing with snow and ice control?

SENATOR STAFFORD: Well, what I believe this is, again, is the additional ice and snow that we've had.

And as I mentioned to you, I am very pleased to have this additional snow. We have had crowds up in the North Country this past weekend, and of course that's really so important to us as far as our economy goes.

But again, you do have to have reasonable care as far as ice and snow control, and that's what that funding is for.

SENATOR MALCOLM SMITH: Madam President, through you, one final question. And perhaps -- Madam President, through you, if the sponsor will yield.

THE PRESIDENT: Do you have a question, Senator?

SENATOR MALCOLM SMITH: Yes.

THE PRESIDENT: Senator, do you -

SENATOR STAFFORD: Yes.

THE PRESIDENT: All right, that was a yes. You may proceed, Senator Smith.

SENATOR MALCOLM SMITH: Thank you, Madam President. If the sponsor could - I understand the sponsor's response to the prior question. I guess what I'm also trying to determine is whether or not we will in fact have to go back and allocate some additional funds toward DOT if in fact there was not a projected cost or there was not some accountability for damages that may have occurred during the time that snow and ice control occurred by DOT.

Because on a regular basis during the time in which snow was removed, whether it's through vehicles or tractors, that from time to time there is damages associated with that. And I guess what I'm trying to find out is in fact are we appropriating enough funds to make sure all is covered so that we don't have to come back this way again.

SENATOR STAFFORD: Well, Madam President, this is something I learned even before I got here. And that's that if you

tell me how much snow we're going to get next year and you're sure of it, you're certainly doing something that I can't do.

SENATOR MALCOLM SMITH: Madam President, if -

SENATOR STAFFORD: If you're going to tell me that we're going to get a certain number of days that we have to provide for ice on the roads, I'm afraid that, again, you're doing something that I can't do.

Now, I will say this. I think that we have very, very efficient and capable people working in this field. And of course we found that we had 3 feet of snow in Plattsburgh, 4 feet of snow in Lake Placid, about 2½ feet in Albany. Buffalo, we had 12 feet -

(Laughter.)

SENATOR STAFFORD: No? They said it. They said 12 feet.

But we had much more snow this year, and therefore this was the requirement. As far as saying will we need any more, this is March. And remember, those of us who live in this area -- in fact, any area. Some of

the worst storms in New York City have been in March. We're now -- the blizzard of 1899, that I remember well -

(Laughter.)

SENATOR STAFFORD: And you know how -- what it was like. Senator Stachowski was there too.

But actually, I would say that this has been well thought out. And now, you think I'm going to say I hope that we don't need any more. That's not the case. If it continues to snow and we keep our ski areas open until June, we're in all favor of that.

So I probably have given you a roundabout answer to a -- well, I'll leave it at that.

SENATOR MALCOLM SMITH: Madam President, through you, I have to ask one more question.

THE PRESIDENT: You may proceed, Senator.

SENATOR MALCOLM SMITH: And I will tell you, Madam President, I have always been enamored by the verbal intellect of the sponsor as well as his ability to manage

different professions. And meteorology is one that I was never good at.

But I can tell you there's one thing that I do have a concern about, and that is numbers. And the question that I do have and I still have, Madam President -- and perhaps I didn't explain myself well, and from time to time I know I have a deficiency in doing so -- and that is on the DOT appropriation of $19 million, there is discussion around operations for snow and ice removal. And I will try to be a little more clear about my question.

In the $19 million that is appropriated, is there also appropriate funds to cover the cost of damages that may have ensued through the operations of snow and ice removal? And maybe that's a question that's a little bit more clear to the sponsor.

SENATOR STAFFORD: Madam President, as far as verbal intellect, you'll find that some of us are merchants of words. And I see some who have gone to that school behind you, and other -

As far as damages go, once again,

we're dealing -- and please excuse me for using these words again, but we're bringing up vagaries and vicissitudes again. Because when it comes to damages, I suppose you're wondering whether or not there are going to be causes of action brought out by the snow and the ice.

And if that is the question, you never for sure know exactly what will result. But I will say usually they're between parties that don't really -- that it doesn't affect the state budget.

And if that does not answer the question, I would have to answer the question with a question. We'd have to define really what we mean by damages. But since it's the last question, maybe we can't do that, I don't know.

SENATOR MALCOLM SMITH: Madam President, on the bill.

Let me first thank the Senator for indulging a freshman to the degree that you have. I appreciate your patience with my line of thought, which I know from time to time may be difficult to follow.

But the concern that I do have - and I'm not clear where I will be on this bill, Madam President. I'm hoping that with the debate that ensues from my other colleagues, I will then be educated enough to know where my vote will lie.

But what I'm having some difficulty with is the fact that if we have gone through this process, as the sponsor has said, 36 years in a row, or 36 years, then it would seem to me that I would have some semblance of understanding of what I can anticipate down the road.

You know, recently I heard the President talk about his tax program, and he wanted to sort of ask people to bet their entire career or their entire income for ten years. Which tells me that there are some people in some form of this budget life that understands numbers and how to project what costs will be down the road.

And I just find it difficult to believe that after 36 years, we still take the time to go through the analysis. And although the sponsor feels as though there is no money

lost by doing so, the fact of the matter is there has to be. There's no question about it. Anytime I take a staff person and put them four hours to do something else, it means that they're not doing something that they could be doing on the affirmative side. So there's definitely a loss in some time.

And, as we continue to go through our questioning, the sponsor couldn't tell me whether or not there's been an appropriation in this bill or in their former appropriation, the current year, to cover the cost for that new time or that downtime that would occur for them now working on this deficiency budget.

It just seems to me that it is pretty clear that a deficiency budget is a normal thing. So either there is something in the spirit of efficiency that we are not doing as legislators to make sure that we know where our money is going to be spent and how it's going to be spent, or there is some new model, there's some new theories we need to incorporate.

So I would just hope, Madam President, as the debate ensues, that perhaps

those answers would come out. Because I don't think it takes a rocket scientist to understand that once, twice, three, four times you do something, clearly it's time, then a pattern has developed, that you know it is not necessary to try to figure out what to do every year but you can project it and then, if necessary, put that in the budget. And if in fact you have to use it, so be it. And if you don't have to use it, then that goes back to a surplus, it goes back to the General Fund.

But I think there might be a more efficient way of coming up with a deficiency budget. Thank you.

THE PRESIDENT: Senator Duane.

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

THE PRESIDENT: Senator Stafford, will you yield?

SENATOR STAFFORD: Thank you, Madam President. I don't want my smiling and trying to provide collegiality here to mistake that my patience possibly is being tested a little. Thank you.

THE PRESIDENT: You will yield for a question?

All right. You may proceed, Senator Duane.

SENATOR DUANE: Thank you, Madam President. I notice that the majority of the deficiency funding is for PS -- personnel services -- funding. I'm wondering whether or not that means that we should have -- that the Retirement System should have hired new employees, or is this -- is that money to go for overtime?

SENATOR STAFFORD: Well, as far as the Retirement System is concerned, once again, this is not a cost to the General Fund.

And this has resulted not from inadequate work, so to speak, it really came about -- as I said, it's due to the fact that it's additional costs, really, from those who have retired that were -- it was not anticipated. But I don't think it was inefficiency.

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

THE PRESIDENT: Senator, do you -- that was a yes, I believe.

You may proceed, Senator Duane.

SENATOR DUANE: I understood the sponsor to say that this would have no cost to the General Fund or it's not General Fund money. But couldn't it mean, then, that the money could have been retained in the system and spent in 2001-2002? Why do we have to do it now?

SENATOR STAFFORD: Well, let me attempt to explain here, in a general way here, what a deficiency budget is. Really, these are funds that are being appropriated and it was not actually foreseen that these costs would be necessary or it would be possible to appropriate these funds.

And if you're asking whether this had been foreseen, I think that the fund is being well-run, I think it's being well-managed. And I don't think that it would have been -- if I understood your question, would have been something where you would have wanted to see additional people hired.

SENATOR DUANE: Through you,

Madam President, if the sponsor would continue to yield.

THE PRESIDENT: Senator, you do continue to yield for -- you have a few questions, Senator Duane?

SENATOR DUANE: A few would be accurate, yes, Madam President.

THE PRESIDENT: All right. You may proceed with a few questions.

SENATOR DUANE: I just want to preface my next question by saying that I'm not claiming inefficiency in the spending by any means.

However, it's mid-March, and I'm wondering why we're doing this in the deficiency budget now rather than just waiting until the budget that we're actually preparing at this moment for the next fiscal year.

SENATOR STAFFORD: I'm always pleased when what I'm thinking is what I'm being advised, because it always makes me feel that I'm on target here.

These were -- we provided increased pension benefits last year also in legislation. This has now come due. And

we're just providing the funds which provide for those benefits from last year.

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

THE PRESIDENT: You have authorization for a few questions, Senator. You may proceed.

SENATOR DUANE: Thank you, Madam President. I'm just trying to do it correctly.

THE PRESIDENT: This is being done correctly, Senator. You may proceed.

SENATOR DUANE: I may come back to that, because I'm still not sure I'm getting the answer to the question I'm asking.

But I know that the veterans' retirement credit buy-back provisions were enhanced. And I'm wondering if there's a savings for the veterans -- which I assume there is, which is why we're doing this -- but what the savings would be to veterans.

SENATOR STAFFORD: Madam President, 22,000 people have applied for the buy-back. And it's almost impossible to

specifically get into detail exactly what it would mean for one category.

SENATOR DUANE: Through you, Madam President, I'm just wondering why that is.

SENATOR STAFFORD: Because it's very complex, Madam President.

SENATOR DUANE: Through you, Madam President. Does anyone know this, or do we just have to wait and see how it plays out?

SENATOR STAFFORD: Madam President, until all the applications are reviewed, I think you've used very, very good verbiage and I think you're right on the track when you say it has to play out.

SENATOR DUANE: Through you, Madam President, I'm hoping the sponsor could tell me how the extra-year credits are going to work for Tier One and Tier Two members, how the extra-year credits for Tier One and Tier Two workers would work.

SENATOR STAFFORD: Madam President, I'd be more than pleased to sit down with the Senator and discuss that field. However, that really doesn't have anything to

do with this legislation.

SENATOR DUANE: Through you, Madam President, I was under the impression that there would be an enhanced benefit for Tier One and Tier Two members.

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

Senator Stafford.

SENATOR DUANE: Is my impression correct?

THE PRESIDENT: I didn't hear a question, sir. If you could ask a question.

SENATOR DUANE: Is it not correct that there are enhancements, through extra-year credits, for Tier One and Tier Two members?

SENATOR STAFFORD: There is. And, Madam President -- that, Madam President, was automatic. And that's no additional legislation. And of course it's not in this legislation.

SENATOR DUANE: Through you, Madam President, I actually don't believe that that's true.

THE PRESIDENT: Senator Stafford,

first of all, do you continue to yield for a question, Senator?

SENATOR STAFFORD: By all means.

THE PRESIDENT: If you have a question, you may proceed, Senator Duane.

SENATOR DUANE: I agree that legislation isn't needed. But extra money is needed for the enhancements; is that correct?

SENATOR STAFFORD: The extra money for that field is not in this bill, Madam President.

SENATOR DUANE: Okay. Okay. I'm not sure I agree with that, but -- then I just want to go back and ask a question that I had asked before, because I'm still mystified about why it is that we're doing this today and not doing it in a few months. What difference does it make, why does it have to be part of a deficiency budget?

SENATOR STAFFORD: I think you will be interested in -- Madam President, excuse me, interested. The Comptroller requested this legislation. It was necessary to appropriate this money, as is always done in deficiency budgets. This is money that

is -- for last year was really not reasonable to foresee, and therefore we have this deficiency appropriation.

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

SENATOR STAFFORD: Thank you.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

SENATOR MARCELLINO: Madam President.

THE PRESIDENT: Senator Marcellino.

SENATOR MARCELLINO: Can we call up Calendar 146.

THE PRESIDENT: The Secretary will read Calendar 146.

THE SECRETARY: Calendar Number

146, by Senator Saland, Senate Print 587, an act to amend the Family Court Act, in relation to extensions of child placement.

SENATOR HASSELL-THOMPSON: Explanation.

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

SENATOR SALAND: Thank you, Madam President.

This bill merely says that under Section 1055, the disposition section of the Family Court Act, where a child is before the court pursuant to an abuse and neglect petition and the parents of that child have passed away, the court will have continuing jurisdiction over that child for purposes of supervising and extending that placement.

THE PRESIDENT: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Yes, thank you, Madam President. If the Senator will yield.

THE PRESIDENT: Senator, do you yield?

SENATOR SALAND: Yes, Madam

President.

THE PRESIDENT: You may proceed, Senator.

SENATOR HASSELL-THOMPSON: Thank you, Senator. I had a series of questions, and I hope you will indulge me.

To what extent does the death of a parent render the replacement issue moot?

SENATOR SALAND: Madam President, what this section does is it takes a situation in which a child is currently before the court for purposes of disposition, the parents have died, the court, like in other sections of the Family Court and Social Services Law, requires the jurisdiction -- to be able to continue to have jurisdiction over the child and determine what's in the best interests of that child.

SENATOR HASSELL-THOMPSON: Madam President, if the Senator will continue to yield.

THE PRESIDENT: Senator, do you continue to yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR HASSELL-THOMPSON: Thank you. Upon the death of both parents, shouldn't the child then be placed in adoption rather than foster care?

SENATOR SALAND: Madam President, there is nothing that would prevent a child under these circumstances from being eligible for adoption. The court, in the course of its continuing its jurisdiction, would be able to make an extended placement. Or, if there was someone who wished to intervene for purposes of an adoption, that person or persons could make an application to terminate the extended placement.

But the court, as it's required to do in these situations, acting in the best interests of the child, would be the appropriate repository for making that decision as to whether to continue the placement or accept an application to terminate the placement for purposes of permitting the child to be adopted.

SENATOR HASSELL-THOMPSON: Madam President, if the Senator will continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR HASSELL-THOMPSON: Thank you, Senator. I was looking at the justification, and it speaks to clarifying the court's authority to continue supervision and by necessary extension.

Does -- by necessary extension to the child's placement in foster care, doesn't that preclude what you just said?

SENATOR SALAND: No, it doesn't preclude. Again, there is an extended placement. That does not prevent someone from making application, assuming there's the justification for the application to terminate that placement.

And certainly were there parents, whether it be a parent or parents or whether there be a family member or a non-family member that had an interest in the adoption, and if the court determined that that particular prospective adoption was in the

best interests of the child, I would assume any court would agree to terminate the placement and resume whatever steps would be appropriate for purposes of an adoption proceeding.

And there are children who are placed in foster care who are effectively placed in preadoption settings. They're placed in foster care for adoption purposes, and this is a preadoption placement.

SENATOR HASSELL-THOMPSON: Madam President, if the Senator will continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: If both parents die without this amendment, Senator, what happens to the case?

SENATOR SALAND: Could I -- with that door open, Senator, could -- if I could just -- I'll ask you to repeat that question.

SENATOR HASSELL-THOMPSON: Certainly, yeah.

In the event that both parents die without this amendment being in place, what then happens to those cases?

SENATOR SALAND: There is really a question as to whether or not the court has the authority to continue without some language that basically enables them to do so.

I think, on the whole, courts today have been continuing to proceed as if they had that jurisdiction. There has been some questions raised as to whether or not they do.

SENATOR HASSELL-THOMPSON: Just a couple more questions, if the Senator will continue to yield.

THE PRESIDENT: Senator, will you yield for a couple of questions?

SENATOR SALAND: Yes, Madam President.

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

SENATOR HASSELL-THOMPSON: Thank you.

You allude to Article 10, that's

silent. But doesn't Article 6 of the Social Services Law give the presumption of continuance of jurisdiction to the Family Court when both parents die?

SENATOR SALAND: No, what - what -- depending on what portion of Article 6 you're talking about -- I believe there are a number of titles in Article 6 -- I think what it says there, in two or three different places, is that in order for there to be some type of action with regard to a child who is currently in foster care, there must be an application to the court.

And I'm looking -- my counsel has just given me a copy of the Social Services Law, and I'm looking at Section 383C, which is entitled "Guardianship and Custody of Children in Foster Care." And if you look at that section, (1)(d) says if both parents of such child are dead, it goes on to say that the action would be taken by the guardian of the person of such child lawfully appointed with the approval of the court, or officer which appointed such guardian to be entered of record.

Which basically says that if you want something to happen in that circumstance, you still have to go back to the court, and the court will make whatever determination it believes, again, to be in the best interests of the child.

And it would seem to me that what we're proposing to do in the bill that's currently before us is to harmonize the language in the disposition section, 1055, really with a number of other sections in the existing Social Services Law or Family Court Act.

SENATOR HASSELL-THOMPSON: Would the Senator continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR HASSELL-THOMPSON: I listened to that, and I tried to read that with you. But by virtue of the fact that they have to go back to court, it automatically gives the court the jurisdiction to make that

determination. Hence I don't -- I still don't understand the specific reason for this legislation.

SENATOR SALAND: Well, as I said in my earlier remarks and in my opening remarks -- and perhaps I just didn't say it as clearly as I should have -- what we're really talking about here is enabling a court to have unquestioned jurisdiction to extend a placement where a child who is the subject of the dispositional hearing has lost both of his or her parents.

SENATOR HASSELL-THOMPSON: Right.

SENATOR SALAND: It's -- it fills what some may view, at the very least, technically as a gap and some may view substantively as a gap.

And again, as I said earlier, it's in complete harmony with other relevant sections of both the Social Services Law and the Family Court Act.

SENATOR HASSELL-THOMPSON: Thank you, Senator.

On the bill. Thank you, Madam President.

Now, my concern was that in first reading and trying to spend some time looking at the legislation, I needed to be sure that the language of the legislation did not presume automatically that necessary extension meant foster care. Particularly because our foster-care homes and facilities already experience overcrowding. We're getting all kinds of concerns coming out of foster care in terms of how children are being cared for.

I just received a letter, and it was very interesting that this letter came at the exact time that I was reviewing this legislation, that talked about a parent who had voluntarily, based upon her own considerations, had given up her children on a temporary basis to foster care and in her contact with them was citing the kinds of conditions that exist in the foster care situations.

And because those children are experiencing extreme trauma by separation, we continually want to be sure that if we can keep families together and if we can utilize extended families, as opposed to foster care,

as the presumption of care services, I needed to be sure that that was not the language of this legislation.

Because as a person who comes out of something called family preservation, we always look to extended families, as opposed to foster care, as a mode of caring for children in the death of parents.

So that I appreciate your opportunity to explain this legislation to me and to help me to be clearer as I consider the vote on this piece.

Thank you, Madam President.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: If the sponsor would yield for a question.

THE PRESIDENT: Senator, do you yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR OPPENHEIMER: Well, actually my concern has already been voiced by the prior Senator, Senator Thompson. And if I

accept, which I do, your explanation that we are not foisting more on -

SENATOR SALAND: Madam President, could I ask for a little bit of order? It's hard for me to hear Senator Oppenheimer.

SENATOR OPPENHEIMER: I have heard what you said. And as long as my concern was Senator Thompson's concern, that we weren't foisting onto foster care, which is so overloaded right now, and taking away the option of returning to -- well, in this case, it's if both -- this is if both -- okay, the question is, are both parents dead in this legislation?

SENATOR SALAND: This specifically addresses a situation in which both parents are deceased.

SENATOR OPPENHEIMER: Okay. Now I have another question, then, if you will yield.

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR OPPENHEIMER: Why in the world -- it certainly sounds very logical to

me. I don't understand -- I may be running into something that is beyond the issue. I don't understand why this hasn't passed in the Assembly.

SENATOR SALAND: Perhaps we're more enlightened than the Assembly. I don't understand why it hasn't either, Senator Oppenheimer.

SENATOR OPPENHEIMER: Oh, come on. If the Senator will yield. A little more technical explanation, Senator Saland.

SENATOR SALAND: Well, thank you, Senator. But truly, I'm baffled. I mean, to me this is a no-brainer.

And I -- while we may have differences of opinions, I'm assuming there's brains over there well enough to realize that, you know, this is something that just basically would address a limited number of cases and make sure that the jurisdiction of the court can't be an issue and that the court can proceed in the best interests of the child.

It's something that should not, I think, really have taken as long as it has.

It's something which I would hope at long last -- and perhaps your posing the question may help us to get this done in both houses.

SENATOR OPPENHEIMER: Okay. Thank you, Senator Saland.

SENATOR SALAND: You're welcome.

SENATOR OPPENHEIMER: Just on the bill.

I think this is a good bill. It doesn't affect enormous numbers of children, since hopefully, you know, both parents will not have died. And as long as we keep in mind that the optimal is to keep the family together, intact, with the support services that are necessary for them to live healthy lives. But that is not the issue involved in this bill.

And this bill has passed the Senate, I see, five times. And I think it's a good bill, and I'm going to support it. And I may speak to some of my colleagues on the other side, in the other house.

THE PRESIDENT: Senator Breslin I believe is next.

SENATOR BRESLIN: Thank you,

Madam President.

THE PRESIDENT: You're welcome.

SENATOR BRESLIN: Would the sponsor yield to a question or two.

THE PRESIDENT: Senator, do you yield to some questions?

SENATOR SALAND: Yes.

THE PRESIDENT: You may proceed with your questions.

SENATOR BRESLIN: Is it true, Senator, through you, Madam President, that there's two natural precedents -- one, that both parents must be dead, and, two, that there's a dispositional hearing in place at the time of their death? Is that correct?

SENATOR SALAND: This is in Section 1055, which is a dispositional section. So what happens, I believe the initial placement can be for up to 18 months, and then there are subsequent placements which the court can order for up to a year.

And this assumes a situation in which the court -- or the child is before the court for dispositional purposes and both parents have passed away.

SENATOR BRESLIN: Again through you, Madam President, if the sponsor would continue to yield.

THE PRESIDENT: You had authorization for your couple of questions, Senator.

SENATOR BRESLIN: Thank you. Do we have any idea of how many cases arise in this situation during a given year?

SENATOR SALAND: I wish, Senator Breslin, that I could quantify that for you. We certainly believe it's a limited number of cases.

It was brought to my attention by a prior counsel who had served the Children and Families Committee, who's currently a Family Court judge hereabouts.

SENATOR BRESLIN: And doing a good job, I might add.

Again through you, Madam President, if the Senator would continue to yield.

In that situation, when both parents die who would understandably have an interest in their child, would it be advisable to have any sort of notification to the next

of kin of the process for their involvement to either foster care and/or adoption?

SENATOR SALAND: Let me come at it two ways. First, I would assume that next of kin would probably be aware of the circumstances and might communicate their interest -- and I assume they would have interest -- either to the agency or to the court.

Secondly, and perhaps I put the cart before the horse, I would assume that they would be -- next of kin would be notified either by the foster care agency or by the court that the circumstances surrounding the standing of the child before the court, now without parents, had changed, and there would be some form of notice.

SENATOR BRESLIN: Thank you, Madam President. On the bill. And thanks to the sponsor.

I think the bill, as evidenced by the discussion, is a good bill. I do have that one modest and minor concern that when we assume that people in Family Court know what they're doing, sometimes that those

assumptions are incorrect.

And I think that possibly in the future, if we could add on to this bill some sort of a process where there's a defined statutory process for next of kin to know how to wind their way through the Family Court process, to either involve themselves at the dispositional level or at the subsequent appearances and parts of Family Court, to their rights under either foster care or adoption.

Thank you very much.

THE PRESIDENT: Senator Montgomery, I believe you're next.

SENATOR MONTGOMERY: Yes, Madam President. If the sponsor would yield for a couple of questions.

THE PRESIDENT: Senator, do you yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Montgomery.

SENATOR MONTGOMERY: Yes. Senator Saland, the bill, as I read it, the

part that is not underlined on line 4, starting on line 4, it says: "Placements under this section may be for an initial period of up to one year, and the court in its discretion may make successive extensions for additional periods of up to one year each."

So it sounds to me like the language allows the court to make an infinite number of extensions based on its discretions. Is that the case, or is there a limited number of extensions that the court will make based on a finding of neglect and -

SENATOR SALAND: The court has the ability to continue to extend the placements at one-year intervals.

SENATOR MONTGOMERY: Okay. Now, you say that -- your new language is "the death of all respondents during the time of placement." Does that mean even if one parent who has -- who is not in the picture, has not -- you know, is not really a -- though that person may be alive someplace, but is out of the picture, does that also -

SENATOR SALAND: No, that - Senator, they would have to have been a named

party in the proceeding.

SENATOR MONTGOMERY: Both of them?

SENATOR SALAND: Correct.

"Respondent" is a term to indicate a party to the proceeding.

SENATOR MONTGOMERY: Okay. So if it's a single parent who's for -- a child for who has only had one parent identified, if that parent dies, the same -- this bill applies in that case as well?

SENATOR SALAND: Correct.

SENATOR MONTGOMERY: Okay. Madam President, if I may continue my asking of questions.

I think that in the late '70s, maybe early '80s, late '70s, one of the major issues -- if Senator Saland will continue to address this -- one of the major issues was an urgency to encourage placement, permanent placement of children as quickly as possible, Madam President.

Because at that time, prior to that time, there was an increasing concern that we had children who languished in foster care for

years and years, and so we -- before the agency that was supervising them would be willing to in fact aggressively seek placement. So we tried to put in place some circuit-breakers for that, some incentives, essentially, for foster care agencies to be more aggressive about placing children.

So my question is, under this particular legislation and this particular section, maybe -- it's not just your bill that is problematic, Senator Saland. But I'm wondering if this does not in fact encourage the courts to extend this status of being in foster care, which is what I consider to be being in purgatory for children, because it does not in fact give any incentive for the court to end this status and in fact seek a permanent placement. Since we know that both parents are dead, so that's not the issue anymore.

SENATOR SALAND: As you pointed out in your earlier remarks where you read from the existing language, this bill does nothing to change the extension mechanism other than to make it clear that in those

limited number of cases where you have deceased parents, that the court maintains jurisdiction of their -- whatever happened in the '70s certainly has at the very least been buttressed by, if not superseded by, ASFA, which really requires that this foster care process move along in a more timely fashion, plus that children be freed up for adoption in a more timely fashion.

There is nothing here that is inconsistent with that whatsoever.

SENATOR MONTGOMERY: Thank you, Madam President. Just one last question that I would like to ask, if Senator Saland would yield.

THE PRESIDENT: Senator, do you yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR MONTGOMERY: Okay. Thank you.

Senator, as you know, there is a very large and growing problem with AIDS, particularly with babies and young people who

are going to be at some point without their parents because their parents, both of -- many of them have either one or both parents who are with active AIDS.

And I know that you have tried to -- you and the Assembly have tried to -- I should say we have tried to address this to some extent by allowing parents to plan ahead of time for the placement of their own children. But nonetheless, there will be a larger and larger number of children who are going to really fall into the category of this particular legislation.

So my question to you is, what do we do to ensure that those -- and maybe they've been neglected because the parents are ill and dying.

SENATOR SALAND: I caught up to the last part, what do we do, and then if you'd -

SENATOR MONTGOMERY: What do we do to ensure that those children don't become the new generation of children who languish in foster care, even though their parents are deceased? Because it's going to be a problem

that we're going to be confronted with in larger numbers, and that the court may not have sort of direction in terms of the intent from us as to what should be done with those children.

SENATOR SALAND: In all candor, Senator, certainly that was one of the driving forces behind the legislation which you referred to that we did at the end of last session to try and provide a mechanism whereby families could plan for this very, very difficult if not horrible eventuality.

That, however, again doesn't really have any bearing on what we're attempting to do here, because all we're doing here is reaffirming the jurisdiction of the court in these particular situations.

We do nothing, as I indicated earlier, that would prevent another family member, an intimate of the family, perhaps a parent who had never stepped forth to have an order of paternity established, to come forward, seek to terminate the placement, and accept the responsibilities of rearing the child who is the subject of this extension

under 1055.

SENATOR MONTGOMERY: All right. Thank you, Senator.

Madam President, just briefly on the bill.

I certainly appreciate Senator Saland's concern that we do have a large number and growing number of children who are going to fall into this category. I just hope and want to encourage Senator Saland to also look at the companion, which makes it very, very clear that we intend for the court to supervise these children but at the same time to make sure that there is an aggressive attempt to locate parents through the - either family members or other appropriate placements as quickly as possible, so that they don't languish in foster care, as we've had in prior years when we did not address this problem of really rewarding agencies for keeping children in foster care rather than providing incentive for them to actively and aggressively seek placement.

So I'll be voting for the legislation but just would like to suggest,

Madam President, that there is, I think, a companion bill, and I hope that Senator Saland and we can work together on that one.

Thank you.

THE PRESIDENT: Senator Duane.

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

THE PRESIDENT: Senator, do you yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Thank you. What happens if prior to the parent's death there's been a permanency plan put in place? Would this trump that, or would the permanency plan go forward?

SENATOR SALAND: My assumption is that if the plan had been established, the plan would go forward.

SENATOR DUANE: The same is true with a -- if there was a standby guardianship?

SENATOR SALAND: I would say the

same would hold true similarly.

It's almost like being an assignee in a contract case. It doesn't change. You can't -- you step into the shoes of whatever preceded you.

SENATOR DUANE: You know, one of the things that happens sometimes when there's more than one child involved in a family is that they are separated and placed in different -- and have different placements. And I'm wondering if thought was given to making sure or making best efforts that they would be placed together and putting that in the law.

SENATOR SALAND: I do believe that there already is a presumption that there should be a placement so long as it's in the best interests -- or unless it isn't in the best interests of children.

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

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, would you call up Calendar Number 147, by Senator Saland.

THE PRESIDENT: The Secretary will read Calendar 147.

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 of a child with consent.

SENATOR BRESLIN: Explanation.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Saland, Senator Breslin and Senator Paterson have both requested explanations.

SENATOR SALAND: Thank you, Madam President.

What this bill does is it deals with the section of the Family Court Act

wherein there's a temporary removal with consent, as distinguished from, obviously, without consent. And it changes the provision in the existing law which says that you have to be in court within three days to three court days.

THE PRESIDENT: Senator Breslin.

SENATOR BRESLIN: Yes, Madam President. Would the sponsor yield to a couple of questions.

THE PRESIDENT: Senator, do you yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Breslin.

SENATOR BRESLIN: In a case where there would be a long holiday weekend, would it be possible that a child could be removed from the home and a petition wouldn't be filed for a period of up to six days?

SENATOR SALAND: That certainly would be conceivable, Senator Breslin.

But let me just suggest to you that this is a consent situation in which the

parent or parents of the child have consented. And if anything, I would imagine that it would afford the opportunity for some type of a - either a disposition with additional services or supportive services, as distinguished from turning to the court for some type of a court-enforced remedy.

So I don't -- I'm not troubled by the idea that there might be some additional amount of time to enable this consenting parent or parents to work out with the agency some type of a resolution before the court intervenes.

SENATOR BRESLIN: Again through you, Madam President, has there been any groundswell of support from the Family Court judges or from other aligned organizations for this bill?

SENATOR SALAND: It would be a stretch for me to say there's been some kind of a groundswell, Senator.

SENATOR BRESLIN: Again, through you, Madam -

SENATOR SALAND: It is an effort to try and make some of these provisions

consistent. As I'm sure you're aware, because, you know, I'm familiar with your expertise as a member of the committee, that the court-day language already exists in the removal situations as distinguished from the consent situations.

SENATOR BRESLIN: Again, one final question, through you, Madam President.

I note that this bill has been coming in this house for a number of years - since, I believe, 1993 -- and nothing has been done in the Assembly. Is there any rationale or reason why -

SENATOR SALAND: You know, Senator Breslin, I had a similar request earlier from one of our colleagues.

To me, it's -- this is logical. If anything, I think it's something that would be considered to be pro-family. What you would be doing with this type of proposal is perhaps avoiding the necessity for a court appearance by enabling, in these consent situations in which a family recognizes, assumedly, that there are some difficulties that have to be addressed, enabling them by giving them

another day, another two -- in the worst case, perhaps three days, in your extended weekend scenario -- to work out differences to avoid the necessity of having the court impose any type of a sanction, and to perhaps resolve what might otherwise be a very difficult situation in a fashion that's mutually satisfactory and avoids the need for any court intervention.

So I'm baffled, truly, as to why this would be a problem. Again, not unlike the bill we just debated, it's consistent with other provisions in which the law talks in terms of three court days as distinguished from three days.

SENATOR BRESLIN: Thank you. On the bill.

I commend Senator Saland for again filling a loophole in our Family Court Law. That I've seen you, in the five years I've been here, diligently and conscientiously review and analyze the Family Court Law and come up with small -- small, sometimes, solutions, but albeit solutions that work.

Thank you, Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, I concur with the feelings of Senator Breslin about the work that Senator Saland has done on this subject and, as Senator Breslin said, his creativity in terms of putting together some solutions to what really are very difficult problems -- fathers' rights problems and the like.

And if the Senator would be willing to yield on this issue.

THE PRESIDENT: Senator, do you yield?

SENATOR SALAND: Certainly, Senator Paterson.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: Senator, I didn't quite hear Senator Breslin's last question when he was asking about passage in the Assembly, since this bill first passed the Senate in 1993.

Does this bill have a cosponsor in the Assembly? Because I just don't see one right here.

SENATOR SALAND: You know, off

the top of my head, I'm not absolutely certain, Senator. Let me just check with my staff and I'll let you know.

I'm being told by my counsel that he does not believe so. We could certainly confirm that for you. But I suspect you know the answer if you asked the question.

SENATOR PATERSON: No, no, Madam President, I really don't know the answer.

SENATOR SALAND: If we don't have a sponsor, your words have certainly encouraged me to make sure that we do have one, Senator.

SENATOR PATERSON: Thank you, Madam President. Thank you, Senator Saland. If the Senator would continue to yield.

SENATOR SALAND: Yes, Madam President.

SENATOR PATERSON: Senator, again, in your discourse with Senator Breslin I wasn't particularly clear on what you would think would be the most -- or what you think would be the most beneficial circumstance. Would you think that the number of days should be increased anyway, rather than three days to

perhaps five or seven days?

And I ask the question because I thought that one of the reasons that when the bill was first -- and we're talking about the Section 1021 of the Family Court Act, that when it was first proposed in 1970, and then when it was amended in 1990, that one of the reasons that they stuck to three days is that they wanted to encourage cooperation between the parents and the agency.

And by allowing the child to be removed from the home without any presumption against the parent, it's kind of like those situations in law where you can't hold the proprietor responsible if someone slips and falls in their restaurant, if they then take the wax off the floor, that can't be used as evidence against them in a civil court case because it's considered to be a kind of just-in-case action. Just in case they are liable, you wouldn't want anyone else to get hurt.

And in this situation, I think it's analogous where, just in case there has been abuse or there has been some violation, we

want to get the child out of the home and we want to get the parental consent. But in getting the parental consent, we want to make sure that in as timely a fashion, in as seasonable a fashion as possible that the parent gets to come back into court, that if there is an allegation of abuse, it will be filed.

So my question to you is, wouldn't it be more foresighted, even if it's on a Friday, to make the agency come into court Monday or to make the agency come into court as soon as possible so as, in the future, to make sure that parents cooperate?

SENATOR SALAND: If by your question you're asking me if I want to change the dynamic with regard to these situations in which a parent consents to the child being removed, the answer is no, I don't want to do that.

If you're saying by the example that you gave do I want to extend by amount of days the number of days which a -- the requirement for the agency to respond in court, again, the answer would be no.

What I would like to do is avoid what I would consider to be an anomaly which permits a situation in which it's conceivable, particularly in this world of three-day weekends -- and we have a number of them, for various and sundry holidays -- a person on a Friday who agrees to a placement almost has the impossibility of performance, because you then have the weekend and the Monday holiday in which to appear.

And as I said, I believe, a bit earlier -- I don't think I said it to you, I may have said it to Senator Breslin -- I believe that time, certainly not elaborate extensions of time, but I believe that time in these situations can only inure to the benefit of those who are genuinely interested in a workable solution that avoids them having to proceed in court.

The fact that there might be another day or two days appended on because of the way the calendar falls I don't think prejudices anybody, and I think may in the long run assist some people in working out service-type solutions, working with the

agency, as distinguished from finding themselves in front of a court with some type of an extended proceeding.

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

ACTING PRESIDENT MEIER: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Mr. President.

SENATOR PATERSON: That is, Mr. President.

ACTING PRESIDENT MEIER: Senator Saland continues to yield.

SENATOR PATERSON: And please let the record note that I know that it's Mr. President.

ACTING PRESIDENT MEIER: Okay.

SENATOR PATERSON: Senator, that was why I asked you the question about the additional time. What I infer from what you're saying is that it's not that you think -- and I would have perhaps been persuaded if you thought a couple more days would be helpful to try to work out an

arrangement.

But if -- but what I'm to take is that what you really meant was that a couple of extra days is not going to change the dynamic of the situation and is in a sense ministerial?

SENATOR SALAND: Yeah, I -- I think if it's going to change, it's going to change to the benefit of the consenting parent or parents. Because with the extension of time, it may well be possible that there is some type of a solution involving supportive services that can be applied to avoid the need to go through a full-blown neglect or abuse hearing in Family Court.

I think time is an ally in these situations, as long as it's not a protracted period of time. Recognizing, of course, the rights of the parents and their interest in being reunited with their child.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: If Senator Saland would continue to yield.

ACTING PRESIDENT MEIER: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Having not known that you felt that way, Senator, my premise was that what would be immediately ameliorated by passing this legislation is the fact that it would be very difficult for the agency to come into court, if the action was brought on a Friday afternoon and then they have to come back in on Monday, and that really, for relief to the work that the institution does, that it would be a lot easier if it's three court days, giving them until Wednesday. Is that not correct?

SENATOR SALAND: I believe I acknowledged that in my earlier remarks when I made reference to, you know, the anomalous situation of having a three-day weekend. I don't know how many times a year that occurs, but certainly for virtually every major holiday you're going to wind up with a

three-day weekend.

And what this attempts to do, I think, is balance the rights of the child, the interests of ensuring that the best interests of the child are protected, and at the same time recognizing the rights of consenting parents.

SENATOR PATERSON: Thank you, Mr. President. I don't know if I totally agree with what Senator Saland is saying, because I would think that to create the cooperation that as quickly as the agency comes into court with whatever finding or whatever they are seeking would be the better.

But I tend to agree with Senator Saland that the difference between a couple of days is really rather ministerial.

And I'm going to resist the attempt to ask him what he considers to be the apt three-day weekends and why there aren't enough of them. Like Good Joes Day, that might have might have been a good three-day weekend.

But I'm not going to ask Senator Saland about that, and I'm going to vote for the bill. Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Gentile.

SENATOR GENTILE: Yes, Mr. President. If the sponsor would continue to yield.

ACTING PRESIDENT MEIER: Senator Saland, do you yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: Senator, just following up a little bit on Senator Paterson's line of questioning, in the Penal Law, or I should say in the Criminal Procedure Law, the law is very strict about the amount of time in which a defendant could be held without any formal proceedings taking place.

And both in 170-70 and 180-80 of the Criminal Procedure Law, there are very strict requirements put upon prosecutors as to presenting formal charges in each of those cases. And certainly those -- that time period covers weekends, covers holidays.

And in that criminal setting, in

that criminal setting, prosecutors are required to work around the time limit with holidays, so to speak. If there was a Monday holiday and the time ran out on a Sunday, a prosecutor would have to present formal charges by Friday, by the previous Friday, not wait till the next Tuesday. So the law is very strict on that in the State of New York.

I'm curious, Senator, since this is a taking of liberty in another sense -- not in a strictly criminal sense, but still in another sense a taking of liberty -- why it is that in this case we're actually adding days and going around holidays rather than making it as strict as the Criminal Procedure Law and say that you have a certain amount of time to bring formal charges, to do an investigation and, if not, then the taking has to be undone, so to speak.

SENATOR SALAND: I certainly, with regard to your analysis of the CPL, couldn't disagree with you. And you may want to look at Article 3 of the Family Court Act which deals with JD petitions, which treats them more in the nature of the way which you

feel that this should be done. Which basically says 72 hours or the next court date, whichever is sooner.

So this, however, Article 10, is still in the nature of a civil proceeding. Although in some instances it may smack of something that sounds like a criminal charge, if in fact there's a criminal charge, it's going to be handled in a criminal court. This is a civil proceeding.

So what we are doing here is again trying to make this consistent with these types of proceedings that are not quasi-criminal, if I can refer to a JD petition as being perhaps quasi or a little - somewhere between the criminal law and wherever else we'd like to define it. There, there's a recognition of the very thing that concerns you about the CPL, and that's totally appropriate. I believe that's the way it should be. And if it's a matter of a day, if it's the next day, you get in the next day.

But this is more services-oriented. The JD situation really doesn't start off that way. Here we're talking more intervention,

we're talking more types of either protective services, the kinds of things that social service agencies deliver, and we're not really talking about things that sound in the criminal law.

SENATOR GENTILE: If the Senator would continue to yield.

ACTING PRESIDENT MEIER: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: I thank you for that answer.

Just following up, even though it's not a criminal proceeding, wouldn't you agree, Senator, though, it's a quasi-taking of someone's liberty -- the child, in this case, and placing them outside the home? Even if it may be for good reasons and in the end is the right decision, nevertheless it's somewhat of a quasi-taking of someone's liberty.

SENATOR SALAND: The -- what the law, when you're dealing with the neglect and

abuse section of the law, attempts to do is to respond in the best interests of the child. We've had it reinforced by the adoption of the ASFA bill that we did, I think it was a year ago this past -- I guess it would be two years ago now this February, in which we recognize that the interests of the child are what drives our child protective system.

It's not in the nature of a taking, in a criminal sense, of the child. It's viewed -- and obviously the court makes the final decision with regard to that taking - as a means by which the child is being protected in his or her best interests in the situation in which there's a removal, at least until such time as the court can determine that the removal is appropriate.

If the court determines that the removal is appropriate -- isn't appropriate, it's the end of the ballgame. If the court determines that the removal is appropriate, you then proceed from there.

But it's a child-protective device. And it's not -- insofar as the child is concerned, there's nothing there that smacks

of a crime. Whether in fact there are criminal proceedings brought against whomever the respondent may be is another story. But again, those proceedings would not occur in the Family Court. If they were going to occur at all, they would occur in the appropriate criminal court.

So I don't view the intervention on the child's behalf as smacking of a criminal proceeding.

SENATOR GENTILE: If the Senator would continue to yield for -

ACTING PRESIDENT MEIER: Senator Saland, do you yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: Thank you, Mr. President.

I stepped out, so that you may have answered this. But it says here in the law that if the -- under the current law, if the child is not returned within three days, taking out your addition of "court," if the

child is not returned within three days, the procedure required in Part 3 of this article shall be applied.

I'm just curious as to what is the procedure in that case as it stands today.

SENATOR SALAND: Senator, the section that you referred to refers back to Part 3, which I believe deals with the emergency removals. And what it says is that the court may, upon good cause shown -- I'm sorry. The court may order extension only upon good cause shown of up to three court days from -- and my copy is cut off -- from the child's removal.

That's an effort, I believe, to harmonize that section with the emergency removal section.

SENATOR GENTILE: So if the Senator would yield for an additional question.

ACTING PRESIDENT MEIER: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR GENTILE: Through you, Mr. President. So what you're saying is that the law right now allows the petitioner to make an application to the court for an additional three days of the proceeding?

SENATOR SALAND: For an additional three court days, upon application for good cause shown.

Which obviously then, I would think, would become more of an adversarial situation than the one that's assumed by a consent order.

SENATOR GENTILE: Okay. If the Senator would continue to yield, Mr. President.

ACTING PRESIDENT MEIER: Senator Saland, do you yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: I'm just curious, then, Senator, would -- we're speaking of three-day weekends, three-day

holidays. Would this necessarily, Senator, have to be a statewide-recognized holiday in order for this provision to add an extra day to the removal?

SENATOR SALAND: I would believe that it would have to be an OCA-recognized - Office of Court Administration-recognized holiday.

I'm not aware of any of those that are anything other than statewide-recognized holidays. But I wouldn't want to say with absolute certainty that there might not be one.

SENATOR GENTILE: Through you, Mr. President, if the Senator would continue -

ACTING PRESIDENT MEIER: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: Through you, Mr. President, I can think of at least one, maybe two that are very local. For example,

on June 6th, which is a Thursday, the people of Brooklyn celebrate Brooklyn Day.

And my good colleague from Staten Island in the Assembly, as Senator Marchi knows, is now advocating that we create a Staten Island Day, so that people can have the day off and celebrate those days.

And indeed, in Brooklyn, the night of June 5th is a celebration, because everyone knows the next day is Brooklyn Day.

Now, in that situation, if we had a proceeding in Brooklyn, would that add a day? Would that be the recognized, Brooklyn Day, under this?

SENATOR SALAND: Does OCA close the courts on Brooklyn Day?

SENATOR GENTILE: Yes, they do.

SENATOR SALAND: Then I would think it would -

SENATOR GENTILE: Then it would be a recognized holiday. Okay, great. Thank you, Senator.

SENATOR SALAND: You're welcome.

SENATOR GENTILE: On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Gentile, on the bill.

SENATOR GENTILE: I again join my colleagues in thanking Senator Saland for his thorough explanations and certainly his willingness to review this legislation in all its aspects.

I believe, in the questioning and listening to the debate, Senator Saland has convinced me of the difference between this type of proceeding and the proceeding that I questioned him about which involves more criminal -- which is more criminal in nature.

Given that, and given the answers that Senator Saland has so willingly provided me and my colleagues here, I will vote in the affirmative.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, just for the record, I was not in the house when the vote was taken on the deficiency budget bill, and I would ask for unanimous consent to be recorded in the

negative on that bill.

ACTING PRESIDENT MEIER: Without objection, Senator Dollinger will be recorded in the negative on Calendar Number 220.

SENATOR DOLLINGER: Yes. And, Mr. President, could we call a quorum of the house, please.

ACTING PRESIDENT MEIER: The Secretary will call the roll.

SENATOR LARKIN: Mr. President, will the Secretary please ring the bell.

ACTING PRESIDENT MEIER: The Secretary will ring the bells.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Present.

THE SECRETARY: Senator Balboni.

(No response.)

THE SECRETARY: Senator Bonacic.

(No response.)

THE SECRETARY: Senator Breslin.

SENATOR BRESLIN: Present.

THE SECRETARY: Senator Brown.

(No response.)

THE SECRETARY: Senator Bruno.

(Senator Bruno was recorded as

being present.)

THE SECRETARY: Senator Connor.

(Senator Connor was recorded as being present.)

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Here.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: Here.

THE SECRETARY: Senator Duane.

SENATOR DUANE: Here.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: Here.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Present.

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: Present.

THE SECRETARY: Senator Gentile.

SENATOR GENTILE: Here.

THE SECRETARY: Senator Gonzalez.

SENATOR GONZALEZ: Here.

THE SECRETARY: Senator Goodman.

SENATOR GOODMAN: Present.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Here.

THE SECRETARY: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Here.

THE SECRETARY: Senator Hevesi.

(No response.)

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Here.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Here.

THE SECRETARY: Senator Kruger.

(No response.)

THE SECRETARY: Senator Goodman.

SENATOR GOODMAN: Present.

THE SECRETARY: Senator Balboni.

SENATOR BALBONI: Here.

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: Present.

THE SECRETARY: Senator Lachman.

SENATOR LACHMAN: Here.

THE SECRETARY: Senator Lack.

SENATOR LACK: Present.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Present.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Present.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Present.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Present.

THE SECRETARY: Senator Maltese.

(No response.)

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: Present.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Present.

THE SECRETARY: Senator Markowitz.

(No response.)

THE SECRETARY: Senator Maziarz.

(No response.)

THE SECRETARY: Senator McGee.

SENATOR McGEE: Present.

THE SECRETARY: Senator Meier.

SENATOR MEIER: Present.

THE SECRETARY: Senator Mendez.

(No response.)

THE SECRETARY: Senator

Montgomery.

(No response.)

THE SECRETARY: Senator Morahan.

SENATOR MORAHAN: Present.

THE SECRETARY: Senator Nozzolio.

(No response.)

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: Here.

ACTING PRESIDENT MEIER: A quorum is present.

SENATOR SKELOS: Read the last section.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2 -

ACTING PRESIDENT MEIER: Senator -

SENATOR DOLLINGER: Mr. President, would you recognize Senator Schneiderman.

ACTING PRESIDENT MEIER: Senator -- well, I'm capable of presiding, and I see Senator Schneiderman.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you,

Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: If I could just have a clarification, is it Senator Paterson that is going to handle the procedural matters sitting in that chair, or is it going to be Senator Dollinger jumping up on occasion as to if somebody is being recognized or not being recognized?

SENATOR DOLLINGER: Point of order -

SENATOR SKELOS: I think it's totally appropriate -

SENATOR DOLLINGER: Point of order. I move to declare Senator Skelos out of order. I mean, what does he have to add to the debate? I believe Senator Schneiderman has the floor.

ACTING PRESIDENT MEIER: One - one second -- one second, Senator Dollinger. Senator Skelos has the floor.

SENATOR SKELOS: Mr. President, can I also point out the rules require a Senator to be sitting in his seat when they're

asking questions or debating a bill.

The last time I looked at the back of that chair, it said "Senator Paterson" on the back of it.

ACTING PRESIDENT MEIER: Your point is well-taken, Senator Skelos.

SENATOR DOLLINGER: Does it say "Senator Skelos" on the back of that chair, Mr. President?

ACTING PRESIDENT MEIER: Senator Dollinger -

SENATOR DOLLINGER: I believe it says "Senator Bruno."

ACTING PRESIDENT MEIER: Senator Dollinger, please. Senator -

SENATOR DOLLINGER: I'm ruled out of order because I'm in the wrong chair and he isn't.

ACTING PRESIDENT MEIER: Senator Dollinger. He's the designee of the Majority Leader, as you well know, under the Rules, sir. You're out of order.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. If the sponsor would yield for

a question.

ACTING PRESIDENT MEIER: Senator Saland, do you yield for a question?

SENATOR SALAND: Yes, I do. Yes, sir.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Thank you.

It seems apparent from the discussion here so far today that this additional time in some instances may be in the best interests of the child, and there's a concern that in some instances it may not. It may extend things for five or six days under a long weekend situation.

In the other portions of this chapter or this part of the law, there are a whole variety of different factors and circumstances taken into account when you're removing a child without parental consent. But this seems to impose a very rigid standard. And my question is, why couldn't we provide the court discretion to either grant the additional days or not, depending on the circumstances?

I mean, there may be times when it's in the interests of the child to have it shorter, and it may not be. There's no reason to require an absolute limit of three court days.

SENATOR SALAND: First, if I may, Mr. President, I just want you to be clear, Senator. This does not add five or six days. It may extend the period to as many as five or six days, but it doesn't add five or six days.

My concern would be, and I suspect that many folks would be discomforted - particularly, I would think, a number of folks on your side of the aisle -- were we to give broad discretion to the judge to make those decisions instead of defining some type of parameters.

I think there would be a level of discomfort when it came to having a child removed even with consent and permitting the court the discretion to make a decision as to whether that child should continue for another two or three days, depending upon how much more time might be provided, or whether the parent should in fact know that on a day

certain they would know whether in fact the proceeding was going to be discontinued and the child returned or whether there were going to be any further proceedings.

SENATOR SCHNEIDERMAN: Through you, Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT MEIER: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Thank you.

Is there no provision in the current law for an additional extension of time upon application for the current three days?

SENATOR SALAND: I'm not sure if there's a provision on consent, Senator.

SENATOR SCHNEIDERMAN: My understanding is that upon application -- and I may be wrong about this. It's not an area I practice in. But my understanding is that upon application, the three-day period as it

exists can be extended.

And my concern is that that would at least require some judicial review: Is this the right amount of time, or should it be extended for another three days. And I'm just -- I'm wondering why we have to do it so rigidly. It seems that we could set parameters that would in effect keep the same scrutiny by the court.

SENATOR SALAND: Senator, I believe -- and it could be in the next section, 1027, emergency removal does -- under an emergency removal situation, the scenario you describe can in fact occur, that there can be an application for an extended period of time. That's where there's been an intervention without the consent of the parents, and a removal.

SENATOR SCHNEIDERMAN: Right.

SENATOR SALAND: That requires an application.

SENATOR SCHNEIDERMAN: So -- I'm sorry, through you, Mr. President. So we're not clear right now whether there is a provision in situations where the parents

consent for an extension on application?

SENATOR SALAND: The child would either have to be returned or the court would have to make a determination. Or the court would have to make a determination.

SENATOR SCHNEIDERMAN: One last question, through you, Mr. President.

ACTING PRESIDENT MEIER: Senator Saland, do you yield for a question?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: What would be lost from this formulation if there was - if the three court days were retained, as they are in the statute, to ensure that in circumstances where it is not in the interests of the child they get returned as quickly as possible, but that upon application for cause shown, as operates throughout the rest of this area of law, an extension for three additional days or to make it three court days could be granted? I'm not sure I understand what would be lost.

SENATOR SALAND: I'm not exactly -- I understand your question, what would be lost. But I'm not exactly sure what preceded it to get me to what would be lost.

SENATOR SCHNEIDERMAN: Oh. I'm just suggesting that it may be a better solution to this problem, that addresses some of these concerns that have been raised, to retain the three days as they exist but to allow, upon a showing -- and we can set the standard for the showing, as we do throughout the rest of this section and the following sections -- upon a showing that additional days would be in the best interests of the child, that can be granted.

So that in situations where it was not in the best interests of the child to have additional time, you wouldn't automatically have the additional days.

SENATOR SALAND: Well, what you're describing is what exists in the removal-without-consent section where there's been an emergency removal. That is clearly a more adversarial situation and one in which there might be considerable concern about the

well-being of the child, and the emergency removal may require additional time in order to perfect papers before the court and you're given the opportunity to do that.

This is a nonconsent situation. By its very nature, you would hope it wouldn't be as adversarial. Although obviously once the agency has presented itself to the parents and said, We want to remove this child, do you want to consent, or, Your choice is - whatever the choice may be -- it may be less than an ideal world for the parents.

But nonetheless, what the consent situation attempts to do is to avoid, I believe as best as possible, the idea of this immediately confrontational adversarial situation. Hoping that there is some way by which the agency, which is charged with acting in the best interests of the child -- and that's obviously a factual question. We may agree or disagree as to what constitutes the best interests -- but nonetheless which is charged with acting in the best interests of the child, arranges for a consent.

And as I said earlier, and I don't

recall to whom I said it, I don't believe that there's any prejudice to anybody that occurs, particularly in the situation in which you have a Friday consent and a Monday holiday and you don't have the ability, in effect, to be in court at the end of the three days.

But again, as I said earlier -- and I'm not sure, Senator, if you were in the chamber or not -- I believe that the additional period of time can only, and certainly in the vast majority of cases, inure to the benefit of the child and to the family.

Because if a disposition can be arranged in which services are provided instead of the adversarial situation that results with the filing of the petition and the perfecting of the petition and the seeking of the order of disposition, then I think the system has worked in a way that works best for the child, by definition best for the parents, and spares the court the need -- a very busy court the need to go through some additional proceedings.

SENATOR SCHNEIDERMAN: Thank you. Through you, Mr. President, that very

responsive answer, which I appreciate, actually gave rise to another question. I don't mean to suggest that good answers get more questions. But if the sponsor will yield for an additional question.

ACTING PRESIDENT MEIER: Senator Saland, do you yield?

SENATOR SALAND: Certainly, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Thank you.

The issue that that raises is one that I think all of those of us who deal with judicial proceedings are sensitive to. The way the statute is drafted now, it really creates a sort of a disincentive to the agency to act and take a kid away from their parents on a Friday, if you want to put it that way.

The circumstances that I'm concerned about, and the reason that I think that something that was a little more flexible would be called for, is a situation that is unfortunately not unknown in this state, where parents consent but it was really not a

consent -- you know, a police officer said, I'm going to arrest you unless you give the child up, or some circumstance like that arises. The next day, they say: Oh, my God, I got to -- want to get my child back.

And the difficulty with this is that if that happens then on a Saturday, a Sunday, a holiday Monday, then the Tuesday and the Wednesday, in every circumstance the parent is locked into the additional time.

And I understand your point. I think that in some circumstances, though, the extra time may not be a benefit and that it would probably be a preferable course to make it somewhat more flexible or arrange for an application for it to be -- this time to be reduced.

And I'm not sure, after all of that, that I understand why that's not possible. I am concerned about the removal of the disincentive to take a kid away on a Friday.

SENATOR SALAND: I suspect that if an agency was compelled to act on a Friday, given the alternatives of seeking a consent

arrangement, if that Friday was followed by a Monday holiday, what they probably would do would be to err on the side of caution and to seek an emergency removal.

I can only share with you my experience when I handled these cases for my county, which was a rather long time ago, my general admonition to the CPS workers was where you're in an emergency situation and you're in doubt, if you don't get a consent, then remove and seek an emergency application. Because the last thing I want is to find the following morning there's a child lying in a pool of blood at the bottom of a stairwell. That's the example I generally gave when I did my tutorials, for lack of any other term, to the CPS workers.

And I suspect that they will err on the side of conservativism -- not in a political sense, in terms of protecting the child.

So -- and I still believe that where you can get a consent order, it's the best -- a consent arrangement, it's the better way to go for all parties concerned, both the

child and the parents.

SENATOR SCHNEIDERMAN: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I commend Senator Saland for his effort to resolve this problem.

I'm still a little bit uncomfortable with the rigidity of the procedure. I think that, you know, in the counties that I represent, the Family Court may not function quite as smoothly as perhaps the lovely counties represented by Senator Saland. And my concern is that in the City of New York, we have often, unfortunately, something that is really a very abusive assembly-line procedure where there are parents who give consent and then immediately say "I really didn't want to give consent."

And my concern is in those situations the extra time may work against the interests of the family and the interests of child, which obviously are the basis for this bill. It's a difficult area, and I hope -- I

guess, given the Assembly's record on this, we may have a chance to make some adjustments again.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: I rise with a point of order with respect to the instruction to the clerk to read the last section. I call the President's attention to Rule IX, Section 3, Section (c), which describes the method for ending debate.

I would simply ask that the house comply with the rules adopted by the Majority of this house and repeat the rule that's set forth there with respect to the close of debate.

ACTING PRESIDENT MEIER: Senator, no other Senator stood and asked to be recognized, and therefore the chair asked the Secretary to read the last section.

Senator Dollinger.

SENATOR DOLLINGER: With all due respect, Mr. President, the section approved by the Majority of this house specifically says when it appears that no Senator desires to be heard further, the presiding officer shall put the question: Does any Senator desire to be heard further?

I believe, Mr. President, prior to giving the instructions to the clerk to read the last section, it's appropriate for the Senate's presiding officer to ask that question. Since it wasn't asked, I don't believe that instructions to read the last section are in order under the rules approved by the Majority of this house.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: It has always been a custom of this house that when the presiding officer does not see another person -- another Senator standing or seeking to be recognized, that we ask that the last section be read.

In no event will the Senate Majority -- let me finish, Senator Dollinger -- deny anybody the opportunity to be heard prior to a bill being brought to a vote by just not recognizing them. If time has elapsed on a bill for debate, we may go to a vote. If there's a calling of the vote, we may proceed. But certainly any Senator that wishes to be recognized will be recognized.

If it would make Senator Dollinger feel better, then why don't we just say, each time, does any other Senator wish to be heard.

SENATOR DOLLINGER: Through you, Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I would ask that -- I would move that Senator Skelos's comments be stricken from the record. He had no place -- at least as I understand the rules, since this is a point of order that needs a ruling by the house before there's any debate on the ruling. With all due respect, Senator Skelos's comments weren't in order. I didn't write

these rules; he did. I'm just asking this body to abide by the rules.

The point of order is raised; it needs -- and I've been told this a number of times by a number of presiding officers, I believe including the current Senator in the chair -- that this is a request for a point of order. If the point of order is granted, then the house will conform consistent with the instructions of the chair. If it is not granted, then it is subject to an appeal of the ruling of the chair, at which time debate over the appropriate ruling is appropriate, including Senator Skelos's comments.

I again reiterate, Mr. President, whatever custom may be in this house, these rules specifically provide for a protocol for ending debate. I would suggest whatever that custom was when you passed these rules, you overruled that custom, because you set a new set of protocols for how we're going to handle this house.

I sit here, Mr. President, simply asking that the Majority's rules that it adopted be applied. That's all, Mr.

President. I would ask that my point of order be sustained and that the house conform to the rules.

ACTING PRESIDENT MEIER: Senator Dollinger, it's the opinion of the chair that the custom of this house has been that members wishing to be heard are recognized. Indeed, this presiding officer and others have interrupted roll calls to permit other people.

If it will make you -- it -- you know, we will ask on this bill does any other Senator wish to be heard on the bill.

SENATOR DOLLINGER: Thank you.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: Mr. President, I wish to be heard on the point of order.

ACTING PRESIDENT MEIER: It's already been ruled on, Senator. Unless you wish to appeal the ruling of the chair.

SENATOR DUANE: No.

ACTING PRESIDENT MEIER: Does any other Senator wish to be heard on the bill?

Read the last section.

THE SECRETARY: Section 2. This

act shall take effect on the 90th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Duane, to explain his vote.

SENATOR DUANE: Thank you, Mr. President. I understand from the sponsor's discussion what the genesis of this bill had been. However, I look at it in a different way.

First of all, I don't think that this is such a major problem now that it needs to be addressed. I can't imagine that this comes up that many times a year. I didn't get any correspondence or memos from any advocates or anyone in the Family Court or anyone, for that matter, on this. So I'm wondering why it is that this bill even came before us today.

But I'm going to say that the thing that most concerns me is that despite what the sponsor said the reasons were -- and I take him at his word on it. But I don't think he considered what this really looks like, which is that we are sacrificing the needs of

children so that the Family Court can have a three-day weekend and enjoy a barbecue or whatever it is.

It seems to me that the needs of a child should take precedence over the weekend plans of people who work in the Family Court system. For a child who's involved in a Family Court procedure, there probably won't be any joy for an extended weekend. Chances are there won't be any holiday barbecue or long weekend at a lovely inn in the country or anything like that. I think what this means is that that child will just have to wait longer for the disposition of what would happen to them.

And so while I sympathize for the difficulty of the proceeding going forward, I just think that it's more important that we take into account the needs of a child who probably won't have a nice long weekend. You know, we say to each other when we have a long weekend coming up, Have a nice holiday weekend. But unfortunately, there won't be a long holiday weekend for children who are held up because of the delay in these court

proceedings.

And so again, I want to reiterate that I understand what the intentions of the bill are, what genesis of the bill is, but I think it's unfortunate that we would sacrifice the needs of a child in this system so that the people who are getting a salary to be in the Family Court get to enjoy their barbecue or long weekend at some country inn.

Thank you.

ACTING PRESIDENT MEIER: Senator Duane, how do you vote, sir?

SENATOR DUANE: No.

ACTING PRESIDENT MEIER: Senator Duane will be recorded in the negative.

The Secretary will announce the results.

THE SECRETARY: Ayes, 59. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, I move we adjourn until Tuesday, March 20th, at 11:00 a.m.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Tuesday, March 20th, at 11:00 a.m.

(Whereupon, at 5:45 p.m., the Senate adjourned.)