NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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11:05 a.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 please come to order.

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

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

THE PRESIDENT: With us this morning to give the invocation is the Reverend Paul Carter, Associate Minister at the People's AME Zion Church, in Syracuse.

REVEREND CARTER: Let us pray.

Almighty God, creator and sustainer of all life, we come before You this day to thank You for the blessings that You have already bestowed upon us, blessings of health, strength, the activity of our limbs and the functioning of our internal organs.

As I stand here today, I realize that in this place there are many faiths and beliefs present. So I'm calling on You to speak to our hearts and our minds, that we remember how it was when the disciples were gathered together in the upper room. Though

they were from different parts of the world, they were gathered together in one frame of mind and for one purpose. It was while they were in that posture that Your Holy Spirit filled and anointed them. And on that day, many miracles began to happen.

As I intercede for those who are gathered here today, I pray that we too might find ourselves on one accord with You. This I pray so that the work and the issues that are to come before this Senate and Assembly body may have Your guidance, wisdom, and Your blessing as a part of the process.

In a world where there seems to be so much turmoil and despair, we know that when we turn to You, we can find a way of peace and hope. In a world where it seems that many of our youth and young adults have lost their way, we know that when we turn to You, we will make a way out of what seems to be no way.

Where there seems to be poverty in life, we know that You can show us the way to abundance, remembering that it is You who gives us the power to get wealth, that Your covenant may be established on the earth.

When it seems that many have neglected Your word in the government and public arena, remind us that without You, we can do nothing of lasting value, but with You, we can do all things.

Keep us reminded of the fact that as You taught the patriarchs of old to call on You in times of need, You have also told us through Your word, so that we can come boldly before You so that we can find the grace necessary to help us in our time of need.

As we read the papers and listen to the news, we know without a shadow of a doubt that our land is in need of a healing. And You have told us that if my people, who are called by my name, will humble themselves and pray and seek Your face and turn from their wicked ways, then you will hear from heaven and heal our land.

Send down Your healing power on all those who call on You for help. Let your wisdom be bestowed on President Bush and leaders the world over as they continue to strive for peace.

We give thanks to You for the

Senators, the Lieutenant Governor, the Assembly members who work so diligently toward the renaming of these buildings after these four prominent women who made such a contribution here in the State of New York.

We thank You for giving ear to our supplication and blessing this day that you have made with Your grace and Your favor, in the name of Yeshua, my Savior, I pray.

Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, March 26, the Senate met pursuant to adjournment. The Journal of Friday, March 23rd, 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 Skelos.

SENATOR SKELOS: Madam President, I believe there's a substitution at the desk. If we could make it at this time.

THE PRESIDENT: That's correct, Senator.

The Secretary will read.

THE SECRETARY: On page 24, Senator Marchi moves to discharge, from the Committee on Environmental Conservation, Assembly Bill Number 6816 and substitute it for the identical Senate Bill Number 3156, Third Reading Calendar 296.

THE PRESIDENT: The substitution is ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could adopt the Resolution Calendar, with the exception of Resolution 981.

THE PRESIDENT: All in favor of adopting the Resolution Calendar, with the exception of Resolution 981, signify by saying

aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is adopted.

Senator Skelos.

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

THE PRESIDENT: There will be an immediate meeting of the Environmental Conservation Committee in the Majority Conference Room.

Senator Skelos.

SENATOR SKELOS: If we could go to the noncontroversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 103, by Senator Skelos, Senate Print 417A, an act to amend the Criminal Procedure Law, in relation to eliminating.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 194, by Senator Rath, Senate Print 1811, an act to amend the Real Property Tax Law, in relation to the allocation.

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 DOLLINGER: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

Senator M. Smith, do you wish to be acknowledged?

SENATOR MALCOLM SMITH: No, no, I'm sorry.

THE PRESIDENT: All right. Well, you were acknowledged anyway.

(Laughter.)

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 205, by Senator Morahan, Senate Print 1158, an act to amend the Military Law, in relation to extending.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 207, by Senator Seward, Senate Print 2133, an act to amend the Executive Law, in relation to requiring.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 211, by Senator Libous, Senate Print 17 -

SENATOR SKELOS: Lay it aside for the day, please.

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

THE SECRETARY: Calendar Number 214, by Senator LaValle, Senate Print 2357, an act to amend the Education Law and the Business Corporation Law, in relation to making.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 275, by Member of the Assembly Grannis, Assembly Print Number 5798, an act to amend Chapter 2 of the Laws of 1999.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 281, by Senator Maziarz, Senate Print 3042, an act to amend Chapter 81 of the Laws of 1995.

THE PRESIDENT: Read the last section.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 282, by Senator Hannon, Senate Print 3614, an act to suspend certain requirements.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

Senator Skelos, that completes the

reading of the noncontroversial calendar.

SENATOR SKELOS: Thank you, Madam President. If we could go to the controversial calendar, beginning with Calendar Number 103.

THE PRESIDENT: The Secretary will read Calendar 103.

THE SECRETARY: Calendar Number 103, by Senator Skelos, Senate Print 417A, an act to amend the Criminal Procedure Law, in relation to eliminating the statute of limitations on the prosecution of certain Class B violent felonies.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, on the bill.

Because of the use of DNA evidence, it now has become possible to trace information a lot more accurately and a lot more assiduously than in the past. And therefore, I can understand the desire perhaps to extend the statute of limitations.

What I don't understand is the idea that we would have no statute of limitations at all. Therefore, I would like to know if

Senator Skelos would like to yield for a few questions.

THE PRESIDENT: Senator, do you yield?

SENATOR SKELOS: Yes, I do, Madam President.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: Madam President, in light of the issues about a permanent tolling of the statute of limitations such that 20 or 30 years later this issue could arise and, in spite of DNA evidence, which I think would be in a sense permanent in our lifetimes, still the issue of witnesses and testimony and memory are very difficult.

And it's not only difficult on the public, it's difficult on prosecutors. I'd like for Senator Skelos to explain to us why, in spite of that, it is a good idea to pass this bill.

SENATOR SKELOS: I think it's a good idea to pass it again this year, Madam President, through you, because, Senator Paterson, you spoke so highly of it last year

when we passed it with one dissenting vote.

SENATOR PATERSON: Thank you, Madam President. If Senator Skelos would yield for a question.

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: Well, I'm speaking highly of it again this year, Senator Skelos.

SENATOR SKELOS: Thank you.

SENATOR PATERSON: Through you, Madam President. But I do have a reservation, as I did last year, but I thought at that time the value of the new potential for receiving evidence would be favored over that which would create the encumbrances to prosecutors. So I voted for the bill.

But nonetheless, I have had some feeling about that and some thought about that. Sometimes late at night I wake up and I start thinking about Senator Skelos -- I'm thinking about him a lot these days -- and I think about this bill.

SENATOR SKELOS: Senator

Paterson, let me assure you, late at night I don't wake up and think of you. I think of Senator Dollinger at times, but not of you.

(Laughter.)

SENATOR DOLLINGER: Only in your nightmares, Senator.

SENATOR PATERSON: Madam President, I'm a little disappointed, but I will go forward.

And what I think about is the fact that let's leave aside what would be the rights due upon any defendant. Let's just leave it to the aspect of prosecution. I'm sure that the DAs Association would be very interested in passing this piece of legislation. But I could confide in you, Madam President, and to Senator Skelos, that there are some reservations that officers have about prosecuting these types of cases way down the line.

And the nature of my concern arises from an issue that always meant a lot to me. And it was the issue of child sexual abuse, which I'll get to in a moment. But my question is -- well, that was my response.

And my question is that with the difficulty of prosecuting these cases that are acknowledged by prosecutors, even though they support the bill, don't you think it would be a little more foresighted if we put a time limit on the back end, even if it was a long period of time like 20 years?

SENATOR SKELOS: Well, no. In a crime, for example, of rape, I don't believe there should be any statute of limitations. And I think a prosecutor has discretion if a case was brought 30 years down the road, as to whether to bring the case to a grand jury or not.

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

I assume that he does.

SENATOR SKELOS: Yes, I do.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: Thank you.

The prosecutor's discretion -- that is, of course, an independent view of the prosecutor that there's a desire to try this case, if not under Section 343 of the Criminal

Procedure Law, the prosecutor does not have to try the case. But in spite of that, I'm talking about the realistic apprehension that prosecutors who understand that for purposes of public policy might have to try the case but in reality have an idea that they can't in any way -- they can't diminish the notion of reasonable doubt, even if you include the DNA evidence, because of the mitigating factors of the lack of evidence, the memories of witnesses, the unavailability of witnesses, the sourness of testimony, other issues.

So I'm just saying even though the prosecutors have been very favorable toward this bill and toward us, do we want to put them in that position that twenty years down the road you'd have to try a rape case where -- the anger and the sentiment of the victim and perhaps the victim's family we certainly understand. But the pragmatic view is that we cannot convict someone on these charges, and in a sense we've laid it out in the law almost that we have to try them anyway.

SENATOR SKELOS: Senator

Paterson, again, going back to the crime of rape, I would find it very difficult to consider, number one, a five-year statute of limitations that exists right now to be just, especially with a woman who has to deal with this intrusion and invasion of her body for her entire lifetime.

So this in type of instance, I think it's totally appropriate to eliminate the statute of limitations. Which, as you know, the statute of limitations are a creation of the Legislature. And as one federal judge once said, "At times there's no logic to it." And I find that there is absolutely no logic to there being a statute of limitations for the crime of rape and to the other violent felonies that are enumerated in this legislation.

SENATOR PATERSON: Madam President, on the bill.

I certainly understand -- not only understand, but I empathize with what Senator Skelos is saying. There has to be a desire among all of us related to the crimes as serious as are documented in the legislation

by Senator Skelos, that there be a tolling of the statute of limitations for an inevitable period of time, to at least give the prosecutor the choice and the victim the choice as to whether or not to prosecute these cases.

The issue of child sexual abuse was simply that there's a five-year statute of limitations on those types of crimes. And quite often, the child, who might have been 9 or 10 years old at the time that the crime was committed, would also incur the difficulty that the statute of limitations might have run at the point where the child was only 15 years of age. And whoever was provoking and attacking the child when they were 10 might still be a person who is viewed as a threat to the child when they're 15 -- a parent, a teacher, some other custodial person, a coach at school. We've heard these types of cases.

And so it was my desire, and probably still, is to toll the statute of limitations forever, if it came to it, because of the ability that we want to vest in the victim to come forward and to identify a

perpetrator who, for all we know, may be committing the same crimes against other individuals.

What I inevitably settled for was a statute of limitations that would start to run at the point that the child reached the age of majority, so at the age of 18 or 21. Now, when the person is of requisite thinking and would seemingly be independent enough to bring forth a charge, there would then be the running of the statute of limitations.

And I got the idea from a lot of the consumer products violations where the statute of limitations starts to run at the point that there is a defect in the product, not at the point that you receive the product, because you have no way of knowing.

So that lack of awareness - children can't sign contracts, they can't vote, they're not allowed to operate a motor vehicle, they're not allowed to consume alcoholic beverages. But still, for years, we as a society urged them that they for some reason have to come forward and bring evidence and that if they don't, we can't have a

prosecution of a willful perpetrator even if the child was victimized at the age of 5.

So somehow between 5 and 10, this infant or this young person is supposed to recognize the wrongness of the acts that were committed against them and come forward to the authorities.

My understanding from prosecutors and from a number of different sources was that it would be very hard to convince enough people to have a statute of limitations that had an inevitable -- that had inevitable jurisdiction.

And what I'm just suggesting to Senator Skelos is that if he wants to pass this legislation, it's a painful reality - because we have nothing but compassion for people who are victimized at any age -- that the right of a defendant or at least the criminal justice system as it operates really accommodates a better notion of fairness and judiciousness if we have some end to the statute of limitations at some conceivable period of time whereby we would agree, all of us, that most of the evidence at that point

would be stale, it would be inadequate, and even though we have DNA evidence, whose reliability is unquestioned and nonpareil, that we really don't want to go down that road to a point where we are putting people sometimes 25, 30 years later in the position of having to defend themselves from actions where they even themselves might not have a total memory about what the circumstances were.

So my suggestion to Senator Skelos -- and I think to encourage him, I'm going to vote for the bill again. And I'm not going to think about Senator Skelos as much anymore, since he doesn't think about me. Many of you might think that's a little vindictive, but -

THE PRESIDENT: Senator, please keep your comments germane.

SENATOR PATERSON: Thank you, Madam President. I'm glad you said that, because I'm starting to feel like Captain Queeg.

THE PRESIDENT: And that's meant in a very positive spirit, Senator.

SENATOR PATERSON: Thank you.

In a positive spirit, Madam President, I'm going to vote for Senator Skelos's bill because I do think that the value of the protection we give to victims at this point in our society inevitably has to be favored over the notions of justice, but with this admonition.

I think that we will make all of our colleagues feel comfortable and pass this bill, Madam President, if we agree that there should be, at some point, an end to the scrutiny and a statute of limitations that gives all people in our society an understanding that there's a point at which they would not be held culpable or responsible for actions that they may or even may not have committed.

THE PRESIDENT: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President. Just on the bill.

I had a series of questions, but I think that most of those that I had I think were asked by -- in the questioning by Senator

Paterson. But I would like to just make a comment.

A year ago, in Westchester County, a 21-year-old case was solved by DNA. That case is making history in the state of New York, particularly because it allowed the victim's family to receive I think what they perceived to be as justice. If we had statutes of limitations on such crimes as that, we would not have been able to try that case as successfully as we were able to do.

I think that one of the things that makes it very difficult for some of us who come here, many of the crimes are committed in our communities by community people on other community people. And there is not this thought that aggressive law actions should in fact be taken. But I come from a constituency that is looking for balance. And I'm not sure that I agree with the last part of Senator Paterson's statement, that the victim's rights for justice are greater than that of the perpetrator. I think that justice, when it's balanced, is served.

And I think that one of the things

that I hope, as we argue and as we debate these bills, that we will always attempt to achieve balance in both directions. Because if we get caught up in the emotions, we will lose the constitutionality that makes it very important for everyone to feel as though they're getting a fair trial. So that occasionally it will be interesting to see how I vote on some bills versus others.

But this one I think responds very appropriately to the things that I think that we want to establish accomplish. And that is to ensure that we send a clear message that violent crimes are not allowed in the state of New York. And as long as we do not violate anyone's constitution in the process of doing that, I will always be in the position to support that type of legislation. So that I commend the Senator and I will vote yes.

THE PRESIDENT: Senator Gentile was first.

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

I too want to commend Senator Skelos for this legislation. I believe

Senator Skelos has it right when he says that these types of violent felonies are so serious that a five-year statute of limitations is insufficient to allow the state to prosecute these very serious crimes that have great impact on the victims, particularly in the area of sex crimes. And certainly as a prosecutor, I have experienced the situation where we have run up against the five-year statute of limitations, and in certain cases unable to proceed with a case, given the indictment period and given the trial preparation period. That we could not go forward with certain cases, particularly cases involving young children, who over time realized that something had happened to them and by the time this was brought to law enforcement authorities, we got to the point of having to deal with the five-year statute of limitations.

And I must tell you, as a prosecutor, having a victim in your office and having to tell that victim that we cannot go forward because the State of New York has indicated, has said in its law that there's a

five-year limit on prosecuting cases of this type, is a very difficult thing. It's a very difficult thing for a victim to understand the rationale behind the Legislature and the Governor enacting a law that puts a five-year limit on crimes -- prosecuting crimes of this type.

Particularly now -- and when I was prosecuting cases, we didn't have the availability of DNA to the extent that we have it today -- and certainly, particularly with DNA evidence, the five-year statute of limitations really is a throwback to an era that really justice is better served now by the fact that we have, as Senator Paterson has said -- also a fellow prosecutor in his earlier days -- that DNA evidence now is so incontrovertible that we can now possibly prosecute these cases ten years down the line or more.

I must indicate, though, that we still, even though if we do away with the five-year statute of limitations, there are still some curbs on prosecutors going forward. Because the fact that we have DNA evidence

doesn't address the issue of witnesses having memory lapses, doesn't address the issue of victims having gaps in their memory, doesn't address the availability of witnesses, doesn't address the availability of police officers that might have been involved at some point in investigation or the case.

So in fact, even if we do away with the five-year statute of limitations, there are still some other factors that affect whether or not we can actually go forward, whether prosecution could go forward here. And those are the issues that are not related to the DNA evidence.

But certainly I think in that respect, in that respect, I think people who are accused of these crimes have that kind of -- at least that kind of protection or that kind of statute, so to speak, a natural statute of loss of memory, lapse of memory, unavailability of witnesses, unavailability of police officers or investigators.

So in that sense, I think we still have -- even if we do away with this, we'd still have some limitation on what a

prosecutor can go forward with. But nevertheless, by removing this from the law and removing this for violent felonies, for B violent felonies we are at least saying to victims in this state, and as Senator has said, that this is serious enough, we believe it's serious enough that we can go forward with this prosecution, assuming we have all the other parts available to go forward, that the law itself will not stop us from going forward on a prosecution of this type.

And I must tell you, Senator Skelos, to be able to say that to a victim that may -- who may have been three or four years old at the time a sex crime was committed and then five or six or seven years later comes to a prosecutor and wants that issue investigated and possibly prosecuted, to say to that victim now, Yes, we can look into a case like that, and, yes, we will use the technology and, assuming we have the witnesses, other witnesses, we can go forward, that means -- that will mean a lot to victims in this state.

So certainly, Senator, I applaud

you for this legislation. I believe it will be a tool that will be used for the better ends of justice and will be used in conjunction with the other items I mentioned that may actually put a stop to a prosecution that has nothing to do with the statute of limitations.

So I will certainly vote in favor of this legislation, and again commend Senator Skelos for introducing it.

THE PRESIDENT: Senator A. Smith.

SENATOR ADA SMITH: Thank you, Madam President. Would the sponsor yield for a couple of questions.

SENATOR SKELOS: Madam President, I'd be delighted to yield for a couple of questions.

THE PRESIDENT: You may proceed, Senator Smith.

SENATOR ADA SMITH: Thank you, Senator Skelos.

Let me first apologize. Senator Paterson may have asked some of the questions, but I was searching for an elevator, so it took me a little while to get here and I

didn't hear some of the answers. And if you've answered the question, just let me know and bear with me.

One of the things that concerned me was, is there any gain or loss to the prosecution by eliminating this statute of limitations?

SENATOR SKELOS: Gain or loss to the prosecutor?

SENATOR ADA SMITH: Yes.

SENATOR SKELOS: I think it's a big gain to the victim, because there would not be an artificial date established in terms of a prosecutor being able to bring a case.

SENATOR ADA SMITH: So you don't see any losses. How about does this place any kind of burden on law enforcement, on the police, the prosecutors, or any law enforcement agency?

SENATOR SKELOS: I don't believe so. What it does, it just eliminates an artificial date and will allow a prosecutor to do his or her job.

SENATOR ADA SMITH: Thank you. Thank you. On the bill.

The media in recent years has shown many cases where people have come forth five, 10, 15 years later where their memory has cleared and they are now assured of who the perpetrator of a crime against them, whether it be sexual assault, rape, et cetera, they are now ready to prosecute. But based under the current law, we would not be able to do so. And especially with the advent of DNA, it's critical that this bill be passed.

And I would advocate that all of my colleagues support this legislation, and I would like to commend Senator Skelos for sponsoring it.

THE PRESIDENT: Senator Duane.

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

I think it's clear that everybody in this body is supportive of crime victims and sympathetic to crime victims and believe that crime victims should get redress from crimes, that we should do everything we possibly can to find the perpetrators, the other people involved in a criminal offense.

As I say, I think that we're all

very supportive of what happens to crime victims here and that we want to catch the perpetrators and make sure that they are brought to justice and that they are punished as swiftly as possible. However, from my point of view, this is just a feel-good bill that really will do nothing.

I would like to have had a thorough hearing on this bill in committee. Certainly that's the place where we should really be discussing what the impact of this bill is. It certainly would have been appropriate to have a full hearing in the Codes Committee on this, and perhaps even in the Crime, Crime Victims, Corrections Committee, because the issues that it raises are very important and very complex.

I would have liked to have heard, for instance, what the DAs across this state thought of this legislation. I would be very interested to hear what DAs thought about this legislation. I would like to hear what other people involved in the criminal justice system thought of it. I'd like to hear from criminal defense attorneys what their thoughts were on

this legislation. I'd like to hear from judges how they felt about this legislation.

You know, if this bill only dealt with DNA evidence, well, to me that would make sense, because there have been advances in DNA evidence. But this bill is not just limited to DNA evidence. I don't know whether any of you know this; I would hope that you did. But, you know, over time, aside from DNA evidence, other kinds of evidence get stale. Memories fade. I think that it would be very hard to get a fair trial, to have accurate information come to a trial if it was old evidence, if old witnesses were being relied on.

And, you know, I'm not an attorney. I haven't worked as a defense attorney or a district attorney. I'm certainly not a judge. I've been involved in the criminal justice system in several different ways, but not as a prosecutor or as a defense attorney. And I would be interested to know how they felt about stale old evidence and faded memories would impact a trial.

As I say, DNA evidence, I certainly

could see why DNA would be an important part of a trial, and we have gone very far in our DNA technology. But unfortunately, we haven't found a way to keep people's memories clear for many, many years. Other parts of evidence get stale through the years. Oftentimes evidence is mishandled. I can understand if we have a DNA database, how that keeps the DNA evidence pristine. But there is no guarantee that other kinds of evidence stay pristine. Evidence gets stale. Memories get faded. And I think that because of that, we can't guarantee that there would be a fair trial.

But again, I'm not an expert on that. I would like to get more expertise. And I think that my job as a legislator is to actually hear from experts and people who work every day in the criminal justice system. But that hasn't happened. Frankly, I think there's more expertise out there in the real world than there is sitting here today, certainly than sitting here today, since there aren't very many people sitting here today. And everybody seems to think this is a wonderful bill, but that's only the handful of

us that are actually in the chamber on this what I think is a very important debate, which raises a lot of questions about the criminal justice system.

In fact, suppose one of us were called in to remember what happened during this debate. Well, there's no one here to remember what happened in the debate, because there's just a handful of people here. So you could only imagine what it would be if you had a new DA ten years after a crime that had to recreate what was going on.

Now, again, with DNA, yeah, you can look at that. That's a scientifically determined fact. But memories of what happened is not set in stone. People make mistakes. Sometimes people don't remember something that happened five minutes ago unless they have a reason to.

You can only imagine what people's memories would be like if they'd been involved in a crime or if they were a crime victim or if they witnessed a crime. That's a very traumatic thing. There is no way that your memory of that would be exactly the same.

I want to go back and say, yes, using DNA evidence, well, you can't really dispute that. But memory, you can certainly dispute that. Other kinds of evidence doesn't stay crystal clear. It's not often kept in the exact same condition. A piece of clothing, hair that hasn't been tested for DNA, all those things can be tainted. Memories can be polluted, other kinds of evidence can be polluted. Again, not DNA.

But this bill is not limited to DNA evidence. This removes the statute of limitations on, as I read it, Class B felonies. Right? Class B violent felonies. As I say, I'm not an expert in the field. I depend on others, although really more people than are actually sitting in this chamber, to make my decisions about that.

I don't know why is this bill only limited to that class of felonies? What makes those felonies something that should be included and not other kinds of felonies? Why is it that it's all kinds of evidence and not just DNA evidence? Why are we removing the statute of limitations on everything? I just

don't understand that. DNA, yes, I understand DNA. I certainly understand DNA. But I don't understand removing the statute of limitations on everything else.

I think there are some other difficulties with this bill as well. And I really think that we should have talked to DAs and judges. How does the Bar Association feel about this? Have we heard from the Bar Association? I don't see any -- Madam President, I think one of my colleagues is standing. Is that -

THE PRESIDENT: Senator Espada, why do you rise?

SENATOR ESPADA: Madam President, will Senator Duane yield to a question.

THE PRESIDENT: Senator, do you yield?

SENATOR DUANE: Yes.

THE PRESIDENT: You may proceed.

SENATOR ESPADA: Senator, you raise a number of interesting questions from a perspective that has not gotten perhaps enough air time here with respect to this bill.

But let me ask you, with respect to

fading memories and stale evidence and the issues that you're raising, how does that work against, in your view, against the defendant? Which would be a principal concern of mine.

SENATOR DUANE: Through you, Madam President, although I forget the Senator's name.

SENATOR ESPADA: Espada.

SENATOR DUANE: It's been a while. I can't help myself sometimes.

Well, five years, 10 years, 15 years is a long time. It would be very difficult to keep exactly the facts of the case and what the order of things that happened, and people's appearances change over time. And I think that that would make it more difficult for a defendant to get a fair trial. Because a witness's memory may fail. Or maybe, over time, after a case has been in the newspapers, someone could go back and read what was said in the newspapers. As we all know, sometimes newspapers aren't absolutely accurate about what's happened in a crime. A lot of that is theoretical. That could get into someone's thinking about what happened in

the crime.

All those things, this is very subjective kind of information. And when we're talking about both a crime victim getting real justice, which means the real perpetrator is convicted and given a penalty, and real justice for a person who is a defendant, I think that we need to be absolutely sure about the evidence that's being presented.

As I say, DNA evidence is something is something which is scientifically proven to be accurate and stays for a very long period of time when it's kept and analyzed correctly and kept in a database. But other kinds of evidence and memories? Very, very subjective. And I think that that works against a defendant and a crime victim getting justice.

SENATOR ESPADA: Madam President, if I might ask Senator Duane another question, through you.

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

SENATOR DUANE: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Espada.

SENATOR ESPADA: Thank you, Senator Duane. Let me just ask you, in terms of the issues that you enumerated -- that is, stale evidence, fading memories, evidence as such that one would have to go back 15 years, 20 years to collect or recollect, reassemble, reconfirm, et cetera -- are you at all concerned about the cost that those kinds of thorough investigations would cost the taxpayers of this state?

SENATOR DUANE: Through you, Madam President, that's an excellent question.

And one of the things that I would like to find out from district attorneys and judges, from criminal defense attorneys, is what the cost is to go back and recreate stale evidence, to gather together witnesses who may be dispersed across the state or across the nation. Or indeed, they could be around the world.

And particularly for a defendant to defend yourself after a long period of time based on state evidence that could be stale

could be a very, very expensive proposition and one which that defendant would have to put the money up for themselves. But also the cost to DAs and other people involved in the criminal justice system is -- it could be prohibitive. I don't know for sure. I think that's what it would be, but I think that's the kind of information we would need to get definitively from having hearings on this.

Again, DNA, you go to the database, you match it up. That's not a big -- that's fine. I'm for that. I approve of that. But it's these other kinds of evidence and memories which I think are problematic, both from a justice point of view and a cost point of view.

SENATOR ESPADA: Madam President, if I might ask Senator Duane one last question, please.

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

SENATOR DUANE: Yes.

THE PRESIDENT: You may proceed, Senator Espada.

SENATOR ESPADA: I hear your

concerns, and they're well-stated. But let's -- I guess yesterday we visited a vortex or two. I'd like to visit this vortex. For me personally, it comes home to this balance between the emotional and physical scars, what Senator Gentile indicated would be a picture of a victim in his office, in our office were we to be prosecutors, and then having to explain that because of some artificial date, we can't move forward.

In your view, how do you balance that with respect to this particular bill against the issues that I think are real that you have raised in this debate?

SENATOR DUANE: Thank you. Through you, Madam President, another excellent question.

I believe that there was a reason that we had statutes of limitations. It's certainly before my time here, but I think there were good reason why statutes of limitations were imposed on criminal justice cases.

I'm not sure that there's a reason why those have been changed, except for the

onset of DNA evidence. I don't think that through the years people's memories have gotten particularly better. I don't know of any drug or mental exercises which keep people's minds sharper than they were in the old days. I think that's pretty much the same. We may have more knowledge and sophistication about things, that's true. But things like memory, I'm not so sure we're any further along than when statutes of limitations were put into place.

Also, evidence. I don't think evidence disintegrates particularly any more slowly than it used to. I think it probably disintegrates at the same clip. I think that these were put into place when there were such things as refrigeration and that kind of thing, so other kinds of evidence probably does. But things like cloth and fabric, that disintegrates over time.

And so I think those were -- and many other things which I'm not even able to think of because, as I say, I don't work in the field -- but I think there are real reasons why statute of limitations were put

into effect. I think probably mostly because of the issue of memory and witnesses and that sort of thing. And, of course, of the person that's actually had the crime perpetrated against them, which again is a traumatic experience.

Now all of that said, I'm wondering why all those things have been removed from the statute of limitations in this bill. Again, DNA I understand. I don't have a problem with DNA. You know, I understand why people would have a problem voting against this bill. And on the face of it, it looks like a good bill. It looks like it's for crime victims, it looks like it helps with justice. But I'm not so sure about that.

I'm not so sure that we should not just limit this to DNA evidence, and I'm not so sure that we should only limit it to Class B violent felonies. Maybe we should expand it. DNA can be used in other things. So this -- parts of this bill may be good for the criminal justice system, but I don't think all of it is. And I also think that other bills could be included to make for a better

criminal justice statute.

I mean, who is going to want to be caught voting against this bill except for me, like I did last year, because I think maybe the people in my district will trust that I really did look at this bill and I had some substantial questions about it. But when you look at this bill, if you look at what it says it's going to do, I mean, it looks like it's the right thing. I mean, who wouldn't want to prosecute a crime years after if you think you know who did the crime? I mean, who wants to be caught voting against that?

But you know what? We could have a better bill. We could have a better bill than this. We could have a bill that only goes to DNA, which I think all of us would vote for, and we might even be able to include other kinds of crimes in the bill to remove the statute of limitations.

But again, I understand how no one would want a news story or a piece of campaign literature saying that someone was soft on crime because they didn't vote for this bill. But you know what? This bill is not as good

as a bill that we could have if we really worked hard on it, if we really reached out to district attorneys and defense attorneys, crime victims' advocacy groups -- I'm sure they would share the same concerns, because they want justice for the victims. They don't want just feel-good legislation, they want real justice.

And I think that's really it's a shame that this is the bill that's come to the floor today. Because if we had good hearings we could go back to the drawing board, we could make a bill that really talks about removing the statute of limitations for DNA evidence and not really make believe that people's memories are going to be crystal-clear through the years. You know, in some cases some people might have great memories, but I don't think we could make a blanket determination about that.

So that's what my concern is. Again, I really -- you know, I'm someone that's worked very hard on the issue of crime victims getting justice and compensation, getting their due. I'm for people that commit

crimes being punished and rehabilitated. But I don't think this bill comes close to what it is that we're really trying to establish, which is to get that kind of justice. So as I did when this bill came before us, when I made many of these same arguments, although it's basically the same bill -- even though it's an A print now, but it's basically the same bill -- I'm going to vote against it. But I really don't think the people in my district or anyone who's looking at this, including DAs and crime victim advocates and defense attorneys, are going to question my motives, because I know they know where my heart is. I just think that as a body we could have a better bill that goes to the issue of DNA and statute of limitations and doesn't really taint what we're trying to do in the way that evidence can be tainted through the years.

So I understand, and I'm not going to say everybody should vote no, although I think that it would be a good sign to say, Look, we could do better with this bill. I don't in any way mean to impugn the motives of the sponsor of the legislation, because it

seems on the face of it. But, you know, I don't think that any bill that I've ever written, and before I got here actually got several bills put into law -

THE PRESIDENT: Senator Paterson.

Thank you, Senator Duane, for your respect of the chair.

Senator Paterson, why do you rise?

SENATOR PATERSON: Madam President, when it's convenient, if Senator Duane would yield for a question.

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

SENATOR DUANE: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Senator, the issue you've raised has just kind of reignited my trouble over this bill. And what I want to raise to you is this possibility. In our criminal justice system, for crimes this serious, we convict people with an accumulation of evidence that convinces a jury that beyond a reasonable doubt that this

person committed the crime. That does not mean that the person is not guilty, it means that we have to prove guilt beyond a reasonable doubt.

So we've built into our criminal justice system, through the M'Naghten Rules and other historic criminal justice documents, that we're not trying to always convict the guilty person. We're trying to convict the guilty person who we can prove that they are guilty beyond a reasonable doubt.

Now, the issue that you've been raising over and over in your conversation is the issue of stale evidence, faulty memories, individuals who cannot be accounted for, unavailable witnesses, witnesses die, that kind of thing. If it is clear that you will not be able to convict beyond a reasonable doubt, that nonetheless does not cause prosecutors to eschew the opportunity to prosecute much of the time, because there's public pressure, there's new evidence that a certain person might have committed a crime.

So my question to you is, isn't there a point beyond which we as a society

have to draw the line? And if you want to leave DNA evidence out, because it does have a sort of shelf life that's permanent. But for the other evidences the reason we had a statute of limitations in the first instance is logical, because beyond a certain point we can't prove the person is guilty beyond a reasonable doubt. But we sure could arrest them, we sure could indict them, we sure could make sure that the rest of their lives are miserable. And I want to know what your interpretation of that standard should be.

SENATOR DUANE: Well, through you, Madam President, I thought that the way we worked in this state, in this nation, is that people are innocent until proven guilty. And I don't think that we should punish people who have not been proven to be guilty.

And will there be a mistake from time to time? Will someone get off without punishment from time to time? Yes, that happens. But so too do we know that lots of people have been convicted unjustly. And DNA is actually helpful in those cases as well.

However, I don't think that people

should be incarcerated unjustly, that people should be held for long periods of time, that people's reputations should be besmirched. I think that that's wrong and that we as a society should be held accountable when that happens to people.

Also, you raise the issue of, well, DAs might respond to public pressure. Well, I don't think DAs are supposed to do that. In a perfect world, they wouldn't. Does that happen? You bet. Have I yelled at DAs from time to time and told them they'd better start prosecuting a little bit harder? Absolutely. Have I yelled at DAs because I thought that they were prosecuting under the wrong crime? I have. I've done that on hate crimes and other things as well, where I've actually gotten very angry with a DA because I thought they weren't doing their job right.

So I'm not saying that all public pressure is wrong. But I think in some cases public pressure, based on what people have read in news accounts or what rumor says a case is about, can really lead to injustices happening. Many times we see in newspapers a

story about a stale crime, and it gets everybody going. And sometimes it's accurate and sometimes it's not.

I know that in New York City the police have a cold crimes unit, which actually has been doing a good job. But they've been doing it without this legislation. As I say, DNA has been very helpful on that.

But all of the questions that you and my other colleagues have raised here, I am not expert on that. I'm just not. The experts on this are the DAs and the police, other crimefighters, crime victims' advocates who work with crime victims every day, and defense attorneys who work to make sure that the playing field is level, and judges, who I think do that as well. So I would like to hear from them.

But I have some very serious questions about evidence other than DNA in this case, and that's why -- and I just want to go back, if I may -- unless you have another question, Senator Paterson.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam

President, actually I do have a final question for Senator Duane.

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

SENATOR DUANE: Yes.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Senator, when I look at this bill from the limited experience that I had in law enforcement, it does seem to me, very honestly, that a lot of thought went into this because of the classifications of the types of offenses that are included in this bill. We have first-degree kidnapping, first-degree burglary, first-degree robbery, we have rape, we have sodomy in the first degree, attempted murder in the first degree. There was some crafting to make sure that these were some very serious violent offenses.

And as a matter of fact, when the bill first came out, Senator Skelos and I had some conversation on the floor as to whether or not it really included first-degree burglary. And by the next year, Senator

Skelos was kind enough to make that very clear in the bill that it did. He meant that, but I wanted to see it a little more documented.

So I think that to a degree, those inquiries have been taken. But here's my question to you. We might say that one of the reasons that some of these offenses were never added to the Class A felonies really relates to the fact that we as a society didn't think very highly of crimes against women, particularly issues of kidnapping, rape, and sodomy. But -- and we augmented them with the most violent offenses of burglary and robbery and attempted murder. So to some degree, what this legislation might be doing is clearing up a class cultural judgment that our society has always had, and in the last hopefully 25 years we've started to ameliorate some of our ignorance in the past.

But when I look at this legislation, what troubles me is where do you draw the line; in other words, what are the synonymous pieces of -- or synonymous cases that qualify for this type of protection where we toll the statute of limitations forever.

And my fear is that this may be the precursor or the catalyst for the next round of felonies that we've now decided that they're serious too, even though they may be higher degree felonies.

In other words, if we're crafting this legislation to protect the victims who were injured by actions that basically could have killed them or ruined them for life, if it was a lifetime sentence for the victim, then we want to give the state a lifetime opportunity to go after the perpetrator. But if we are doing this because this is just the beginning of new law and order statutes where we're just going to find new ways to punish people for longer periods of time and new ways to access people who might have thought to have been guilty -- oh, but let's just throw it in the grand jury anyway, let's prosecute them, let a jury decide -- that would be not something I would want to -- would not want to do.

So my question to you is just simply where would you draw the line regarding those issues that you'd be comfortable leaving

the statute of limitations open -- because it is open for some crimes now -- and where would you close it? And you don't have to give a law enforcement opinion. I think the opinion of a person who might not be a prosecutor but could be a juror is just as important as anyone that had law enforcement training.

SENATOR DUANE: Through you, Madam President. From my sort of amateur point of view on this -- although I don't want to stress that I'm such an amateur, because I obviously have thought about this -- most but not all of the offenses that you listed I think the statute of limitations can and should be extended, based on our use of DNA now.

But I don't -- I'm not an expert enough to really delineate for you here on the floor what's above that line and what's below that line. I simply can't do that. If I had an opportunity to hear and read testimony from district attorneys and defense attorneys and crime victim advocates and judges and police, I probably could give you a better idea of what it is.

As I said, you know, I may not be known as the law-and-order senator, but in fact I am very concerned about making sure that we have a just and a free society and that crime victims get justice and that perpetrators are convicted and punished and I would hope rehabilitated as well. And so I do think that this the sponsor shares those concerns and is trying to make it so that justice is more easily garnished in our imperfect system, which is better than anyone else's system.

All of that said, I am going to come full circle again and say I have no problem with DNA at all. It's just in the statute of limitations being removed for many of the offenses in this bill. But I think there could be other offenses that should be included for DNA, and I also think that other kinds of evidence gets tainted over time, potentially that memories pretty much definitely get faded.

And again, we talked about the issue of public pressure. But I think DAs have to make difficult choices. I mean,

why -- for instance, let me just think of this kind of a case -- why was it that Robert Chambers was able to plead to a lesser charge than what he was being tried on? Well, you know what? I don't think any of us really knows why that is. That was something that was in the hands of the DA. She had her reasons for doing that. But I also think - that was probably ten years or more ago - that if we went around the chamber here and asked people some of the details of that case, who would be able to remember that?

So I think all of that goes to why it is that so many of these things should be subjected to the statute of limitations, but not DNA.

As I say, minds far better than mine put into place statutes of limitations on many of these cases. I can't tell you all the reasons why, I can only tell you what I think some of those reasons were because they make sense to me as someone who's not a DA or a defense attorney, as someone who actually has sat on a criminal jury, criminal case jury, and we were even sequestered overnight, so we

really had to go through the evidence. It was quite a job, but one that I found to be very, very important and fulfilling. And which is the reason why, though I know I'm drifting a little bit, whenever anybody calls and says, Help me get off jury duty, I always say, No, better you should ask for a tax thing for your synagogue than you should ask me to get off jury duty.

And I'm serious about that. I think it's very, very important. Any one of us here, particularly under new laws, attorneys, doctors, politicians, we can all serve on jury duty.

But anyway. But I think that well-intentioned though this bill is, feel-good though this bill is, I think that the DNA is good but the -

THE PRESIDENT: Senator Skelos, why do you rise?

SENATOR SKELOS: Madam President, if I could just interrupt for a minute, because there are a number of witnesses that are seeking to appear before committees. There will be an immediate meeting of the

Crime Victims, Crime and Corrections Committee in the Majority Conference Room.

THE PRESIDENT: There will be an immediate meeting of the Crime Victims, Crime and Corrections Committee in the Majority Conference Room.

You may proceed, Senator Duane, with germane remarks.

SENATOR DUANE: Interesting that the committee that I'm ranking on is being called off the floor at this very moment. But I was wrapping up anyway.

As I say, I do think that it's good to remove the statute of limitations for DNA for lots of offenses, but I don't think we should remove the statute of limitations for other things. I understand why people may feel the need to vote yes on this bill, but I think it's problematic. I think we could do better. And I hope that we will do better on it.

Thank you, Madam President.

THE PRESIDENT: Senator Onorato.

SENATOR ONORATO: Madam President, will the sponsor yield to two

questions that I am not clear on.

THE PRESIDENT: Senator Skelos, will you yield?

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR ONORATO: Senator Skelos, by eliminating the statute of limitations, is this for crimes going to be committed after this becomes law, or does it go retroactive?

SENATOR SKELOS: No, it's after. After.

SENATOR ONORATO: After, okay. Then there's no need for the second question.

THE PRESIDENT: Does any other Senator wish to be heard on this bill?

Senator Montgomery.

SENATOR MONTGOMERY: Yes, thank you, Madam President. I would like to ask a question of clarification of Senator Skelos if he would yield.

THE PRESIDENT: Senator, do you yield?

SENATOR SKELOS: Yes, I do.

THE PRESIDENT: You may proceed.

SENATOR MONTGOMERY: Thank you. Senator Skelos, I'm just wondering for the crimes in this category, as listed in the bill -- for instance, aggravated assault upon a police officer -- I don't know what second-degree kidnapping -- and some of the other, I guess burglary, robbery, gang assault and what have you, I know that there's a very common practice in New York City that on practically every contact with a person, particularly a young person, with the police -- in other words, there's an arrest for some reason -- one of the charges is assault on a police officer.

And the question that I ask you is what is the standard of evidence required for aggravated assault upon a police officer, and how would that fit into removing the statute of limitations? I mean, if -

SENATOR SKELOS: You still have to prove your case beyond a reasonable doubt, the prosecution. And this is one of the crimes that's listed in the B violent felony section. And we've eliminated from the

original bill that we passed certain crimes that are not nonphysical in nature. So the crimes that we continue to eliminate the statute of limitations for are those where there is a physical intrusion of an individual.

SENATOR MONTGOMERY: Okay. Madam President, just one more question for Senator Skelos if he would continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR SKELOS: Yes.

THE PRESIDENT: You may proceed.

SENATOR MONTGOMERY: Senator Skelos, for some of these crimes -- i.e., rape, sodomy, sexual abuse, sexual -- I don't know what this -- conduct against a child, burglary, robbery, I suppose, I can see that DNA could be used to affirmatively prove a case no matter when it's brought. But then there are some others where you really don't have the benefit of DNA necessarily as the level of proof. So why are we including those in terms of this issue of statute of limitations?

Because this assault upon a police officer, that could be just my word against your word. I mean, the police stopped me and he accused me of assaulting him or her. And so this -- and I could be brought back 25 years from that time, if I do something that I'm charged with in relationship to this at 13 and then I can be brought back to be tried again at 25 on that same issue? There's no statute of limitations even though you can't prove it with evidence a certain number of years later?

SENATOR SKELOS: Number one, on all of these, if I could comment, presently there is no statute of limitations for murder.

SENATOR MONTGOMERY: Right.

SENATOR SKELOS: And you wouldn't necessarily prove this crime with DNA evidence. So to say that the only way we should be able to convict a person is based on DNA, well, it's not required in a murder case, necessarily, or any other type of crime. We should also point out that the crimes that are enumerated in this section of the law, there has to be serious physical injury to the

person, or weapons involved.

SENATOR MONTGOMERY: Mr. -- will he continue to yield, will Senator Skelos continue to yield?

ACTING PRESIDENT BONACIC: Senator Skelos, do you continue to yield?

SENATOR SKELOS: Yes, Mr. President.

SENATOR MONTGOMERY: Senator, in other words, in order to be charged with aggravated assault upon a police officer, you must have a weapon, you must use a weapon in that assault, is that the case? In order for it to be -

SENATOR SKELOS: Weapon or there's serious physical injury to that police officer.

SENATOR MONTGOMERY: So it's not necessary that there is a weapon, but there is serious physical injury.

But nonetheless, you get a charge, and in the event that there is, 25 years later, no evidence, you can still be brought to be tried based on this particular issue?

SENATOR SKELOS: You still have

to prove your case. The prosecution would still have to prove its case beyond a reasonable doubt. And remember, we're dealing with a section called Class B violent felony, violent felony offenses.

SENATOR MONTGOMERY: But it's not Class A-1.

SENATOR SKELOS: And, Senator Montgomery, even with murder you still have to prove your case. Whether the statute of limitations -- or there's no statute of limitations, even if it was brought twenty years later, you still have to prove your case.

SENATOR MONTGOMERY: Right. But Senator, I'm not talking about murder, I'm talking about assault upon a police officer, which is a particular problem with arrests in my area. That's what young people get charged -- Mr. President, that's what young people get charged with. So I'm trying to get some clarification on how far are we going with this. Assault on a police officer may or may not be assault, but they get charged with it anyway. Every African-American young

person that gets stopped gets charged with this thing here, assault on a police officer, Mr. President.

ACTING PRESIDENT BONACIC: Sen ator Montgomery.

SENATOR MONTGOMERY: Yes.

ACTING PRESIDENT BONACIC: I understand your passion, and we will get to each of your questions in an orderly way.

So do you have a specific question for Senator Skelos?

SENATOR MONTGOMERY: Well, Mr. President, I'm just trying to get some clarification on this particular one, because that's the one that is most problematic.

What I would like to ask is this assault upon a police officer, why are we now including that in this legislation, eliminating the statute of limitations, when that is -- in many instances, it's a subjective charge, it's a routine kind of charge, and now we have a young person who may be, you know, 13 at the time they get this and 25 years later they can still be brought to be tried up on -- based on this so-called Class B

violent felony offense? I want to know how - why are we including that in here, in this bill.

ACTING PRESIDENT BONACIC: Okay. So, Senator Montgomery, you do have a question for Senator Skelos.

SENATOR MONTGOMERY: Yes, I do.

ACTING PRESIDENT BONACIC: Sen ator Skelos, do you continue to yield?

SENATOR SKELOS: If the question is why -

SENATOR MONTGOMERY: Yes.

SENATOR SKELOS: -- it's because as the author of this legislation, legislation which I believe you voted for last year, I sought to include all of these crimes in there. That's my answer. It's totally appropriate for Class B violent felonies.

SENATOR MONTGOMERY: Okay. Mr. President -

ACTING PRESIDENT BONACIC: Senator Montgomery.

SENATOR MONTGOMERY: -- I'll be voting no on this legislation this year. I made a mistake last year.

ACTING PRESIDENT BONACIC: Thank you, Senator Montgomery.

SENATOR MONTGOMERY: Thank you.

SENATOR HEVESI: Mr. President.

ACTING PRESIDENT BONACIC: Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President. Would the sponsor yield?

SENATOR SKELOS: Yes.

SENATOR HEVESI: Thank you. Mr. President, I'm curious to know -- because I have a somewhat divergent view than some of my colleagues, who I understand are passionate about this issue and have thought a lot about this issue. I'm concerned that this legislation, which I believe is long overdue, doesn't go far enough.

And my question for Senator Skelos is, my understanding is that there are certain violent B felony offenses that the statute of limitations would be removed if this bill became law. My question is, which violent B felony offenses are not included?

SENATOR SKELOS: Arson in the first degree, arson in the second degree,

criminal possession of a dangerous weapon in the first degree, criminal use of a firearm in the first degree, criminal sale of a firearm in the first degree, intimidating a victim or witness in the first degree.

SENATOR HEVESI: Thank you. Mr. President, would the sponsor continue to yield.

ACTING PRESIDENT BONACIC: Senator Skelos, do you continue to yield?

SENATOR SKELOS: Yes.

SENATOR HEVESI: Thank you. I'm a little bit confused, because just from hearing that list of offenses, those are all very serious violent felony offenses. And as I'm sure you will agree, there are many violent felony offenses that are C felonies and D felonies which also could necessarily have the type of impact that is the purpose of this legislation to try and remedy by providing a cure years later.

So my question is, why was the legislation drafted this way instead of, for example, including all violent felonies as opposed to nonviolent felonies? Could you -

SENATOR SKELOS: You know, we passed that version of the bill last year, which you supported. I think Senator Paterson voted against it. And now in order to get the Assembly to do something, to do something, I would be in favor of including all these crimes, eliminating the statute of limitations.

But unfortunately, we have to deal with an Assembly that is of another mind-set. And we've taken out certain crimes which Senator Paterson suggested -- so we do listen at times to Senator Paterson -- so that we would have a better opportunity to get a two-house bill passed. That's why.

But I'd be happy to bring the other bill out again. I'd be more than happy to bring it out.

SENATOR HEVESI: Mr. President, one final question for the sponsor.

ACTING PRESIDENT BONACIC: Senator Skelos, do you continue to yield?

SENATOR SKELOS: Yes.

SENATOR HEVESI: Thank you. Just for clarification, the bill -- last year's

bill included all violent felony offenses?

SENATOR SKELOS: I think just about all Class B violent felonies. We eliminated some. I don't remember all of them.

SENATOR HEVESI: All B violent felonies.

SENATOR SKELOS: Class B violent felonies, yes.

SENATOR HEVESI: Thank you, Mr. President. On the bill.

ACTING PRESIDENT BONACIC: Senator Hevesi, on the bill.

SENATOR HEVESI: Mr. President, last year we had a situation in New York City where, in a warehouse in Long Island City, in Queens, rape kits were sitting and had been sitting for years, untested. And many of these rape kits -- with the advent of DNA technology, these rape kits were languishing there as the clock on the statute of limitations was ticking away. And for many victims of the rapes that had taken place, no remedy is available any longer. And even if we pass this legislation today, pursuant to

Senator Onorato's question and Senator Skelos's answer, this legislation is not retroactive. All of those victims will have no redress as a result.

Now, I listened to Senator Duane and I very much understand his passion on this issue and his point, which was that if this legislation was limited to new DNA evidence, that he'd be much more amenable to passing the bill. I diverge from him on that issue in that I think New York State should be more in line with the other states, such as New Jersey, which have no statute of limitations for any violent felony offenses, irrespective of whether or not DNA evidence is now available.

I think we -- if we had not had DNA technology now available, I still would support legislation to remove the statute of limitations on violent felony offenses. And as a result, I don't believe that this legislation goes far enough. Not only would I like to see the statute of limitations eliminated for the very serious crimes that Senator Skelos has included in his bill, and

the very serious crimes that Senator Skelos included in his bill last year -- which according to the sponsor were also B felonies but were only B felonies -- I would include that to be every violent felony offense, irrespective of whether it's an A, B, C, D, or E felony offense.

I don't agree with the supposition that irrespective of DNA, that memories fading, which is the presumptive reason or one of the strong reasons why you need a statute of limitations, that that is a greater hindrance to the defense than it is to the prosecution. And I believe, though I was not in the chamber, Senator Gentile, who was an outstanding assistant district attorney in my home county before he was elected to the State Senate, elaborated on this point. But a prosecutor has the burden of proving beyond a reasonable doubt the guilt of an individual whom he is prosecuting.

Memories fading, it's my understanding and logical thought, is a hindrance much more to the prosecution than to the defense. Memories fading is something

that the defense is going to bring up as a reason why the prosecution is going to have an unbelievably difficult time proving a case once years and years and years have elapsed.

So I don't agree with those two central contentions of my very well-intentioned Democratic colleagues on this legislation. And I just -- I have the strongest reservations about not taking an action which would prevent somebody who's the victim of a crime from getting redress of that crime. And by the way, it's not just for the crime victim. If we are precluded from prosecuting, convicting and imprisoning somebody who has committed a serious violent felony offense because a statute of limitations of five years has elapsed, knowing what we know about recidivism and criminal behavior in our country, not just in New York State, if you are able to prosecute on these offenses, if you get somebody, through DNA or through some other evidence, or somebody comes forward with some new information or some non-DNA evidence now presents itself after the five years has been established, and we

successfully prosecute that individual six years later for a rape or for an assault which has left somebody crippled or what have you, the individual who committed that crime and who is now in prison is by definition not going to victimize anybody else.

So this is not just a measure -- if we take this step today, it's not just a measure that does the right thing and provides justice for the victim, somebody is who all too often left out of the equation here, but it is a public safety mechanism that should provide some level of protection from individuals who might prospectively be victimized by an individual who, subsequent to passage of this legislation -- and I hope it's passed -- is prosecuted for a violent felony offense, irrespective of when that violent felony offense was committed.

I think the State of New York has made a mistake in its existing law in having a statute of limitations. And I -- you know, with reference to Senator Skelos's comment about why this legislation has been tailored now and reduced in its scope, that's a

problem. I have a problem with that. And I would urge the Assembly to not only adopt this bill immediately but to open up discussions to expand the elimination of the statute of limitations for all violent felony offenses in New York State, and I would urge them to do that as soon as possible.

This is an important piece of legislation, notwithstanding the very serious concerns that some of my colleagues have raised. But nonetheless, I support this bill and encourage my colleagues to do the same.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard on this bill?

Debate is closed.

Read the last section.

THE SECRETARY: Section 3. This act shall take effect in 30 days.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Duane -

SENATOR PATERSON: Mr. President.

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

SENATOR PATERSON: Mr. President, I would like to remind my colleagues that in the United States Supreme Court ruling in the Miranda case, also in Mapp versus Ohio and also in the Huntley case, the court held that it is possible that a few guilty people will go free if we have to preserve the duties incumbent upon government in our criminal justice system.

When you have evidence that becomes stale because of inaction by prosecutors, it is our culture in this country that that lapse inures to the benefit of the civilian, the defendant, the free person in this society. Because the whole basis of our criminal justice system is not to allow individuals who are actually innocent to be convicted of crimes, nor is it to allow individuals who have not committed a crime to be painted with the brush of suspicion because of actions taken by prosecutors. Because of that, that is why we have the most significant democracy on this planet.

I must thank Senator Skelos. I don't think it was properly pointed out that there was a lot of research done and they did listen to some of the admonitions that we offered them about this type of legislation.

And what I would say is that with all of my dissatisfaction about statute of limitations tolling, what I would say is that the crimes that are in this legislation are so analogous to the Class A felonies that we already toll the statute, that I can vote for this bill. But if this is a precursor to legislation like it, I don't want to stand up here one day and regret my decision.

I vote aye.

ACTING PRESIDENT MEIER: Senator Paterson will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 55. Nays, 2. Senators Duane and Montgomery recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President,

there will be an immediate meeting of the Transportation Committee in the Majority Conference Room.

ACTING PRESIDENT MEIER: Immediate meeting of the Transportation Committee in the Majority Conference Room.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could take up Calendar Number 281, by Senator Maziarz.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 281.

THE SECRETARY: Calendar Number 281, by Senator Maziarz, Senate Print 3042, an act to amend Chapter 81 of the Laws of 1995.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Maziarz, an explanation has been requested of Calendar 281 by Senator Paterson.

SENATOR MAZIARZ: Thank you very much, Mr. President.

The limited home care services agency program was created by Chapter 81 of the Laws of 1995. This program was designed to allow frail senior citizens to remain in an

adult care facility. The program allows certified adult homes and enriched housing programs to provide certain Medicaid-funded personal care and nursing services to be delivered on-site. Services are provided by the limited home care services agency only to Medicaid-eligible residents.

Limited home care services agencies must be licensed in the Department of Health and secure a contract with their local social services district, to be reimbursed through the Medicaid program. This bill simply extends the limited home care services agency program until March 31st of 2003.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, I can understand the value of allowing the home care agencies to come into the home and help many of our constituents and residents of the state of New York, negating and hopefully delaying the use of an adult care facility or an enriched living condition. And probably it would inure to our benefit in terms of the cost to the state. So I understand the

premise of the bill. We had it in laws of - Section 81 of the Laws of 1995, and I voted for it. And I came back and voted for it in Section 443 of the laws of 1997, and I voted for it. And I came back here in 1999 and I voted for it in Section 18 of the Laws of 1999.

So my question to Senator Maziarz is, is there a statute of limitations for how many times I'm going to vote for this bill and we haven't even enacted the legislation yet?

SENATOR MAZIARZ: Senator Paterson, I would love nothing more than to permanentize it and not to have to come back here every three years and answer the same questions that you ask every year. But apparently our colleagues in the other house are mistrustful, if you can believe it, of the Department of Health, and they insist on it being for a limited time period.

SENATOR PATERSON: Mr. President, if Senator Maziarz would yield for a question.

ACTING PRESIDENT MEIER: Senator Maziarz, do you yield?

SENATOR MAZIARZ: Certainly, Mr.

President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Well, if we instituted a process that we wanted to make permanent, then I would agree with you. But my concern is that we haven't instituted a process. We're over six years after we passed the legislation, and at this point we haven't really put this project that you suggested many years ago into effect.

So what I'm, you know, just pointing out or suggesting to you is that maybe something is wrong. Maybe we need an explanation. Has the Department of Health, as it is required, submitted reports on why this is the case, why there's a delay in implementing -

SENATOR MAZIARZ: Through you, Mr. President. Actually, the program has been implemented. There are currently 15 ongoing programs.

Now, I agree, Senator, it did take some time to get the proper training and to get the program ongoing. But currently it is

in effect and we think is saving the state a lot of money. And most importantly, it's allowing low-income senior citizens to receive care in their residence. Not within their home, but within the facility that they are living in which they now consider to be their home. And it's ongoing now at 15 sites throughout New York State.

SENATOR PATERSON: Mr. President, if Senator Maziarz would continue to yield.

ACTING PRESIDENT MEIER: Senator Maziarz, do you yield?

SENATOR MAZIARZ: Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Senator, what is the maximum service that we can provide? How many programs was it designated to assist?

SENATOR MAZIARZ: There are - I'm not sure I understand the question, Senator. The services that are primarily provided are personal care services, the administration of medications, and the application and changing of sterile dressings by a registered nurse. Those are the services

that are currently provided.

SENATOR PATERSON: If the Senator would continue to yield.

SENATOR MAZIARZ: Yes, Mr. President.

ACTING PRESIDENT MEIER: He yields.

SENATOR PATERSON: Senator, you said there were 15 programs that are up and running. My question is, at full implementation, how many programs will actually be in the process?

SENATOR MAZIARZ: There's no limit to the number of applicants that there could be, Senator. Each adult home or enriched housing program that's currently licensed in this state could in effect apply for a limited licensed home care service agency. And I don't know how many there are in the state, Senator.

SENATOR PATERSON: Senator, would you agree with me that the spirit of this legislation, the desire to actually lessen the cost to the state of seniors that would have to go to other facilities couldn't be enhanced

very much by the implementation of 15 programs when we have, I would suggest, hundreds if not a few thousand programs that could be implemented?

SENATOR MAZIARZ: Through you, Mr. President, I would agree, Senator. But I think as this program becomes -- as the value of the program becomes more widely recognized throughout the state, I think that this program is going to grow. But of course it can't grow unless we pass this legislation today, Senator.

SENATOR PATERSON: Thank you, Mr. President. If Senator Maziarz would continue to yield.

SENATOR MAZIARZ: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: The merit of the program is not in question. I'm not debating the merit of the program today. What I'm talking about is the implication. Perhaps it would relieve our colleagues of some of our fears and anxieties if Senator Maziarz would

explain to us what caused the delays in the first place.

If we passed legislation in 1995 with a two-year sunset, it must have been in the reasonable contemplation of the formulators that we could actually put a reasonable number of programs in the process in two years, so as to at least portray for the Legislature that there was a real valid reason for starting this progression.

SENATOR MAZIARZ: Senator, I was told by the Department of Health that the primary reason but not the only reason for the delay was the rate-setting that the Department of Health used in coming to an agreement with the adult homes and the enriched housing programs. The rate-setting was a problem, Senator.

SENATOR PATERSON: Mr. President, if Senator Maziarz would continue to yield.

SENATOR MAZIARZ: Certainly, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Mr. President,

is Senator Maziarz familiar with the payment to the workers at home care facilities?

SENATOR MAZIARZ: Yes.

SENATOR PATERSON: Mr. President, if Senator Maziarz would continue to yield.

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

SENATOR MAZIARZ: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Senator, isn't it true that when the home care facilities decide on what their payments to their workers will be, that they are not affected -- they make the ultimate decision themselves and that's not affected by the rate negotiations between the home care facility and the state; is that correct?

SENATOR MAZIARZ: You're asking me how -- when they decide how much they're going to pay their employees? Yes, I would assume that's between the home administration and the employees themselves, yes. That's not set by the state.

SENATOR PATERSON: Thank you,

Senator. That is my understanding as well.

If the Senator would continue to yield.

ACTING PRESIDENT MEIER: Senator Maziarz, do you yield?

SENATOR MAZIARZ: Certainly, Mr. President.

SENATOR PATERSON: Then, Senator, wouldn't you have some apprehension about an agency which is negotiating rates with the state, doesn't give much back to their workers, wants to have a plan that clearly inures to their benefit, hasn't provided any services to the state in six years, with 15 exceptions, and still wants you and I to come and vote for another two-year sunset for which there's no encumbrance upon them to meet a deadline on time -- doesn't that make you a little bit apprehensive about continuing this policy which has brought us back very little and has created what may even be a windfall for some of the agencies?

SENATOR MAZIARZ: The answer to your question, Senator -- through you, Mr. President -- is, yes, it does make me

apprehensive.

However, the fact that there - after much delay, there are 15 ongoing programs in the state and I am told 75 applicants pending, and the fact that I have visited several adult homes and enriched housing units and spoken to low-income seniors, Senator, who are enrolled in this type of a program, and they seem to be extremely pleased that they do not have to leave what they now consider to be their home, this adult home or enriched housing -- which an adult home tends to be a room in a larger facility, enriched housing tends to be a very small apartment in another facility -- that they are extremely pleased they do not have to leave what they consider to be their home to get their dressings changed or to administer some medications or get personal care services.

So I am apprehensive. The answer to your question is yes, I share your apprehension. But I think the program is growing rapidly.

SENATOR PATERSON: Mr. President,

the Senator who represents -

SENATOR MAZIARZ: My answer was almost as long as your question, which is very troublesome.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, the Senator who represents Niagara Falls and other great regions that he's allowed me to visit on occasions is very honest. And if he would yield for further questioning.

ACTING PRESIDENT MEIER: Senator, do you yield?

SENATOR MAZIARZ: Surely, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Senator, I appreciate your concern for the issues that I have raised. I assure you they are at least valid in my own mind, and I think in those of others who just wonder what is going on and what is taking so long. And in the end, in spite of my frustration at the process, I'm inclined to adhere to your suggestion and vote

for the legislation. Particularly if there's 75 other applications pending, maybe finally we'll get this whole thing going.

I guess I would just have to ask you, if we come back here two years from now, do you have an idea or in a sense a threshold that you think that the Department of Health should be able to report to us that these agencies have met in terms of service around the state that would make you more comfortable with either continuing it or just institutionalizing this process?

Because I like the idea. And I think any person who is affected would rather stay in their own home, and of course it's less costly to the state, so it's a win-win on both sides. But I just have a fear about perhaps some who may not be taking this as seriously as you and I not putting their full effort into implementing this process and really creating a logjam and diminishing the number of people who can receive these services.

So my question is, is there a standard by which you and I can agree, if we

come back here in 2003, that we're going to say, Hey, wait a minute, Department of Health, you know, we don't always get reports on how the hospitals are doing, the Department of Social Services is also involved, if you can't come up with this, we're just going to knock this thing out and reformulate it, maybe let somebody else take the responsibility for implementing these processes that will help the home care agencies.

SENATOR MAZIARZ: Senator, I would be extremely reluctant to give you a particular very definite number, because I know that two years from now you will remember this debate and come back here and there will be 89 operating licensed home care agencies under this particular legislation, and you will come back and say that I said 90, so they're one short. And we'll have that debate all over again.

So, Senator, I would say that I'd be very happy if the 15 that are in operation continued operation, that the 75 that are pending were also licensed, and I would also expect at that time that the Department of

Health would be able to do a much more in-depth analysis of this program than what they have already done. But I can assure you, Senator, from the individuals that I have spoken to that are involved in the program now, this is a very successful program. And I think you know that too.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, Senator Maziarz is right. I do know that the program could be very effective, as I described previously. If the Senator would yield for another question.

ACTING PRESIDENT MEIER: Senator Maziarz, do you yield?

SENATOR MAZIARZ: Surely, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Senator, I guess what would make me feel comfortable is knowing that what I believe is true is true, which is that the 15 that have been set up have pretty much come into being within the

last two years, ever since we passed Chapter 18 to the Laws of 1999.

SENATOR MAZIARZ: I would presume that most of the 15 have gone into operation in the last two years, Senator, yes. I'm not absolutely certain of that, but I think we can say that there was a delay in getting this program implemented.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Therefore, Mr. President, if the Senator continues to yield.

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

SENATOR MAZIARZ: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: If I feel a sense of disappointment over this process, at least I can come away understanding that in the last two years, when we granted the second extension, that the agencies have gotten the message that the Legislature really wants them to enact these services to help the seniors of our communities all around the state.

SENATOR MAZIARZ: You're asking me if that was -- if that is my opinion or if I agree with your statement? I guess I'm not sure of your question, Senator.

SENATOR PATERSON: Mr. President, I'm asking Senator Maziarz if that would be helpful to those of us who have those apprehensions that at least we can say that we didn't do what we did in 1997, which is extend the program for two years and in two years they did absolutely nothing; that in this case, we voted for it two years ago, we can vote for it again because we now can point to something tangible they have done that will benefit our cause.

SENATOR MAZIARZ: I would agree with part of that, Senator. I don't know that they did absolutely nothing initially. I think that they sat down with some of the home owners and negotiated a rate settlement and -

ACTING PRESIDENT MEIER: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, there will be an immediate meeting of the Children and Families Committee in the

Majority Conference Room.

ACTING PRESIDENT MEIER: Immediate meeting of the Children and Families Committee in the Majority Conference Room.

SENATOR MAZIARZ: I'm sorry, Senator. I would just add to my answer by saying that I would hope that when we renew this legislation two years ago from now that we're much further along than we were in the last two years.

SENATOR PATERSON: Mr. President, on the bill.

I'm not going to be cynical enough to quibble with one agency short of what the 90 should be that would be implemented in two years. Actually, I hope there will be more than a hundred at that particular time, because I think it does accommodate need.

I do think, though, that some of the home care agencies have not only taken advantage of their workers but have taken advantage of the people they serve by having legislation passed that inured to their benefit and, for want of a better association, taken their sweet time implementing it. It

really bothers me not only that that's the case but that the decision-making bodies whose charge it is to supervise them have apparently not only been somewhat derelict in their duty but really haven't provided adequate information for what these delays are about.

I don't think it takes six years to negotiate rates over the delivery of services to home care. In many ways, I think they have cost the state in a way that we'll probably spend a period of time when we implement these services regaining some of that cost.

But Senator Maziarz is right. To some degree, we can't hold the advocates or the agencies culpable -- I'm sorry, we can't hold our seniors culpable for the actions of the agencies that are supposed to take care of them or our state agencies whose mission it is to supervise them. In the end, it would work very much to the benefit if those who can stay in their homes would not have to be moved around or burdened by moving to other living conditions. It will also save money for the state.

It's a great plan. I don't think

anyone had a problem with it in 1995. I don't have a problem with it now. I, as Senator Maziarz, hope that I see it again in two years, because I think this is the last time I can honestly feel that I'm benefiting residents around the state by voting for this. Clearly, if we don't see something demonstrably different than we saw in this session, then I think we're going to have to reconsider the whole plan and perhaps find someone that can implement it a little better.

But I was pleasantly surprised that Senator Maziarz didn't just deflect my questions but personally recognized the need to put these services into place posthaste.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President. I'll waive my questioning of Senator Maziarz, and I appreciate his patience in responding to what I think were good, solid questions from Senator Paterson.

On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I'm going to vote against this bill, and I'm going to vote against this bill because I don't understand why we use sunset laws this way, number one.

And, number two, I'm frankly tired -- and I appreciate Senator Maziarz's advocacy, but I think it's only fair when we say to the State Health Department, we're going to start this new program and we're going to take our money and invest in this program through establishing reimbursement rates, once we do that, we want you to tell us, is this a good program, is it working, are we saving money.

I don't think we need a thousand-page report. I don't think we need a 20-page report. I don't think we need a five-page report. But I do think that after six years, we could get a letter from the State Health Commissioner that says, Here's the program. We had startup problems. We couldn't negotiate the initial reimbursement rates, and as a consequence the program has been delayed. I need more time in order to conduct the evaluation. Simple,

straightforward, one page. Something to say to the Legislature it's worth continuing to use this investment.

I would suggest after six years - if to one of my employees at my law firm I said, I'd like to know where that case is, could you tell me, and six years later, the answer was -- as Senator Maziarz pointed out -- I think it's a good program, I think it's doing good things, I think it's reaching the goals and objectives that we would like to reach. I would look that employee in the eye and say, You think or you know? And that employee would say, Well, I just think. I really haven't done the research to figure it out yet. And I would fire them on the spot and simply say, I asked you to tell me whether it was working or not. Not whether you believed it was, not whether you think it was, but whether it actually was.

I would suggest there's millions of dollars that we spend on the bureaucracy of the Health Department. It's very easy to call up someone and say, How is that report going? Can you actually put it in writing? We didn't

say that it had to be 20 pages long. We didn't say it had to be exhaustive. In fact, the only thing we told them was that the Department of Health shall submit a report to the Governor and the Legislature that describes the cost savings.

I would daresay, Mr. President, that Senator Maziarz, as the chairman of the Aging Committee, could meet with them for 20 minutes, and he and his staff could write a report that would take 25 more minutes, and the job would be done.

We command our state agencies to do lots of work, to tell us, as the experts, whether these programs work. We give them four years to do it, they don't do it. We give them two more years, they don't do it. And now they ask us for two more years.

I would suggest, Senator Maziarz, you're correct, it's a terrible thing to have the senior citizens in this state held hostage to the State Health Department, to be in a position where the State Health Department's failure to comply with the legislative demand is a consequence for them losing services. I

would suggest if that is the case, then let's never ask the Health Department to tell us anything. Let's drop all these requirements for reports, and we will just decide whether to pass legislation simply on the basis of whether we believe it's a good idea, whether we think it's a good idea, whether the advocates tell us it's a good idea. I would just suggest, Senator Maziarz -- and again, this is well-intentioned. It may be a great program. But from my point of view, the mere fact that somebody believes it to be so is no longer enough.

Ask the State Health Department. They could even submit the report, I daresay, between now and Friday, which is the day in which the extension actually expires. Ask them for a written report, get the written report, get the Health Commissioner to do her job, have her tell the Deputy Commissioner to do his, have the Deputy Commissioner tell the person in charge of Medicaid financing to do theirs, and find that person somewhere in the bowels of the Health Department whose job this is to do their job and get us the report. I

daresay it could be here by 5 o'clock today if the Health Department thought it was that important.

But we don't seem to have that report. The bureaucracy doesn't seem to do what the Legislature wants -- what we told them to do, and the Health Department seems to assume that aw, so what, if we don't get the report done, we'll get an extension again anyway.

I'm not willing to do it one more time. Six years was more than enough. Find the person responsible. Have them produce the report. It can be here by Friday. On Friday, with the report in hand, I may vote for this program. Today, without it, I will not.

ACTING PRESIDENT MEIER: Senator Schneiderman.

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

ACTING PRESIDENT MEIER: Senator Maziarz, do you yield?

SENATOR MAZIARZ: Surely, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Thank you. I must admit that I am also somewhat baffled as to the course of events over the last six years in connection with this program. Does the Department of Health have a particular deputy commissioner or an agency within the Department of Health that has taken responsibility for this?

SENATOR MAZIARZ: I'm sure that there is, Senator, but I'm not aware of what particular agency within the Department of Health that it is.

SENATOR SCHNEIDERMAN: My understanding is that this bill is limited to adult homes and enriched housing programs; is that correct?

SENATOR MAZIARZ: Yes, that is correct.

SENATOR SCHNEIDERMAN: And does that mean that programs that deliver services to seniors in their own residences, off-site service providers are not included in the definition of limited licensed home care

service agencies?

SENATOR MAZIARZ: That is correct, yes.

SENATOR SCHNEIDERMAN: Has there ever been -- and in light of the discussion thus far, I hesitate to suggest that we try and implement a new program. But one of the major issues that seniors in my district raise with me -- and I think that as someone sensitive to the evils of big government bureaucracy, this would be an issue that probably is raised with you in your district -- is the question that the structure of New York State's regulations regarding adult homes, adult care facilities generally, really encourages people to get out of their own homes and into adult care facilities or possibly these limited licensed home care services agencies. Is there a parallel program to encourage agencies or to develop programs for agencies to provide these services to seniors in their own homes?

SENATOR MAZIARZ: Senator, first of all, I think just -- and I say this respectfully, I think the way you've asked the

question, you really don't have a clear understanding of this program.

These are seniors that are already in adult homes or in enriched housing. They're already residents of those homes. They would have to leave their home in most cases, in most cases, to get this type of care, when in fact you have staff on hand who could do things like change bandages. Most of this is about changing bandages, administering medications, and personal care services. Personal care services I guess is the largest of them.

So these individuals are already in these homes, they're residents of these homes. And in order -- what would normally happen, before this program was brought about, Senator, is we think that a lot of people who needed these services and could stay in their home were instead sent over into full-scale skilled nursing facilities. I mean, there are home health care agencies out there that provide home health care in a senior citizen's home, in their, if you will, natural home.

Now, these are senior citizens that

are residents of enriched housing, of adult homes. They consider that now to be their home, if you will.

SENATOR SCHNEIDERMAN: Through you, Madam President, if the sponsor will continue to yield.

SENATOR MAZIARZ: Surely.

THE PRESIDENT: You may proceed.

SENATOR SCHNEIDERMAN: Thank you. I thank the sponsor for the clarification.

I guess my concern is this. It seems that this program was intended as a sort of a halfway step towards the objective, which I think most of the seniors in my district would like to see. Which is to say instead of being in a full-fledged nursing home, you can be in a limited-care facility. But most of the seniors in my district really would like to be in their own homes and see us improve the quality of home care services so they can stay there. We have a lot of people who really feel as though the regulatory structure of New York State and also the economics of the industry really almost creates an incentive for people to get out of their

homes. And I accept the suggestion that a limited licensed home care may have some significant cost savings over a nursing home.

But the question I'm putting to you is, aren't we really emphasizing the wrong aspect of this, when I think that the need here, according to people I talk to in my district, really is not so much for more of these halfway facilities or limited licensed facilities but for a significant investment and improvement in home care for seniors in their own, as you say, natural homes.

SENATOR MAZIARZ: Through you, Madam President, I would agree with your statement that we do need more home health care. This has really, I think addressed, another issue. But on the issue of do we need more home health care, absolutely. Do we need better trained personnel. I think that, quite frankly, we've made great strides in the home health care field since 1995, since Governor Pataki was elected and certainly since Dr. Novello has become the New York State Health Commissioner, in the home health care side. I think this is another step for the

home health care, if you will, within these specific types of units.

SENATOR SCHNEIDERMAN: Through you, Madam President, if the sponsor will continue to yield.

SENATOR MAZIARZ: Surely, Madam President.

THE PRESIDENT: You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you. Well, I appreciate your -

SENATOR MAZIARZ: I feel I just extended this debate for probably another twenty minutes.

(Laughter.)

SENATOR SCHNEIDERMAN: Oh, not at all. Not at all. I do have some questions about the National Rifle Association that I want to get to.

(Laughter.)

THE PRESIDENT: Not in this debate, Senator. Not in this debate.

SENATOR SCHNEIDERMAN: Germane questions, Madam President.

The problem that we've been

discussing, though, is that whatever general statements you may wish to make about the success of Governor Pataki's Department of Health, it is hard to argue that this program can be counted as a success. What -- do you know where the 15 -- I gather there are only 15 facilities that are operational under this program over the last six-year life of the program. Do you know where they are located?

SENATOR MAZIARZ: Senator, I was just saying to my staff person I wish I had a listing of where all of them are. I'm told that they're fairly spread out around the state. But -- I was kind of hoping that I would know exactly where the ones in the city of New York were located, Senator, but I don't.

SENATOR SCHNEIDERMAN: Well, okay, thank you. Through you, Madam President. Are there other facilities that have applied -- perhaps you can explain, before I get into these questions, the process. Is there an application and review process before you become a limited licensed home health care service? Could you describe

how that works? Because I'm interested in the backlog.

SENATOR MAZIARZ: Yes, there is an application and a review process, Senator. I'm not familiar with the technical nature of what the application review process is. But I do know that there are 75 pending applications. In addition to the 15 that have already been approved, there are 75 pending applications. I do know -- by the way, I do have the criteria in front of me, it's rather lengthy, if you're interested in it.

SENATOR SCHNEIDERMAN: Yes, actually, I am interested in the criteria, because I'm trying to figure out, as I think many of us are, what's taken six years. And I think that we have an obligation when we implement a program like this to do some follow-up and oversight. And I appreciate the sponsor's attention to detail and responsiveness to the questions. But I still don't understand why, after six years of a program, we have 15 facilities operational at a time when our population of seniors is increasing substantially and the needs for

these sort of facilities would seem to be very pressing.

So maybe the backlog -- the tie-up is in the application process. I don't know. How burdensome are the applications? Are there on-site inspections? What's the process that's taking so long?

SENATOR MAZIARZ: Well, as I said in my answer to Senator Paterson, I said that I too was somewhat apprehensive about the length of time that it took this program to be made available in New York State. But I think that the Department of Health wanted to do a very thorough job and certainly wanted to make sure that the rate-setting methodology that was used would make it at least a situation where adult home owners and operators and enriched housing owners and operators would desire to get into the program, that it would not be something that they would lose money on. So that is the reason that was given to me as to why this process took so long, Senator.

But I share your apprehension and really dismay at the fact that it did take so

long.

SENATOR SCHNEIDERMAN: Through you, Madam President. Well, the concern over the rates and structuring the rates to create the right kind of market, I understand that. Is there any reason to believe, that you're aware of, why that would have taken longer than a year at the most? Were there hearings held? I mean, were there reports submitted, polls conducted, surveys done?

SENATOR MAZIARZ: No, I'm sure - I know that there were many, many meetings, Senator, that took place. Many meetings that took place at my instigation, Senator. But I'm not aware -- now, the Department of Health may have had hearings on it that I'm not aware of.

SENATOR SCHNEIDERMAN: Through you, Madam President, if the sponsor will continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR MAZIARZ: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR SCHNEIDERMAN: What were these meetings? Were they limited to the first few years of the program, or have they been going on for five years? I have to go to a lot of meetings also, but this seems to be an example perhaps of a government agency out of control. Do you know if the meetings - were they meetings with service providers, were they interagency meetings? What were these meetings that took six years.

SENATOR MAZIARZ: Oh, I'm not aware of what the specific meetings were. But they were meetings involving several agencies, yes.

SENATOR SCHNEIDERMAN: In addition to the Department of Health, what other agencies were involved, if you know?

SENATOR MAZIARZ: I'm sure the State Office of the Aging was involved in it. I'm sure that the Department of Children and Family Services, the Division of Budget, the Department of Social Services. Children and Family Services.

SENATOR SCHNEIDERMAN: Thank you. Through you, Madam President. If we have a

situation -- I'm pleased that we're joined by the chairman of the Health Committee now who can help us in rooting out the source of this inexplicable delay in providing badly needed services to the senior citizens of our state.

Are you or anyone else in the Legislature, in the Senate -- has anyone undertaken an inquiry into where the delays are taking place, if it takes like two years for an application to be processed or if the applications were just generated two years ago? Has anyone really taken a look at this or demanded answers from the Health Department?

SENATOR MAZIARZ: No.

SENATOR SCHNEIDERMAN: Through you, Madam President. I would suggest that perhaps since we are coming back for support here, that we undertake such a project, which I don't think will be tremendously burdensome, but at least to find out what's going on. Because if there is a problem that can be rectified -- and it's hard to imagine that it can't be -- you know, after six years, I think that a little noodge from the Legislature

perhaps would be in order.

Would you say that the program has shown any improvement, are there any positive gains that you can report to us because of these delays?

SENATOR MAZIARZ: I think that the answer to your question is yes, Senator, there have. And I think that the program now, with the 15 applicants and the 75 pending, nearing completion, I mean, I think that's certainly a good sign. I've gone out and visited some of these homes. I think it's good that seniors do not have to leave their home -- these are all low-income seniors, they're all Medicaid-eligible seniors, Senator -- that do not have to leave their home, that there's a comfort level in dealing with a staff person that you see on a daily basis that works in the facility that you're in.

And I can assure you, Senator, as someone -- every day that I'm in my district, Senator, every day, my last stop of every day is at a nursing home. And I can assure you that there is a comfort level between the

residents and staff persons that they are familiar with.

SENATOR SCHNEIDERMAN: Thank you. Through you, Madam President.

THE PRESIDENT: Senator, do you continue to yield?

SENATOR MAZIARZ: Yes, I do, Madam President.

THE PRESIDENT: You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Is there any reason for us to believe that the Health Department will be any more forthcoming in producing the report required by this statute than it has been in past years?

SENATOR MAZIARZ: Actually, Senator, they have produced a report which I have a copy of which I will make available to you and to Senator Dollinger and to all of our colleagues, by the way.

SENATOR SCHNEIDERMAN: And through you, Madam President, if that report has been submitted, then we're about to pass a statute that calls for another report. Is that the same report, or are we asking for a

new report?

SENATOR MAZIARZ: I would presume that we're probably asking for a new report, Senator.

SENATOR SCHNEIDERMAN: Okay. Through you, Madam President, when was this first report -

SENATOR MAZIARZ: I'm not sure, Senator, when it came out.

SENATOR SCHNEIDERMAN: And is it a report that, as set forth in the bill, describes the cost savings associated with the authorization of certified operators of adult homes and enriched housing programs to qualify as limited home care services agencies licensed by the Department of Health? Is that what the report addresses?

SENATOR MAZIARZ: I'm sorry, Senator, you're going to have to ask that again. I was -

SENATOR SCHNEIDERMAN: Oh, I'm sorry, I was just reading from your bill. Through you, Madam President. The sponsor referred to a report that was issued by the Department of Health. My question is, is it a

report that describes the cost savings associated with the authorization of certified operators of adult homes and enriched housing programs to qualify as limited home care service agencies licensed by the Department of Health?

SENATOR MAZIARZ: To be honest with you, Senator, I have not had a chance to read the report yet, so I really don't know if it contains that information or not. I'm told by staff who has read it that it's a status report of the current program and of the 15 current ongoing licensees.

SENATOR SCHNEIDERMAN: Through you, Madam President, the bill or the statute that we've passed authorizing this program in the past, did it require the -- did it have the same requirement in it for a report on the cost savings?

SENATOR MAZIARZ: I'm sorry, Senator, I did not hear you.

SENATOR SCHNEIDERMAN: I'm sorry, I'll try and speak louder. I'm sometimes a little shy and retiring.

The question is, we've had several

runs at this before, and we've passed other bills authorizing this program. Did the last few bills that we've passed -- and I guess this was in 1995, 1997, 1999 -- include the same requirement for a report from the Department of Health describing the cost savings associated with the authorization of these programs?

SENATOR MAZIARZ: I believe that it did, yes.

SENATOR SCHNEIDERMAN: But the report that we have -- and I trust that your excellent staff will give you accurate information. But what I gather from what we're hearing is that that report is just a status report on the program as a whole and not the report that was required by the legislation.

SENATOR MAZIARZ: I would say that's correct. However, there was no program to report on during those years that there were no licenses issued.

SENATOR SCHNEIDERMAN: Okay. Now, are you familiar -- through you, Madam President, is the sponsor familiar with the

rules and regulations that govern these sorts of limited licensed home care service agencies as far as patient conduct within the facilities?

SENATOR MAZIARZ: No, I am not, not directly, Senator.

SENATOR SCHNEIDERMAN: Through you again, Madam President, is there any sort of model set of rules, are there any requirements imposed by the Department of Health for rules and regulations of residents of such facilities?

SENATOR MAZIARZ: Rules and regulations for the residents?

SENATOR SCHNEIDERMAN: Yes, governing the lifestyle of the residents, their schedules, their medical care, what they're allowed to have with them, what they're not allowed to have with them, visiting.

SENATOR MAZIARZ: I'm certain that there are, Senator, but I'm not familiar with the exact nature of those. And obviously there's a licensing procedure for an adult home for an enriched housing program.

SENATOR SCHNEIDERMAN: Thank you. On the bill.

I thank the sponsor for his responsive questions. I would be very curious in knowing what the regulations are as far as the limitations on the conduct of residents. I am particularly curious about -

THE PRESIDENT: Senator Duane, why do you rise?

SENATOR DUANE: If the Senator would yield, please.

THE PRESIDENT: Senator Schneiderman, do you yield to Senator Duane?

SENATOR SCHNEIDERMAN: Yes, I will yield.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: I'm wondering whether or not you're getting the same sort of confusion that I'm getting here.

SENATOR SCHNEIDERMAN: I don't know. Perhaps if you described your confusion, I could answer. I may have a different type of confusion.

SENATOR DUANE: Well, through

you, Madam President, I'll describe my confusion and then see if we can come to a consensus about the confusion here.

Now, as I understand it, we may or may not have a report that may or may not be about a pilot program that may or may not have been started, or we may have a report about maybe having a pilot program or a report on whether we're going to have a pilot program and what would part of the pilot program. Do you think it's any of those things?

SENATOR SCHNEIDERMAN: Well, I admit to sharing some confusion about this. And not just so much confusion, but puzzlement as to why this state of affairs has been allowed to go on as long as it has. If it took six years for an agency such as, you know, the Board of Education of the City of New York to implement a program providing much-needed services, I think that there would be an outrage in the newspapers, hearings in the City Council. And I am concerned that we are not fulfilling our obligations to follow up and supervise the implementation of legislation that we've passed.

It sounds as though this program, which is six years old, we've never gotten any sort of a detailed report. What we have is one report, which we will call the status report, that as far as I can tell no one here has read except the highly trained and qualified staff who is advising Senator Maziarz, but we don't know what is in that report. Apparently no report on the cost savings associated with this program, which is required in the bill we're debating now, has been issued. The purpose of this program in large part is to save money. I mean, I don't think there's any dispute that nursing homes are worse places to live than these limited licensed home care service agencies, but they are far, far more expensive.

So we're proceeding here in the sixth year, reauthorizing a program for existence that's taken six years, and we don't know why, to get 15 facilities licensed, which I guess qualifies as a pilot program, a minimal pilot program at best. And we don't know what's taking so long, we don't know what's in the report. I guess we have one

report over six years, which is not terribly impressive.

So I must say -- and I think that it doesn't sound to me as though the sponsor disagrees with the puzzlement here. I'm sure the 15 facilities that it's taken us six years to develop are making a contribution to the well-being of the seniors in those facilities. But it doesn't sound to me as though we're doing our job or the Health Department is doing its job if that's all we have to show for six years of work. And we don't know, as far as I can tell -- although this perhaps will be a question I did not ask the sponsor -- how much this has cost over the past six years.

So I think I'm not as much confused as I am concerned and not as much baffled as I am puzzled by why this state of affairs has been allowed to continue. But I see the sponsor is doing some research even as we speak, so he may have some late-breaking news for us on this issue.

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

to yield.

SENATOR SCHNEIDERMAN: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR DUANE: As has been noted before -- and the Senator did raise the issue of cost savings associated with this. And that's the whole reason that there was supposed to be the existence of this program. But I'm wondering whether the Senator thinks that anyone who's a member of this body has either seen -- or I should say seen and/or read this interim report on the potential pilot program from six years ago.

SENATOR SCHNEIDERMAN: I only can judge by the responsive, candid, and fulsome statements of the bill's sponsor acknowledging that he has not read it. I don't know that anyone else has. The chairman of the Health Committee was here. Perhaps he has. But I don't think anyone in this body has read this report.

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

SENATOR SCHNEIDERMAN: Yes, I will continue.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: I'm wondering, Senator, if you are concerned, as I am, that we go through all the trouble of passing legislation here and then nobody follows that legislation. Do you have concerns about what the point is of our passing legislation here that gets ignored and frankly no one even seems to bother to track what's happening with the legislation and thereby makes it very easy to have that legislation and laws ignored?

SENATOR SCHNEIDERMAN: Well, I think that is a tremendous subject of concern, and particularly in this area. And we know that historically in New York State there have been recurring problems with the oversight of facilities that provide services to our senior citizens. We've had tremendous problems with nursing homes in the past. We've had problems with regulations not being enforced, with unscrupulous profit-making enterprises taking advantage of our senior citizens. So that is

a subject of concern.

Now, I note that in the New York State Assembly some time ago they set up a special committee on oversight, specifically just to follow-up on this type of issue, on programs and what had happened to programs set up through legislation. And perhaps that would be something that could be an addition to the numerous committees that we have in this fine body. I certainly would support - if Senator Maziarz was interested in being the chair of such a committee, I would certainly -- I'm not sure me giving him a recommendation would do much good at this point, but I would be glad to provide that.

I think there is a serious problem of the lack of follow-up, and I think it is something that we have an obligation to address. And I hope that we will address it with regard to this specific program, although a program providing services to seniors that's this important that has taken six years to get one update report and to license 15 facilities, as they used to say, it's like the clock striking 13. It doesn't just make you

question what time it is now, it makes you question all the information you've gotten from that clock. So this makes me wonder about other programs that the Department of Health is responsible for that may or may not be implemented.

And actually, I understand why the sponsor was concerned about the sunset provision. But it's only because we had the sunset provision that this is coming to our attention. If this hadn't had a sunset provision, I don't know that we would be having to debate right now.

SENATOR DUANE: Thank you. Thank you, Senator.

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

I hope that we will take a serious look at this program in this area. I do think that while I appreciate the sponsor's explanation of the need for these facilities, in my view the most critical area in which we have a shortcoming in New York regarding services for senior citizens really is in the area of providing services to people in their

own homes. The workers in that industry are grossly underpaid. And the home care service providers are really, if you want to look at it in economic terms, one of the best investments we can make in this state. Because what keeps people out of nursing homes and what will even keep people out of these limited licensed home care service agencies is effective services in a senior citizen's home. Our failure to invest in these workers, in training, in health care, is really very shortsighted. And I would respectfully submit that that's something that we should be taking the initiative on as well as following up on this puzzling lack of progress in the program that is before us now.

I find that I am continuing to listen to the debate because, frankly, at this point I'm not sure if I'm going to vote for this legislation or not. I think that the idea is very good, but I don't see how in good faith we can support something that's six years old where we don't really have any information about what's taking so long. This is the kind of issue that often our colleagues

on the other side of the aisle rail against when it comes to a bureaucracy being unresponsive to people's needs. So I am undecided at this point, and I will listen to the rest of the debate to decide how I'm going to vote.

Thank you.

THE PRESIDENT: Senator Duane.

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

I'm really embarrassed. I mean, this is the New York State Senate. This isn't like a moot court. We're not playing, this is real life. We're passing laws. Apparently we're passing laws that are ignored. That's really an embarrassment to this body. It's a disgrace. It's really a disgrace. And you know what? There isn't even anyone here who cares about it. Look. It's really an outrage. You know, this is the New York State Senate.

So we're just getting around now, six years later, to start a pilot program maybe. We may be starting a pilot program six years later. We don't know why there's a

delay. We don't even know whether as a result of passing this law that they'll start the program now. They didn't start it the last time. What makes any of us think that they're going to start it now? Apparently passing legislation doesn't really do anything here. Pretty embarrassing for the State Senate.

Does the lengthy delay mean that the program is working and doesn't need a report, or does it mean it's not working and we should just scuttle it? Six years. It's been six years. Really, I don't understand why do we bother passing legislation if nobody is going to follow it and nobody even pays any attention to when we do pass it or what happens with it. I just find all of that totally inconceivable.

I can't believe that nobody in this room, nobody in this chamber even knows whether a report has been done or read a report about this. You know, maybe I should call the Health Commissioner and find out what's going on here. I can't believe that before it came to the floor here that nobody even checked with the Health Commissioner on

what the heck is going on with this bill. Maybe I should just call her and find out what's happening. Maybe she could give me some answers on it.

Or maybe what we should do is have a hearing and call the Health Commissioner in here and find out why it's not done. Maybe we could find out ourselves without a report on what's happening. Maybe we could bring in the nursing home operators, maybe we could bring in some people that are allegedly getting these services. Maybe we could talk to people who may or may not be putting this program together. Maybe, just maybe, we could have a hearing.

Has there been a hearing in six years on this? No, I guess not, because nobody really seems to know what's going on with it. Is anything going to happen in the next two years? Why should I vote for something that extends something that hasn't happened for six years? Why should we give them two more years?

I thought that this was a chamber with adults in real life passing laws that

impacted real people. If older New Yorkers aren't real people, then I don't know who is.

THE PRESIDENT: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President. If the Senator will yield for a couple of questions.

THE PRESIDENT: Senator, do you yield?

SENATOR MAZIARZ: Surely, Madam President.

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

SENATOR HASSELL-THOMPSON: Thank you. Through you, Madam President. To the Senator, everything that I know about this legislation and the continuing legislation I've learned on the floor today, and a little bit from what I've read from the bill. So if you will indulge me, I'd just like to ask you a couple of basic questions.

SENATOR MAZIARZ: Certainly, Senator.

SENATOR HASSELL-THOMPSON: Okay. The little that I know about these kinds of

programs -- and I know them because of some of the health facilities, the adult homes in my area, where the health center and some of the other agencies are providing health services to them to allow seniors, as your bill describes, not to have to leave their homes or not to have to go to a facility to receive certain kinds of care. And I'm familiar with some of these.

I guess the problem that I'm having is, number one, I want to be clear in my question, my first question. This is to do a continuing resolution to allow these services to continue to happen within homes and/or faciles for the elderly. That's correct?

SENATOR MAZIARZ: Yes. In two very specific types of facilities, though, Senator: adult homes and enriched housing units.

SENATOR HASSELL-THOMPSON: Right.

SENATOR MAZIARZ: I mean, in other types of facilities, skilled nursing and so forth, these services are already provided.

SENATOR HASSELL-THOMPSON: Through you, Madam President, if the Senator

will yield.

SENATOR MAZIARZ: Surely, Madam President.

THE PRESIDENT: You may proceed.

SENATOR HASSELL-THOMPSON: Thank you. Are you talking about those facilities such as assisted living?

SENATOR MAZIARZ: No, assisted living is another type of -

SENATOR HASSELL-THOMPSON: Okay. What is the category that's under this special type?

SENATOR MAZIARZ: Adult home and enriched housing. Adult home is -

SENATOR HASSELL-THOMPSON: I know adult homes. Tell me what enriched housing is.

SENATOR MAZIARZ: Okay. Enriched housing would be an apartment-like setting where you have an option to have, let's say, congregate meal service. I mean, there are different types. But the most popular one is a private type of an apartment where you would have an option to either have some services like meal services, for instance, on your own

in your apartment or a congregate-meal setting.

One is more an apartment-like setting and the other one is more a room with, you know, congregate meals and so forth.

SENATOR HASSELL-THOMPSON: Okay. But they're all a type of residential, they're all residential.

SENATOR MAZIARZ: Right. Yes.

SENATOR HASSELL-THOMPSON: Okay. Through you, Madam President.

SENATOR MAZIARZ: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR HASSELL-THOMPSON: Thank you, Senator. You said that there are 15 existing?

SENATOR MAZIARZ: Yes, there are, 15 existing.

SENATOR HASSELL-THOMPSON: Throughout the state.

SENATOR MAZIARZ: Yes.

SENATOR HASSELL-THOMPSON: And continuing, through you, Madam President.

SENATOR MAZIARZ: Yes.

SENATOR HASSELL-THOMPSON: Of those that exist -- i.e., are licensed by the state -- in the six-year period since this program began, how many -- how did the licensing occur? Did they all occur suddenly, two in the first year, six or ten in the second year? How did the licensing occur?

SENATOR MAZIARZ: It has been spread out primarily over the last two years. There were approximately, I think, five in 1999 and 10 in the year 2000.

I don't think there have been any in 2001 so far. But there are 75 pending.

SENATOR HASSELL-THOMPSON: Through you, Madam President.

THE PRESIDENT: You may proceed.

SENATOR HASSELL-THOMPSON: Thank you. Thank you, Senator.

I'm beginning to understand, then, why we haven't had any reports generated, because we haven't had any programs generated.

SENATOR MAZIARZ: Yes. I said that, Senator, about 45 minutes ago.

SENATOR HASSELL-THOMPSON: I know you did. But somehow I needed some other

background for the whole thing to come together for me. So I appreciate it.

Continuing, through you, Madam President. You said there are 75 pending.

SENATOR MAZIARZ: Yes.

SENATOR HASSELL-THOMPSON: What is it that we're going to do differently to ensure that once the licensure -- because I understand that without this continuing resolution, those 75 cannot come into the program because the demonstration program will stop. Is that correct?

SENATOR MAZIARZ: Yes.

SENATOR HASSELL-THOMPSON: Okay. I'll get to the report. But I'm really more concerned about providing of services at the moment. What is it that we're going to do differently with this 75 to ensure, number one, that the licensing process is not prohibitive? Because apparently it must be, within six years, if we have 75 pending and only 15 have been licensed. That's part A.

Part B, how can we then implement a penalty to the Health Department or provide assistance to the Health Department if that's

what's necessary to facilitate these?

THE PRESIDENT: Senator Duane, why do you rise?

SENATOR DUANE: Madam President, this is a very important issue that goes, I think, institutionally to what's happening here. And I think people need to know what the answers to the Senator's questions are.

THE PRESIDENT: Senator - Senator, if I may -

SENATOR DUANE: Is there a quorum in the house?

THE PRESIDENT: Senator, I believe you've already spoken twice on this bill.

SENATOR DUANE: Is there a quorum in the house?

THE PRESIDENT: Senator, would you please listen to my comments and not interrupt. You have already spoken twice on this bill. You do not have the floor.

Senator Hassell-Thompson, you may proceed.

SENATOR DUANE: Madam President, anything -

You do not have the floor, Senator Duane. Please sit down.

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

SENATOR MAZIARZ: Actually, you had asked a question and I was answering; right?

THE PRESIDENT: Excuse me, Senator Maziarz. You may proceed.

SENATOR MAZIARZ: Thank you, Madam President.

To answer your question, Senator, before we were interrupted by Senator Duane, I think that the primary cause for the delay was the rate-setting. That issue has been resolved. Fifteen are approved and out there operating right now. They've proven to be extremely successful. I think that they wanted to get some out there in various regions of the state -- this is the Department of Health -- to see how it would work out. In fact, it's been, I think, hugely successful.

I would suspect that the other 75 are going to be approved because most of the problems, like any -- and I would tend to

agree that this has taken too long. And, you know, you can assess blame wherever you feel it should lie. But I'm just glad that the 15 are out there, that the rate methodology has been set, and that I think we can expedite these other 75. And probably as the program grows and becomes more popular, we'll multiply the number of applicants.

SENATOR HASSELL-THOMPSON: Madam President, through you.

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

SENATOR MAZIARZ: I do.

THE PRESIDENT: Do you have a question, Senator Hassell-Thompson? You may proceed with a question. Or on the bill, whichever you -

SENATOR HASSELL-THOMPSON: No, I'm still on the question.

Through you, Madam President. Senator, then this project, as I understand it, is a demonstration. When the project was first designed, what was the window for that demonstration project? And that's (A).

And then, (B), have we passed the

demonstration portion and is it going to become a permanent program?

SENATOR MAZIARZ: The answer to your first question, to (A), was two years.

Is it going to become a permanent program? As I answered to Senator Paterson, it is my desire to make it a permanent program. However, I'm told that our colleagues in the other house desire it to be on a two-year basis as opposed to a permanent program.

I think eventually, Senator, it probably will become extremely successful and will become a permanent program. I would like to see that happen.

SENATOR HASSELL-THOMPSON: Last question, if you will, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR HASSELL-THOMPSON: Do you think that the reluctance -- and I really hate to ask you any questions regarding the other house, because I know that you're in this house and you can't answer. But do you think that perhaps the reluctance to making this a

permanent program may have a lot to do with the failure of the Health Department to give us some statistical information or status as to the effectiveness of the program, particularly the cost-effectiveness? Because we still don't continue to know what the out-years fiscal impact is going to be without these reports.

SENATOR MAZIARZ: Through you, Madam President. Senator, you're correct, I cannot answer for the other house. I do not know.

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

To the Senator, thank you -

SENATOR MAZIARZ: You're welcome.

SENATOR HASSELL-THOMPSON: -- for indulging me with the questions and helping me to understand this.

I am a person who has been on both sides of issues in terms of having to generate reports on programs and also I've been on the side where I've requested and required the programs. And I certainly do not want to take a cut-and-dried posture that says that this

body ought not to vote for this bill because of the Health Department's default. And I can only say that the Health Department is at default because even if the agencies had not given us any sense of what's happening in order for them to generate a report, they should have given us something that says that as a fact. That's a report in and of itself, that we have not been in the program long enough for us to be able to generate this information.

Well, one of the things that becomes very important from a cost perspective is that when we look at programs, particularly on a pilot, one of the critical things when - when the premise is that it's a cost savings, that's one of the first pieces of information that we ought to require. Because every time we do a continuing resolution, as we are doing in continuing to reenact this, we may be creating parallel services that are not in fact cost-effective. And we can't know that. And six years down the road is pretty late for us to be trying to figure out what this is costing to the state, what the fiscal impact

is.

And also when we've got 75 of these programs that could be providing these excellent services to other citizens, seniors within the state, and we're not able to do that, there is something very, very, very, very wrong.

But I cannot in good conscience, even having said all that, deny the opportunity to seniors to receive these kinds of services if in fact this is the only substitute program that they can receive without having to travel distances from their homes or from whatever their source of residence is.

So I am in support of the bill, but I have some very serious problems that within a six-year period that we have not conducted some hearings, some body of people have not talked with the Health Department to try to figure out what are the difficulties, what are the impediments, what are the barriers to getting this program up and running. And certainly from a fiscal perspective when we continue to look at our budget, know that

we're not putting in enough money, and yet we're allowing expenditures to continue to occur that we're really not putting a rein on.

And so, I mean, having said that, it won't change the fact that I will vote for a continuum. But it will go on the record that I would like to be a part of any committee or subcommittee that is called to investigate what it is that is happening and what we need to be doing to ensure that this moves along more readily so that those 75 programs, if they're really successful, can be implemented more quickly than the first 15 were.

Thank you, Madam President.

THE PRESIDENT: Does any other, member wish to be heard on this bill?

Then the debate is closed.

SENATOR DOLLINGER: Madam President, can we call a quorum of the house.

THE PRESIDENT: The Secretary will call the roll and then ring the bell.

THE SECRETARY: Senator Alesi.

(No response.)

THE SECRETARY: Senator Balboni.

(No response.)

THE SECRETARY: Senator Bonacic.

(No response.)

THE SECRETARY: Senator Breslin.

SENATOR BRESLIN: Here.

THE SECRETARY: Senator Bonacic.

SENATOR BONACIC: Here.

THE SECRETARY: Senator Brown.

(No response.)

THE SECRETARY: Senator Balboni.

SENATOR BALBONI: Present.

THE SECRETARY: Senator Bruno.

(Senator Bruno was recorded as present.)

THE SECRETARY: Senator Connor.

(Senator Connor was recorded as present.)

THE SECRETARY: Senator DeFrancisco.

(No response.)

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.

(No response.)

THE SECRETARY: Senator Gonzalez.

(No response.)

THE SECRETARY: Senator Goodman.

SENATOR GOODMAN: Here.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Here.

THE SECRETARY: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Here.

THE SECRETARY: Senator Hevesi.

SENATOR HEVESI: Here.

THE SECRETARY: Senator Hoffmann.

(No response.)

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Here.

THE SECRETARY: Senator Kruger.

(No response.)

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: Present.

THE SECRETARY: Senator Lachman.

(No response.)

THE SECRETARY: Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Present.

THE SECRETARY: Senator LaValle.

(No response.)

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Here.

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.

SENATOR MARKOWITZ: Present.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: Present.

THE SECRETARY: Senator McGee.

SENATOR McGEE: Present.

THE SECRETARY: Senator Mendez.

(No response.)

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: Here.

THE SECRETARY: Senator Morahan.

SENATOR MORAHAN: Here.

THE SECRETARY: Senator Nozzolio.

(No response.)

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: Present.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: Present.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Here.

THE SECRETARY: Senator Paterson.

(No response.)

THE SECRETARY: Senator Meier.

SENATOR MEIER: Present.

THE SECRETARY: Senator Meier, we

have a quorum.

SENATOR MEIER: Thank you, Madam President.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Dollinger, to explain your vote.

SENATOR DOLLINGER: Just to explain my vote briefly, Madam President.

I think that the comments that I made to Senator Maziarz, and that were echoed perhaps by Senator Schneiderman and Senator Hassell-Thompson, about when do we require the Executive branch, who we give certain responsibilities to, to perform consistent with what we tell them -- and I would suggest that what we're asking for is nothing more than a page-and-a-half letter, a simple little letter that says this program is off the ground, it's running, Senator Maziarz said there were 15 groups, there's 75 more,

everybody wants to be in, it's going to be a great program, and we're doing the one thing that we set out to do, which is saving money.

I can't for the life of me understand why a report like that -- it could be a page, it could be two. We don't need voluminous records. I'm willing to accept experts' evaluations of the programs. But we don't get it, we don't get it after four years, we don't get it after six years, we won't get it after eight years, and it will be twenty years downstream and we'll still be waiting for the Health Department to tell us whether it works or not.

I commend Senator Maziarz, because I think this bill may be important. But I didn't come here to vote on a "may" or a belief. I came here to try to evaluate real evidence and real information.

Madam President, I'll be voting in the negative.

ACTING PRESIDENT FUSCHILLO: Senator Dollinger will be recorded in the negative.

Senator Onorato, why do you rise?

SENATOR ONORATO: Mr. President, to explain my vote.

ACTING PRESIDENT FUSCHILLO: Senator Onorato, to explain his vote.

SENATOR ONORATO: I too would like to commend Senator Maziarz, because I know he has the best interests of our senior citizens at heart. But I would like to admonish the individuals responsible for not providing a timely report on this matter. Perhaps we should apply the same rules and regulations that we applied to ourselves in this very chamber: if we didn't pass a budget, we weren't going to get paid. Which we are now on the very threshold of not being paid for not, supposedly, performing our duty.

I think the same rules of order should apply to the agencies that are responsible for not providing timely reports. Cut off their salaries until they comply with the intent of our Legislature.

I vote no.

ACTING PRESIDENT FUSCHILLO: Senator Onorato will be recorded as voting in the negative.

Announce the results.

THE SECRETARY: Ayes, 55. Nays, 2. Senators Dollinger and Onorato recorded in the negative.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

Senator Meier.

SENATOR MEIER: Mr. President, may we call an immediate meeting of the Aging Committee in Room 328.

ACTING PRESIDENT FUSCHILLO: There will be an immediate meeting of the Aging Committee in Room 328.

SENATOR MEIER: Mr. President.

ACTING PRESIDENT FUSCHILLO: Senator Meier.

SENATOR MEIER: May we now take up Calendar 282.

ACTING PRESIDENT FUSCHILLO: The Secretary will read.

THE SECRETARY: Calendar Number 282, by Senator Hannon, Senate Print 3614, an act to suspend certain requirements.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT FUSCHILLO:

Senator Hannon, an explanation is requested on your bill.

SENATOR HANNON: This bill continues a provision of the Laws of the Year 2000, Chapter 57, to be more precise, for another year. And it's done in conjunction with provisions that are being discussed in connection with the budget and extenders.

ACTING PRESIDENT FUSCHILLO: Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, if Senator Hannon would yield for a few questions.

ACTING PRESIDENT FUSCHILLO: Senator Hannon, will you yield?

SENATOR HANNON: I will yield to a -- question by question.

ACTING PRESIDENT FUSCHILLO: Senator Paterson, Senator Hannon will yield.

SENATOR PATERSON: That's perfectly fine. Thank you, Mr. President.

Mr. President, I'm interested in the programs this actually affects -- workers' compensation cases, volunteer firefighters, health and hospitals, corporations and HMOs,

and the like. What I'm trying to figure out is if that we're going to continue the suspension, how does that assist us when weighed against the budget process itself?

In other words, I thought that what we did during the budget process is that we continued certain things that were vital, paying state workers, meeting our debt obligations, that kind of thing. How does the continuing of these suspensions, which I don't know if I agree with even in the first place, how does that -- why does that have to be accomplished if we were theoretically to have a delayed budget process?

SENATOR HANNON: This is only parallel to things that are otherwise done in the budget and agreed to in the process of all the parties in both houses and the Governor, and this would just go along with it and enable it. And any of the specifics would be done in the substantive portion, not in the technical portion.

SENATOR PATERSON: Mr. President, if Senator Hannon would continue to yield.

ACTING PRESIDENT FUSCHILLO:

Senator Hannon, do you continue to yield?

SENATOR HANNON: Yes.

SENATOR PATERSON: Let me be specific. Let's take the implementation of Child Health Plus. It says under -- I think it's subsection ii of Section A of subdivision 7 of Section 2511 of the Public Health Law that they have to seek networks, they have to demonstrate the type of care and also to make sure that the served lived in the geographic area. Why does the continuation of that suspension of that part of the Public Health Law, why is that something that we have to do during the budget process?

In other words, you told me specifically why we do it. But what I'm trying to get, Mr. President, is the meaning. If we're going to in a piecemeal approach put things together that otherwise would be the same if we had a budget process, we're almost changing the budget process. And while we're hurting the state, we're not really having what I would think would be the heightened tension that there should be about not meeting our obligation, the public trust that we pass

the budget.

If we do it for essential services, I understand it. But why in this particular section of the law, the one that relates to the implementation of Child Health Plus, why do we have to do that now? Why can't we just wait until after the budget is passed?

SENATOR HANNON: In allowing benefits to flow to kids in this state, these technicalities, it's been determined, aren't needed.

SENATOR PATERSON: Mr. President, if Senator Hannon would continue to yield.

ACTING PRESIDENT MARCELLINO: Senator, do you continue to yield?

SENATOR HANNON: Yes.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR PATERSON: Senator, I can make a case for why the suspension actually inures to the detriment of kids. In other words, if we're saying that the people who run these programs don't have to make this information available, if we're suspending the obligation that exists under Section 2511 of

the Public Health Law, we're actually granting them a benefit, not the kids.

I thought the suspension was due to some issues that decreased some of the encumbrances upon them for a period of time. But I don't even understand in the first place how that is a benefit by continuing that suspension that we -- in this case we started in the Laws of 1999.

SENATOR HANNON: This suspension, as you've noted, and which you've voted for in the past, has enabled us to grow the number of kids by tens of thousands per year in this state, and obviously it's worked.

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

ACTING PRESIDENT MARCELLINO: Senator, do you yield?

SENATOR HANNON: Yes.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR PATERSON: Let's say we discontinued the suspension and we continued the mandate that's offered by the Public Health Law that these organizations have to

give this information. How does that hurt kids, how does that diminish the number of kids that are in the program?

SENATOR HANNON: That's not a question, that's a statement. And I have already said that's not a point of view that I agree with.

SENATOR PATERSON: Mr. President, it's my understanding that Child Health Plus increased due to the -

ACTING PRESIDENT MARCELLINO: Senator Paterson, are you asking the Senator to yield?

SENATOR PATERSON: Yes, I am, I'm sorry.

ACTING PRESIDENT MARCELLINO: Senator, do you yield?

SENATOR HANNON: Oh, I'm sorry, I didn't know that. Yes, I'll yield.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR PATERSON: I apologize to Senator Hannon, Mr. President.

SENATOR HANNON: No, I just sat down. I mean, I thought you were on the bill.

SENATOR PATERSON: Okay. I thought that the immense increase in the numbers of participants in Child Health Plus came from the outreach. If I'm not mistaken, how does forcing the organizations to comply with what is set forth in Section 2511 of the Public Health Law, how does that hurt outreach? In other words, it is a question: How does not continuing this suspension hurt the area of Child Health Plus?

SENATOR HANNON: It doesn't. I mean, if it doesn't, therefore there's no question to answer.

SENATOR PATERSON: Then the question, Mr. President, if the Senator would continue to yield -

ACTING PRESIDENT MARCELLINO: Senator, do you continue to yield?

SENATOR HANNON: Yes.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR PATERSON: -- is why do we have to continue these suspensions during a budget process if it's nonessential?

SENATOR HANNON: They're in law.

When we negotiate the substantive part of each of the benefits, it has been determined in the past that we don't need these technical provisions, and so we're continuing the suspension.

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

ACTING PRESIDENT MARCELLINO: Senator, do you continue?

SENATOR HANNON: Yes.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR PATERSON: But, Mr. President, we just heard that though they may be technical provisions, and though maybe in the end we really don't need them, we're not necessarily hurt. In other words, it's an inconvenience, is what I'm hearing.

And what I'm saying is during the budget process, I would think that if we were going to be making special provisions for certain operations of government during the budget process that we don't need these types of technical provisions to be included, we could do it. You know, we could do it. I

don't think it would hurt, necessarily. But why do it at a time when we're in the regular budget process? That is the question. I don't think I've heard a significant answer from the Senator. I want to know why it is so essential that we do this.

SENATOR HANNON: Sometime within the next few days, the budget year will end. And with it the authorization for a number of programs will end, including CHP. This provision is being passed because I believe we'll have to address such things.

I don't know if it will be absolutely needed. That's being discussed now. But in the event it is, I'd rather have this technical bill in place, I'd rather have those provisions out of the way. If someone feels a specific part of the ultimate negotiations on the substance should get flagged, should go through the notification process, well, then we can accommodate it then.

But there are many technical provisions that drive the enormous billions of dollars into our health care system, some

state technical provisions, some federal. And it's just -- we just needed to get these addressed at this point in time because, as I said, the fiscal year ends and at some point in time we need to get funds to health-care providers throughout this state so they can continue to take care of your constituents and my constituents, Senator.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Paterson.

SENATOR PATERSON: On the bill, briefly -

ACTING PRESIDENT MARCELLINO: Senator Paterson, on the bill.

SENATOR PATERSON: -- because I probably want to talk to Senator Hannon further about some of the other affected programs, particularly the Article 43 corporations and what their duties are, and particularly the Commissioner's obligations to the Workers' Compensation Board to set rates.

And what I'm just saying preliminarily, because I think Senator Hannon could persuade me to vote for this

legislation, but I'm just not hearing a reasonable solution to the dilemma that I'm having, which is that we try to restrict those pieces of legislation that we are going to enact for the operation of government to those essential items which I think the public needs. And what Senator Hannon may be implying is that this is somewhat of a necessity.

I think that I regard the value of CHP as highly as Senator Hannon does, and I certainly want us to have that program. But I don't see how the obligation of organizations to declare what their networks are, to discuss the geographic location of their service and what type of services they provide, I don't know how their unwillingness to do that affects the program or their unwillingness to meet the deadline causes the program to shut down. I just don't see it.

And so I'll look forward, in the discussion with Senator Dollinger and others, to see if Senator Hannon might be able to make me feel a little more assured that this would be a good thing to do at this time. I don't

necessarily want to put something in place technically that we aren't going to need later on. And maybe if I were presented with a scenario of how some succeeding discussion or lack of negotiation would cause us to lose some of these services, I would understand that. But I'm -- you know, when it comes to paying state workers, when it comes to meeting our obligation debt to try to keep our interest rates down, some kind of program that we need in the future and it would be lost by the months that we take away from the process by negotiating the budget, I can see those. And I've voted for them in the past.

On this one I'm just not quite as assured. And I did vote for it in the past. I'm glad I've taken a second look at it. But I'll listen to the discussion.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President. Will the sponsor yield? I have just two real brief questions.

ACTING PRESIDENT MARCELLINO:

Senator Hannon, do you yield to two brief questions?

SENATOR HANNON: I'll yield to a brief question.

SENATOR DOLLINGER: Through you, Mr. President, what was the rationale -- and I assume this was done in the last year's budget -- for the suspension of these requirements? I mean, we obviously put these requirements into law and then we said, okay, for some reason we're going to suspend their application for a period of time, which I assume, since this is a budget-related item, was for at least a year. What was the rationale just to suspend it in the first place?

SENATOR HANNON: I think it more related to initiation of a change in the program. There has been no change in the program, so -- last year, so it was put in. And at the moment, we don't have any changes in the program, so we don't -- we may not need them.

SENATOR DOLLINGER: Okay.

SENATOR HANNON: But it's a

static thing.

SENATOR DOLLINGER: And through you, Mr. President, just one other question.

ACTING PRESIDENT MARCELLINO: Senator, do you yield for another question?

SENATOR DOLLINGER: Senator, do you see in your position as the chair of the Health Committee that there's any reasonable prospect, either in this budget or at some point, where the suspensions would be lifted and the new regulations or the new portions of law would then take effect and we would be in the presuspension period in which those original rules were -- would take effect?

SENATOR HANNON: I would think if the original policies and notifications were appropriate in any way, given the widespread interest and the well-debated interest we have in the field throughout the state, that we would either put these back or we'd have something comparable to them.

SENATOR DOLLINGER: Okay, thank you, Mr. President. And I appreciate the comments of the chairman of the Health Committee.

I'm going to vote in favor of this bill. I -

ACTING PRESIDENT MARCELLINO: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Thank you, Mr. President.

I think this bill highlights the - both the complexity of health policy which finds its derivation in part in statute, in that we, as I think the chairman of the Health Committee has laid out, set certain standards and certain requirements and then ran into a new series of programs in which we were going to try to make a quick adaptation, we were going to try to move with some speed. And therefore we said to them we're going to lift the earlier restrictions that we imposed, the requirements for notice and other things. We decided, in order to allow new programs to move quickly, we suspended the effect of certain restrictions onto these new programs.

I think if we're going to continue to be flexible in our health care policy, if we're going to allow new ideas to get into the public debate, sometimes we have to put a

suspension of certain rules and regulations that may apply to well-established plans.

I think this, at least as I understand it, is justifiable. My only regret, Mr. President, is that once again it's late March and once again we're probably going to do a couple dozen chapters that will look somewhat similar to this one, in that they will be derivative from the prior year's budget because our budget will not get on done on time. The experimentation that this specifical proposal was designed to encourage obviously -- and I trust the judgment of the chairman of the Health Committee -- should continue, but we're not going to have a full debate of the continuation of that program in the context of a budget in which we would actually appropriate the funds to make it go and where we would put our money behind our policy judgment.

So I'm going to vote in favor of this, Mr. President. But I just think it's unfortunate that at this time of tremendous change in the health care system we don't seem to be able to get our budget done on time and

we don't know whether this will end up being permanently suspended or at some point reinstated, all of that left up to further discussions probably later this summer.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, I was wondering if Senator Dollinger would yield for a question.

ACTING PRESIDENT MARCELLINO: Senator Dollinger, do you yield for a question?

SENATOR DOLLINGER: Certainly, Mr. President.

ACTING PRESIDENT MARCELLINO: I'm shocked.

Senator Paterson.

SENATOR PATERSON: Mr. President, the Health Commissioner, under I believe it's Section 2807 of the law, one of the commissioner's obligations is to notify the hospitals of what -- or is to notify them of what the schedule would be for their and HMOs' reimbursement rates. I'm not stating it

exactly correctly.

But is this a serious enough situation that the suspension of this is important during the negotiation of a budget period?

SENATOR DOLLINGER: Well, through you, Mr. President, I don't know. I think what we have done is we have suspended the effect of that rule, the requirement that the Health Commissioner submit those rates to the Workers' Compensation Board. We had put a suspension in place, according to my understanding, in the last budget. So we've already suspended it for a year. The question is whether we continue to suspend it for a longer period of time until we resolve the next budget.

And from what I hear from the chairman of the Health Committee, that is in fact what the Health Department wants to do and would also continue the flexibility for other new ideas in the health care system of which in part this was suspended, to give more flexibility in that rate-setting process. That's my understanding, Mr. President.

SENATOR PATERSON: Mr. President, if Senator Dollinger would continue to yield.

SENATOR DOLLINGER: I will, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR PATERSON: Senator, I understand that institutionally it would probably be more suitable to continue the suspension as it is because it has a benefit. But what I'm saying is, the whole issue of the budgeting process, to me, doesn't hold the value that it used to. There used to be a great amount of fear and anxiety on the part of legislators as to what was going to happen if they didn't pass the budget on time. They'd stop the clock if they went a day later. There were actually legislators who were afraid they might not come back the next year.

Because of just what I consider to be the vanquished nature of some of the process, my contention is that only the essential services should be preserved in a period where we are continuing to negotiate

the budget. And that these shrill ideas about not paying people and the like are not really the answers to trying to get the budget passed on time. I think we all know realistic solutions. Senator Connor mentioned one in here last week about how they chose a pope. And we could pass a budget in the same period of time -- I wouldn't take away their food and water, but it could be done.

And what I'm saying to you is, do you know of what could be the possible detriment to the state by not making the Commissioner approve the reimbursement rates for hospitals and HMOs and to schedule the rates as per the Workers' Compensation Board? Do you know exactly what it is that is going to be so harmful that we can't wait until the budget period passes?

SENATOR DOLLINGER: Through you, Mr. President, I do not. I don't know, I -

SENATOR PATERSON: Senator, I heard Senator Hannon said that it sounds like him, and it sure sounds like him to me.

SENATOR DOLLINGER: I've been the ranker on the Health Committee for too long,

Mr. President. I'd like to be the chair.

(Laughter.)

SENATOR DOLLINGER: Through you, Mr. President, just in perhaps a more complete answer, my expectation would be -

ACTING PRESIDENT MARCELLINO: Senator, don't feel that you have to.

(Laughter.)

SENATOR DOLLINGER: Well, I just -- I will add it for Senator Paterson's edification. Obviously the posting of those rates creates certain legal obligations and certain rights. We are affecting the rights of third parties when we say to the Health Commissioner: You have to post those rates, you have to give them to the Workers' Compensation Board, those are going to be the rates that are going to be charged by the carriers.

If that's not done, then we affect their substantive rights; I presume, the obligation to pay those rates. And we have created, as certainly, I think, Senator Paterson I know well knows, the chairman of the Health Committee well knows, it's a very

complicated system of balancing the rights of obligors and payors and recipients, and it's not uncharacteristic for the courts of this state to say that if you don't strictly comply with each and every little requirement, you can't be paid or you don't have an obligation to pay or you don't have the obligation to pay at that rate.

Given the complexity of those legal obligations, what I understand this bill to do is to say we have suspended some of those obligations to create greater flexibility in the rate-setting process and not that rigid adherence to certain obligations at certain times. As a consequence, we're continuing that suspension for a period of time.

And the practical consequence, Senator Paterson, I think could be -- and again, I've suggested that my thoughts may not be determinative for this body -- but if we don't continue the suspension, we'll go back to these very well-defined rules that will have to be complied with immediately, and if there's a failure on the part of any one of the payors or recipients, we will create legal

problems for them in the future.

ACTING PRESIDENT MARCELLINO: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Dollinger would continue to yield.

SENATOR DOLLINGER: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He continues to yield.

SENATOR PATERSON: Since the always prepared and very diligent Senator Hannon didn't have much more of a thought beyond yours, and you being usually quite loquacious, I'm frankly surprised that neither one of you has been able to at least give me some history of why we know that this situation would happen in the past.

For instance, Article 43 Insurance Law corporations, they have an obligation to submit, within 60 days, a schedule of their rate payments for in-hospital patients. Now, to me that doesn't sound like the hardest thing to do. They just have to tell you what the rate payments are going to be for inpatient care. If they don't tell you within

60 days, they are not complying with this section of the law.

Now -- but even if that's the case, have we any history of the complicated nature of trying to reconstruct some of these obligations because some of the suspensions were deferred in the past that makes us know that this would create a red tape or a bureaucracy even after we passed the budget such that it would hurt constituents or inpatient services for people who are in the hospital?

SENATOR DOLLINGER: Through you, Mr. President, I have no specific knowledge of the kinds of complications that Senator Paterson makes reference to.

But as I understand what we did, one of the things we did in the original suspension was to give greater flexibility to insurance companies in posting their rates and negotiating their rates with recipients, whether it's hospitals or ambulatory surgical centers or physicians or nurses, other health-care providers. And the whole point was to get away from the notion that when you

had a rate you had to go to the Health Department to file it and you had to get approval for it before you could charge it. Instead, what we wanted to do was to get to a system of health care in which providers and payors could more freely negotiate those rates without the constant overview of the State Health Department or the State Insurance Department, and provide them with greater flexibility.

So at least to my understanding of this bill, that's in part what it's designed to do, is to say we're going to do away with all those little rules and try to get more to the substance of here's what I'm going to charge you, here's what you're going to pay, let's negotiate that. Once we've got a deal, buy and sell those services on the open market.

SENATOR PATERSON: Mr. President, if Senator Dollinger would yield for a final question.

SENATOR DOLLINGER: Glad to, Mr. President.

ACTING PRESIDENT MARCELLINO: I

believe he yields.

SENATOR PATERSON: Senator, I guess the question I want to ask you is, if we are institutionalizing the suspension of these rules, which no one, not the chair of the Health Committee, the ranker on the Health Committee -- I'm tempted to ask Mr. President himself -- but no one can really give me a concrete problem that's going to result. There is some speculation. But I wonder if it isn't somewhat remote to the actual process that it's going to be that much of an inconvenience to the insurance companies, to the Commissioner of Health, to the others who are obligated, even the networks for Child Health Plus, for goodness sakes, the fact is that since I -- I can't be persuaded that there is something really tangible that's going to happen.

Why don't we then put a task force together and take a look at the sections of the law that are creating too much of an obligation to the detriment of the parties that are involved here, and why don't we think about just repealing those sections? We might

not need for -- we might need more flexibility in the system than we have right now.

SENATOR DOLLINGER: Well, through you, Mr. President, I think the chairman of the Health Committee, in -- and I won't certainly speak for him, but I think he suggested that that's one of the options in the budget process, is that we might decide to do that.

I think -- and I agree with you in one respect, Senator Paterson, I don't -- I haven't heard articulated a substantial reason for continuing the suspension. But at least at this point I'm satisfied that since, according to the chairman of the Health Committee, what we're doing is simply continuing it until such period of time that we can look at it in the context of the budget, that I'm willing to go along with that.

I know -- and I think you and I talked about this when we did Senator Maziarz's bill, that I'm one of those who continues to look for justifications from the Health Department and others why we

continually do the extenders and now we're doing a continuing suspension, which is like an extender except we're not extending the law, we're extending the suspension of the law. It gets enormously complicated.

And I can appreciate the fact that the administration comes to the Health Committee and says, We need these bills passed because there were time restraints put in the version of the budget or in prior law, we need continuing time to evaluate these. But it seems to me that in this case I'm willing to take the chairman of the Health Committee's word when they say we need this suspension to continue it for a period of time until it can be evaluated in the context of the budget.

And when we do the budget, Lord knows I'll probably get up and ask the chairman of the Health Committee where is that deal with the suspension or discontinuance of those regulations, and I'm sure he'll be well-prepared and ready to answer me virtually word for word.

So my sense is, Senator Paterson, there is no substantial justification that's

been laid for continuing this, but it's enough to justify doing it until the budget process.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Dollinger.

SENATOR PATERSON: Mr. President, on the bill.

ACTING PRESIDENT MARCELLINO: Senator Paterson, on the bill.

SENATOR PATERSON: You know, I really think that there is probably some very good reason for why we need to continue these suspensions. I just didn't believe I heard the reason.

I think that, in very good faith, that Senator Dollinger and Senator Hannon are relying on professionals in the field and administrators who recognize that the removal of these technicalities would create further confusion and that even when we pass the budget, that they will be months into the process trying to work out the details of what may have been easier remedied by just continuing the suspensions and creating the legal fiction that the budget had already

passed.

So, you know, I suppose that I can go along with my colleagues. They know the area better than I. But I do want to suggest that something that Senator Dollinger may have inadvertently raised is something that we need to pay attention to. And it was the issue that came up in the previous legislation, that administrators often give you reasons that you don't want to challenge because the area is more familiar to them than it is to you. But what we have to look at in the end is the inevitable results. And what we saw in a previous piece of legislation, as Senator Duane pointed out, was five or six years of reliance, to our detriment, on promises that were made by a number of agencies with very little results.

Now, I don't think that is nearly the case here. I think that it may just be that this is an easier way to solve the problem and the Legislature just goes along with it. But what I'm saying is some of the obligations that were set forth in this legislation are not the hardest thing to have

accomplished. And I really wonder, you know, what the benefits are going to be to volunteer firefighters. Did that have to be included in the legislation? I really don't, you know, understand what that would have to be. Motor vehicle requirements that I think seem pretty easily set forth, and what the insurance reparations are in those situations, I don't see that as the most difficult process either.

So I'm just saying that I hope that before we enact some of this legislation that continues the suspensions, that not my colleagues but that the professionals will make themselves a lot more clear about what the benefit is and, if necessary, what is going to be the injury if we don't accomplish it.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

Any other Senators wishing to heard on this bill?

Seeing none, the debate is closed.

Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Meier.

SENATOR MEIER: Mr. President, may we now call up Calendar Number 275.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: Calendar Number 275, by Member of the Assembly Grannis, Assembly Print Number 5798, an act to amend Chapter 2 of the Laws of 1999 amending the Legislative Law.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Rath, I believe an explanation has been asked for.

SENATOR RATH: Thank you, Mr. President.

At the end of '91, the bill, which extends the Lobbying Law, contained provisions

which required lobbyists who lobby municipal entities to register with the Lobbying Commission, and it established a five-member advisory council for municipal lobbying.

Unfortunately, the council appointments weren't made before the council expired at the end of 2000. And this bill revives the council, which is expected to gather information and make recommendations on implementing the municipal lobbying provisions.

SENATOR OPPENHEIMER: Madam President -- Mr. President.

ACTING PRESIDENT MARCELLINO: Let's not go there.

Senator Oppenheimer, why do you rise?

SENATOR OPPENHEIMER: I think I have to improve my lenses.

If the Senator would yield for a couple of questions.

ACTING PRESIDENT MARCELLINO: Senator Rath, do you yield?

SENATOR RATH: Sure.

ACTING PRESIDENT MARCELLINO: She

yields.

SENATOR OPPENHEIMER: I really love this bill, and so I'm concerned why we didn't have appointments made to the advisory council. It doesn't seem like it should be a very difficult thing to do.

SENATOR RATH: What happened was that, as can you see, the numbers of the jurisdictions that were to send in recommendations, everyone was slow and delayed, and we did not get the names in on time for us to move forward and get that pulled together.

SENATOR OPPENHEIMER: Through you, Mr. President, how long do you think it should take to get those appointments made? Are we going to see this come back again as not having been accomplished?

SENATOR RATH: Well, you know, the first time you do anything, I think it takes people a while to get the idea that they really need to do it and that they need to get it pulled together. I think we can be very firm this time in insisting that those names come in so that we can move forward with this.

SENATOR OPPENHEIMER: And through you, Mr. President, the extender is through October '01? What's the extender to?

SENATOR RATH: Okay. April 1, '02.

SENATOR OPPENHEIMER: Oh, sorry, I just -

SENATOR RATH: And to back up on your other question, Senator Oppenheimer, all the people who are to be appointed now know they are to be appointed. They have been asked if they will serve. So this is ready to go.

SENATOR OPPENHEIMER: Through you, Mr. President, is this going to be a cross-section of the municipalities across our state so that we'll have some rural and some suburban; in other words, have a variety of designations?

SENATOR RATH: Let me check on that.

The traditional local government organizations are going to be presenting their recommendations, the Association of Towns, Association of Mayors, Association of County

Governments. And so they will have a representative selection of people that will represent their interests.

SENATOR OPPENHEIMER: I hope so.

Through you, Mr. President, I wonder why the bill is limited to communities just over 50,000. Because, you know, I was the mayor of a 20,000-person community, and I think our community could benefit, smaller communities could benefit from this legislation.

SENATOR RATH: That provision appeared in the original bill, and so the extender is just carrying that forward.

SENATOR OPPENHEIMER: Might you consider an amendment that would bring the number lower? I mean, certainly the condition exits that lobbyists have input even in smaller communities where some of the contracts are fairly large-sized.

SENATOR RATH: The bill, Senator Oppenheimer, originated in the Assembly. And it's a three-way agreed-to bill, so it's ready to go.

SENATOR OPPENHEIMER: At some

point, perhaps an amendment.

Did any municipalities -

ACTING PRESIDENT MARCELLINO: Senator Rath, do you continue to yield?

SENATOR OPPENHEIMER: I'm sorry. Through you, Mr. President.

ACTING PRESIDENT MARCELLINO: She yields.

SENATOR OPPENHEIMER: Were there any hearings held by municipal governments concerning this bill? And if so, what was the feedback that you got?

SENATOR RATH: Through you, Mr. President, no, there were not that I know of. Because they were as anxious as we were to provide guidance. And once this council sets up, they will be able to develop the questions and the guidelines so that they will have the same kind of guidance that people were looking for as we were looking for it.

SENATOR OPPENHEIMER: Through you, Mr. President, if the sponsor would yield again.

SENATOR RATH: Surely.

SENATOR OPPENHEIMER: Do you have

an idea of the kind of regulations that would come out of this or the guidelines that would come out of the advisory consensus, the committee's consensus?

SENATOR RATH: No, I don't, Senator. I believe that's why we're setting them in place. Because local governments, as you noted a moment ago, are very often dealing with much smaller constituencies. And so many of the regulatory kinds of things that we deal with here on the state, that we deal with lobbyists for, because they're coming in and out in order to advise us of their opinions on the issues, they really don't get to the legal governments in the numbers that they do here, certainly not in the volume, and with the amount of work that happens in a State Legislature.

But there are occasions where, yes, it is appropriate that they're working with local governments, and they needed some help. And I think once that council is set up, they will look to our experience and then modify it according to what their needs are.

SENATOR OPPENHEIMER: I find that

at the local level sometimes lobbyists are not so defined. And I think we could perhaps go back and do another bill that would define what it means to lobby at the local level, which is different from what is happening here. Which brings me to my last question.

ACTING PRESIDENT MARCELLINO: Senator, do you yield for another question?

SENATOR RATH: Yes.

ACTING PRESIDENT MARCELLINO: She yields.

SENATOR OPPENHEIMER: And that is, is the purpose of this to develop a public awareness of government, of lobbying's effect on government, and keeping the whole system open and honest? Would you say that is a primary -

SENATOR RATH: I think, Senator Oppenheimer, the intention of all of the kinds of regulations in relation to the lobbying, no matter which level of government it's at, is that certainly there an openness and a willingness for all of us to participate in that openness. And I don't think the intention of this council states it as such,

but it's all inherent in just the legislation that's set all of this in motion.

SENATOR OPPENHEIMER: Thank you. Thank you, Senator.

On the bill.

ACTING PRESIDENT MARCELLINO: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: As I said when I started off, I think this is an excellent piece of legislation, the original bill and the extender now. And I just hope that the appointments will be made in a timely fashion now that people have been notified that -- or they have been sought for the advisory council. Because this is something that really ought to have been in place a while back. And, you know, we want to keep all our levels of government as open and as honest as possible, and that includes the municipal level.

So I applaud the Senator on this bill and hope that we will move ahead expeditiously now.

ACTING PRESIDENT MARCELLINO: Senator Stachowski.

SENATOR STACHOWSKI: If the Senator would yield for a couple of questions.

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

SENATOR RATH: Surely.

ACTING PRESIDENT MARCELLINO: She yields.

SENATOR STACHOWSKI: I noticed Senator Oppenheimer asked you something in the general area of the question I'm going to ask. But do you have any idea why six months wasn't enough time to make the appointments to this council the first time around?

SENATOR RATH: No, I don't. Except that the requests were made and the information was not sent back in, the appointments were not sent back in.

SENATOR STACHOWSKI: Mr. President, through you, I'm not sure I understand. The request for the appointments was made -

SENATOR RATH: Yeah. For the associations that were to make recommendations with names, send the names in for the appointments.

Now that has been accomplished. The associations have managed to get through their membership. And I think they probably would want to make sure that they had someone representing their interests on a broad - someone who had a broad understanding of municipal government at the different levels. So I think that that maybe took them a while.

SENATOR STACHOWSKI: Mr. President, if the Senator would continue to yield, were there certain groups that were named that -

SENATOR RATH: Yeah, we said a moment ago. NYSACG, NYCOM.

SENATOR STACHOWSKI: Sorry, I missed that part.

SENATOR RATH: The Association of Towns.

SENATOR STACHOWSKI: With the names being sent in now -- Mr. President, if she'll continue to yield -

SENATOR RATH: Yes.

SENATOR STACHOWSKI: -- do we anticipate that the Governor will in fact now make these appointments based on the

recommendations he gets, or will he want to select his own person from that group if he doesn't happen to care for the one they send? And if he does, then we can anticipate that the council will put regulations together that will take the kind of burden that now exists on the people that have to do business with local governments, because they're not sure about what they're supposed to be doing currently as far as any kind of reporting if they have to deal with local governments?

SENATOR RATH: Senator Stachowski, yes, to your first question, I expect that these people will be appointed immediately.

And to your second comment, which may have been a question, I'm going to make a recommendation that you be the first one to address them, because the way you described what they should be doing sounds exactly like what they should be aware of. I mean, you've had a lot of experience. And I'm not doing that as a tongue in cheek. What I'm saying is that you've is got it right on.

SENATOR STACHOWSKI: On the bill.

ACTING PRESIDENT MARCELLINO: Senator Stachowski, on the bill.

SENATOR STACHOWSKI: Briefly, I appreciate you being so nice to me on that. But I've been on Ethics since it started, and I think I had enough just having to do with the commission. So I think I'll let the Governor handle his own council. And I don't want to interfere with local governments. I think that they should give as much advice as possible. Hopefully that they'll come up with some good regulations to oversee local governments.

It's unfortunate that this wasn't carried out in the six-month time frame that the original bill said they should have done. I really don't understand why, since most of these organizations that are listed -- and I thought there were organizations, that's why I asked. I just -- sorry I missed the answer rather than having to go back and read the bill.

They always have so many suggestions for things we should be doing that it was kind of interesting to me that they had

this one opportunity to send a name in and six months wasn't enough time for them to do it. Kind of interesting to me.

But hopefully they'll get the appointments that they want and get the council together and get their awareness of what the problems are that they may or may not face. And hopefully out of that they'll come up with regulations that will be appropriate and in the good nature and spirit that we like these ethics things to be in. Not so much as a witch-hunt as something to give advice so that people don't get themselves in trouble, as opposed to trying to find ways that they are in trouble already.

But hopefully it will work that way, it will be helpful to local governments, and it'll give them the guidance necessary so that nobody will get themselves in trouble. And for that reason, I'll probably support this bill. But I'm really disappointed that those particular groups couldn't get their names in a six-month period, because it seems like an awful long period of time just to come up with a name to be appointed to a position.

ACTING PRESIDENT MARCELLINO: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President. Will the sponsor yield to a question, please.

ACTING PRESIDENT MARCELLINO: Senator, do you yield?

SENATOR RATH: Surely.

ACTING PRESIDENT MARCELLINO: She yields.

SENATOR DOLLINGER: Senator, on page 2, line 8 of the bill it talks about the provisions of Section 3 and Section 4 of the Lobbying Law that were set to expire and that already have expired as an operation of law. And it says that we're going to extend the expiration date to December -- October 1, 2001. Could you tell me what these provisions are that we're bringing back to life, since they were dead as of December 31st?

SENATOR RATH: One moment.

It was the provision that established the advisory commission.

SENATOR DOLLINGER: It was that Section 3.

SENATOR RATH: Advisory council for municipal lobbying, Section 3.

SENATOR DOLLINGER: And what was Section -- through you, Mr. President, if -

ACTING PRESIDENT MARCELLINO: Senator, do you continue to yield?

SENATOR RATH: Surely.

ACTING PRESIDENT MARCELLINO: She does.

SENATOR DOLLINGER: What was Section 4? Through you, Mr. President.

SENATOR RATH: The functions and powers and duties of the advisory council.

SENATOR DOLLINGER: Through you, Mr. President, will the sponsor yield for one other question.

SENATOR RATH: Surely.

ACTING PRESIDENT MARCELLINO: I believe she yields.

SENATOR DOLLINGER: What was the advisory council going to do that it would go out of business and it wouldn't be needed anymore?

SENATOR RATH: Well, I believe it was just the authorization to appoint them

that went out of time.

And also, after they issued their report, they no longer have a function.

SENATOR DOLLINGER: Oh, okay. Thank you, Mr. President. And I thank the sponsor as well. I'm going to -

ACTING PRESIDENT MARCELLINO: Senator Dollinger, on the bill.

SENATOR DOLLINGER: The more I peel back these bills, the more I vote against them. I'm going to vote against this one as well, and let me tell you why.

We continue to use the world "shall." The Governor agrees with us when we use the word "shall," the council shall be appointed in six months and produce a report. Except the problem is that this Legislature has obviously decided that the word "shall" really means may, at his own discretion, whenever he wants. Because that's what the Governor has done. The Governor gets a bill from us, a law -- a bill, it says he shall make the appointment. He signs the bill, obligating himself to do it, and then doesn't bother to do it.

Much like in the case of Senator Maziarz, I've got to figure out who on the second floor gets delegated the power to create the local council on lobbying. Somewhere someone must have been told: You shall get this done. And someone, probably in the council's office, in the appointments office, said, guess what, it goes to the bottom of the priority level. Because it didn't get done.

And I would just suggest when the New York State Legislature and the Governor agree to use the word "shall" in a statute, and they say you shall make the appointments in six months, and six months after you've made it, it shall expire and have no continuing validity because its work will be done, I would suggest that everyone in this state, from the Governor on down, all of us being people bound by law, should do it.

This is the second time today in which we've debated a bill in which we said to the Executive branch, You shall do something, and we're extending the time to do it because they never got around to doing it. I would

suggest, Mr. President, that when we use the word "shall" we ought to say, as every one of our schoolchildren watching knows, that "shall" means you must. It doesn't mean you may whenever you want to, it means you must. The Governor must do it, it must be done. That's the power of law.

And someday we'll use the word "shall," we'll say insurance companies shall, and they'll say, Well, it doesn't mean we have to, because the Governor of the state doesn't have to do it when you tell him he has to do something. And someone will someday say, You shall go to jail if you do this, and one of our citizens will say, Well, you don't really mean you got to. It doesn't mean the Governor has to. It means the Governor doesn't have to follow what the Legislature says. If the Governor doesn't have to follow it, neither does anyone else, neither do our collection of people in this chamber, neither do we.

I would suggest we set a horrible trend by using the word "shall" make appointments, that committee shall produce a report. They did neither. And we're now

saying oops, it really only meant may, it really only meant you could do it whenever you wanted to. And guess what, you can always come back and ask for more time, and we'll always give you more time. I would suggest let's stop using the word "shall" if we really mean may.

As for me, when I use the word "shall" in a statute, I'm going to cast my veto that it means you must. And until we agree that "shall" means "must," I'm going to vote against this bill.

ACTING PRESIDENT MARCELLINO: Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, on the bill.

I wish Senator Dollinger had been as persuasive on the last bill in convincing me of the value of his argument as he is here. But I think that what he's raising really speaks to what is a breakdown of the institutional integrity that has affected government and I think affects the people that we actually serve.

There was a time when legislative

session was scheduled for a particular time, and we just started any old time. And lobbyists came here to see us, and constituent groups came here to see us. And I must give credit where credit is due. It was the Majority Leader, Senator Bruno, in 1995 who wanted to change that process. And we start our sessions on time now and have really firmed up some of the obligations that we have.

And as a designee of Senator Connor, he is usually in this chair, and he has spoken many times on this floor about that same obligation that we have to the public.

What makes it is seasonable to this particular case is the fact, Mr. President, that this was a law that was set up to determine what actually is the responsibility of public servants, legislators and the like, with respect to the passing of legislation itself. In other words, it wasn't a substantive law that we were actually thinking about changing, it was the process. So to have a violation of a process on a bill that cures process to me just enhances the

criticism that we have to endure.

In Section 3, which Senator Dollinger referred to, there actually was a double deadline. There was a six-month period that was set up for appointment of the council, and then there was an expiration of the time that you could appoint a council, and that was even six months after that. Both deadlines were not adhered to. There was no compliance even in what were the roles and responsibilities of the council set up in Section 4, and even that had to be extended and rewritten and reinstated into the law that we're passing here today.

The fact is that it was a highly publicized incident that brought us here to even talk about ethics in terms of lobbying and campaign finance in 1999 in the first place. We wouldn't want the public to think that the only time that we address issues is when we as an institution feel some embarrassment because of some type of incident. But at the same time, our failure to comply with the obligations that we set upon ourselves only further creates the notion

that we were responding rather than actually coming to a reasonable point of view.

Certainly the ideas that were proposed in that legislation were good, but the planning seemed absolutely horrendous. And here we are some 16, 17 months later and, again, haven't even begun to address the issues for which we held press conferences and acted like there was great importance at that particular time.

I think it's really kind of a shame that we would allow that to happen, and I think that a message has to be sent, just as it is when there is self-examination of a body.

The reason I didn't have any questions for Senator Rath is because Senator Rath didn't do this. And I don't know that she would be able to answer to these issues anymore than I can.

I'm not making any obscure accusations against the Governor I don't know what it was about the process that we set up that might have hindered his action. Although I would have thought that six months would

have been reasonable to fill a council with a group of appointments, and I really don't understand why that was done.

So now we're back here extending the deadline to a period in 2001. Do we really care if the deadline is met? Do we really feel any sense of responsibility to make sure that that actually gets done? How much more foresighted would it have been if we'd complied with the obligations we set upon ourselves? And how notorious does it appear to the public that maybe what we were doing was just finding a way to react to something we were reading about in the newspapers, make it look very grandiose, as if we were actually doing something about it.

But there's no one watching these proceedings today necessarily from the public that would like to shed light on the fact that we actually didn't do what we said we were going to do.

And so I agree with Senator Dollinger, and I think that that message does have to be sent, that in the future when we talk about -- not only legislation, because

what happens to laws we often don't have any control over. But this was a process within the Legislature that we had ultimate control over and didn't do it. And I think that the more that value of integrity slips away from us, the more this institution is looked upon by the public as being inactive. Who can blame them? No one.

But who can remind them? We can remind them of the terrible truth of what happens when public service doesn't adhere to the public trust and when we appear to be self-serving rather than performing that same value to those who thought enough of us to give us these jobs and put us in office in the first place.

ACTING PRESIDENT MARCELLINO: Any other Senator wishing to be heard on this measure?

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, just briefly. I have to add one other thought in reading the bill.

I mean, Senator Rath, again, I applaud your carrying this bill. But this is

a perfect demonstration of the problem with trying to control lobbying. What we said to the Governor was, you have to appoint this advisory council. You have to do it. Because the Lobbying Commission won't enforce the local lobbying law against local lobbying until there's a report from the council, until it's been given advice on how to do it.

The whole theory of enforcing this bill was we believe that not only should lobbyists who affect our judgments but the lobbyists in city councils and county legislatures, which happens all the time -- we wanted to extend the protection of the Lobbying Law, public disclosure of advocacy and supportive measures or funds or bills or laws or projects, we wanted to extend that to legal communities.

So what we did is we said, okay, we by law are going to make that extension. However, we make it subject to one thing. We will give the Governor a chance to appoint a council which will advise him and the Lobbying Commission on how to do it.

The Governor obviously sits down

and says, Well, I don't want to do this. I don't local lobbying. I don't want the pain in the neck of that. I would rather have that lobbying which has gone on for years continue to go on and not in any way be affected by the State Legislature.

How does he defeat our intention, our will, and his own signature? He simply fails to appoint the council. The council doesn't issue a report, and the Lobbying Commission doesn't enforce the law. We in essence defeat the whole purpose of what we worked so hard to do. He doesn't do what we tell him, and as a consequence the law doesn't apply.

What the Governor of this state did was he circumvented the legislative will by not appointing the council, by not following our direction. I believe that the local lobbying is just as critically important as this. I supported the change in the Lobbying Law. And I resent the fact that this Governor hasn't seen fit to do what we told him to do and what he agreed to do.

Under those circumstances, no more

extensions. Do what should be done. I don't think he deserves an extension and the delay of a year and a half in the local lobbying law taking effect is completely unjustified. We cannot reward that kind of conduct by an Executive, regardless of who he or she is.

ACTING PRESIDENT MARCELLINO: Senator Breslin.

SENATOR BRESLIN: Thank you, Mr. President. I join with my fellow Senator -

ACTING PRESIDENT MARCELLINO: Senator, are you speaking on the bill?

SENATOR BRESLIN: On the bill.

ACTING PRESIDENT MARCELLINO: Senator Breslin, on the bill.

SENATOR BRESLIN: -- in saying that the Governor has circumvented this piece of legislation and we shouldn't give him an opportunity to do it again. We should rethink this bill. We should rethink this bill to make it tighter, stronger, and let it be effectuated without the participation of the Governor.

In addition, we should rethink the population size of 50,000. Is this to suggest

that there will only be problems in those areas where there's in excess of 50,000? I think not. I think this bill has been ill-fated from its beginning. We should rethink it, redo it, and make it stronger.

For that reason, I will vote in the negative. Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Any other Senators wishing to be heard?

Seeing none, the debate is closed.

Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Senator Oppenheimer, why do you rise?

SENATOR OPPENHEIMER: I'd like to explain my vote.

ACTING PRESIDENT MARCELLINO: Senator Oppenheimer, to explain her vote.

SENATOR OPPENHEIMER: I mentioned earlier to the sponsor that I'm concerned about people who lobby our municipalities that

don't consider themselves lobbyists, because I had a lot of that when I was mayor.

And the bill defines lobbying municipalities as any attempt to influence passage or defeat of any local law or the adoption or regulation having force and effect of local law or any rate-making proceeding by any municipality or subdivision thereof.

It does cover it, the bill does cover it. But I will be monitoring this once we get this off the ground, because I am not sure that many of those people that are influencing municipal government consider themselves lobbyists. And we have to get on their case to make sure that they comply with this law.

So I will be voting for the law, because I think it's terrific.

And I want to recognize three young children who are in our chamber who have won the Department of Treasury U.S. Savings Bond Poster Contest.

ACTING PRESIDENT MARCELLINO: Senator, excuse me. That's not in order at this point in time.

Senator Onorato, to explain his vote.

SENATOR ONORATO: Mr. President, I rise -- I plan on opposing this here. This report was due out June of last year. And I think by delaying the implementation of this bill again will result in further delays.

I can guarantee you that this report will not be made by October of -- let's not pass it. Let's make it mandatory that the implementation and the intent of all of the fanfare that we went through last year, that we all took measures to obey the Lobbying Law. Everybody seems to be the -- the legislators are complying with the rules and regulations of it, but the ones that we were seeking out to affect the most are not.

And I don't think that we should give them any more time to implement it. I vote no.

ACTING PRESIDENT MARCELLINO: Senator Onorato will be recorded in the negative, and Senator Oppenheimer in the affirmative.

Senator Paterson, to explain his

vote.

SENATOR PATERSON: Mr. President, I think that sometimes there is a notion of partisanship that precedes some of our statements. And I can certainly understand if it appears that way this time. But what I want to say is this is something I think we're all guilty of. This is an instance where I might want to exact some blame on the Governor's office, but I have seen this happen in reverse. I have seen it done by all parties. And what I think it is is a lack of respect for the institution.

We are the ones that told the public we were going to do this. The public didn't tell us to do it. I think we got the idea that the public was somewhat frustrated with the way we do business around here. And we complied with what we thought was that sentiment and jumped up and down. I remember in 1999 everybody had a plan, an oath and a - something that they wanted to suggest for the process. No one seemed to have bothered about it before then.

And we passed this bill. It had an

ethical, you know, underpinning to it. And then we go forward and barely comply with even the least of the obligation, which was to just form an council, establish some procedures, and submit a report. And we didn't even do that.

So to come back and ask for an extender, yes, of course we're going to have to eventually do this, but I don't know that we have to do it right now. I think that a little taking of responsibility is in order. And for that reason, I vote no, Mr. President. I really believe that to have a -- the notion of lobbying within a lobbying bill itself is a highly suspicious type of a situation for us to be addressing at this particular time.

Thank you.

ACTING PRESIDENT MARCELLINO: Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I want to echo the concern about the process that is encompassed in this bill. I don't really see the justification for it. I think we've been very slow to move on

lobbying issues here. I think that the opportunity has presented itself, presented itself last year, and that we really are further behind the curve than we need to be. I don't see that this delay is appropriate. I really think we need to move faster.

It is very difficult now to figure out all of the interwoven webs of influence that permeate the government in the State of New York. I think we have to move to make it easier for the public to understand and not put it off any further. So I will join my colleagues in voting no.

ACTING PRESIDENT MARCELLINO: Announce the results, please.

THE SECRETARY: Those recorded in the negative on Calendar Number 275 are Senators Breslin, Dollinger, Onorato, Paterson, Sampson, Schneiderman, and Senator M. Smith. Also Senator Montgomery. Ayes, 52. Nays, 8.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 200, by Senator Trunzo, Senate Print 2032, an

act to amend Chapter 672 of the Laws of 1993.

ACTING PRESIDENT MARCELLINO: Senator Trunzo, an explanation has been asked.

SENATOR TRUNZO: Thank you, Mr. President.

This is a very simple bill that amends Chapter 672 of the Laws of 1993 to permit the Sayville Library to be added to the other eight libraries which are eligible to use Dormitory Authority financing for the construction or renovation of facilities and renovate any existing facilities. A simple bill.

ACTING PRESIDENT MARCELLINO: Senator Paterson.

SENATOR PATERSON: Mr. President, even I would have to agree with that presumption. But -

ACTING PRESIDENT MARCELLINO: Read the last section.

(Laughter.)

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

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MARCELLINO: He

yields.

SENATOR PATERSON: Senator Trunzo, which of the library systems that we have -- we have 700 libraries, 75 systems, some of them are public school libraries, and we have some research and reference libraries. Which of the systems is the Sayville Library coming under?

SENATOR TRUNZO: I didn't understand your question, Senator. Didn't quite hear it.

SENATOR PATERSON: Is the Sayville Library a public library, is it a reference and research library, or is it a school library?

SENATOR TRUNZO: Yes, it's a public library.

SENATOR PATERSON: And if the Senator would yield for a question, what is the reason that it would need this type of sponsorship from the Dormitory Authority?

SENATOR TRUNZO: Well, basically what's happening there is that when the library was first built -- in 1953, I believe -- it was made to accommodate 10,000

people. And now they've got well over 20,000 people that utilize the library on a daily basis -- or at least an annual basis, rather. And therefore they need to expand and double the size of the current library.

SENATOR PATERSON: Thank you, Mr. President. If Senator Trunzo would continue to yield.

ACTING PRESIDENT MARCELLINO: Senator Trunzo, do you yield?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR PATERSON: Senator Trunzo, how is the library funded right now in its initial size? Is this done through a library district, does it come from municipal fees, or is it a combination of the two?

SENATOR TRUNZO: It's funded by a library district.

SENATOR PATERSON: And as the library district, I would assume that there has to be some kind of outside funding. If the Senator continues to yield, Mr. President.

ACTING PRESIDENT MARCELLINO: I

believe he yields.

SENATOR TRUNZO: Yes.

SENATOR PATERSON: Then is there -- the only way this library can be enhanced to double its size is going to have to be from some outside funding from some source; is that correct, Senator?

SENATOR TRUNZO: That is correct.

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

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR PATERSON: Senator, is the normal procedure for expansion accomplished through a grant from the New York State Dormitory Authority?

SENATOR TRUNZO: Well, it hasn't been normal that way. What's happened, usually they would have to go out to bonding on their own to get the funding necessary for the bonding. And evidently the word's getting around that it's a little cheaper going through the Dormitory Authority as far as interest rates are concerned. And the other

eight libraries that are in this legislation right now, the word spreads, and it's one way of trying to save the taxpayers some money within that district.

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

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR PATERSON: Then is it my understanding that because the Dormitory Authority bonds out on greater volume that it has a lower bonding rate so that the Dormitory Authority, being a larger entity than any single library, can create a lower interest and in that way save money for the whole process?

SENATOR TRUNZO: That's right. That's the whole purpose of it, yes.

SENATOR PATERSON: I was hoping I'd be wrong.

Mr. President, if the Senator would yield for a question.

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MARCELLINO: I

believe he yields.

SENATOR PATERSON: About how long do you think it will take for this process to take place? This should occur within a year, shouldn't it?

SENATOR TRUNZO: Well, first of all, the recommendation, through the Dormitory Authority, they're going to have to have a referendum by the people in the district allowing them to go out for bonding through the Dormitory Authority, first of all. So it's got to be done by referendum first.

And they're currently in the planning stages. And by being in the planning stages, they expect to have a referendum to the people sometime this year so that they can apply to the Dormitory Authority for the funding, you know, in time for construction to start in the spring of next year.

SENATOR PATERSON: Mr. President, if Senator Trunzo would continue to yield.

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR PATERSON: Senator, I

wouldn't expect -- and it's just my own judgment -- that a referendum would fail in this particular case. But I guess one of the questions that would come up, that in other words, some of the government-operation-type committees, good government committees would ask, would relate specifically to just what the tax impact would be of bonding out this amount of money even through the Dormitory Authority. Do you have an idea how much this is going to cost and whether or not it would accrue in taxes anywhere?

SENATOR TRUNZO: Well, the estimate that we were able to get from the library is that it would cost somewhere from $5 million to $6 million.

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

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR PATERSON: To the average taxpayer, would that be of any great cost? Has anybody researched this to kind of divide

it out to determine whether or not you think there'd be any real public opposition to this?

SENATOR TRUNZO: Well, I don't think so. Because the library is fully used, and they don't have the room to have all the various programs that they would like to accommodate the community with. And therefore, they need the space. They're doubling the size of the current library in order to accommodate the various organizations as well as programs that the library may have on its own.

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

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR PATERSON: Senator, although this all sounds fine to me, I'm just wondering, just the conceptual development of the property and the way it would actually occur, has there been any feedback from the public, public hearings or memorandums of - seeking suggestion or any kind of environmental problem that would be caused by

the expansion?

SENATOR TRUNZO: Well, other than the fact that they have to have a referendum in order to get approval to do it, the general consensus, from what I've been able to hear, the public, the people within the district are very much in favor of having the library being expanded. And it's necessary that they do that. They're serving now over 315,000 people a year.

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

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR PATERSON: Well, we've discussed the referendum process, and that's quite appropriate, because it is provided under the law. I just want to know, before we go to the referendum process, are there any plans to actually make sure that everyone is informed so that a vote that would be cast would be one out of understanding and out of full disclosure as opposed to this just being something put on the ballot? Because I don't

think, if you say you want to expand a library, that anybody really is opposed to it.

SENATOR TRUNZO: Would you ask that question again? I just wasn't sure of what you -- you know, you led up to a question, but -

SENATOR PATERSON: Well, my question was just in terms of information that would be provided to the public before there would be an actual vote.

SENATOR TRUNZO: Oh, yes, definitely information has to be provided in advance of the referendum, to get public input and all of that in order to continue with the possibility of going through the referendum and getting the funding to expand the library. That's all part of procedures.

SENATOR PATERSON: Mr. President, I hold in my hand the last question.

ACTING PRESIDENT MARCELLINO: Senator, do you yield for the last question?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR PATERSON: I was hoping

there would be applause. But in spite of it, I will go forward and ask the Senator, has this library ever received any type of state funding prior to this action?

SENATOR TRUNZO: Well, from what I understand, no, not directly. But indirectly, through the Suffolk County Cooperative Library System, they got about $5600 last year.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Paterson.

SENATOR PATERSON: Have I covered it?

ACTING PRESIDENT MARCELLINO: On the last question, you've covered it.

SENATOR PATERSON: Thank you.

ACTING PRESIDENT MARCELLINO: Senator Smith.

SENATOR MALCOLM SMITH: Thank you, Mr. President. Would the sponsor yield for a question?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MARCELLINO: I believe he yields, Senator.

SENATOR ADA SMITH: Thank you. Will this new facility be erected at the same site, or will it be moved?

SENATOR TRUNZO: No, they are looking for another site. Because from what I understand, the doubling in the size of the current library, the current land is not large enough. And they are looking around for another site.

SENATOR ADA SMITH: Would the sponsor continue to yield.

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR ADA SMITH: Will it be as be as accessible as the current Sayville Library is to the general public?

SENATOR TRUNZO: Well, it will be in the general area, so that it would be convenient to all the residents of that particular community.

SENATOR ADA SMITH: Will the Senator continue to yield?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MARCELLINO: The

Senator yields.

SENATOR ADA SMITH: Thank you.

Once the library is built, will it have the need for additional staffing?

SENATOR TRUNZO: Well, I'm not sure whether they do or not. It probably would because of the number of residents they intend to employ. Or whether the current employment would be enough, I don't know. They're doubling the size of the library. And only because there are so many people utilizing it at the same time. So maybe they can do it under the present thing, but I think they will probably have to increase the employment to some small degree.

SENATOR ADA SMITH: Would the Senator continue to yield.

ACTING PRESIDENT MARCELLINO: Senator, do you continue to yield?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MARCELLINO: I believe he yields.

SENATOR ADA SMITH: Have preparations been made to budget for this new staffing and so forth down the line?

SENATOR TRUNZO: Well, that I don't know, if they've done that at this point yet.

SENATOR ADA SMITH: Okay. One last question.

ACTING PRESIDENT MARCELLINO: Senator, one last question?

SENATOR TRUNZO: Okay.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR ADA SMITH: Thank you, Senator.

Do you have any idea as to the new kinds of programming that will become available once the library is built and in place?

SENATOR TRUNZO: Well, they utilize the library currently for various types of programs -- I'm not sure what they are, but different types of programs -- and also making the library available to the community organizations of one sort or another. And they've had to turn people away because they don't have the space to accommodate them. And this is part of the

also the expansion is necessary.

SENATOR ADA SMITH: Mr. President, I'm sorry, I said one, but it provoked another thought. And I would wonder if the sponsor would be kind enough for just one last one.

ACTING PRESIDENT MARCELLINO: Senator, would you be kind enough?

SENATOR TRUNZO: Okay, one last question, sure.

ACTING PRESIDENT MARCELLINO: Please don't provoke another.

SENATOR ADA SMITH: Senator, would you have any idea what the total cost of this package will be?

SENATOR TRUNZO: The total cost of the project? As I answered to Senator Paterson, $5 million to $6 million in construction and acquisition of property.

SENATOR ADA SMITH: Thank you very much. Thank you, Senator Trunzo.

SENATOR TRUNZO: You're welcome.

ACTING PRESIDENT MARCELLINO: Senator Onorato.

SENATOR ONORATO: Mr. President,

will the sponsor yield to a question.

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR ONORATO: In the earlier part of the discussion, you mentioned the fact that this will have to go on a referendum for the bonding. Is there a contingency plan? Because we've seen, very recently, some of the plans that we have submitted to the public which we thought were going to go down, especially the School Construction Bonding Act, went down to defeat. Is there any contingency plan in the event that it fails on a referendum? Are there any alternative plans for providing the money, through perhaps taxing the residents of the Sayville community?

SENATOR TRUNZO: If it fails on referendum, then I guess they would have to try again.

But the way things have been happening on Long Island, there are very few school district or library district budgets that have been rejected by the public. The

public is well aware of what they need, what they'd like to have. And this is one of the things that they are insisting upon, the expansion of this library for better use by the public.

SENATOR ONORATO: One follow-up. In the event, again, if it does not pass, what would the alternative cost be to the taxpayers by not opting in to the bonding by the authority?

SENATOR TRUNZO: I think they definitely have to go through a referendum before they can do anything at all. It has to be passed for them to be able to spend the funding that they'd like to do.

And if the people turn it down, then they can't do anything with it at this time, and try again at some other future date.

SENATOR ONORATO: Thank you.

ACTING PRESIDENT MARCELLINO: Are there any other Senators wishing to be heard on this measure?

Seeing none, debate is closed.

Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to motions and resolutions, I know there are two privileged resolutions at the desk. May we please take up resolution 981, by Senator Bonacic, have it read in its entirety, and move for its immediate adoption.

ACTING PRESIDENT MARCELLINO: The Secretary will read Resolution 981.

THE SECRETARY: By Senator Bonacic, Legislative Resolution Number 981, congratulating the Rondout Valley High School Football Team, State Champions, upon their visit to the State Capitol on March 27, 2001.

"WHEREAS, Excellence and success in competitive sports can be achieved only through strenuous practice, team play and team spirit, nurtured by dedicated coaching and

strategic planning; and

"WHEREAS, Athletic competition enhances the moral and physical development of the young people of this State, preparing them for the future by instilling in them the value of teamwork, encouraging a standard of healthy living, imparting a desire for success, and developing a sense of fair play and competition; and

"WHEREAS, This Legislative Body is justly proud to congratulate the Rondout Valley High School Football Team, State Champions, upon their visit to the State Capitol on March 27, 2001; and

"WHEREAS, the Rondout Valley High School Football Team was victorious in the Class B New York State High School Championship held on November 26, 2000, at the Syracuse Carrier Dome, and

"WHEREAS, the Rondout Valley High School Football Team became the first team from Section 9 to win a State title since championship games began in 1993; and

"WHEREAS, As a result of winning the Class B Championship, the Rondout Valley

High School Football Team celebrated with a parade in their honor held in Stone Ridge; the Team was also named the Freeman Sportsmen of the Year, and were invited to visit the State Capitol; and

"WHEREAS, The athletic talent displayed by the Rondout Valley High School Football Team is due in great part to the efforts of Coach James Malak, a skilled and inspirational tutor, respected for his ability to develop potential into excellence; and

"WHEREAS, The Ganders' overall record is outstanding; the team was loyally and enthusiastically supported by family, fans, friends and the community at large; and

"WHEREAS, Sports competition instills the values of teamwork, pride and accomplishment, and the members of the Rondout Valley High School Football Team have clearly made a contribution to the spirit of excellence which is a tradition of their school; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate the members of the Rondout Valley

High School Football Team: Maurice Chesson, Ken Smith, Ryan Gribulis, Charles Lentz, Jeremy Todd, Dave Lajara, Don Ford, Jay Lawlor, Shane Fattarino, Elliot Douglas, Patrick Rahm, Tim Bogart, Chris Sebald, Nick McGill, Matt Rhett, Paul Bogart, Robert Beatty, John Carelli, Rob Soto, Eric Kellogg, Max Gruner, Jesse Porter, Brandon Walsh, Tony Sakellariou, Cody Bryant, Scott Lovelace, Phil Brooks, Keith Ayers, Andrew Davis, Manny Pomales, Chris Dominowski, Robert Roosa, Robert Nace, Harley Davis, Brandon Sebald, and Scott Woelk, and Coach James Malak, on their sparkling season and upon becoming State Champions; and be it further

"RESOLVED, that copies of this Resolution, suitably engrossed, be transmitted to the Rondout Valley High School Football Team, and to Coach James Malak."

ACTING PRESIDENT MARCELLINO: Senator Bonacic.

SENATOR BONACIC: Thank you, Mr. President. I'd like to welcome these good-looking athletes to the Senate chambers in Albany, and their coach, Jim Malak.

We are very proud of what you accomplished. It's a continuation of the celebration that started back in November of last year. I'm sure your friends, your family and all of the people in Stone Ridge, as well as Ulster County, are very proud of you, as well as all of the people in Hudson Valley.

Shortly we will be taking pictures and visiting with the Governor, who wants to also welcome you and share some of his thoughts with you. My good friend, Senator Larkin, who also represents Ulster County, joins me in having you here today.

Thank you very much.

ACTING PRESIDENT MARCELLINO: On the resolution, all in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The resolution is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President,

there's another privileged resolution at the desk, by Senator Oppenheimer, Number 685. May we please have the title read and move for its immediate adoption.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: By Senator Oppenheimer, Legislative Resolution Number 685, honoring the First, Second and Third Place Winners of New York State's U.S. Savings Bonds 2001 National Student Poster Contest.

"WHEREAS, The Department of the Treasury" -

SENATOR OPPENHEIMER: If I would could waive the reading of the resolution and speak on it.

ACTING PRESIDENT MARCELLINO: Senator, we will waive the reading of the rest of the resolution.

Senator Oppenheimer, on the resolution.

SENATOR OPPENHEIMER: Thank you very much.

Actually, I have just found that this is the last year that they're going to

have this contest. These are children who drew posters to promote the U.S. Savings Bonds. And the winners, the first-place winner gets $1,000, the second-place winner gets $500, and the third place I think gets 200 and some. And there were three wonderful posters that I just saw produced by children.

Now, I can speak to the young woman in my district who took first place. And she is -- pardon me, it's he. It's Andrew Morejon. I'm thinking of the second-place winner.

Andrew is 9 and a half years old, and he's only in the fourth grade. He goes to the Daniel Webster Magnet School in New Rochelle. And the boy is an unbelievable artist. His brother, who is wonderfully artistic also, won first place last year. Same family. And the mother is an art teacher, so you can see where the talent comes from.

And he got the thousand-dollar savings bond, and he'll now be entered nationally, as the first-place winner from each of the states goes into a national

competition, and they can make megabucks there. He has already won a $10,000 scholarship from Kraft Macaroni & Cheese, and a trip for four to Disneyworld in Florida.

But this is just such a wonderfully talented family, it's just a pleasure to have met them. And as this is the last year, this is the last opportunity we'll have to speak about these wonderfully talented children that participated in the U.S. Savings Bond contest.

And the second-place winner I think I will permit Senator Ruth Thompson to speak about, as it is a young woman in her district.

ACTING PRESIDENT MARCELLINO: Senator Thompson.

SENATOR HASSELL-THOMPSON: Thank you. Thank you, Senator.

The student that won the second prize is a young woman whose nationality is Korean. And I say that because her parents have been in this country a very, very short time. But this is a youngster who has embraced all of the best qualities of being an American. And in doing this poster, which is a promotion for United States Savings Bonds,

it was very, very gratifying to have her be one of our winners this year.

Her name is Irin Son. And not only is she very talented in art, but she is a high honor student, she is a two-year piano student, she's in intermediates in gymnastics, and her other interests and talents include art and writing. And she has aspirations of being an Olympic athlete as well as a writer.

An extraordinary young child whose parents are hard-working people in our community. They own a dry cleaners in my neighborhood, and just are very solid citizens. And she is an exciting child and has such a tremendous talent. And I was very proud of her as the second-place winner, as well as for all of the other youngsters in participated in this promotion of our United States Bonds.

So I am very pleased for the support of this resolution on her behalf.

ACTING PRESIDENT MARCELLINO: Senator Sampson.

SENATOR SAMPSON: Mr. President, I have to rise to speak on the resolution.

First and foremost, I want to congratulate the first- and second-place winners in the New York State's Savings Bonds Student Poster Contest. And I want to congratulate Miss Etienne, the third-place winner, who resides in my district.

This is an 11-year-old student who attends the Mark Twain School for Gifted and Talented Children. And she is the oldest of her four siblings, and the only girl also. And her parents are Haitian immigrants, and they understand the importance of education. And they understand the importance of allowing their children to excel in school.

And Miss Etienne, who I just spoke to a few minutes ago, her mother told me that the poster she designed, she designed it the night before, and she was inspired by her younger brother who was standing in her bed. And in the poster, it says: U.S. Savings Bonds, you can reach for the stars."

And I was really impressed to see her level of ingenuity and also the level of confidence that she exudes at 11 years old. And a lot of times we talk about the negative

things that are going on in the world with the young children killing one another at these schools in our communities, but we really have a lot of positive things. And I want to congratulate Miss Etienne for the good job that she has done and the role model she is for her younger three brothers.

And once again, I want to congratulate the first- and second-place winners, because this is something that we all tell our children. We want them to go to school and be educated. But at times like this when we're able to commend them on a job well done, they can really say: We are really working hard, and people appreciate what we're doing.

Once again, thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: On the resolution, all in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The resolution is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 214, by Senator LaValle.

ACTING PRESIDENT MARCELLINO: The Secretary will read Calendar Number 214, by Senator LaValle.

THE SECRETARY: By Senator LaValle, Calendar Number 214, Senate Print 2357, an act to amend the Education Law and the Business Corporation Law, in relation to making technical changes.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT MARCELLINO: Senator LaValle, Senator Paterson has asked for an explanation of your bill.

SENATOR LAVALLE: This bill is a lot less esoteric than the bill we had yesterday before us. This bill deletes some archaic language in the first four sections, the terms "other than a registered store" that really does not apply. It's an anomaly in the

law. Under Section 6802, a registered store means a store for which a storekeeper's license has been issued, located in a village or a place of less than 1,000 inhabitants that has no pharmacy within three miles.

The other sections apply to the registration period in which pharmacies must register, which comes up all at one time. And what this bill would do is allow for a rolling period based on date of birth. And it would mean that the 4,500 pharmacies or the 800 manufacturers and wholesalers that would apply now all at once, overburdening the Office of the Professions that handles this, it would mean that that staff can be used more efficiently in the registration.

And that is the bill, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Lachman.

SENATOR LACHMAN: Yes. Will the Senator yield to a question.

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR LACHMAN: Senator LaValle, you mentioned there are 4,500 pharmacies. Now, we are all aware that many of the individual, independent pharmacists are going and selling their stores, and you have Rite Aid and Genovese and Eckerd taking over these pharmacies. How would this bill apply to these giant corporations of pharmacies if you're having them based upon date of birth, and how will it roll over to these giant manufacturers of pharmaceuticals?

SENATOR LAVALLE: Under Section 11 of the bill, those would be apparently handled in a different -- I believe in a different way, Senator.

SENATOR LACHMAN: Mr. President, can I continue with another question?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MARCELLINO: Please.

SENATOR LACHMAN: Senator, what I'd like to know is what will be handled in a different way -

SENATOR LAVALLE: Senator - Senator, let me just -- excuse me -

SENATOR LACHMAN: -- and what that different way will be.

SENATOR LAVALLE: Under the chain pharmacies, the reregistration will be on the same day, one date. Those would be on the same date.

SENATOR LACHMAN: So all the - I'm sorry, Mr. President, will the Senator yield for another question.

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR LACHMAN: So all the chain pharmacies will be under one -- from one day?

SENATOR LAVALLE: One day.

SENATOR LACHMAN: Do you have a percentage figure -

SENATOR LAVALLE: No, I do not.

SENATOR LACHMAN: -- of how many are chain pharmacies and how many are independent pharmacies?

SENATOR LAVALLE: No.

SENATOR LACHMAN: You do not.

Thank you.

ACTING PRESIDENT MARCELLINO: Senator Stavisky.

SENATOR STAVISKY: Mr. Chairman, if Senator LaValle will yield.

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR STAVISKY: I raised these questions at the Higher Education Committee meeting. And my question really is very similar to Senator Lachman's.

From what you said, can we assume that they will all be able to register at the same time if it's a chain? For example, CVS, which seems to have a voracious appetite for swallowing up independent pharmacies, or Eckerd or Rite Aid, they will be able to register all of their pharmacies at the same time?

SENATOR LAVALLE: Senator, the chains, whether it's CVS, Rite Aid, Genovese, whoever, really in the development of this bill requested the one day, the same day. So it was at their request that we did this.

SENATOR STAVISKY: Good. Thank

you. That was the thrust of my question.

And my second question -

ACTING PRESIDENT MARCELLINO: Senator LaValle, do you yield to another question?

SENATOR LAVALLE: Yes, sure.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR STAVISKY: Have the chain-store pharmacies taken a position on this bill? I do not have a memo in support or opposition.

SENATOR LAVALLE: I cannot believe they're opposed to it, since we have accommodated them on when they would register. As far as I know, there are no memos in opposition to this bill. And this bill is supported -- well, I don't know whether they have memoed in favor of it. But it is a bill that would be helpful -- let me put it this way, would be helpful to the State Education Department, the Office of the Professions, because they would be able to use their staff in handling this in a much, much greater and much more efficient way.

SENATOR STAVISKY: Thank you very much.

On the bill.

ACTING PRESIDENT MARCELLINO: Senator Stavisky, on the bill.

SENATOR STAVISKY: It seems to me that, assuming the absence of a negative memoranda, that we can assume that this is an agreed-upon measure and that, for that reason, I will support the bill. Thank you.

ACTING PRESIDENT MARCELLINO: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would like to ask Senator LaValle a question, if he would yield.

ACTING PRESIDENT MARCELLINO: Senator, do you yield?

SENATOR LAVALLE: I do.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR MONTGOMERY: Okay, thank you.

Senator LaValle, this process, I just want to know for my edification, does this generate any -- this licensure renewal or

registration renewal, does it generate any money for the department or for the state in any way?

SENATOR LAVALLE: Yes, there is a fee for the pharmacies when they register. And that fee actually pays for the staff and the running of the Office of the Professions. In the same way each of the professions, if you have a license, you pay a fee. And that fee is really to process the paperwork and background checks and whatever is necessary in giving that license or, in this case, the registration to the pharmacy.

SENATOR MONTGOMERY: All right. And if Senator LaValle would continue to yield.

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR MONTGOMERY: Are these pharmacies, the chains, essentially, are they licensed per unit, or are they licensed as one entity, CVS or -

SENATOR LAVALLE: No, each store. Each store. It's not a gang application that

they put in for fifty pharmacies. Each store must register itself.

SENATOR MONTGOMERY: All right. And so therefore, Mr. President, just to continue that question, therefore any issues related to the licensing or the operation of a pharmacy, one of the chains, that pharmacy is responsible to State Ed for any regulatory issues individually? In other words, we don't have to go through the -

SENATOR LAVALLE: That is correct, Senator.

SENATOR MONTGOMERY: -- through the home or the parent company in order to get any corrective action?

SENATOR LAVALLE: That's correct.

SENATOR MONTGOMERY: That's at individuals.

Okay, those are my questions. Thank you, Senator LaValle. Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

Senator Onorato.

SENATOR ONORATO: Mr. President,

will the sponsor yield for a question.

SENATOR LAVALLE: Be delighted to.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR ONORATO: Senator LaValle, is there a different mechanism for the fees for the chain-operated pharmacies as against the small, local, mom-and-pop type of operation?

SENATOR LAVALLE: All the pharmacies, whether it's a mom-or-pop or a CVS, are at the same rate.

SENATOR ONORATO: They're all at the same rate.

SENATOR LAVALLE: Yes. The one difference in the bill is where we have the manufacturers or the wholesalers. They pay a higher fee, different rate.

SENATOR ONORATO: Thank you.

ACTING PRESIDENT MARCELLINO: Are there any other Senators wishing to be heard on this bill?

Senator Paterson.

SENATOR PATERSON: Thank you, Mr.

President. If the Senator would yield for a question.

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR PATERSON: Senator, if we're going to start apportioning out the registrations, where in the past the registration for the pharmacists was in January and the wholesalers was in September, will some of the -- will the Department of Education prefer to have some of the registrations delayed or would they like to truncate the process for some and renew their licenses earlier than the three-year usual limit, just to create the revolving registrations?

SENATOR LAVALLE: Yes, that may happen to get them on the triennial track. So yes, they might do that.

SENATOR PATERSON: But they haven't -

SENATOR LAVALLE: The amount of the fee would be, of course, prorated, Senator.

SENATOR PATERSON: Sure. Sure.

The Department hasn't indicated a preference yet, whether they're just going to hold some back and add to their fee because it might take four years to do some, or to move some up? They haven't decided which direction to go yet?

SENATOR LAVALLE: No. Senator, you -- it's going to be done within the three-year time frame. So extending it so as to cause an additional amount is not something that is -- that we foresee.

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

ACTING PRESIDENT MARCELLINO: Senator, do you continue to yield?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MARCELLINO: I believe the Senator yields.

SENATOR PATERSON: Mr. President, the Senator indicated that the chains had a preference to be registered on the same day, and that's fine. But some of the independents may own more than one pharmacy or one wholesale house. Has the department extended

that same courtesy to them?

SENATOR LAVALLE: Senator, in the development of this bill, which we worked on with the State Education Department and with the associations, we have found that we were accommodating in terms of some of their issues. So -- I mean, there could always be one or two individuals that maybe are not happy with this. But my feeling is that whether we're talking about the large chains or the independent pharmacists, that they're pretty much on board with the system that we have developed. And, I mean, the Department has worked with their association, so I don't really see a problem.

SENATOR PATERSON: Thank you. If the Senator would continue to yield.

SENATOR LAVALLE: Yes, I will.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR PATERSON: Mr. President, one of the problems that we've had in my district and in a few of the districts, particularly in Manhattan, where there are tremendous opportunities for development and

not only commercial speculation but real estate development, is that a lot of the properties have been bought up by independents and chain pharmacists. We have one, I'd say, five-square-block area, Senator LaValle, where we have about nine drugstores. Now, the market cannot facilitate all of these pharmacists. What seems to be the case is that they are buying properties and getting licenses to operate drugstores, knowing full well that they'll probably go out of business because there just aren't that many people that need this service. But then it gives them the opportunity to hold the property and sell it at a higher level.

And we've been considering challenging the licenses as to whether or not they're really in the market to accommodate the sale of pharmaceuticals and other items that are sold in a drugstore but rather are using it as a real estate speculation.

The reason I raise it is because with the licenses being challenged at individual times, would it not accommodate - in other words, would it not accommodate the

interests of some of these independents of actually escaping the kind of scrutiny when there's a single issue, let's say, that the public has with them?

I don't see any problem with this bill, but I'm just asking the question that wouldn't this actually make it more difficult for communities such as mine to raise the issues of the licensing since we don't think they're really engaging in the practice?

SENATOR LAVALLE: Senator, we have to take a step back and look at what is the licensing procedure all about. And that is really -- it goes to a public protection, to find out whether the owners are indeed the owners of application and whether there are - in doing a background check, whether there is anything that we need to be concerned in terms of criminality that those individuals have committed.

That's what the licensing procedure goes through. We -- the licensing procedure does not get into a mens rea issue to find out what is the intent of the applicant in terms of a business philosophy of what they're

trying to do. Licensing does not get involved with those issues.

SENATOR PATERSON: Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Are there any other Senators wishing to be heard on this bill?

Seeing none, the debate is closed.

Read the last section.

THE SECRETARY: Section 12. This act shall take effect in 30 days.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

The Secretary will read Calendar Number 207.

THE SECRETARY: Calendar Number 207, by Senator Seward, Senate Print 2133, an act to amend the Executive Law, in relation to requiring.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MARCELLINO:

Senator Seward, an explanation has been asked for.

SENATOR SEWARD: Mr. President, this bill changes one word, from "may" to "shall," as to the provisions of funds to local veterans' service organizations, making it mandatory rather than permissive. And this funding would be provided pursuant to the population-based formula that is in existing law.

ACTING PRESIDENT MARCELLINO: Senator Dollinger.

SENATOR DOLLINGER: Through you, Mr. President, will the sponsor yield to a question.

ACTING PRESIDENT MARCELLINO: Senator Seward, do you yield?

SENATOR SEWARD: Yes, I do.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR DOLLINGER: What has been the experience under the optional allotment of funds that's provided for this under this statute? Do you have a sense of what local directors have done under the optional

language?

SENATOR SEWARD: Well, Mr. President, I must say I cannot point to any particular problems that have been as a result of that "may" word being there rather than "shall" and making it permissive rather than mandatory. I honestly cannot point to a problem or issue.

However, one of my local counties in my district, in looking at this whole issue of the funding of our local veterans' service agencies, pointed this out to me in the law. And it seemed to me that we should be making it mandatory rather than permissive in terms of the disbursements of the funds to the local veterans' service agencies. It seems to me that we should take away any ambiguity in the law in that regard. It seems to me that if the -- as we appropriate the funds every year in the budget, that the state should be directing these funds to the local counties without question.

SENATOR DOLLINGER: Through you, Mr. President, if the sponsor will again yield to a question.

ACTING PRESIDENT MARCELLINO: Do you yield, Senator Seward?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR DOLLINGER: Senator, as I understand this bill, we're going to go from an optional allocation to a mandatory allocation. What effect in terms of dollars will that have on the state budget or the state operations? Is there any indication that the director has not tried to maximize the allotments to local counties under the optional language?

SENATOR SEWARD: Well, Mr. President, the passage of this bill would not have a fiscal impact on the state, because the -- every year when the budget is done, there is obviously an appropriation. In the last couple of years it's been $575,000 statewide. And nothing would change with the passage of this bill. And there's no fiscal impact in terms of the dollars or the manner in which the monies are disbursed.

There's currently in the law -- and

we're not going to change that under this bill -- but currently in the law, which would continue to exist, there's a formula that is population-based. The smaller counties, under 100,000 in population, each receive $5,000 to go toward their county veterans' service agency. And the counties over 100,000 in population receive an additional $2,500 for each additional 100,000 persons in that county.

So that formula will stay in place. The only change we would be making would be that it would require the Director of the Division of Veterans' Affairs here in Albany to disburse these funds to the counties based on this formula.

Now, for example -- I cannot point to any problem, but as an example down the road, there would be no question regarding the disbursement of these funds. I think we owe it to our veterans to take away any ambiguity in the law at all.

SENATOR DOLLINGER: Through you, Mr. President, if the sponsor will continue to yield.

ACTING PRESIDENT MARCELLINO: Senator Seward, do you continue to yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MARCELLINO: He continues to yield, Senator.

SENATOR DOLLINGER: Senator Seward, just so I understand it, at this point you are not aware of any shortchanging or short payments or refusal to pay or an interference with payments made by the state director to the local veterans organizations, the local setup, under the "may" language.

And so my question is, why change it, if it seems to be working well as a permissive grant, to a mandatory grant? Mandatory obligation, I should say, for clarification.

SENATOR SEWARD: Well, Mr. President, I've stated it a couple of times already. I do not -- I am not aware of any problems that have been experienced under the current language.

Other than I can report to you there's a sense of uneasiness in a question to me, as a State Senator, has come in to me, is

why would we have it permissive, why would we allow the Director of the Division of Veterans' Affairs to perhaps not send the money out once it's been appropriated to the division and for the purpose of supporting these local veterans' service agencies?

My question to you, Senator, through you, Mr. President, would be why would we give that option to the Director of Veterans' Affairs? Why not make it mandatory to have him carry out the wishes of this Legislature to send this money out to the local veterans' service agencies so that they can provide the services to our veterans who have served this country? For the life of me, I wouldn't know why we would not require that, rather than have it continue to be permissive.

SENATOR DOLLINGER: Through you, Mr. President, was that a question directed at me, or a rhetorical one?

SENATOR SEWARD: It was a rhetorical question.

ACTING PRESIDENT MARCELLINO: It sounded more rhetorical to me, sir.

SENATOR DOLLINGER: It sounded

rhetorical to me as well.

On the bill.

ACTING PRESIDENT MARCELLINO: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I thank Senator Seward for his explanation.

I guess in the course of today's debate I've found a very interesting meaning of the word "shall," Senator Seward. If you were here for the debate with Senator Rath when we had a bill about the Lobbying Commission where we said, Governor, we all agree that you shall do this, he didn't do it, a year and a half later, after not doing it, now we're coming back and we're telling him to do it again.

We write the word "shall" in the Health Department, we say to the Health Department, you shall provide us a report on this. No report. We give them more time. We have the Aging Committee bill that Senator Maziarz did in which we said you shall conduct an evaluation of this program and the Medicaid consequences and long-term care. And the Executive Department didn't bother to do that.

So with all due respect to Senator Seward, we now have a bill before us in which Senator Seward I think properly acknowledges that we have no evidence that the state director hasn't given local communities their fair share of veterans' service dollars. That practice on behalf of the State Director of Veterans' Affairs, has happened under Democratic administrations, under Republican administrations. This is money, let's face it, that we tell the State Bureau of Veterans' Affairs to get to the local commissions as quickly as possible.

The way we do it is we use the word "may," we say you may do it. But in essence, we're telling him to do it. And sure enough, he's actually done it. So we use the word "may" in a statute, and it gets done. We use the word "shall" in other states, and it doesn't get done.

So with all due respect to Senator Seward, I can't understand the difference between these two words. Sometimes we say "shall" and it's ignored; sometimes we say "may" and it's done. I would suggest to

Senator Seward that if today's experience has any value to us, we ought to leave the word "may" in there because that means that it may actually get done.

And I would suggest that if we put the word "shall" in there, it all but assures the Executive will not do it. That's my essence of what we've debated today. And that's why, Senator Seward, your bill, which has certainly a very beneficial intent -- I appreciate, again, your responsiveness when a constituent says, This raises a question, why is it 'may' instead of 'shall'? I would suggest that they're much better off with "may," because "may" means that it happens. And when we use "shall," it's a virtual guarantee that it won't.

Under those circumstances, Mr. President, I'm going to vote in favor of this bill. I think we ought to tell them "shall." My only question to the other members of this house is, do we really mean it this time? Is that what really we're intending to say?

I would suggest in our attempts at legislative draftsmanship, and our people at

the bill-drafting commission are so good and so diligent, they've got to find a word that's more powerful than "shall." How about "must"? Let's use the word "must." Because maybe the Executive branch will think then, if we pass a bill that says "must," that we really actually mean it. Instead of the word "shall," which most often in our experience with the Executive branch, certainly based on the bills we've seen today, means, oh, I'll get around to it when I want to.

Mr. President, I'm going to vote in favor of this bill. I would suggest that Senator Seward, before -

ACTING PRESIDENT MARCELLINO: Excuse me, Senator.

Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: I wonder if my colleague would answer a question.

ACTING PRESIDENT MARCELLINO: Senator Dollinger, would you yield?

SENATOR DOLLINGER: Yes, Mr. President, I'd be glad to.

ACTING PRESIDENT MARCELLINO: He

yields.

SENATOR MONTGOMERY: Thank you, Mr. President.

Senator Dollinger, would it satisfy you if we created an E felony for anyone who does not "shall," based on your -

SENATOR DOLLINGER: Yes, through you, Mr. President, maybe that's what we should do. We could guarantee that these things happen in the Executive branch by just making it a crime not to follow the Legislature's intent.

I would note for Senator Montgomery's edification that we do use the word "shall" a lot in our Penal Law, and we say that people shall do this or they shall be punished. If anything, our experience today has said when we use the word "shall" and we tell the Executive to do something, it more than likely will not get done.

I would suggest, Senator Seward, when it's considered by the other house, substitute the word -- make an amendment. I can't make that amendment, because if I made that amendment, we'd have a canvass of

agreement to decide whether the word "shall" or "must" ought to be inserted into this bill. I would just suggest that the word that the might actually catch the Executive's attention and achieve the goal you're looking for, which is a direct command to do it or else, is the word M-U-S-T.

I'll vote in favor of it, but I am afraid we only mean "maybe."

ACTING PRESIDENT MARCELLINO: Senator Malcolm Smith.

SENATOR MALCOLM SMITH: Thank you, Mr. President. Would the sponsor yield for a question or two?

ACTING PRESIDENT MARCELLINO: Senator seward, do you yield?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR MALCOLM SMITH: Thank you, Mr. President. Through you. I believe the sponsor, as one who is a strong advocate for vets, I think his bill is on the right track. I just have a couple of questions I'd like to ask him.

And in terms of expenditure of the funding for -- through the -- by the commission, this is actually done through the commission; correct? The commission makes that decision before any expenditure can happen, is that how it works?

SENATOR SEWARD: Well, Mr. President, the way that the funds flow out to the local governments is, as I described earlier, every year in the budget of course a total sum is appropriated, the last couple of years, it's been $575,000. And then there is a formula that exists in the law currently that would continue, with this bill passing, that distributes the money. It's based on population. Obviously, the more populous counties receive more funds. But there is a minimum of $5,000 for the smaller counties.

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

ACTING PRESIDENT MARCELLINO: Senator Seward, do you continue to yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MARCELLINO: He

yields.

SENATOR MALCOLM SMITH: Thank you, Mr. President.

Through you, Mr. President, is the sponsor saying that the commission has no involvement with the appropriation or when the expenditure is released?

SENATOR SEWARD: Well, Mr. President, the Senator refers to a commission. We're really talking about the Director of the Division of Veterans' Affairs. And the funds are appropriated, obviously, by this Legislature in the form of the budget passing. And the formula that I have described exists in the law. As a matter of fact, I think it's been there since 1945.

SENATOR MALCOLM SMITH: Through you, Mr. President, if the sponsor will continue to yield.

ACTING PRESIDENT MARCELLINO: Senator Seward, do you yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR MALCOLM SMITH: It is my

understanding, Mr. President, that there is a commission that is involved that determines the expenditure at that point in which expenditure is done through the director.

SENATOR SEWARD: Yes, the Senator is correct. Within the Division of Veterans' Affairs, there does exist a Veterans' Affairs Commission that the state director to which I referred, with the approval of the Veterans' Affairs Commission. That is correct, there is that extra step there in the law.

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

ACTING PRESIDENT MARCELLINO: Do you yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MARCELLINO: He continues to yield, Senator.

SENATOR MALCOLM SMITH: Thank you, Mr. President.

Through you, does the sponsor know how the commission is currently involved with the fiscal affairs of the division at this point?

SENATOR SEWARD: Well, Mr. President, it's my understanding that the State Veterans' Affairs Commission is purely an advisory panel made up of veterans and others who advise the Director of the Division of Veterans' Affairs. In terms of being involved in the day-to-day administration of the division of veterans affairs, they are not. It's purely an advisory panel.

And I would suspect, Mr. President, that the state director merely runs the numbers by this commission. The state director is really the key person, the true administrator and the true head of the Division of Veterans' Affairs.

Very often -- it's very common throughout state government that various so-called advisory panels are in existence, and this Veterans' Affairs Commission is such a body.

SENATOR MALCOLM SMITH: Through you, Mr. President, if the sponsor will continue to yield.

ACTING PRESIDENT MARCELLINO: Do you continue to yield, Senator Seward?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MARCELLINO: He does, sir.

SENATOR MALCOLM SMITH: Thank you, Mr. President. Through you.

From time to time there are agencies, at no fault of their own, who don't often utilize the funds, for whatever reason, or it's not spent where it should be. Does the director have any discretion, if he should note such performance, to have the funds appropriated elsewhere?

SENATOR SEWARD: Mr. President, something that would also continue, which is existing practice, required, the local veterans' service agencies have to, you know, file the necessary paperwork showing that - their local budget, how they spend their funds. And only upon the receipt of this type of information, which is a full accounting of their finances, does the state aid flow.

I might point out that we're really talking about small sums of money here. You know, it's $5,000 for the counties that I represent, because they are under 100,000 in

population. So it's a -- I must say it's really a token, but yet very, very important to putting together the financing of these local veterans' service agencies.

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

ACTING PRESIDENT MARCELLINO: Senator Seward, do you continue to yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MARCELLINO: He continues to yield, sir. You may proceed.

SENATOR MALCOLM SMITH: Thank you, Mr. President.

Through you, Mr. President. Notwithstanding that it's a small amount, and clearly I can agree with that, the question before me becomes, in terms of -- as we were talking earlier today, we were talking about "shall," I heard a lot of discussion around "shall" and "may." I'm not sure where all of that was going. But can we be assured as a Legislature that the funding will be available for these particular agencies? Is it guaranteed that that is such? Is there a

memorandum for this bill as well that we can be assured that the veterans will get this money where necessary?

SENATOR SEWARD: Well, Mr. President, that's the whole point of my legislation, is to take away any sense of ambiguity in the law by changing that word from "may" to "shall." Now, I can't speak to the other examples that have been cited here. This is a sincere attempt, this legislation, to honor the veterans of this state by taking away any sense that their needs will not be attended to with some state assistance to the local veterans' service agencies that exist around this state.

SENATOR MALCOLM SMITH: Through you, Mr. President, one other question, please, if the sponsor will continue to yield.

ACTING PRESIDENT MARCELLINO: Senator, do you yield for another question?

SENATOR SEWARD: Yes. Yes.

ACTING PRESIDENT MARCELLINO: He yields, sir.

SENATOR MALCOLM SMITH: Thank you. Through you, Mr. President.

The question, I guess -- and let me rephrase it in terms of a memorandum on the bill. My concern is, is there any guarantee that the Legislature will put the funds or make the funds available for this particular program?

SENATOR SEWARD: Well, Mr. President, in terms of the dollars involved to -- that would flow through this formula for the Director of the Division of Veterans' Affairs to disburse to the counties through this formula, the dollar amount obviously is an annual decision that's made by this Legislature through the appropriation process. I certainly would support the continuation of state support for these local veterans' service agencies, and I'm sure you would as well.

And once we pass another state budget, I certainly have every expectation that we're going to continue to support our local veterans' service agencies through an appropriation. We're just merely, through this bill, tightening up language that exists in the law. I think to honor our veterans,

why continue to have ambiguity in the law, is my question. A rhetorical question, Mr. President.

SENATOR MALCOLM SMITH: Right. Thank you, Mr. President. One more question, through you, if the sponsor will continue to yield.

ACTING PRESIDENT MARCELLINO: One more question, Senator Seward?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MARCELLINO: I believe he yields.

SENATOR MALCOLM SMITH: And it's just a simple question. Can you tell me how many times the commission meets? Do you know how often?

SENATOR SEWARD: Mr. President, I really don't have the answer to that question.

SENATOR MALCOLM SMITH: On the bill.

ACTING PRESIDENT MARCELLINO: Senator Smith, on the bill.

SENATOR MALCOLM SMITH: Thank you, Mr. President. And I thank the sponsor too.

I can tell you, as one who believes that I am going to spend most of my life speaking on behalf of veterans, I think unfortunately they have allowed us to treat them like second-class citizens to our fault. For some reason, we tend to treat veterans as though what they did for us was they did it as a favor and we say thank you to them by simply shaking their hand from time to time, by having a particular day to their honor.

My belief is that we should probably be honoring veterans every day of our lives. Had it not been for them, probably we would not be standing here or sitting here having the liberties that we do have in this country.

I have taken it upon myself to devote a lot of my energy to veterans. And whether it is shall or may or will, I can only tell you that we must make sure that in everything that we do, that we offer our thanks and honor to veterans.

I think this is a good bill. I think it's a small step. I think it could be somewhere two or three or four or five times

this amount, as relates to the formula for allocation of these funds. And I would just hope that my colleagues would support the bill, and not because of anything more than the fact that the vets deserve everything that we give them and even more.

Thank you very much, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Schneiderman.

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

ACTING PRESIDENT MARCELLINO: Senator Seward, would you yield?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT MARCELLINO: He yields, sir.

SENATOR SCHNEIDERMAN: Thank you.

I am not completely clear on the system of caps. And my reading of this sounds as though -- it sounds like a very well-intentioned bill, but it sounds like it's actually not going to deliver very much money at all in the cases of cities or counties with a large population. Do I understand correctly

that $5,000 limit on the $2500 per 100,000 limits, that's a whole gross number applying to the whole budget of the agency, or is that per program?

SENATOR SEWARD: Mr. President, that is directed toward the gross budget of the local agencies.

SENATOR SCHNEIDERMAN: So it would not be the case if a county or city wants to have a counseling program for veterans and then it also has an education program for veterans, each program would not be eligible for that sum, the total that the city or county agency would receive would be the $5,000 or plus 2500?

SENATOR SEWARD: Well, Mr. President, the -- it is not done an a program-by-program basis. Obviously if the local veterans' service agencies, in conjunction with their local budget-making process, wish to have these fine programs, that's certainly up to them. What we're talking about here is the state support for the overall programs.

SENATOR SCHNEIDERMAN: Through

you, Mr. President, if the sponsor will continue to yield.

ACTING PRESIDENT MARCELLINO: Senator, do you yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MARCELLINO: He yields, sir.

SENATOR SCHNEIDERMAN: How was the determination made -- and again, I think this sounds like a very worthwhile program. I'm just concerned that the caps are far too low for large metropolitan areas, for large cities and counties. How was the determination made about the $5,000 and the $2500 per 100,000?

SENATOR SEWARD: Well, Mr. President, the formula that is being referred to has been in the law for some time, and we could certainly have a discussion about their inadequacy. That could be very well a subject of another piece of legislation, or addressed through our budget-making process a bit later in the session.

The point of this particular legislation is to take that initial step

toward taking away any sense of discretion on the part of the Division of Veterans' Affairs in terms of the disbursement of funds under the existing formula. The question of whether the formula should be change or not is an interesting one, and perhaps one that should be explored. I'm not saying it shouldn't. But that is not direction of this particular piece of legislation.

SENATOR SCHNEIDERMAN: Thank you. Mr. President, on the bill.

ACTING PRESIDENT MARCELLINO: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I think this is a very worthwhile bill. And I echo what others have said. And I know Senator Smith, Senator M. Smith is very actively involved in this area and is riling us up about the need to do more for veterans.

It does seem to me, however, that the formula is really out of whack with the costs of doing business in 2001. And I know that in the areas that I'm familiar with in New York City and the surrounding counties, $5,000 plus $2500 per 100,000 is not going to

support very many veterans. So that while I do support the bill, I do hope that we will be able to address that issue later on in this session. Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Onorato.

SENATOR ONORATO: Mr. President, will the Senator yield for one question?

ACTING PRESIDENT MARCELLINO: Senator, will you yield for a question?

SENATOR SEWARD: Yes.

SENATOR ONORATO: Senator Seward, because we've been hearing so much about the caps on the bill and how much we're going to allow, does the director have any discretion in denying perhaps some of the underutilized areas of the state that are not perhaps in need of as much money as some of the others? Does he have any discretion in shifting some of those funds around to areas that are more in need of the funds than others, or must he stay within the guidelines of the caps?

SENATOR SEWARD: Mr. President, the formula is very well defined in the statute currently. And in terms of the

Director of the Division of Veterans' Affairs being able to move money around within that formula, that's not possible because the formula is very well defined in the legislation.

SENATOR ONORATO: Thank you.

ACTING PRESIDENT MARCELLINO: Senator Oppenheimer.

SENATOR OPPENHEIMER: If the sponsor will yield to a question.

ACTING PRESIDENT MARCELLINO: Senator, do you yield?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT MARCELLINO: He yields, Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you, Jim.

I guess I'm questioning the services that would be provided. I'm sorry, I was out of the chamber just now for a few minutes. And because -- I'll tell you why item asking. We have a Veterans of Foreign Wars that owns a building, and they're having trouble keeping up the building, and they wondered -- they asked me if there was some

assistance for them to help maintain the building. Is that a service that could be included?

SENATOR SEWARD: Well, Mr. President, are you talking about a -- like a post, like a Legion post?

SENATOR OPPENHEIMER: Yeah, a post.

SENATOR SEWARD: This is not the -- these funds are not directed toward individual veterans' posts. These funds are directed toward either the county- or the city-operated veterans' service agencies. You know, they have the counselors and other assistance to the veterans.

SENATOR OPPENHEIMER: Right. Right.

SENATOR SEWARD: You'll have to deal with your issue in another way. This bill is directed to your county and city veterans' service agencies.

SENATOR OPPENHEIMER: Well, we tried.

On the bill.

ACTING PRESIDENT MARCELLINO:

Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: I think whatever we can do to help the veterans -- and we have done a lot at Montrose now which will assist some of our aging -- after many years, assist some of our aging veterans. And I would agree that this is only a small amount to start to meet the needs of them. But as many of you know, I was brought up as an Army brat. My father was a colonel in the Army. And I think anything that we can do to assist them, because they certainly went to bat for us.

So I'll be voting in favor.

ACTING PRESIDENT MARCELLINO: Anyone else wishing to be heard on this bill?

Seeing none, the debate is closed.

Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you call up Calendar Number 205, by Senator Morahan.

ACTING PRESIDENT MARCELLINO: The Secretary will read Calendar Number 205.

THE SECRETARY: Calendar Number 205, by Senator Morahan, Senate Print 1158, an act to amend the Military Law, in relation to extending certain benefits.

SENATOR ONORATO: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Morahan, an explanation has been requested.

SENATOR MORAHAN: Certainly, Mr. President.

This bill will amend current law, the New York Military Law, that deals with military personnel who maybe, because of military duties or assignments, get a stay on any civil actions that they may be involved with. This bill now would extend those same right to the minor dependent children of the

military personnel.

ACTING PRESIDENT MARCELLINO: Senator Malcolm Smith, you are recognized.

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

ACTING PRESIDENT MARCELLINO: Senator Morahan, do you yield?

SENATOR MORAHAN: Yes.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR MALCOLM SMITH: Mr. Chairman, just a couple of questions. One, with regards to the bill in terms of it covering minors, is there any particular reason why it doesn't cover adults such as disabled or elderly?

SENATOR MORAHAN: It doesn't cover them? No.

SENATOR MALCOLM SMITH: Is there any particular reason why it doesn't cover them, disabled, elderly, parents?

SENATOR MORAHAN: Well, I can't give you a reason off the top of my head why

they're not covered. But let me say this. Right now the law is silent on minors, and in a lawsuit or a law case, a judge did give the extension of the benefits to minors. And therefore, this language just clears it up to coincide with a law case that was in New York in, I guess, 1992.

SENATOR MALCOLM SMITH: Through you, Mr. President, if the sponsor will continue to yield.

ACTING PRESIDENT MARCELLINO: Do you continue to yield, sir?

SENATOR MORAHAN: Yes.

ACTING PRESIDENT MARCELLINO: The Senator yields, sir.

SENATOR MALCOLM SMITH: Excluding the Justino versus New York City Housing Authority case, do you know how frequently the stays are requested?

SENATOR MORAHAN: Pardon?

SENATOR MALCOLM SMITH: How frequently are they requested, stays? Do you know how frequently stays are requested, excluding that particular case?

SENATOR MORAHAN: It's really

indefinite. It's very hard to come up with a number, inasmuch as this could be any time they're deployed, reassigned, temporarily out at maneuvers or whatever it may be. So it's really hard to say how often this will come up.

And to the first part of your answer, on the disabled and the other people, that's probably -- and elderly, if you will, we're trying to clarify, and our law is a takeoff of the federal law, the federal Soldiers and Sailors Act. That act provides only for the military personnel themselves. Okay?

This will amend New York law to include the military plus the minors.

SENATOR MALCOLM SMITH: Mr. President, through you, I have another question, if the sponsor will continue to yield.

ACTING PRESIDENT MARCELLINO: Senator Morahan, do you yield?

SENATOR MORAHAN: Yes.

ACTING PRESIDENT MARCELLINO: He yields, sir.

SENATOR MALCOLM SMITH: Are there provisions to accommodate the members of the dependent family in instances such as these when they are requesting or when the stays are granted?

SENATOR MORAHAN: Senator, I'm having difficulty understanding the question.

SENATOR MALCOLM SMITH: Are there provisions to accommodate the military members and their dependents? In other words, when they're asking for these particular stays and they're granted, are there facilities that are available to them, to accommodate them?

SENATOR MORAHAN: Senator, I don't know if I'm going to answer your question exactly the way you would like, because I'm having difficulty understanding the question. But assuming I've heard you, when you say facilities, what do you mean by facilities?

SENATOR MALCOLM SMITH: Well, provisions. Are there provisions made to accommodate them? In other words -

SENATOR MORAHAN: When you say provisions to accommodate, you mean like hotel

rooms? I mean, what are you speaking about?

SENATOR MALCOLM SMITH: Fly them there, fly them back during the time while this is going -- I'm sorry, through you, Mr. President.

SENATOR MORAHAN: No, this merely changes a statute, okay, that now exists of the New York State Military Law, the Soldiers and Sailors Act, I think it's Section 340, that now allows minors -- now, I don't know - what, to come back for a civil suit? They won't have to, under this law.

SENATOR MALCOLM SMITH: Through you, Mr. President, if the sponsor will continue to yield.

ACTING PRESIDENT MARCELLINO: Do you continue to yield, Senator?

SENATOR MORAHAN: Yes, I do.

SENATOR MALCOLM SMITH: Let me ask you the question a different way. Let's talk about there are speedy trial requirements in criminal cases. And I guess my question is, in this particular instance when stays are granted, how would that interact with the speedy trial requirements?

SENATOR MORAHAN: Well, I don't know about speedy trial. That would be just for criminal. This is just civil law.

SENATOR MALCOLM SMITH: Correct. I'm -- through you, Mr. President, if the sponsor will continue to yield.

ACTING PRESIDENT MARCELLINO: Do you yield, sir?

SENATOR MORAHAN: Yes.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR MALCOLM SMITH: In criminal cases, yes, there are speedy trial requirements. My question is, in this particular instance it is civil. They're still requesting a stay in a civil act, what have you.

SENATOR MORAHAN: Yeah. For as long as it takes.

SENATOR MALCOLM SMITH: For as long -- okay, that's the answer.

SENATOR MORAHAN: For as long as they're away.

SENATOR MALCOLM SMITH: Just one last question, if the sponsor would continue

to yield, Mr. President.

ACTING PRESIDENT MARCELLINO: Do you yield for another question?

SENATOR MORAHAN: Yes.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR MALCOLM SMITH: The memorandum in the case that a proper notice of claim was not filed on the minor's behalf, I guess the question for me was a notice of claim ever filed or -

SENATOR MORAHAN: Yes, there was a case where the aunt -- the child had to leave the country, and I believe it was an aunt that went down as a guardian to speak for and ask for a stay, and that's what gave the genesis of this bill some impetus, because they wanted to clarify that law. The judge in the case I believe, okay -- I have the court papers here, but I don't want to take the time to read them. I believe they ruled that she could serve as a guardian, and he was excused, if you will, from the -- he got the stay based on the fact that he was a minor child of a member of the military.

Now, what we're trying to do is just take that court ruling, if you will, and put it in law so it doesn't get repeated in some other future case where somebody may need that relief.

SENATOR MALCOLM SMITH: Thank you very much, Mr. President. On the bill.

ACTING PRESIDENT MARCELLINO: Senator Malcolm Wilson [sic], on the bill.

SENATOR MALCOLM SMITH: Mr. President, I guess I can tell you, just one of my joys working here thus far has been working with the chairman of this particular committee. I guess everyone tends to believe that some of us in the Legislature can be very cynical about what we do and how we pursue our missions. And I can tell you the altruism that Senator Morahan has for veterans and this issue when was a joy to me when I began to work with him.

I think the bill is right on, and I hope he understood my questions as more out of concern for vets and making sure they are given every just cause and every benefit and opportunity that they can to be dealt with in

a fair and proper way.

So I would urge my colleagues, notwithstanding their independent concerns on this bill, to support the bill. And I would just encourage Senator Morahan to continue the path that he is going, and as the ranking member on Veterans and Military, I'll always offer my assistance to him.

ACTING PRESIDENT BONACIC: Senator Breslin.

SENATOR BRESLIN: Mr. President, would the sponsor yield for a couple of questions.

ACTING PRESIDENT MARCELLINO: Senator Morahan, will you yield?

SENATOR MORAHAN: Yes, I do.

ACTING PRESIDENT MARCELLINO: He yields, sir.

SENATOR BRESLIN: Given the fact that you indicated it doesn't apply to criminal trials, and that most infants are, in most situations immune from lawsuits, what kinds of situations do you envision this statute handling?

SENATOR MORAHAN: Well, they

could be Office of Mental Health, it could be a lawsuit that they're involved with. In other words, they may be the victim of the lawsuit, you know, of the -- they may be the claimant, if you will, and they can't be there to pursue it when the trial comes up.

It could be a custody matter, could be a matter of custody in the Family Courts, those sorts of things.

SENATOR BRESLIN: Then again through you, Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT MARCELLINO: Do you continue to yield?

SENATOR MORAHAN: Yes.

ACTING PRESIDENT MARCELLINO: He yields, sir.

SENATOR BRESLIN: If in fact there was a custody situation you indicated it covers and they were the focus of that investigation or that determination of custody, and there was another -- there was someone here in New York State alleging that they should be the custodial parent of that infant, does this statute protect that infant

from coming back and being subject to a custody proceeding?

SENATOR MORAHAN: Yes. As I understand the question, it's if the custodial parent is in the military and there may be a court action regarding custody. But if that child is in the custody of one parent and that parent is in the military and that parent goes overseas, then the child would go with the parent.

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

ACTING PRESIDENT MARCELLINO: Does the sponsor yield?

SENATOR MORAHAN: Yes.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR BRESLIN: How would it be, then, in a situation if there was a joint custodial relationship, with each parent having equal access to the child, and the person in the military was transferred and took that child with him? Would this legislation then act to insulate that child

from returning to any kind of custody proceeding relative to the parent who lives in the State of New York who is not in the military?

SENATOR MORAHAN: Yes.

SENATOR BRESLIN: Again, through you, Mr. President.

ACTING PRESIDENT MARCELLINO: Do you yield, sir?

SENATOR MORAHAN: Yes, I do, Senator.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR BRESLIN: Then it's conceivable that there's a contested custody situation where full custody has not been determined and a child might be with a parent who does not have full custody -

SENATOR MORAHAN: I'm sorry, I was talking to counsel. Would you start your question again? I'm sorry.

SENATOR BRESLIN: Again, through you, Mr. President -

SENATOR MORAHAN: I'm trying to listen to two people and it's hard, Senator.

SENATOR BRESLIN: Might there in fact be a situation where there is a custody which is being challenged, that is still being contested? And generally in custody proceedings each parent would have an equal right to a child.

SENATOR MORAHAN: Yes.

SENATOR BRESLIN: And in the hypothetical, the military parent is transferred to a jurisdiction outside of New York State for a term of, let's say, four years. Would this statute then insulate and protect the military person and the child against the other parent who has an equal claim to the custody of that child?

SENATOR MORAHAN: Counsel advises me that the court has some discretion and that what is in best interests of the child would be considered.

SENATOR BRESLIN: Again, through you, Mr. President, if the sponsor will continue to yield.

SENATOR MORAHAN: I continue to yield, yes.

ACTING PRESIDENT MARCELLINO: He

yields, Senator.

SENATOR BRESLIN: The best interests of the child is the traditional, accepted determination on custody of a child. But if that child is not subject to our jurisdiction, how can that be determined?

SENATOR MORAHAN: The court access would have already started. This is for a stay. This is for a stay of a proceeding already underway. Okay? And they can apply for the stay. When they make application for the stay, the court, knowing that the child has this right and is protected under military law, and his mother may be shipped over to Germany, that the court could say in the best interests of the child that it would go to Germany.

But it does afford the right to ask for the stay. The issuance of the stay, I would believe would have some discretion by the judge.

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

SENATOR MORAHAN: I will continue

to yield, yeah.

SENATOR BRESLIN: Well, in that situation, wouldn't it be that a court has had sufficient evidence to make a determination as to what is in the best interests of the child, but before -- there are many situations where, before a court can make that determination, a child would go with one parent who might have an equal right to that child. Would this statute then disenable the parent here in New York from bringing that child to a court proceeding?

SENATOR MORAHAN: I believe, Senator, that the court would look at the application, wherever they are in the process, and look at the application for a stay and both parents could talk to the stay, and knowing that the child has this right, if the court decides that -- you know, get the stay, that the court could rule for the best interests of the child. If it would be that, you know, he's going for four years or the youngster is going for four years, maybe that's going to be some measurable determinant for the court.

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

SENATOR MORAHAN: Yes.

SENATOR BRESLIN: If I were in Family Court, if there was a situation wherein there was a juvenile distinction petition or a PINS petition that has been filed, would the movement of that child with his military parent either stay the proceeding which has been initiated or, if it hasn't been initiated, stay it prospectively being initiated?

SENATOR MORAHAN: This is a civil statute. And it's my understanding, okay, that if the proceeding has not started, there is no stay, and the person could take the child -- if there's going to be a battle or a divorce but they have not started it, there's nothing to issue a stay about.

SENATOR BRESLIN: Then if there was a -- and again through you, Mr. President that isn't in the nature of a criminal proceeding. It's civil in nature, Family Court.

SENATOR MORAHAN: I know that. Civil, yes.

SENATOR BRESLIN: Then this statute would prevent -- if someone -- there were allegations of juvenile delinquency, the child left with the military parent, is it correct that it would then stay any -- not stay, would prevent the initiation of any kind of juvenile delinquency petition until that child returned to New York State?

SENATOR MORAHAN: Now, you're giving me a -- has this court action that you're alluding to commenced?

SENATOR BRESLIN: No, it hasn't been commenced.

Again through you, Mr. President, a hypothetical. A child has committed a couple of burglaries, and then there's all set to be a commencement of a juvenile delinquency petition, the parent gets transferred to Germany -

SENATOR MORAHAN: This doesn't speak to that issue. The current law is the current law. This only speaks to commenced proceedings. So if it hasn't been commenced,

whatever the judge decides now, under whatever existing statutes they work under, that's what would happen.

SENATOR BRESLIN: Again through you, Mr. President. Then this legislation is only for cases which have been initiated by a petition or a summons that are in being before the transfer takes place; is that correct?

SENATOR MORAHAN: Yes, it's my understanding that this is a stay.

SENATOR BRESLIN: Then again through you, Mr. President, would it have any -

SENATOR MORAHAN: You can't stay anything that hasn't started.

SENATOR BRESLIN: Okay. Then in fact, this would have no bearing on the statute of limitations.

SENATOR MORAHAN: No. There's a separate provision for that in the Military Law, but we're not amending that today.

SENATOR BRESLIN: Thank you, Mr. President. Thank you, Senator.

ACTING PRESIDENT MARCELLINO: Senator Schneiderman.

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

SENATOR MORAHAN: Yes, I do.

ACTING PRESIDENT MARCELLINO: He'll yield.

SENATOR SCHNEIDERMAN: Following up on the very helpful colloquy between the sponsor and Senator Breslin, I don't know this area of the law very well, but I don't see anything in this section that would limit this to civil proceedings. Is there some other section that limits this to civil actions?

SENATOR MORAHAN: The whole act 304 -- is it 340? Just bear with me a moment, Senator.

The title of the act that we're amending is the New York State Soldiers and Sailors Civil Act.

SENATOR SCHNEIDERMAN: Through you, Mr. President. So there's another section other than Section 304 that addresses that issue?

SENATOR MORAHAN: Twenty-five of them.

SENATOR SCHNEIDERMAN: Thank you.

SENATOR MORAHAN: Twenty-five of them. Don't ask me to recite them, okay.

SENATOR SCHNEIDERMAN: All right. I'll move to my next question.

Following up on the discussion with Senator Breslin, it does seem to me that this does shift the advantage substantially in a joint custody situation to the parent in military service. My reading of this is that the discretion of the court is limited to a finding that the ability of the plaintiff or defendant to prosecute the action or conduct their defense only relates to the party that is in military service, I'm reading the last five lines of the bill.

Isn't that correct that if there was prejudice to the parent that was not in military service, that would not enable the court to apply its discretion?

SENATOR MORAHAN: There is an intent, an inherent intent to give preference to those people who serve in the military to defend the nation. So -- and in that service, you know, they don't voluntarily go from here

to there. They're issued orders. And the supposition here is that if their military assignment requires them to be moved or to be absent from the area for military reasons, then they should not be harmed in any way and they should have some consideration. And that's the way the -- and the purpose of the Soldiers and Sailors Civil Relief Act.

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

SENATOR MORAHAN: Yes, I continue to yield, Senator.

ACTING PRESIDENT MARCELLINO: Senator Schneiderman, he yields.

SENATOR SCHNEIDERMAN: Yes, thank you. I appreciate that. My concern, though, is that this really may have an unintended effect of prejudicing the parent that is not in the military or a party that would be adversely affected by this. Because if the judge's discretion was broad enough so that, you know, you'd say the judge in the interests of justice or in the best interests of the child would decide to grant or refuse to grant

a stay, that would be one thing.

That is not the language of this bill, and that's what raises my concern. The language of the bill that I want to address is in the -- starting in line 13, which is the description of the limitation on the court's discretion. "Unless, in the opinion of the court, the ability of plaintiff to prosecute the action and defendant to conduct his defense . . . The ability of the party to represent his interest is not materially affected by reason of his military service or military service of the parent or guardian."

So that limits the judge's discretion to ascertaining whether or not the party that's in the military's ability to defend or prosecute is materially affected. So in a situation even if the particular operation of the statute was to provide for the most severe sort of prejudice to the nonmilitary party, the court would be lacking discretion.

And I don't think this is the intended consequence, but I think that this section is poorly drafted if the intent was to

allow the court to exercise its discretion to prevent any sort of a miscarriage of justice under those circumstances.

Is that -- is my reading correct?

SENATOR MORAHAN: Yeah, you did a good job.

SENATOR SCHNEIDERMAN: Well, thank you. I'd like to get that section of the transcript.

The -- I would urge in that case -

SENATOR MORAHAN: 25 cents a page, Senator.

SENATOR SCHNEIDERMAN: On the bill.

ACTING PRESIDENT MARCELLINO: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: 25 cents a page? That's better than I do in the supply room.

I think this is a perfectly reasonable bill and a modification of the existing law. I am concerned that the particular language in the last five lines has the unintended effect of creating prejudice where prejudice -- I'm sure the sponsor and

distinguished counsel and staff did not intend that. I think we should correct that to ensure that we don't have unintended negative consequences on other parties to these proceedings.

But even in the absence of that, I think this is a fine effort to protect the dependents in the military and protect really those who are serving from undue stress created by these problems with their dependent children.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Any other Senator wishing to be heard on this bill?

Seeing none, the debate is closed.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Skelos, that completes the reading of the noncontroversial calendar - the controversial calendar, excuse me.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Skelos.

SENATOR SKELOS: Would you please lay aside Calendar Number 194 for the day, at the request of the sponsor.

ACTING PRESIDENT MARCELLINO: So ordered.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT MARCELLINO: I believe we have a motion by Senator McGee, if we might return to motions and resolutions.

SENATOR McGEE: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator McGee.

SENATOR McGEE: I offer the following amendment to Calendar 32, S694, by Senator Goodman.

One more.

ACTING PRESIDENT MARCELLINO: The amendment is received, and the bill will

retain its place on the Third Reading Calendar.

SENATOR McGEE: And, Mr. President, on behalf of Senator Goodman, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause. Senate Number 698.

ACTING PRESIDENT MARCELLINO: So ordered.

SENATOR McGEE: Thank you.

ACTING PRESIDENT MARCELLINO: Senator Skelos.

SENATOR SKELOS: Please recognize Senator Dollinger.

ACTING PRESIDENT MARCELLINO: Senator Dollinger.

SENATOR DOLLINGER: Thank you.

Mr. President, I hereby give written notice, as required by Rule XI, that I will move to amend the rules and add a new rule, XV, in relation to ethical standards for members, officers, and employees of the State Senate.

Thank you, Mr. President, and

thanks to the Deputy Majority Leader.

ACTING PRESIDENT MARCELLINO: We've received the notice, and it will be filed.

SENATOR DOLLINGER: Thank you.

ACTING PRESIDENT MARCELLINO: Senator Skelos.

SENATOR SKELOS: Please recognize Senator Paterson.

ACTING PRESIDENT MARCELLINO: Senator Paterson.

SENATOR PATERSON: Mr. President, I would like to advise the members of the Minority that there will be a Minority conference tomorrow morning at 10:30 a.m. That's tomorrow, March the 28th, at 10:30 a.m., in Room 3.141925, which is the furthest I can carry out pi at this particular time, Mr. President.

ACTING PRESIDENT MARCELLINO: There will be a Minority conference tomorrow morning at 10:30 in Room 314.

Senator Skelos.

SENATOR SKELOS: Mr. President, there being no further business, I move we

adjourn until Wednesday, March 28th, at 11:00 a.m.

ACTING PRESIDENT MARCELLINO: On motion, the Senate stands adjourned until Wednesday, March 28, at 11:00 a.m.

(Whereupon, at 4:40 p.m., the Senate adjourned.)