NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 2, 2001

3:00 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

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

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

THE PRESIDENT: In the absence of clergy, may we bow our heads in a moment of silence.

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Friday, March 30th, the Senate met pursuant to adjournment. The Journal of Thursday, March 29th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Marcellino.

SENATOR MARCELLINO: Yes, Madam President. I move that the following bill be discharged from its committee and be recommitted with instructions to strike the enacting clause. And that would be my bill, Senate 495.

THE PRESIDENT: So ordered.

SENATOR MARCELLINO: And on behalf of Senator Libous, please place a sponsor's star on Calendar Number 193, 235, and 309.

THE PRESIDENT: The bills will be starred, Senator.

SENATOR MARCELLINO: Thank you.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, 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.

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution Number 1116, recognizing the White Ribbon Campaign, sponsored by Vera House, of Syracuse, New York, to take place during March 30th to April 8th, 2001.

SENATOR PATERSON: Senator DeFrancisco.

SENATOR DeFRANCISCO: Thank you, Madam President.

Each year I sponsor this resolution for what I think is a very important cause, not only in Central New York but also

throughout the state. I've distributed the white ribbons to everyone -- all the Senators, at least, and I would request and hope that they would wear them as a symbol of their solidarity with Vera House of Central New York, an organization that has been in existence for quite some time to help victims of domestic violence.

And there's all kinds of statistics in the resolution that I'm not going to go through. But the cause is a good one, and it's worthy of our support. And hopefully we can bring this message throughout all of New York State and, by the awareness of the people we meet, help stop this very, very terrible event called domestic violence.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, may we please have the reading of the noncontroversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 32, by Senator Goodman, Senate Print 694A, an act to amend the Penal Law and the Criminal Procedure Law.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

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

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 252, by Senator Skelos, Senate Print 399, an act to amend the Family Court Act and the Criminal Procedure Law.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 259, by Senator Farley, Senate Print 2839, an act to amend the Banking Law.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 286, by Senator Kuhl, Senate Print 3071, an act to amend the Vehicle and Traffic Law.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 290, by Senator Fuschillo, Senate Print 1070, an act to amend the Vehicle and Traffic Law.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 299, by Senator Marcellino, Senate Print 2384, an act to amend the General Municipal Law.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid

aside.

THE SECRETARY: Calendar Number 300, by Senator Kuhl, Senate Print 2491, an act to amend the General Municipal Law.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 302, by Senator Padavan, Senate Print 2774, an act to amend the General Municipal Law.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 305, by Senator LaValle, Senate Print 1208, an act to amend the Education Law.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

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

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

THE PRESIDENT: The Secretary

will read.

SENATOR SKELOS: Well, we'll start with Calendar Number 300, by Senator Kuhl, if we could, Madam President.

THE PRESIDENT: The Secretary will read Calendar Number 300, by Senator Kuhl.

THE SECRETARY: Calendar Number 300, by Senator Kuhl, Senate Print 2491, an act to amend the General Municipal Law, in relation to authorizing.

SENATOR PATERSON: Explanation.

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

SENATOR KUHL: Thank you, Madam President.

This is a bill that is specifically directed to one school district in the state, namely, Elmira City School District, which happens to be in my Senate district. And it allows the school district to establish an insurance reserve fund for the purposes of funding self-insured accident and health insurance plans and cover risks that are not currently available under accident and health

coverage policies.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if Senator Kuhl would be willing to yield for a question.

THE PRESIDENT: Senator, do you yield?

SENATOR KUHL: Yes, I would yield.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: Madam President, this question was phoned in by a listener.

I'd like to know, Senator Kuhl, if the uniqueness of this particular district offers us a specific problem that they're having with the insurance not covering all of the situations and issues that can come up, and why that is the case. What is specific to this school district that compels this amount of attention by the Legislature?

SENATOR KUHL: It's my understanding, Senator, that this -- the creation of a reserve account for these specific purposes is not able to be done under

current law without a specific piece of the legislation from this body and from the Assembly and signing by the Governor for them to do that.

And they have requested the opportunity to do that.

SENATOR PATERSON: Thank you, Madam President. If Senator Kuhl would be willing to continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR KUHL: Yes, I'll yield to another question.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: Senator, do you have any idea what the legislative intent was by having school districts such as Elmira -- I don't have a problem, really, with the school district coming back here. But I just want to know, what is the public policy in which we force districts on almost a piecemeal, case-by-case basis -- I think you discussed this with me before -- where we're coming back over and over to do this?

Isn't there some way to establish

some policy so we don't have to waste really not only our time but the school district's time putting them through the ordeal of getting this legislation passed?

SENATOR KUHL: Senator, I don't know what the public policy was when the law was created the way it currently exists. I don't think I was in this body, nor was I in the Assembly, and I don't believe you were either. But there are actually two bills that I've presented, and one was specific to Elmira, and another one is a generic that would do exactly what you would suggest, and that is to do it on a one-time basis.

I decided to approach this one first because it seems that the other house often at times has difficulty, not only with local bills, but has more difficulty with the generic kinds of changes to specific areas of the legislation that's currently in existence, such as the Insurance Law or some other law.

So what I decided to do was to - because I really only had one request from any school district -- was to approach it on a local-bill basis.

SENATOR PATERSON: I'm wondering, Madam President, if Senator Kuhl would yield for another question.

THE PRESIDENT: Senator, do you yield?

SENATOR KUHL: Yes, I'd be happy to yield.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: Senator, I'm trying to assess the risk of self-insuring, as in a school district. I just thought that one of the reasons we had insurance companies was to actually perform this duty. Do you see any risk in taking this course to relieve this problem?

SENATOR KUHL: I don't believe there's any more of a risk, Senator, in allowing the school district to do what they're asking to do here than there is really in other areas.

You know, I -- several years ago, Senator, from your background, you wouldn't necessarily know this, but I had the great good fortune of being the county attorney for the County of Steuben. And Steuben County was

a self-insured county. And as you know, school districts are considered to be municipalities much like counties and villages and cities are. And we went through the same kinds of things that insurance companies do. We analyzed our risk, we saw what the payouts were, we established a reserve account, and we managed our own account.

And we did that internally without having to pay some private body who you knew was actually going to extort some sort of a profit from the taxpayers. So we did it internally with our own employees, and the school districts want to do the same sort of thing. Particularly as it relates to accident and health policies.

If you were on the Education Committee, Senator -- I know you're not -- you would have heard from your school superintendents, but you may have anyway, that they have some concerns. And one of their biggest ones is the rising cost of health insurance.

And so this is an attempt by a local school district to try to minimize the

cost to their taxpayers and provide a quality education without trying to diminish, really, the quality of the education by having to pay exorbitant fees to private insurers.

SENATOR PATERSON: Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Yes, thank you, Madam President. I appreciated that answer by Senator Kuhl. I had not heard some of the testimony in the Education Committee by the superintendents that have been there.

If Senator Kuhl would continue to yield.

SENATOR KUHL: Yes, I would yield, Madam President.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: Madam President, I want to suggest an alternative, an option by which perhaps Elmira could take -- I think this bill is fine, and I think I'll vote for it.

But if they were unable to meet the cost or feel that it would more feasible not to have a cost that would be associated with

the type of insurance that's on the market right now, they still have to cover themselves for some huge possible loss. And what about the stop-loss insurance alternative or catastrophic health insurance, separate from the insurance policy, as a -- you know, as a means to do this rather than self-insuring, which I think has some risk attached to it, Senator.

SENATOR KUHL: You know, that's not contained in the bill, Senator. But certainly that is a possibility.

And what you find is that a lot of the people who do self-insure don't self-insure the entire potential for loss. What they will do is go and buy some catastrophic insurance which is at minimal cost to them, and then just insure the kind of -- I should say the risks that in fact are manageable within their scheme of budgetary or fiscal kinds of conditions that they see.

I would share with you, Senator, that this is not a single entity, Elmira City School District, as being self-insured. There are, at least the information I'm given,

several other, perhaps as many as ten schools, like Scarsdale and Ossining and Syracuse and Katonah-Lewisboro and Queensbury and Pulaski and Southern Westchester BOCES and New Hartford and North Tonawanda, who I believe already do some self-insurance.

So it's not a singletary kind of sole example that exists out there. And as I've said to you before, I'm sure that there are other municipalities who are still self-insuring because they see it as a cost benefit to their taxpayers.

SENATOR PATERSON: Therefore, Madam President, if the Senator is willing to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR KUHL: Yes, I'll yield to another question, Senator Paterson.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: It would be safe to say that this is why you offered the generic legislation, because there are at least ten school districts that you've been able to uncover that have this problem?

SENATOR KUHL: Yes.

SENATOR PATERSON: All right. If the Senator is willing to yield, Madam President, I have another question.

SENATOR KUHL: I'll yield to another question, Madam President.

SENATOR PATERSON: Madam President, I'm just wondering about the reserves that would be available for these school districts acting as municipalities that are self-insuring at this point, either generically or even in this individual case. What constitutes the threshold? At what point would we say that it's feasible that we feel safe that the school district has the reserves to cover this type of policy?

SENATOR KUHL: I don't think - Senator, if I may, I don't think that there are any -- there's nothing in this legislation that defines that, number one. This is really kind of a conceptual brush that we're dealing with here. And that is to provide the opportunity for the creation of a, quote, unquote, reserve account.

There may be some rules and

regulations that are set up for self-insurers which I would expect fully as to what kind of participation. But again, we're not really exposing ourselves, I don't believe, as an entity, as a body. The school districts themselves, as you may know, have the ability to raise revenues from levying taxes, like the other municipalities do. And so certainly those people, if they don't make good, bona fide decisions, are going to be responsible, as they should be, to the taxpayers and to the voters in those districts.

SENATOR PATERSON: Madam President, if the Senator is willing to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR KUHL: Yes, I'd yield to another question.

THE PRESIDENT: You may proceed, Senator.

SENATOR PATERSON: Thank you, Madam President. Thank you, Senator.

My question represent to the issue of governance. I'm just not clear on once there is self-insuring -- and you described it

very well in terms of Steuben municipality. But how will the school district -- and I know you wouldn't know the specifics. But if you can just give me a general sense of what will be, who will be involved -- you know, not specifically, but what type of decision maker in the district and what will be the method of which they reach a consensus on the policy.

And I just want to know a little bit about how it works. Because after that I want to ask you a question about the Insurance Department. I just want you to understand where I'm going with this.

SENATOR KUHL: Well, I don't know the specifics, Senator, so anything I would tell you would simply be a guess. But my guess would be that the business manager, who is the person that I have had the contact with and who has made the request for the creation of this account, would come up with a proposal which that person would then submit to the superintendent of schools, who is essentially the manager of the school systems, but is employed by the school board.

And that would then be presented to

the school board, who are all elected by the voters, and they in fact then would decide whether or not the policy that they suggested was correct.

And so the ultimate determination would be made by the school board of the City School District of Elmira.

SENATOR PATERSON: Madam President, if the Senator is willing to yield, I have another question.

THE PRESIDENT: Senator, are you willing to yield?

SENATOR KUHL: Yes, I'll yield to a question.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: Senator, the Insurance Department itself is charged, of course, with overseeing this process. And what I wanted to know is, since it's not really in the bill, what would be -- is there a threshold of what resources have to be available, what reserves have to be available in order to establish this? What would be the size of the school district acting as a municipality that would qualify the school

district? What guidelines has the Insurance Department set on this? Because as I was sitting here with Senator Connor, we were talking a little earlier about the situation sometimes where the unthinkable happens where an entity is self-insuring and you've got a big problem on your hands if you have a major catastrophe.

SENATOR KUHL: Did that happen in New York City?

SENATOR PATERSON: It actually happened in New Jersey.

SENATOR KUHL: Oh, okay.

I don't know, Senator. I honestly don't know if there are any rules or regulations. My guess is that it's entirely up to the school district.

After all, let me just follow on that, Senator, we all know the Insurance Department of the State of New York has certain kinds of rules and criteria that they require of professional insurers who hold a product out for sale. But if somebody decides that -- for instance, as far as I know, there's no requirement that a school district

cover, say, a minimum of a million-dollar individual liability policy or a $5 million fire policy or any type of insurance, certainly. But if in fact they don't insure, then they do stand the subject of being sued for a loss. And a loss then that they would have to bear for themselves and wouldn't have the benefit of combined premiums to call upon which had been set aside in reserve accounts to actually fund their loss. And they do have that power to raise that money.

And at this point, I'm not aware that there's any problem here. I think it's just a question of economics. No, I don't think there are any Insurance Department requirements or demands that they fulfill a certain need.

The health insurance that they'd be looking for would be essentially providing health insurance to their employees, which would be a contractual agreement between the municipality themselves and their employees. The Insurance Department would have no oversight over that.

Because, as you know, there is no

requirement to provide health insurance to any employer, that that is totally contractual unless it's required by, say, the State Legislature to require all state employees to have health insurance of basic minimums. But those are generally contractual agreements between the executive branch of the municipality, which in this case would be the superintendent approved by the board of education.

So I don't know that there's any requirements to provide insurance in these particular areas that are being mandated upon these districts.

SENATOR PATERSON: Madam President, if Senator Kuhl is willing to yield for another question.

THE PRESIDENT: Senator, do you yield?

SENATOR KUHL: Yes, I do.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: Madam President, the Senator is correct, particularly when he talks about the prescriptions and what the requirements are

and that they don't necessarily -- these are contractual agreements, as he stated. But between the school districts and the Insurance Department, in spite of those requirements, I would presume that it would be the latter would be the better authority on what the industry allows and what would be at least proprietary under the -- what would be the spirit or the scope of what insuring entails.

And I wondered if the Insurance Department has commented on these separate legislations or even your proposed legislation that would be somewhat curative en masse and whether or not they have let us know how they feel about allowing these school districts to insure themselves.

SENATOR KUHL: I've had no communications, Senator, with the Insurance Department of the State of New York suggesting that they have an opinion one way or the other.

SENATOR PATERSON: Well, Madam President, I am very much in debt to Senator Kuhl for his forthright answers to these questions.

If I may speak on the bill.

Hearing no objection, I guess I'll speak on the bill, Madam President, and let you know that I do have a concern. It's one that doesn't exist in statute. I can't give a reason under the law why we should not pass this bill. Senator Kuhl has crafted legislation that fits right within the ambit of protection, and these municipality contracts don't call for this type of action.

But I just wonder if the occasion would arise, the more and more school districts that we approve for this self-insurance coverage, when we all regret it sometime down the road because of what would really be a supervening cause, one not within the contemplation of the contractors, and there are heavy casualties. And those are the times that people start asking questions about how these types of contracts came into being and what the foreseeability was of any type of disaster.

And in spite of the fact that overwhelming numbers of times these things don't happen, when they do, we in the

Legislature are asked, we are presumed to take responsibility that we sought when we looked for the vote of our constituents.

And I'm just saying that this is this is probably something that will go through, it will never be thought about again. But self-insuring does bring into question the full protection that insurance provides.

And I can vote for this bill, but just with this admonition that if we're going to create a generic piece of legislation to cover all these districts, I think now I can understand why the Assembly, on this point, is a little resistant. Because we don't want to create a situation that there would be many employees covered under around the state, only to find out one day that in one of these municipalities or one of these school districts we have a problem that we can't aptly address in terms of the insurance coverage provided.

So I'll vote for the bill, Madam President, but just a thought that we consider in our deliberations.

SENATOR OPPENHEIMER: Madam

President.

THE PRESIDENT: Senator Breslin, I believe you have the floor next.

SENATOR BRESLIN: Thank you, Madam President. Would the sponsor yield for a question or two?

THE PRESIDENT: Senator, do you yield?

SENATOR KUHL: Yes, I'd yield to Senator Breslin.

THE PRESIDENT: You may proceed, Senator Breslin.

SENATOR BRESLIN: Madam President, has this been tried in any other districts in the State of New York?

SENATOR KUHL: I can't answer that. I don't know.

SENATOR BRESLIN: Then again through you, Madam President, then you're not aware of any other laws that would allow any other districts to employ self-insurance?

SENATOR KUHL: Senator, as I indicated, there are, as you probably know, close to 700 school districts throughout the state. And there are only ten that I know of

who carry self-insurance programs. The rest obviously carry -- if they have insurance, carry insurance through private providers.

I'm not aware at the moment that there is any of these other ten that I'm aware of who have self-insureds have asked for the creation of reserve accounts as we have in Elmira.

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

THE PRESIDENT: Does the Senator yield?

SENATOR KUHL: Yes.

THE PRESIDENT: You may proceed.

SENATOR BRESLIN: Obviously, the school district thinks it's in their best interests to create this kind of legislation. Do you know whether or not they sought out the advice of the State Insurance Department and, if so, what the recommendations from the State Insurance Department were concerning the self-insurance?

SENATOR KUHL: I don't know that.

SENATOR BRESLIN: Again through

you, Madam President, if the sponsor would continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR KUHL: Yes.

SENATOR PATERSON: You may proceed.

SENATOR BRESLIN: We all know that the Insurance Department is very sophisticated in knowing how to set up reserves and know how to regulate insurance companies. And in this self-insurance scheme, can you tell us what the school district has done to prepare itself to set up reserves?

SENATOR KUHL: I can't tell you that either, Senator.

SENATOR BRESLIN: On the bill, Madam President.

It's very difficult to speak against something in a local school district that they choose to do, they feel they can be successful. But I have some severe reservations when there's no knowledge of whether or not they sought out the advice of that agency which is set up in New York State

to regulate insurance, the State Insurance Department, or that they looked to see if other school districts had done similar types of self-insurance or if there has been any research to determine the efficacy of a self-insurance program for the school district.

But given the local nature of the bill and that it only refers to that one particular school district, I will in fact vote in the affirmative.

Thank you, Madam President.

THE PRESIDENT: Senator Oppenheimer.

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

THE PRESIDENT: Senator, will you yield?

SENATOR KUHL: Yes, I'd yield to a question from Senator Oppenheimer.

THE PRESIDENT: You may proceed, Senator Oppenheimer.

SENATOR OPPENHEIMER: I personally have no complaints with self-insurance, though I do recognize certain

problems with it. Basically, that there are no reserves established, there are no capitalizations established because there is no oversight, state oversight of these individual self-insurance programs that have been set up in the various school districts.

Would you like to comment on whether you think there ought to be oversight as far as capitalization and as far as establishment of reserve funds by the Insurance Department?

SENATOR KUHL: We didn't consider that in the bill, Senator. And again, I'm trying to answer questions that are relative to the bill, rather than conceptual, because I really didn't get into a conceptual analysis of this particular problem.

As I indicated to Senator Paterson, I had the benefit of being the administrator to the self-insured program in Steuben County for, oh, close to five years, I think it was. And so I know how essentially a self-insurance program works and how much in advance and how you have reserves that are set aside and all that kind of stuff.

Well, what's interesting to me is that the school district is really in a little different position because they're solely self-insured. As opposed to the county that I administered the plan for also had numerous towns within the county who participated in the self-insured program. So you had more than one participant, so there was a need to devise a budget, anticipate what your losses would be, what the payouts were going to be, establish a reserve and certainly had an ongoing report as to what outstanding claims you had and carryover reserves and that sort of thing.

So that what you did was to look always ahead and monitor, because if you underestimated or you had some catastrophic losses, then you had to go back to all those participants.

Well, the school district is in a little different position, because they're the sole bearer of the loss. And the reason - one of the reasons, and probably the most predominant reason for creating this account, as you know, being the ranking Minority member

on the Senate Education Committee, you know that we constantly hear from superintendents that they're only allowed to have 2 percent of a carryover of their budget and they would love to have 5 percent. Well, if you only have 2 percent and, I mean, you're talking about a budget the size of some of our school districts, whether it's four or five or six million dollars, that doesn't give you a lot of extra money.

So that if in fact you do have an unanticipated catastrophic loss, then you cannot go to your reserves because you don't have any reserves. You only have that 2 percent. And then you'd have to exhaust all the other potential contingency claims against that 2 percent outstanding balance.

And so what this school district has said is, Look, we know that that may in fact happen. It hasn't. But let us plan for that. And let us -- as long as you're not going to give us a 5 percent contingency account, let us create a special reserve account for insurance and let us put a little bit of money aside each year so that we can

get to a level that we feel comfortable.

So they're not exposing themselves to any risk, as some of our colleagues might think. What it is is they're preparing for the future. They don't want to have a large claim come against them that they cannot fund from that year's fund balance. They want to have a specific reserve account, which the state law does not allow them to create, created so that they can put a little money aside for that specific purpose, those uninsured, contingency, unforeseeable kinds of claims on health and accident policies.

SENATOR OPPENHEIMER: That raises another question, if Senator Kuhl will yield for another question.

THE PRESIDENT: Senator, will you yield?

SENATOR KUHL: Yes.

THE PRESIDENT: Thank you.

Senator Oppenheimer, you may proceed.

SENATOR OPPENHEIMER: Your experience when you were dealing with a variety of communities in a single plan, when

you were in that position in Steuben County, we have a similar situation set up for a variety of school districts dealing through BOCES for insurance needs. And we believe that BOCES permits us to spread the risk, which is fundamental to insurance. And surely better than a catastrophe happening in a single school district, where you can get wiped out, you're spreading your risk with several school districts.

Does that -- does BOCES exist in your area? And if it does, does it offer an insurance program like our Southern Westchester BOCES?

SENATOR KUHL: Well, there are 38 BOCES districts in the state. As you know, they include all except for a couple of the Big Five cities and a couple of other cities. But as far as I know, the BOCES does not provide any kind of self-insurance program.

I think the City of New York -- or, excuse me, the City of Elmira struck out on its own because that was the most cost-effective mechanism for them. That's solely a guess on my part.

SENATOR OPPENHEIMER: Well, thank you, Senator Kuhl.

On the bill for a moment. Madam President, on the bill.

Well, two things strike me. One is that I think this is an opportunity for the BOCES in Senator Kuhl's area to step up to the plate and get involved in this, because this is an important function of BOCES. And I would say in those areas where they are able to help several school districts that individually would have considerable trouble meeting certain needs, such as doing a major search for a new superintendent of schools or insurance or dealing with special ed kids or dealing with vocational ed kids, this is the function of BOCES. And I think it ought to be explored in the area of this school district.

But I for one do not have any problems with self-insurance. When I was mayor of Mamaroneck, I did take my village into self-insurance because of the enormous costs involved with purchasing insurance. So I'm going to support the bill. But I think this is an area that should be explored more

and try and bring in the Board of Cooperative Educational Services to add -- to take responsibility.

I'll be voting yes, Madam President.

THE PRESIDENT: Senator Schneiderman.

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

THE PRESIDENT: Senator, will you yield?

SENATOR KUHL: I'd be happy to yield to a question from Senator Schneiderman.

THE PRESIDENT: You may proceed, Senator.

SENATOR SCHNEIDERMAN: Thank you. Again through you, Madam President. I am not completely clear on the financing for this fund. Do I understand that the school district does not have an existing fund, or does it have a fund but just not able to purchase this kind of -- provide this particular type of insurance?

SENATOR KUHL: As I understand

it, Senator, the law prohibits the creation of reserve funds for this particular type of activity by school districts.

And the purpose of this bill is to allow them to create such a fund.

SENATOR SCHNEIDERMAN: Through you, Madam President, does this school district already have a reserve fund but just is not -- is it just because they're not able to use it for these purposes or they had not yet created any reserve fund yet?

SENATOR KUHL: School law -- and I don't claim to be an expert in education law. But as I understand it, the Education Law does allow a school district to set up reserve funds for specific types of events like a building fund, like an equipment fund. But there is not one -- there is not the availability as I understand it for them legislatively, or at least legally, statutorily, to create a reserve fund for health and accident insurance.

SENATOR SCHNEIDERMAN: Thank you. Again, through you, Madam President. The existing law, though, as I understand it,

allows -- and this is in the language, line 4 of the bill, it allows the governing board of any municipal corporation to establish a reserve fund and then sets limit on what this insurance reserve fund is for.

My question is, does Elmira have an existing insurance reserve fund and they're just not able to apply it for these purposes or have they not ever set up an insurance reserve fund?

SENATOR KUHL: I can't answer that, Senator. I don't know.

SENATOR SCHNEIDERMAN: Okay, thank you.

Again through you, Madam President, if the sponsor will continue to yield.

THE PRESIDENT: Senator Kuhl, do you yield?

SENATOR KUHL: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR SCHNEIDERMAN: Thank you.

I note that this legislation amends paragraph A of subdivision 2 of Section 6-N. But it does not appear to amend Section 4,

which sets limits on how much money the school district or governmental entity can place into the reserve fund.

And my question is, has any attention been paid to the fact that there are some fairly strict financial limits on what can be placed in a reserve fund which is not -- are not modified by this legislation, so the school district is taking substantial additional burdens, but there is no change in the amount of money they're allowed to put into their insurance reserve fund?

SENATOR KUHL: There's never been any request for any monetary limitation or expansion, Senator.

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

I thank the sponsor for his answers. I think that it is interesting that the -- let's put it this way, the attitude toward school districts or, you know, the organizations that run our schools and our assumption that when they make a request it's the right thing is very different in New York

City than it is in other parts of the state. Where, in New York City, the request of the board of education, individual school districts are sometimes subjected to the most rigorous scrutiny and with, in many quarters, a presumption that they're probably up to something that is not good.

This sounds reasonable. I must say I don't really understand the market circumstances that have led school districts to enter into self-insurance programs. I share Senator Paterson's concern that this could, under difficult circumstances, lead to a disaster.

And I know that our local governments that support schools, whether school districts or municipalities, are going to be under increasing pressure over the next three, four, five years to provide additional funds for the different kinds of high-need students and high-need programs that have been identified in the Campaign for Fiscal Equity litigation. And I suspect that the resolution that we ultimately reach in the Legislature is going to involve appropriation of state funds

but also some mandates to local governments to provide some additional funds.

Under those circumstances, having the potential exposure for a self-insurance fund with these sorts of limits on what can be paid into the fund I think raises some questions that should be addressed. And I would think that it might be prudent and I would suggest to the sponsor it might be prudent to have the State Insurance Department take a look at this so that we can be sure that we're headed down the right road as we rely on the local school districts to tell us what they need.

I do plan to vote for the bill, but I think there are some issues raised here that we will need to address, if not in this session, then in the near future.

Thank you.

THE PRESIDENT: Senator Stavisky.

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

THE PRESIDENT: Senator Kuhl, will you yield for some questions?

SENATOR KUHL: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR STAVISKY: Through you, Madam President, does the Superintendent of Insurance have any regulatory powers or general oversight function when it comes to the implementation of the self-insurance aspect for the school district?

SENATOR KUHL: I don't know, Senator. I don't know.

SENATOR STAVISKY: Then my second question, since we don't know what oversight power the Department of Insurance will have, how can we be sure -- my second question, if the Senator would yield.

THE PRESIDENT: You may proceed, Senator Stavisky.

SENATOR STAVISKY: Thank you.

How do we know that there will be adequate reserves in the case of a claim against the school district?

SENATOR KUHL: Senator, as far as I know, there's no requirement in state law that requires school districts to provide any

insurance, that that's a voluntary commitment that they make, a contractual agreement that they make with their employees. So I don't see that the Insurance Department has any kind of oversight in this particular area.

But keep in mind, the municipality, the city school district is responsible for their acts and their actions. They do have the power and the ability to levy taxes. So their -- to the trial attorneys regiment, they have deep pockets, just like the State of New York does. So what they don't have in a budget, haven't provided for, whether it's in a reserve fund or whether it happens to be in a contingency account planned in their budget makes no difference whatsoever, because they have the ability to raise money.

So it's going to be their responsibility as to whether or not they provide adequately within the requirements, the unforeseen requirements in their particular region.

SENATOR STAVISKY: I didn't expect that answer. Madam President, one last question, then.

Can we assume that if there are a great number of claims against the school district, that this conceivably can cause an increase in the property taxes -

SENATOR KUHL: No question about it.

SENATOR STAVISKY: -- to pay for any unexpected claims?

SENATOR KUHL: No question about it. And the same would be true, Senator, if in fact there were the same number of claims and whether it was self-insured or insurance provided through a private provider of insurance. Next year, their premiums would escalate and they'd be part of that overall pool and up they'll go, and certainly the taxes would go up.

But the fundamental purpose of this bill is to try to contain that cost for those taxpayers. And certainly there's a risk. There's a risk for every one of us as we walk down the street. There's a risk for every kind of thing that goes on in an area like this when you have young students being taught and you have multiple exposures to the

elements, to the environment.

And what they're trying to do then is in the most efficient way -- we may remember, we had some major insurance renovations years ago which really rewrote how insurance is provided or how it's able to be provided in a number of areas. And this school district is just trying to do the most efficient thing that they can do. And that's what I'm trying to do, is to allow them to do that.

SENATOR STAVISKY: Thank you.

Madam President, on the bill.

It's interesting that Senator Kuhl mentioned insurance revisions over the years. When I first got out of college, my first job was working for an insurance company in the actuarial department. And the same way that Senator Oppenheimer last week indicated the 11th Commandment was that you don't borrow against your expense budget, I was taught in the actuarial department that we have to take a very careful look at the reserves.

This became a problem, if my memory is correct, at the turn of the century when we

had major scandals because insurance companies in New York State were not providing the proper cash reserves in the event of a claim. And it seems to me that we have to be very careful with this legislation also.

I'm going to vote for the bill. But I do caution my colleagues that presumably the taxpayers of the Elmira City School District could be faced with an increase in their property taxes come a series of claims that are unanticipated.

Thank you.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Thank you, Madam President. I'd like to close for the Minority.

I voted for this bill last year. But I really have to confess, Madam President, I was totally unaware of it and what it did. As has been the practice for many, many years, not only in this house but the other house, legislation moves rather quickly, and this bill is not of major significance, it would seem, statewide, although I have no doubt that it's of important significance to the City of

Elmira School District.

And let me say at the onset that I have nothing against Elmira. I remember it fondly as the place where early in the last century, the great Senator John Murtaugh was sent to this body and sat in that chair as the Democratic Majority Leader of the State Senate. So if anything, that gives me warm feelings toward Elmira, New York.

But I see a problem in going down this road. Many years ago, when I was in my teens and lived in the city of Trenton, New Jersey, the city council had passed a bill availing itself of the municipal right to be self-insured. And someone on the floor of that city council, and I can't remember who it was, said: But what if one of our fire engines ran into another of our fire engines? And he was assured that that possibility was extraordinary remote.

And in a tragic accident not two years later, speeding to a fire from different directions, two hook-and-ladders collided, and many, many firefighters were killed and injured. And the liability to that city was

enormous, enormously more than anyone had anticipated when they decided to self-insure against accidents and liabilities by municipal vehicles.

The whole function of insurance is to spread the risk, spread the risk among many, many possibilities for an event taking place. And my concern with this bill is, it doesn't spread the risk of some catastrophe which I hope, certainly hope never befalls the City of Elmira School District.

But possibilities would include - I'm sure significant numbers of employees of the City of Elmira School District routinely eat in the cafeteria the same food.

Risks of illnesses caused by food poisoning and so on could in fact have an inordinate percentage of the school district's employees putting in substantial claims at the same time. And of course we hope it never happens, but we have seen in this state disasters often strike a particular building or school or whatever and result in a lot of people being hospitalized, the potential medical expenses cumulatively being very, very

great.

What I see of this is the idea of self-insurance is a misnomer. Self-insurance really means no insurance. That's what it means. No spreading of the risk. It means keeping all the risk in one place. Ah, yes, a reserve fund will be created, but apparently it's capped at a certain dollar amount. And ah, yes, deep pockets, deep pockets, the school district has deep pockets.

If there were ever catastrophic demands on whatever reserve fund was set up, Madam President, as Senator Kuhl pointed out, oh, you could just sock the taxpayers and raise their property taxes.

Well, I don't think we ought to let a school district get in that kind of jeopardy. We in this Legislature have recognized over the past years that real property taxes, school taxes have been an enormous burden on the people of New York State.

That's why we had programs like STAR and Enhanced STAR and all those other programs, to provide property tax relief to

taxpayers in school districts.

This in fact would put these taxpayers at risk. I'm not sure exactly how it works, but of course school budgets need to be approved by the voters in a district such as this. I can't imagine they would approve a budget that enormously raised their taxes to answer some claims.

If they didn't, I suppose contractual litigation could ensue and judgments could be obtained and the school district would be forced to do it. But I would think that the reluctance of the school tax voters would make it so that educational programs would be at risk in order to satisfy such claims.

I really think it's unwise public policy. The fact that they asked for it, the fact that it solves some perceived economic interest -- you know, gee, it will be cheaper -- Madam President, we never, never confuse -- we should never confuse "it will be cheaper" with "it will be more efficient." Those two things don't equate.

But obviously this city school

district thinks somehow or other it will be cheaper. I daresay what they're really doing is making a judgment that no insurance is cheaper than having insurance. And that's always true if nothing happens, if no claims are filed.

But the whole purpose of having insurance is to guard against unlikely events and to provide for unlikely events that create an enormous liability or number of claims against the insurer. You spread it over many, many school districts throughout the state or throughout the area that an insurer would cover. Efficiency does get built into that. You hold all the risk in the City of Elmira School District, I suggest that's unwise.

So unlike a lot of my colleagues, Madam President, I will not be deterred from voting against this by the mere fact that I voted for it in the past. I think such consistency is the hobgoblin of small minds. Now that I've studied it and now that I've heard my colleagues ask questions and Senator Kuhl give straightforward answers, cooperative answers, I am confident that I know what the

right thing to do with respect to this bill is, and that's to vote no.

So that's what I intend to do. Self-insurance means no insurance. That's bad public policy.

Thank you, Madam President.

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

Then the debate is closed.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Duane, to explain your vote.

SENATOR DUANE: Thank you, Madam President. Once again, I'm appalled that a bill has come out of without apparently appropriate oversight having been done in committee. And practically no information was added on the floor here today. It's shocking that such an important issue has gotten such little scrutiny and that we're passing it with such a vacuum of information.

I was very compelled by what our leader had just said. And for that and other reasons, I'm going to vote no on it.

I also think, though, the real issue is, since we're talking about an issue that concerns the Elmira School District, is that we didn't pass a budget on time. That's an important issue to every school district in the state. That we have not passed a budget and thereby protected the education for Elmira is wrong.

So maybe what we should do first is actually work on the issues that are most important and most timely, which is the budget, and then move on to other issues in the future. And maybe that will give us enough time to get information on them.

I'm voting no, Madam President.

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

Senator Paterson, to explain your vote.

SENATOR PATERSON: Madam President, with all sentiments to the Elmira

School District, and I'm sure there's some way that we can actually work this out. It was just a little thing during the debate, and it's probably a good thing that we have debates and that we really look into these pieces of legislation, because I said on the record that this was fine with me.

But Senator Oppenheimer and Senator Schneiderman and then eventually Senator Connor touched on this point, which was that insurance is for those events that are unforeseen. That's why we have insurance.

We're insuring against the unlikelihood of things happening. And as rare as those occasions may be, the incident that Senator Connor described about the two hook-and-ladders colliding and all of the liability that the township was responsible for and the difficulties they had kind of convinced me that we need to talk about this some more.

I'm sure we'll find a way to provide decent insurance to the Elmira School District. But I'm going to vote no on this legislation, Madam President. And I want to

thank all my colleagues, including Senator Kuhl, for that discussion because it made me feel a little differently than I did when I first came in here.

THE PRESIDENT: Senator Schneiderman, to explain your vote.

SENATOR SCHNEIDERMAN: Yes, thank you, Madam President. I, as I indicated before, was inclined to vote for this bill.

In addition to the debate that has taken place, which has helped me to clarify my views, I've also just received a definition of the insurance that would be authorized under this bill. And it does reinforce my concern that this is a serious fiscal problem that we are allowing.

We are enabling the district in Elmira to undertake accident and health insurance, meaning insurance against death or personal injury by accident or any specified kind of accident, against sickness, ailment, and noncancelable disability insurance. So this is really where the big money is for claims.

I think we have protected school

districts in the past by putting the funding cap on and limiting them from undertaking to insure against the really most major sources of payments for self-insurers. I think this is fiscally imprudent.

And I'm afraid that, based on that and based on the comments of my colleagues - Senator Connor, Senator Paterson and others - that I will be also voting no. I am sympathetic to the issue in Elmira, but I think we are enabling school districts to go down a very dangerous path with this sort of bill.

Thank you.

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

Senator Onorato.

SENATOR ONORATO: Madam President, to explain my vote.

I heard the discussions here and, from a personal aspect of it, when I was the secretary-treasurer of the Bricklayers Union, we were self-insured at the time also. And we started to notice, after several lengthy

decisions, our funds were almost depleted, and it wasn't the right way to go.

And I think as a sure way of protecting the Elmira School District, I don't think they should be in the business of self-insuring. And for that reason, I think it would be prudent for them to purchase the insurance rather than subject the entire tax-based community for any catastrophe insurance claims that may take place.

Therefore, I vote no.

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

Senator Stavisky, to explain your vote?

SENATOR STAVISKY: To explain my vote.

I too have been listening to what everyone has said. And I'm troubled by the potential for disaster, as Senator Connor described the two fire engines having the accident in New Jersey.

The fact that there is no oversight by the State Insurance Department, the fact

that there are a number of problems with this bill caused me also to vote in the negative.

THE PRESIDENT: Senator, how do you vote?

SENATOR STAVISKY: No.

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

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 300 are Senators Connor, Duane, Onorato, Paterson, Schneiderman, Stachowski, and Senator Stavisky. Ayes, 49. Nays, 7. Excuse me, also Senator Hassell-Thompson. Ayes, 48. Nays, 8.

THE PRESIDENT: The bill is passed.

SENATOR MARCELLINO: Madam President.

THE PRESIDENT: Senator Marcellino.

SENATOR MARCELLINO: Could we call up at this time Calendar Number 32.

THE PRESIDENT: The Secretary

will read Calendar Number 32.

THE SECRETARY: Calendar Number 32, by Senator Goodman, Senate Print 694A, an act to amend the Penal Law and the Criminal Procedure Law, in relation to prohibiting.

SENATOR PATERSON: Explanation, please.

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

SENATOR GOODMAN: Madam President, this is a rather fascinating subject this afternoon on the matter of identity theft.

Identity theft occurs, believe it or not, when an individual is actually able to steal various credentials which make it possible for them to assume a false identity; that is to say, the identity of an individual who they then fraudulently cheat out of many thousands of dollars.

In June of 2000, the Senate Investigations Committee issued a report entitled "Identity Theft: Is Your Identity Safe?" In this report we have some evidence,

through testimony and various bits of information obtained by the committee, which deals with a number of specific thefts that occurred in this area. I'd like to share a few of them with you.

First of all, one victim in the East Side of Manhattan told her story as follows, indicating that some person succeeded in having her address changed. She then promptly attempted to obtain cash advances and payments for gasoline and repair bills in the Bronx. It took over six months to turn the nightmare around. It involved having to close down a checking account, on the advice of her account manager.

The same individual filed a medical claim on May 28, 1998, using this individual's Social Security number, basing it on employment with Metro North, et cetera, and making it clear that this was not the individual involved. Nonetheless, extensive medical charges were charged to that individual.

A media buyer from New City in Rockland stated that his personal line of

credit was pilfered by an international network of thieves who used his Social Security to obtain a checking account in his name. Using his personal information, the thief also opened 30 credit card accounts and charged large amounts of money on goods purchased overseas.

In another instance that came to the attention of the Investigations Committee, a ring stole credit cards, made their own credit cards, and assumed the identities of thousands of unsuspecting cardholders. In ten months, the organization stole $650,000 in goods and cash advances and had credit card numbers with access to $8 million, stealing credit card numbers from invoices and contacting credit reporting agencies, mortgage agencies, and the like.

Perhaps you're aware of the fact that when you charge a credit card at a restaurant, sometimes you get a carbon copy of your charge slip. Unless you carefully dispose of that charge slip, it can be picked up out of the ashcan of the restaurant in which you ate and someone can forge your

signature on your credit card number very readily, using the carbon copy as a piece of evidence.

According to the Newark Star Ledger, in March of '98 a man assumed the identity of a New York anesthesiologist in an identify fraud scheme, stealing more than a quarter of a million dollars from the physician's account. Furthermore, this individual then opened an account at another bank by assuming the identities of others using driver's licenses and credit cards.

And we could go on and on. I think perhaps the most extreme case of which we were advised was a woman who one day answered a ring at her front doorbell in her suburban home.

Two burly men came in and said, "Where is the BMW?" She said, "What BMW?" They said, "The BMW that you purchased with your fraudulent credit card." She said, "I have no such thing." They said, "We insist on searching your garage." They then bulled their way into the garage. Finding no BMW, they beat a hasty retreat. The fact was,

however, that a BMW had been charged to this lady without her knowledge, due to the fraudulent theft of her identity.

This goes on and on. And in extreme cases, an individual can be literally bankrupted and then faces the problem of untangling the skein of evidence which led to the bankrupting through fraudulent information in the first place.

So to try to respond to this, the Senate Investigations Committee made several recommendations, some of which are embodied in the legislation before us. The bill before us is one which I think properly defines the crimes involved and, defining them, describes penalties at different levels of identity theft.

In that respect, I think we're addressing a major problem now confronting our society which, due to increased computerization and increased credit availability, is causing very serious problems throughout society and creating great hardship among constituents and consumers.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, this is a very important subject. The issue of identity fraud has really become the number-one crime of the information age, as it reflects on credit and it reflects on identity, and is one that has destroyed the lives of people.

There have been all kinds of exposes, "20/20" and all of these programs, "48 Hours," about people whose lives have been destroyed. And even when they were able to show a great degree of identity theft, they still ran the risk of problems with other creditors and other companies.

There did not seem to be a way - you can contact all the credit companies if someone is in arrears, but you don't seem to have that same opportunity if an individual is in the situation where they have been defrauded.

And it certainly is one that needs some redress. I'm just a little concerned as to whether or not this is the form in which we would want to address it.

Now, the Federal Identity Theft and

Assumption Deterrence Act, U.S. Codes 1028, covers a lot of this. And if Senator Goodman would yield for a question.

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

SENATOR GOODMAN: Yes, I would be glad to.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Senator, how would your legislation on the state level interface with federal protections that we have already ascribed through legislation in the House and Senate and signed by the President?

SENATOR GOODMAN: There would be no conflict between them, Senator.

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

SENATOR GOODMAN: Be glad to.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Well, Senator, there may not be a conflict in the structure

of the legislation. But when one looks at the use of the Internet and the crimes that take place in cyberspace and the fact that many of these companies now are relocating -- 300 of the Fortune 500 companies now have offices in Charlotte, North Carolina, not in New York anymore. And we have different centers of service that are provided all over the country. Boulder, Colorado, is a major one. Silicon Valley in California is another one.

So I'm just saying, can local governments -- can the state actually provide protection on this type of situation when, once the theft is made, the companies in which the perpetrators are interacting with basically are not always located in New York State and then have really what would be a national flavor to this whole sense of identity fraud?

SENATOR GOODMAN: Senator, if the crime occurs in New York, if it's perpetrated in New York, our penalty structure is relevant and applicable.

SENATOR PATERSON: Senator -- if the Senator would yield for a question.

SENATOR GOODMAN: You can consider this an open invitation to yield to anything you'd like to ask in the next 15 minutes.

SENATOR PATERSON: Well, thank you, Senator, I -

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR GOODMAN: I'll let you know when 15 is up, though.

SENATOR PATERSON: Thank you. I appreciate that very much.

All right, Senator -- Madam President, do you think that we could close the door?

SENATOR GOODMAN: Madam President, may we have some order, please. We're having a little trouble hearing with the door open.

SENATOR PATERSON: Madam President, my question to Senator Goodman applies to the section of the law in which he desires to add legislation, and that would be Section 190.25 of the Penal Law. Which is really the act relating to the impersonation

of others for benefit or for theft. And that is right now -- the second degree of that offense constitutes an A misdemeanor.

What I would assume, Senator, and I just wanted your comment on it, is that the difference between your legislation and the one that's now on the books is that the legislation that we have now really sets up the banks and the credit agencies as the victims, whereas your legislation, from my - and, I'll admit, cursory reading of it, really applies the protection more to the actual victim.

Would that be an accurate statement of what you're proposing here today, Senator.

SENATOR GOODMAN: I must say your cursory observation is very telling and accurate. It's not cursory at all, it's very penetrating.

SENATOR PATERSON: Thank you. Well, as I go on, you may find out how cursory it is, Senator, so help me through this.

Madam President, I now wish to ask Senator Goodman about the credit companies themselves.

Certainly we had a situation that we read about just two weeks where the busboy from Brooklyn, when you think about it, all he used was a list of the Fortune 400 wealthiest people. He used a cell phone that had Internet access. He used the computers in the public libraries. And acting with those pieces of information and a voicemail, with those four apparatus, basically took the identities of some well-known and wealthy people, and he also was able to impersonate them to commit a fraud. He was also able to take goods, money, property, and services away from them.

And in spite of the crime that this individual committed, I want to talk about the responsibility of the companies themselves. And I wanted to know, Senator Goodman, about the -- where the legislation would apply to the credit card companies, who are all too often sending us these preapproved applications, they have our names on them, they can easily be stolen. And I just wanted to ask you how you address the credit card companies in this legislation.

SENATOR GOODMAN: May I point out, sir, that I don't believe that the blame in this situation rests with the credit card companies, but rather with those who seek to take advantage of the existence of credit cards through computer technology.

May I parenthetically point out that the plural of "apparatus" is "apparati."

SENATOR PATERSON: Madam President, I'm well informed, based on that answer from Senator Goodman. And I would like to ask if he would yield the floor to another question.

SENATOR GOODMAN: I will.

THE PRESIDENT: You may proceed, Senator.

SENATOR PATERSON: Well, Senator, the blame would always rest with the perpetrator, I agree with you about that. But I'm talking about the foundation for the actual crime itself. And I think that there certainly is some responsibility and that at certain points it might even incur criminal liability.

Let me cite one of those examples

for you.

Suppose the individual has made it clear to the credit company that they do not want any of their information to be listed, that they've put out a credit alert that someone may be stealing their credit. Don't you think that it would then rise to a level of a criminal violation if the credit card company continues to issue credit in that name and that for that we might want to either include it in your bill or include it in succeeding legislation that's germane to this subject?

SENATOR GOODMAN: Let me go back to your root question. I think the question directed itself to the matter of whether or not, by making it easy to have access to credit through credit card issuance, that creates culpability on the part of the credit card company.

My answer to you is definitely not. I think in an age where many people need credit that is available through credit cards that it's a deprivation for them not to be able to have such access. And making it

easier in a situation where it can't be done unilaterally, but must require their consent, should not be regarded as a crime. In fact, it may be constructive if used with a degree of discretion.

If people are spendthrift, that's another matter, but that's not a crime either. That's a matter of bad judgment.

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

SENATOR GOODMAN: Yes, I will.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Just for purposes of clarity, Senator, you're saying that the bad judgment is on the part of the consumer or on the part of the credit card company? I just didn't hear your answer.

SENATOR GOODMAN: Senator, I think you said earlier that you were inquiring whether it would be appropriate to place penalties on credit cards companies which issue cards in a way that makes it easy for the individual to obtain credit.

My response was even in those instances it's necessary to have bilateral agreement. That is to say, the acceptance must be initiated by the person receiving the credit card, and in so doing they assume certain responsibilities. If they wield those lightly or with lack of discretion, or carelessly, that becomes their problem, and I don't think it's the problem of government to punish people who are in effect spendthrift without any personal controls over their money as it flows out of their persons.

SENATOR PATERSON: Madam President, if the Senator would continue to yield as he has agreed to.

SENATOR GOODMAN: Yes, I will.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Well, Madam President, you see, what I'm really pointing out here is if you put some of these questions that I've asked Senator Goodman together, what I'm really driving at is the fact that we in this society -- not only have the banks and other lending institutions and credit cards

companies suffered great losses from theft, but right now -- and one of the reasons I think Senator Goodman tailored this legislation specifically to talk about the victims, people who, like the woman he described, just answer their door and suddenly they are being harassed about credit that they are supposed to have extended that they had no memory of because they didn't do it. And what I'm saying is if that's the intent of the legislation, then I want to go back to the actual cause.

Now, perhaps, Senator, you're right, maybe we're out of the realm of criminality. But we're certainly on the same subject of what we can do as lawmakers to try to diminish this problem. And I'm saying since most of the incidents that are going to come up with this widespread identity theft are relating specifically to what would really be interstate commerce, I don't know that this law has as much application as it would if we were to address the issues that actually lay the foundation for these bad practices in the first place.

And let me cite an example of one of them.

If these preapproved applications are mailed to an address and someone sends in a form stating that they want to borrow money but they send in a different address, well, that could be a change of address. But I would want to require the credit card companies to verify three different pieces of identification -- a Social Security number, a driver's license, a place of employment, something to let the credit card company know that this is on the level, that this isn't someone that just stole the mail of the addressee and then took the preapproved application and used it in a fraudulent manner.

And so, Senator Goodman, even if we're out of the criminal law, my question to you is, don't you think that along with your legislation that we should be really in many ways shortening the leash on the credit card companies' ability to continue to almost seduce us with these applications, preapproved credit applications, when this is really

opening the door -- it may not be the crime, but it certainly is the catalyst for the crime that is inevitably committed by perpetrators in our society?

SENATOR GOODMAN: Senator, I understand what you're driving at. Let me say if a bank chooses to issue credit cards on relatively lenient terms and requires various forms of identification which it feels are adequate, that's the responsibility of the bank. I presume the bank does this with fairly careful forethought and decides that the risk-to-return ratio is such that it pays to do this.

And I don't think it's up to this Legislature to intervene in an attempt to discipline banks and say to them thou shalt not issue credit cards on too liberal terms, because often it serves a useful purpose.

Therefore, I'm afraid that my philosophy of government might differ a little from yours in the fundamental respect that we should try to punish crimes severely where they occur, but where there's no crime and where there's only a presumption that one

might result from a certain pattern of action which has a commercial purpose, I'd be very loath to interject myself into that legislatively.

SENATOR PATERSON: Madam President, one of the reasons that I didn't get up and pursue a line of questioning with Senator Goodman about Penal Law Section 190.25 is that I thought I understood what the Senator was saying, that we want to direct our protection to the individuals, not to the banks or the credit-lending institutions. And so I understand what Senator Goodman is getting at.

And since the Senator has kindly been willing to yield, my question at this point, Madam President, is, what do we do to protect the victim beyond sending the perpetrator to jail if we find them?

Let's go back to the Brooklyn busboy for a minute. The Brooklyn busboy only got in trouble not for stealing the money, it was when he started pooling some of the funds from different accounts to try to make large financial interactions that really sent off a

signal to the institutions in the first place. He'd still be doing it if we hadn't caught up with him.

But let's take some of the victims. Not the victims who were high-profile and on the Fortune 400 list, let's take the victims who on the lower frequencies of our society don't have the means to protect themselves when they are actually put in the situation. Wouldn't it be a perfect addendum to this legislation to add on the opportunity to freeze the credit reports from being distributed to private institutions if the individual requests that of the credit card companies?

And further, Madam President, wouldn't be it important to establish a system where we provide free copies to every resident of this state of their credit condition so they could find it out right now to try to nip the problem in the bud if it were to arise?

SENATOR GOODMAN: Senator, it occurs to me that the icy fingers of this type of crime have reached right into the Senate chamber. Only late last week did your

Minority Leader and I discover that someone had stolen our identity and put our names on a bill which purported to be our bill, and they printed up the bill with our names on them as sponsor and cosponsor, and it is only belatedly that we found that we had nothing whatever to do with the bill, nor were we even aware that it had been circulated until it was brought to our attention.

So this is a ubiquitous type of crime, one which we have to be very alert to. And I mention that just to show you the extent to which this can occur.

But let me just say this, if I may. Responding to your expression of concern about the consumer, I want to invite your attention to the report on identity theft which the Senate prepared in June of 2000. I hold it up before me.

Within that, there's a section which states that there are various things that can be done for consumers to protect themselves against identity theft. These include the following. And I'm just going to share this with you for a moment, if I may. I

think it's germane to your question.

THE PRESIDENT: Senator Paterson.

SENATOR GOODMAN: Excuse me, Madam President, I still have the floor in response to the Senator's question.

THE PRESIDENT: Excuse me, Senator Goodman.

SENATOR GOODMAN: Here are some safeguards that we recommend.

Don't display your Social Security number in obvious places or give it out unless it is vital to do so.

Identity thieves steal preapproved credit offers from your mail. To prevent credit reporting agencies from providing your information to lenders, call a certain number, which we provide.

Check your credit report at least once a year, and before making applications for mortgages and education loans, to monitor fraudulent activity.

Bring envelopes with checks to the post office rather than leaving them in a mailbox for the postal carrier to pick up.

Buy a shredder and destroy

financial documents.

Carry no more than one or two credit cards in your wallet or purse, and close all unused credit card accounts.

Reduce information available to direct marketers by placing your name on a purge file which is sent to 3600 subscribing organizations. We give the address of same.

Delete your name and phone number from telemarketing lists by ordering telemarketers to put your name and address on a "do not call" list.

May I remind you that the Majority has launched an extensive program, involving I believe close to a million responses statewide, which has people on a "do not call" list, which has been an enormously successful preventive program.

Furthermore, reduce the amount of information released to the highest bidding marketer by opting out of the data sold through the New York State Department of Motor Vehicles.

Refuse to give personal information or financial data over the phone or the

Internet except to known or reputable establishments.

Remove your name from lists that are used for marketing purposes by contacting a certain number given in the report.

Call the FTC -- that's the Federal Trade Commission -- to report incidents of identity theft.

Report any tampering with your securities, investments or brokerage accounts to the Securities and Exchange Commission and your broker.

And, finally, contact the Social Security Administration's fraud hotline number given if someone is using your Social Security number for employment purposes.

Those -

THE PRESIDENT: Senator Goodman, we cannot hear your pearls of wisdom, and we'd all like to.

SENATOR GOODMAN: I'm sorry, Madam President. I won't repeat the whole thing. Let me say to anyone who's interested -

THE PRESIDENT: Well, I believe

it was the last few sentences.

SENATOR GOODMAN: Madam President, I present with my compliments to you and anyone in the chamber who is interested a copy of the Senate Investigation Committee's identify theft report. It's illuminating and I think is probably responsive to many of the questions which the good Senator is asking.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, on the bill.

I commend Senator Goodman for his legislation and for his diligence on this issue and many other issues that we've been privileged to receive his advice and counsel on. And he's always a gentleman. I said that behind his back, and I hope it got back to him.

On this particular piece of legislation, I just feel that this Senate, and particularly the most distinguished among us, such as Senator Goodman, are capable of greater than what exists in this legislation.

Now, we have a Federal Information

Theft and Assumption Deterrence Act that already exists. And what Senator Goodman has accomplished quite adroitly is to carve out analogous protections for this state that would address the same issues if the companies are right within New York.

Now, I don't really feel, Madam President, that because of the interstate commerce practices of these companies that they still cannot be prosecuted under the federal law. So I think that there is a little overlap between the federal law and what Senator Goodman is proposing.

Nonetheless, I do think we need to propose it. I'm not at all in disagreement with what Senator Goodman is doing.

All I'm saying -- and the best way to describe it, Madam President, is I would call it a notion of coalesced dreams. It is the desire of certain individuals in our society to defraud and impersonate others for their own benefit and to injure the other party through the theft of goods, services, property or money.

Now, at the same time, it is the

desire of the credit card companies, in a different way, to literally squeeze as much credit out of all of us as citizens as they possibly can. And in addition to doing that, they recognize that there's going to be a certain amount of debt that's not repaid. And they charge those accounts off after 18 months.

Further, they understand that these types of practices or fraud are actually going to exist. Moreover, they've accommodated in their projections for what would be service and what would be mitigated by the losses in providing that service.

We had a bill that was sponsored, I believe by Senator Farley, talking about extending credit to college-age students. And I think the credit card companies know that college-age students are less likely than their elders to pay back these loans. But again, in the end, when you count the numbers, it works out to be a benefit to the credit card company. And that's fine. If they want to undertake those risks and they have factored it out to a degree that it works for

them and it benefits their cause, that's fine with me that they do that.

But we're in the business of protecting the residents of New York State, our constituents. And to that end, what I'm saying is, that we have not, as I said before, tightened up the reins on these companies.

They are sending out preapproved applications. They are sending information to addresses where they don't really know who is the actual resident of those addresses. And they are not requiring the type of identification that would really be necessary to protect consumers from this type of practice. We can't blame them, but we certainly can require them under the law to do so.

And I think that if we were going to do our own arithmetic right here in the Senate chamber, let's add up what would really benefit the consumer, I don't think there are going to be that many cases under Section 190.25 of the Penal Law. There haven't been to this point. And if you add Sections 77 and 78, they are good law, they're certainly

well-drafted, and Senator Goodman is to be commended.

But I'm talking about the results. If we want to limit the opportunity of perpetrators to steal from us through credit and on the Internet and in cyberspace, I'm suggesting that the best way to do it, the most feasible means that we could be taking right here in the Senate today would be what I would call preventive medication against credit fraud. And that would be to limit these individuals from getting in the door.

It's not a crime to allow your own house to be robbed, but it would be a crime to leave the door open -- I'm saying it's not a crime to do that, but it would be irresponsible to leave the door open on your way out of someone else's house, allowing the perpetrator to see the entry point.

And I'm saying that that's what these institutions have done to us, only because they're not regulated.

They have opened the door for these perpetrators to come in. And if we were to require the three pieces of identification -

you know, what the Brooklyn busboy was able to do was he went and found the mother's maiden names of all of these famous people, and that's one of the ways that he got into the credit card companies and was able to impersonate them. Because they all have this strict standard that probably sounded pretty bright ten years ago, but the infiltration of unscrupulous people has caught up with the ability of those of us to protect ourselves against it.

So I know that we can give manuals telling consumers how to be protected. But why not send to each resident -- this would be a little cost to the companies, but I think they've shown they can endure it. They've put up with all of these criminals. They can put up with all of us who are trying to fight criminality as much as we are. Send us a copy of our credit records annually. Send it to us so the beginning, the poisonous tree can be been before the fruit of it involves someone showing up at the door of a poor innocent woman demanding to look in her garage to see if she has a BMW in it.

That's what I'm saying. I'm talking about not necessarily the validity of this legislation. It fits and encapsulates the violations set forth in Section 190.25 of the Penal Law quite admirably. But what I'm saying is, we can add to it. We can make sure the door is closed to limit and reduce our resources from having to fight all situations to identifying those individuals who are at least wily enough to commit these crimes. It's so easy that it's hard. And it is being done with just a cell phone that has computer access, with library computers, with a list that you could get from any magazine as to who the 400 wealthiest people in this country might be. And just those elements, anybody in this room, in spite of how the public sometimes feels about our ability, yet we still could do the same thing that the Brooklyn busboy did.

So I'm just recommending that to Senator Goodman, through you, Madam President, and hope that this will be the first step in a continuing fight to try to prevent the impersonation or the identity theft that is

pervading this society. It is dictating and pervading the notion of credit here in this country. And all I'm saying is this is a good bill, but it's not enough.

THE PRESIDENT: Senator Duane.

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

THE PRESIDENT: Senator Goodman, will you yield?

SENATOR GOODMAN: Yes.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Thank you.

What happens now if someone is caught engaging in identity theft?

SENATOR GOODMAN: Not much.

SENATOR DUANE: Through you, Madam President.

SENATOR GOODMAN: Not much, Senator. Not much. In certain cases, nothing.

SENATOR DUANE: And through you, Madam President, in the other cases is there anything in current law that does cover this?

SENATOR GOODMAN: There can be. It depends on the nature of the crime. What sort of crime did you have in mind?

SENATOR DUANE: You know, Madam President, I'm sorry, he said -

SENATOR GOODMAN: What sort of crime did you have in mind, Senator? I can't answer generically. Would you be a little more specific in your question?

SENATOR DUANE: Through you, Madam President, generic. Generically.

SENATOR GOODMAN: Madam President, I can't answer that generically because there's no such thing as a generic identity theft. There are various types and sizes, shapes and flavors. And until I know what you have in mind, I can't respond.

Have you had a chance, Senator, I might ask, in case we might abbreviate this discussion in its less productive moments, to read the report of this committee on this subject?

SENATOR DUANE: Is the Senator asking me to yield?

SENATOR GOODMAN: I'm asking you

to yield to let me know if you've had an occasion to look at the report of the committee.

THE PRESIDENT: Senator Duane, will you yield to Senator Goodman?

SENATOR DUANE: Yes, Madam President. Actually, I have, although I'm still waiting for that moving van one from '92.

SENATOR GOODMAN: I couldn't hear the Senator. Waiting for what?

SENATOR DUANE: I said yes, I have seen that and reviewed it, but I'm still waiting for the '92 report about moving vans which you promised me a couple of weeks ago.

SENATOR GOODMAN: A report about moving vans? You think there's identity theft in connection with moving vans?

SENATOR DUANE: Through you, Madam President, if I may just explain what I'm saying.

I have read the report on identity theft, and it was very interesting. However, a couple of weeks ago the Senator promised me a copy of his '92 report on moving vans, and I

have not yet received that report. And I would offer to copy the original, but my Xerox doesn't work so good.

SENATOR GOODMAN: It's thoughtful of you to inquire about that, but there has never been a report on moving vans as such. I'm not sure what you're referring to.

SENATOR DUANE: Through you, Madam President, I think it's moving companies. But whatever.

If the sponsor would continue to yield.

THE PRESIDENT: Senator Goodman?

SENATOR GOODMAN: I will give you an open season on yielding for about four questions, at the end of which we'll determine whether I can continue to yield, Senator.

THE PRESIDENT: You may proceed with a maximum of four questions, Senator Duane.

SENATOR DUANE: What happens now if someone in Texas steals a credit card from someone in New York -- for instance, over the Internet, just to get a little more specific, as was requested -- how would we be able to

get that person from New York to Texas?

SENATOR GOODMAN: The answer, Senator, is unless the crime is -- I think you might not have heard the debate earlier. I answered that unless the crime is perpetrated within New York State, you cannot go out of reach of the punishment. It's these people who perform this type of crime within the state who can be punished under this law.

SENATOR DUANE: So the answer is -- through you, Madam President -- there is nothing can be done?

SENATOR GOODMAN: Excuse me? Did you say something else? I'm sorry.

SENATOR DUANE: Through you, Madam President, the answer is that nothing could be done in that kind of a situation, now or with this bill?

SENATOR GOODMAN: I've responded, Senator. Do you have another question? That's two so far.

SENATOR DUANE: But, Madam President, I -- I'm sorry, I must -- the microphone must not be working well. I didn't hear the response to my original question.

THE PRESIDENT: Senator Duane, you've asked two questions. You have a maximum of two more, sir.

SENATOR DUANE: But I'm allowed to get the answers, am I not, Madam President?

THE PRESIDENT: And you've received an answer. Could you proceed if you have another question, sir?

SENATOR DUANE: You know, I don't mean to be inappropriate, but I really did not hear the answer. And I frankly had trouble hearing a lot of the earlier debate.

THE PRESIDENT: Senator Goodman, would you repeat your last answer?

SENATOR GOODMAN: I'm glad to repeat the answer. The answer is that unless the crime is committed in the State of New York, it is not punishable by New York law.

SENATOR DUANE: Then through you, Madam President, what about the reverse? If someone in New York steals a credit card number or an identity from someone from Texas, can they be prosecuted here in New York for stealing identity in Texas?

SENATOR GOODMAN: Senator, if

you've listened to the debate with Senator Paterson, you'd know I've already answered that question in the affirmative.

SENATOR DUANE: I just -- I'm accepting that answer under protest, Madam President, because it was incredibly difficult to hear the earlier debate.

THE PRESIDENT: Senator, do you have a fourth question? You have the floor for a fourth question if you -

SENATOR DUANE: Am I up to number four, Madam President?

THE PRESIDENT: Yes, you are, sir. Please proceed.

SENATOR DUANE: Okay. I'm wondering if there are any minority sponsors of this legislation and, if not, why not.

SENATOR GOODMAN: There are not, sir, that is correct.

SENATOR DUANE: And then, just finally, may I go on the bill, Senator?

SENATOR GOODMAN: You're asking me if you may go on the bill? The answer is have you ever requested to go on the bill?

THE PRESIDENT: Senator, could

you direct that request to me?

SENATOR DUANE: Yes, through you, I am -

THE PRESIDENT: You may proceed on the bill.

SENATOR DUANE: Thank you, Madam President. I am requesting to go on the bill right now. I think that it's urgently needed to have more bipartisan bills here.

But I -- from what I heard of the earlier debate -- and again, it was incredibly difficult to hear, and I did call that to the President's attention, as did others call that to attention. It was difficult to hear. But it sounds to me as if this is really something that we should spend more time getting the federal government to take a position on and to pass legislation. I mean, it's kind of feel-good, but it doesn't seem that it would capture that many people here in New York State.

Identify theft, particularly during these times of the Internet, is actually much more of a federal problem. And at some point, if it hasn't already, it's an international

problem. And, yes, it happens to some small extent here in New York State, I suppose. It really is something that needs the attention of the federal government. And I would be more than happy, in addition to trying to help get this passed in the other house -- which I was going to ask about, but it wasn't as important as the other four questions I was allowed. But if I had a chance, I'd like to know who it was in the Assembly, because I'd like to work on it with them and encourage them to make the bill bipartisan as well.

So -- but that said, I think that our time might be better spent on focusing the federal government's attention to this problem, because that's really where this kind of crime can best be fought. So I'll vote yes for it, and of course I'd love to be a part of it, because there do seem to be an awful lot of names on the bill. But I also think that we should reach out to the federal government.

Thank you, Madam President.

THE PRESIDENT: Senator Lachman.

SENATOR LACHMAN: Yes, would Senator Goodman yield for a question, Madam

President.

THE PRESIDENT: Senator Goodman, do you yield?

SENATOR GOODMAN: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR LACHMAN: I also unfortunately didn't hear some of the debate -- because of the noise in the chambers -- between you and Senator Paterson, and I regret that. But I would like to go back to the initial question in terms of the constitutionality of this.

I'm delighted Senator Goodman and others in this chamber feel this is a major threat to our democratic society, the issue of identity theft. But Senator Goodman knows, in American history in terms of constitutional law, in 1801 the Hamiltonian principle of federalism was strongly established, upheld by Chief Justice Marshall, our second chief justice of the U.S. in Marbury versus Madison.

Now, if there are any flaws in the federal legislation, should we not therefore

improve the federal legislation which goes into all fifty states, and can even go out of the fifty states, rather than using a legislation that is limited to what Senator Goodman said is problems that arise in New York State?

SENATOR GOODMAN: May I just respond by saying that Marbury versus Madison was a matter relating to judicial review. I think you meant the Claremont Steamboat case?

SENATOR LACHMAN: No, no, I meant Marbury versus Madison, which upheld the power of the federal government to -- and the U.S. Supreme Court of the federal government to make decisions relating to federal issues.

SENATOR GOODMAN: I believe you referred to judicial review. Be that as it may, Senator, may I say that in 1801, to the best of my knowledge, credit card fraud was not a notable problem.

(Laughter.)

SENATOR LACHMAN: Can you slow down? You're going too fast for me. Madam President, I really want to hear Senator Goodman's answer, but I have difficulty. It

might be my ears. It might be the chamber.

SENATOR GOODMAN: I was just observing that in 1801 it's my impression that credit card fraud was not one of the major problems confronting the nation.

But nonetheless, apparently you seek to draw precedence from that. And I'm not sure -- maybe it's just the number of years that have intervened in between. I've somehow lost, in the annals of history, the thrust of your question. What was the point you were trying to make?

SENATOR LACHMAN: Madam President, through you, another question.

Fraud was always a problem in this nation, including in 1801. And the Hamiltonians said if there is any conflict between the state and the federal government on any of these issues, the federal government's position should be dominant, especially in interstate commerce and especially in issues that involve interstate matters.

Of course there was no credit card or moving van or any other issues that pertain

to today. But we've interpreted the law, as I see it -- and I thought you would see it, Senator Goodman -- that if the federal law does not sufficiently extend to cover the problems of the state statute, the federal law should be changed to improve that so it could encompass all fifty states.

SENATOR GOODMAN: Senator, I understand your good intentions. May I point out to you that there are certain problems which we as state legislators can address, that we do not have any power to pass federal laws. And under the circumstances, we attempt to solve problems somewhat closer to home with our legislative involvement, such as things such as gun control, in which clearly the federal role would play a major part, but we nonetheless seek to control the illicit use of guns on an intrastate basis.

Similarly, with this type of crime, we seek to try to prevent the use of -- there are some 30,000 complaints, as revealed by the Federal Trade Commission, that relate to intrastate matters in New York State alone. In view of that volume, obviously it's

desirable to try to prevent this.

May I just ask in conclusion if you'd yield to me for a moment. Is it your contention that because federal law -

SENATOR LACHMAN: Can you slow - Madam President -

SENATOR GOODMAN: Is it your contention, Senator, is it your contention that because federal law might also apply here that we should abnegate any responsibility as state legislators to try to solve this problem?

SENATOR LACHMAN: Madam President, can I respond to that?

THE PRESIDENT: Senator, do you yield?

SENATOR GOODMAN: No, I've asked the Senator if he would yield.

SENATOR LACHMAN: Yes, I do yield to that, Senator Goodman.

I feel there is a major avenue, many major avenues for state law and state legislation. But I also feel that if there are federal laws on the books and if we feel these federal laws are imperfect and these

federal laws reflect fifty states rather than just one state, where the Senator said this would just apply, then I would go for federal law.

Also, how does this -- Madam President, will the Senator yield for a -

THE PRESIDENT: Senator Goodman, will you yield?

SENATOR GOODMAN: Yes, I will, Senator.

THE PRESIDENT: You may proceed.

SENATOR LACHMAN: Unfortunately, because you were talking so rapidly, I couldn't pick up the major debate between you and Senator Paterson. How does this law - which I think is a very, very important law, and I will probably vote for it -- how does it interface with federal law? Is it subsumed under federal law? Are the fifty states now going to have their own laws? Or will the federal government attempt to protect the fifty states by going through them through the federal legislation?

SENATOR GOODMAN: I pointed out a moment ago there are many areas in which both

federal and state law can punish various crimes. Are you able to hear me? There are many areas in which federal and state law can punish various crimes, would you agree?

SENATOR LACHMAN: Yes, I would agree.

SENATOR GOODMAN: And under the circumstances, we're attempting to punish crimes that occur within New York State which are within the reach of our long arm of the law. That's all this law seeks to do. And I think that if we should fail to act, it would be an abnegation of our responsibility.

SENATOR LACHMAN: One final question, Madam President, through you. Will the Senator yield?

SENATOR GOODMAN: Yes.

THE PRESIDENT: You may proceed, Senator Lachman.

SENATOR LACHMAN: Okay. Senator Goodman, are you therefore saying that if a federal law needs improvement in this area, it should be improved through our Congressmen and U.S. Senators and if state law needs improvement in this initial legislation, it

should be improved through the two houses of the State Legislature?

SENATOR GOODMAN: I'm saying that we need a state law, and I think if there are curative measures that could be taken at the federal level, it would certainly be helpful to have that accomplished.

SENATOR LACHMAN: Thank you.

THE PRESIDENT: Senator Nozzolio.

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

Madam President and my colleagues, I wish to rise and congratulate Senator Goodman for the drafting and the forwarding of an excellent piece of legislation, a piece of legislation that is not designed to participate in any grand scheme but to protect individual consumers in each of our districts across this state.

Senator Lachman waxed on about the federal preemption. Senator Paterson tried allude to it. But frankly, this isn't a question of federal law, this is a question of federal prosecution. The prosecutors of this state are, we hope, going to utilize this tool

to protect consumers. The U.S. Attorneys across this country have their hands full, and identity theft is by and large not a crime which will be prosecuted at the federal level.

But it is a crime that is unfortunately the fastest-growing crime in America. Today there are over 750,000 victims of identity theft, and that number is rising each year.

Now, we all have horror stories of constituents confronted with the not just difficulty but the at times dangerous situation where they are accused of taking and buying and leasing property when in fact they had no economic or personal connection to that acquisition whatsoever. Senator Goodman eloquently discussed an individual who faced severe threat because of this crime perpetrated upon her.

And the emotional toil is a significant aspect of this crime. When identity theft can occur to individuals as notorious as Tiger Woods, as Martha Stewart, it can happen to anyone. And frankly, those of you who are debating that the merits of

this case do not rise to a state crime that could be subject to state prosecution are ignoring the fact that there is just no time for federal prosecutors to engage in adequate consumer protection.

It's the obligation of this house and the other house, the entire Legislature, to protect New York consumers from frauds perpetrated on them in this state. And that's what this measure does. This measure presents a tool for prosecutors to fight this crime. For those of you who wish to ignore that, you do so at your peril.

Senator Goodman is a protector of consumers. I'm fighting for this legislation. I want to congratulate the Senator for his efforts and, Madam President, move the rapid adoption of this legislation.

THE PRESIDENT: Senator Brown.

SENATOR BROWN: Thank you, Madam President.

THE PRESIDENT: Excuse me.

Senator Paterson.

SENATOR PATERSON: Madam President, I was going to ask if Senator

Nozzolio would yield for a question, but I'll yield to Senator Brown.

THE PRESIDENT: Thank you, Senator Paterson.

Senator Brown.

SENATOR BROWN: Madam President, if I may, I'll yield to Senator Paterson.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if Senator Nozzolio would be willing to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: Senator, could you cite for me where it has been written by United States Attorneys -- I mean, I think this is something that we all know, that in law enforcement it's very hard to get prosecutors as interested in these crimes of either white-collar crimes or even just these crimes of fraud, as serious as they are. But generally speaking, can you tell us where you

have received information that the United States Attorneys in New York are not interested in prosecuting these cases, particularly in light of the fact that we had a rather extensive federal intervention on this matter in the U.S. Code Section 1028?

SENATOR NOZZOLIO: Madam President, I did not say that U.S. Attorneys were not interested in prosecuting these cases. In some cases, the more major cases, they are prosecuting aggressively.

However, in the vast majority of cases, there is just not the -- they do not rise to the dollar amount that prosecutors can invest in, that there are many, many, many more cases that federal prosecutors are not engaging in than they are engaging in in this crime.

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

THE PRESIDENT: Senator Nozzolio?

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: You may proceed,

Senator Paterson.

SENATOR PATERSON: Madam President, the Senator raises a good point. And it's about the dollar value. And I agree with him that I don't see this -- I alluded to the fact not that there was federal preemption, I alluded to the fact that most of the actual companies engaged in interstate commerce. So all I was saying is, doesn't that impede the prosecution in a lot of ways?

And by the way, I'm a supporter of this bill, Senator. And I didn't hear anyone else get up to discuss the bill that did not describe themselves as a supporter. So we are just talking about the priorities of legislation here.

But nonetheless, my question is, is there any reason to believe that it would be easier to prosecute these cases by the state when many of the companies that are affected are actually housed in other states?

SENATOR NOZZOLIO: Madam President, I'll answer that very rambling and disjointed question by stating that in 1998 the United States Senate Judiciary Committee,

in a report of identity theft, said that federal legislation alone cannot eradicate identity theft.

The committee, after hearing testimony from the United States Secret Service, strongly encouraged state and local governments and the private sector to complement the federal role in this matter.

That's what exactly what Senator Goodman has done, in listening the Judiciary Committee of the United States Senate, and that's why this legislation is before us today.

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

THE PRESIDENT: Senator Nozzolio, do you yield?

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR PATERSON: Madam President, nonetheless -- I agree with Senator Nozzolio that if there is a void, or even if

there wasn't one, that to augment the federal legislation, the state legislation is meritorious. And I think we all complimented Senator Goodman.

Nonetheless, I didn't feel that I got an answer to my question, which was did the location of companies outside the state impede the prosecution of fraud or the impersonation of others right here in the State of New York? Isn't that true, Senator, that if the companies are located out of the state that it makes it more difficult to prosecute them?

SENATOR NOZZOLIO: Madam President, I'll answer that by indicating that each of the 750,000 cases of identity theft occurring on our citizens across this country each year have individual circumstances of fact. No two of them are exactly alike. That identify theft may have risen to fraudulent obtaining of leases, may have obtained fraudulent credit card information and the acquisition of goods therefrom. It could have been a number of those types of instances. That you can't say that two cases are exactly

alike.

And I'd have to say that the location of anyone who engages in commerce in this state will be subjected to Senator Goodman's bill. That's really the point that should be made. This legislation, it affects everyone who does business in New York State with New York consumers.

SENATOR PATERSON: Madam President, I want to thank Senator Nozzolio, and I also want to thank him for being here.

Could we have a quorum call, Madam President?

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

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Present.

THE SECRETARY: Senator Balboni.

SENATOR BALBONI: Present.

THE SECRETARY: Senator Bonacic.

SENATOR BONACIC: Present.

THE SECRETARY: Senator Breslin.

SENATOR BRESLIN: Present.

THE SECRETARY: Senator Brown.

SENATOR BROWN: Here.

THE SECRETARY: Senator Bruno.

(Senator Bruno was recorded as present.)

THE SECRETARY: Senator Connor.

SENATOR CONNOR: Here.

THE SECRETARY: Senator DeFrancisco.

(No response.)

THE SECRETARY: Senator Dollinger.

(No response.)

THE SECRETARY: Senator Duane.

SENATOR DUANE: Here.

THE SECRETARY: Senator Espada.

(No response.)

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Present.

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: Present.

THE SECRETARY: Senator Gentile.

SENATOR GENTILE: Here.

THE SECRETARY: Senator Gonzalez.

(No response.)

THE SECRETARY: Senator Goodman.

SENATOR GOODMAN: Here.

THE SECRETARY: Senator Hannon.

(No response.)

THE SECRETARY: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Here.

THE PRESIDENT: Senator Hevesi.

(No response.)

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Aye. Present.

THE SECRETARY: Senator Johnson.

(No response.)

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: Present.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Present.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Present.

THE SECRETARY: Senator Leibell.

(No response.)

THE SECRETARY: Senator Libous.

(No response.)

THE SECRETARY: Senator Maltese.

(No response.)

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: Present.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Present.

THE SECRETARY: Senator Markowitz.

(No response.)

THE SECRETARY: Senator Maziarz.

(No response.)

THE SECRETARY: Senator McGee.

SENATOR McGEE: Present.

THE SECRETARY: Senator Meier.

SENATOR MEIER: Present.

THE SECRETARY: Senator Mendez, excused.

Senator Montgomery.

SENATOR MONTGOMERY: Present.

THE SECRETARY: Senator Morahan.

SENATOR MORAHAN: Present.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Present.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: Present.

THE SECRETARY: Senator Oppenheimer.

(No response.)

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Present.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: Present.

THE SECRETARY: Senator Rath.

(No response.)

THE SECRETARY: Senator Saland.

SENATOR SALAND: Present.

THE SECRETARY: Senator Sampson.

(No response.)

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: Present.

THE SECRETARY: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Present.

THE PRESIDENT: Senator Skelos, we have a quorum.

SENATOR SKELOS: Thank you. If

we could continue.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if Senator Nozzolio would be willing to yield.

THE PRESIDENT: Senator Nozzolio, will you yield?

SENATOR PATERSON: Thank you, Madam President.

SENATOR SKELOS: Madam President, I believe Senator Nozzolio may have stepped out of the chamber temporarily. If we could continue with the questioning.

THE PRESIDENT: Pardon me, Senator? I didn't hear the last part of your statement.

SENATOR SKELOS: If we could just continue with the normal debate.

THE PRESIDENT: Senator Brown.

SENATOR BROWN: Thank you, Madam President. I'd like to speak on the bill.

THE PRESIDENT: You may proceed on the bill.

SENATOR BROWN: I too would like to commend Senator Goodman for this piece of

important legislation which I do feel will safeguard consumers. Identity fraud is something that could victimize any citizen, and I think this goes a long way to protecting citizens.

I want to also thank Senator Goodman for responding to the questions of my colleagues, because I too did have a number of questions. But from the debate, all my questions were answered, and I certainly understand this bill and its effects a lot better than I did when I initially read the bill memo.

I am very pleased to join my colleagues who have spoken, those who have spoken in support of this piece of legislation, and will certainly be voting in the affirmative.

THE PRESIDENT: Senator Malcolm Smith.

SENATOR MALCOLM SMITH: Yes, on the bill, Madam President.

THE PRESIDENT: You may proceed.

SENATOR MALCOLM SMITH: Yes, Madam President, I also want to tip my hat to

Senator Goodman.

Identity theft is clearly a crime that is on the rise, there is no question about it. It is clearly being sistered with the theft of intellectual property as well, and it is my hope that we will also pursue the rigors of legislation that will also effectuate some type of response to that problem as well.

I had the ability to be in a room along with a couple of my colleagues and the DA from Queens, and it was clear to him that identity theft was one of the fast-sweeping crimes in the Borough of Queens and New York City, and it has gone as deep as even to the theft of religious leaders' identity, some of which would rather be unnamed. But it's clearly a piece of legislation whose time has come.

To Senator Goodman, I would just ask that he pursue this and also we look at the potential for how we will finance the support of identity theft. Because while the law is clear in terms of what prosecutors have been able to do in terms of prosecution and

the actual degree of the offenses, there is need for financial support as well to make sure that they can pursue these particular felonies.

And so I would just tell Senator Goodman, while we support the bill, perhaps we could also have some discussion around the financial support as it relates to the prosecution of such thefts.

Thank you.

THE PRESIDENT: Senator Hassell-Thompson.

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

THE PRESIDENT: You may proceed.

SENATOR HASSELL-THOMPSON: I too want to commend Senator Goodman. As a member of the Consumer Protection Committee, I know that consumers need all the help that they can possibly get.

I think my major concern, though, is that most consumers, while they may not object to being -- to Amazon.com and some of the other practices of sending them book titles and things of information that they

think may be of importance to them, or of interest, I think what I object to, if they knew what was happening in the way that the Internet business track web uses websites to collect information about such things as their spending habits, income, illness, and occupation, which can be in fact used against them with insurance companies -- and I think that that's a piece that we haven't talked about and explored on the floor.

But certainly I am hoping that as we go forward with this bill, that these will be additional strengths that we will be adding from a state perspective to those of the consumer.

Also, I still agree with Senator Paterson from the perspective that while the consumer has a responsibility to protect themselves, I think that because so much information in cyberspace can be obtained without their permission and without their knowledge, that we also have to hold the credit industry somewhat responsible for their behavior.

I know that, for instance, credit

card companies send college students who are not the responsible party credit cards, preapproved. And so those are some of the concerns that I continue to have in terms of who has been responsible for bills that students run up. And while that might not be perceived as fraud, it's still an issue from a consumer protection perspective as we look at how do we protect consumers, because parents are consumers as well.

So I thank you and I commend you on the step that you have taken, but I would hope that as we review this bill we will continue to amend it to give it strength and support that may need to go to our federal partners.

Thank you, Madam President. Excuse me, Mr. President.

ACTING PRESIDENT MEIER: That's all right, Senator Hassell-Thompson.

Senator Onorato.

SENATOR ONORATO: Mr. President, I intend supporting this legislation. I think it's high time that we did something to protect our -- I was just wondering what the difference was between identity theft and

fraudulent use of a credit card.

And I'll give you an example. My wife lost her credit card a couple of years ago. I didn't report it for several months, knowingly, because the person who found her card was charging much less than she was. So I was actually saving some money.

SENATOR OPPENHEIMER: Oh, stop that.

(Laughter.)

SENATOR ONORATO: But, Senator Goodman, will you yield to a question? And I guess you didn't hear my earlier statement.

SENATOR GOODMAN: I'd be grateful if you would repeat it so I can join in.

SENATOR ONORATO: I just wondering, what is the difference between identity theft and simply using a credit card fraudulently?

SENATOR GOODMAN: You don't know the difference, Senator? You shock me.

I'm not sure that I know it either. Just a moment, let me see if my lawyer can clarify.

ACTING PRESIDENT MEIER: Senator

Paterson, why do you rise?

SENATOR PATERSON: Mr. President -- I'm sorry.

SENATOR GOODMAN: The answer is, Senator, that the identity theft is a child of the modern age in which we have things like computer theft, various telephonic types of theft -- Madam President, could the -- Mr. President could the New York Post be asked to help us restore order to the chamber?

ACTING PRESIDENT MEIER: We can ask, but I doubt if it will be efficacious.

Could we have some order so we can hear Senator Goodman explain identity theft.

Senator Goodman.

SENATOR GOODMAN: If I read you a list of the items covered in the bill, it may manifestly respond to your question.

You get name, address, telephone number, date of birth, driver's license number, Social Security number, taxpayer ID number, mother's maiden name, financial services account number or code, savings account number of code, checking account, et cetera, et cetera. E-mail address or computer

password, public/private government employee or place of employment, and employee identification number.

These matters expand the scope of the reach of the law.

SENATOR ONORATO: Thank you, Senator.

ACTING PRESIDENT MEIER: Senator Stachowski.

SENATOR STACHOWSKI: Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Stachowski, on the bill.

SENATOR STACHOWSKI: I think that the need for this kind of law is obvious in the computer age. I think that a lot of the questions asked were good ones. I think that there might have been some misinterpretations by some people on the floor of where the questions were going, but I think they were good questions.

The fact that the individual has his identity stolen and then has to go through this whole web of entanglement to try to get all their personal items straightened out.

And Senator Goodman's answer that, you know, there's great suggestions in his report, well, unfortunately, some of us have his report, some of us read his report, others didn't, others probably couldn't find it if they had to look for it.

And the general public is -- it's not available to the general public, so they can't -- they don't have this readily at their fingerprints, so that response to a question about what does this law does for victims was a valid one.

And maybe what we should be considering or what Senator Goodman should be considering, since he's the sponsor, is a follow-up legislation maybe addressing what can be done for victims in this kind of situation.

And to just slough off the fact that credit card companies and banks, et cetera, have no responsibility in this, that it's a light use of credit opportunities by individuals that sometimes leads them to have their credit card applications or identities stolen, that's not entirely true. Because

nowadays, with those instant credit forms coming through the mail rapidly and people just throwing them out, everybody doesn't have a shredder and everybody can't afford the $29 extra right now, with all the utility bills up and everything else up, to run out and buy one. They don't actually think about the fact that when they throw that in the garbage - they think, like most people, who's going to go through my garbage? Because they would never think of going through somebody else's.

So that their identity is available because they throw these things out whole, sometimes, they don't even open them because they recognize them by the envelope. And oftentimes companies that offer this credit will send even an altered form where the alteration is I've since moved since you first sent this by the time I got to apply, and now you're sending back the credit card possibly to the person at a different address.

So, I mean, I think there is some responsibility to those people. And of course in this legislation, because it's only looking to punish the perpetrator -- which is a good

starting point -- nothing is done to try to safeguard this and try to do a little bit of curtailment maybe on not only junk mail but also on the fact that some of these forms go out and that they're very risky to people that aren't careful with what they do with the forms that are sent to them, they just toss them whole, and somebody might be able to - because if they're interested enough to go through your garbage, they might be crafty enough to get your Social Security number. Which wouldn't be a major lift nowadays with some of the things available on the Internet.

So that I think that the fact is that they should bear some responsibility, and maybe they should bear the financial responsibility if it can't be gotten from the perpetrator. Rather than the victim even taking the $50 hit when he didn't even get the credit card. So it's not like he had the credit card and somebody got one of their - they didn't tear up their receipt and they got it from that, that's one thing. And okay, maybe you are a little careless there. But nowadays, you might not even have that

company's credit card and somebody else has one in your name. And all the other things that they can do with it is interesting.

And an interesting thing -- and this is kind of a Goodmanesque part of my statement, something that Roy would sometimes do, Senator Goodman would sometimes do in his explanations or in his opening descriptions. But I got a little confused before I started -- I'm going to give you this -- I got a little confused because I understood that this bill came out about as a result of your Investigations Committee. And somebody from another Ivy League school tried to tell me that it came about because of a Senate committee report. That's probably some kind of competitive thing between Cornell and Harvard, I don't know. But I'm going to side with Harvard this time.

And this is the Goodmanesque part of my presentation, that the right of privacy, at the time it first was put forward, had nothing to do with law or the Bill of Rights or the Constitution or even statute. This came from the Harvard Law Review, the first

mention of the right of privacy. And that was in 1889, and it was written by two Boston lawyers, Louis Brandeis and Samuel Warren. And the fact that they talked about this, because it was a great technological error. And everybody takes some of this technology from that period, like photography and telephony for granted, but that was the great technological changes in its infancy.

And because of that putting forward of the right to people's privacy, that eventually, in a series of cases, it was various law principles held up that protected people's privacy. And that's why privacy is so taken for granted by us now, but why it's protected somewhat by law.

And I thought you'd appreciate the fact that it came from the Harvard Law Review, and that's why I brought it up. And that was my Goodmanesque part of this. I figured as long as it's Senator Goodman's bill, I might as well use the Goodmanesque part of this and straighten out the little bit that confused me between the Cornell Senator and the Harvard Senator.

But the fact is, I think that the bill itself should be a good step forward. I think there's a lot that remains to be done. I think that there's some things we should be putting out to help the victims when these things happen to them. And obviously if it happens to high-profile people, as the Cornell Senator mentioned -- and we know it happens to everyday people a lot easier -- so that I think that Senator Goodman has a good idea here, but I hope that he will follow up with a lot of the things we mentioned.

And that since his report isn't available to the general public, maybe he would think of having the printing people start putting out a pamphlet that would cover the same things that are covered in his report. Because obviously everybody won't have that at their fingertips.

So I'm also going to vote for this bill. I didn't hear any of my colleagues saying they were against the bill, they were just asking different questions trying to find out different parts about the bill or if the bill would eventually cover this, or maybe at

least to give the sponsor ideas for future legislation where he can continue to protect the individual and maybe make it easy for him to get out of this web of entanglement they find themselves in once someone steals their identity and maybe commits crimes and all the other things that happen to them as a result of that theft.

And with today's computer age, that's more easy than ever. And some of these people that are so good on computers -- I not being one of them. I'm lucky I can get through on the Internet and find the easy things, much less any of the difficult things.

So with that, I also wanted to rise and support Senator Goodman's legislation, but also offer a little clarity on what some of my colleagues are trying to do, and also take my opportunity to give the Goodmanesque part of the explanation.

ACTING PRESIDENT MEIER: Senator Stavisky, we have a list going.

Senator Lachman was next, I believe.

SENATOR LACHMAN: Yes. On the

bill.

ACTING PRESIDENT MEIER: Senator Lachman, on the bill.

SENATOR LACHMAN: I will be voting for this bill, Senator Goodman -- and through you, Mr. President -- because I think it initially is an attempt to fill a loophole in the legislation that currently exists.

Now, we've mentioned the steamboat law in terms of interstate commerce. I know David mentioned that to you and to us. But we mentioned Marbury versus Madison. We mentioned an unknown lawyer writing in the Harvard Law Review who 25 years later was appointed a member of the U.S. Supreme Court, Louis Brandeis, taking it from a different point of view and the point of view of the right of privacy in the information age.

But I do think that there should be a greater connection between the legislation that we pass here and the legislation that exists in the fifty states as passed by the federal government and the Congress of the United States.

But you are attempting to respond

by filling a loophole, and I think it's a very good initial step, and I would like to see it extended in other areas as well.

I support the measure.

SENATOR GOODMAN: On the bill, Mr. President.

I just wanted to express my gratitude, if I may, to some of our colleagues. I'd like to start with Senator Nozzolio, who, Senator Stachowski, you should know is the chairman of a task force that addressed this question after our special Senate Committee on Investigations did so. We held a press conference involving most of the Majority Senators and widely publicized the contents of this ultimate piece of legislation. I want to thank Senator Nozzolio very much for his involvement in this.

And I'd also like to extend sincere thanks to my colleagues on the other side of the aisle. Senator Smith, Senator Brown, several of the rest of you who were kind enough and gracious enough -- including my good friend, Senator Paterson, I might say - to suggest that this legislation did have some

usefulness, and to do it in very gracious terms.

There have been from time to time suggestions that there is a tension that grows between us in this chamber, and I think that your conduct this afternoon suggests quite the reverse. And I for one wish to extend my personal thanks to each of those of you who were kind enough to make your very gracious remarks.

Thank you.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Stavisky, to explain her vote.

SENATOR STAVISKY: Yes, Mr. President.

I too would like to compliment Senator Goodman on the work he has done on

this bill.

About three or four weeks ago the district attorney of Queens County had a meeting in the LOB, and he brought with him some material that he had collected concerning identity theft. And to look through the books and see all kinds of names of people whose identities have been stolen was very revealing, because there were people from all walks of life. Some names were very recognizable.

The district attorney in Queens County has done considerable work on identity theft, and I'm sure that he will be delighted too with the work done by this chamber this afternoon.

So I vote yes.

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

Senator Gentile, to explain his vote.

SENATOR GENTILE: Thank you, Mr. President.

I too join with my colleagues on both sides of the aisle in congratulating

Senator Goodman for this piece of legislation. As a former prosecutor, this piece of legislation will clear the air as to what someone committing a crime of this type can be charged with, rather than just trying to patch different pieces of the law together.

In addition, I too have been a victim of identity theft. Indeed, about three or four years ago, there was a credit card stolen from my gym locker. And little did I know that after I went back to the locker, the person who had that credit card went on a little shopping spree.

Indeed, it was around Valentine's Day, and they want to the Staten Island Mall. And Senator Marchi knows well that there are many stores there at the Staten Island Mall, and it seemed that that person's girlfriend had a great Valentine's Day on my credit card.

So certainly -- and it took many months to correct that whole situation, so - unfortunately, that person was never apprehended. But in any case, there should be an apprehension, Senator Goodman's bill will go a long way in making sure that this state

is on record as strongly as possible to use this as a deterrent for future identity theft.

So congratulations. Thank you, Senator Goodman. And I'll be voting yes.

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

Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: Yes, thank you. Through you, Mr. President, I will be voting yes on this bill. I appreciate the work Senator Goodman has done on this and his graciousness in presenting it to us today.

There is one area of concern that I would raise really that I think may require some additional attention, and that relates to the difficulty, particularly in Internet commerce, where there's the tremendous potential for abuse and identity theft, the difficulty of New York courts obtaining jurisdiction over the Internet thief.

The law is very unclear in this area. If a company is based in California, the only contact is over the Internet, they steal the goods in California by charging them

there, it's not clear that we could actually obtain jurisdiction in New York to punish such a felon.

And I think it's good that we're criminalizing the behavior, and I hope that we can continue to work to make these laws more effective.

But I would commend to Senator Goodman and others working on this that the jurisdictional issue is an additional aspect of this that may require our attention and that will emerge as these laws are prosecuted and as we move forward.

Thank you, Mr. President.

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

Announce the results.

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 158, by Senator Wright.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 158.

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

SENATOR PATERSON: Explanation.

SENATOR WRIGHT: Read the last section.

(Laughter.)

ACTING PRESIDENT MEIER: Senator Wright, an explanation has been requested of Senate 158 by Senator Paterson.

SENATOR WRIGHT: Thank you, Senator Meier. Thank you, Senator Paterson.

The bill that you have before you directs the Public Service Commission to prepare a report relative to the rural communities of this state and their ability to access telecommunications. And it directs that the report will be prepared by no later than February 1, 2002, copies to all of us.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President,

it's a pleasure to dialogue with Senator Wright. And if he would yield for a question.

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

SENATOR WRIGHT: I will, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Senator, what have been the reports from rural residents of the state about some of the difficulties that they have encountered with Internet access?

SENATOR WRIGHT: Well, the difficulties we're talking about have principally focused on the ability to access the ability to utilize new telecommunications systems, the most newest technologies.

Typically you will find that service providers make the investment in the primary markets where they will have a quicker and more prompt return on their investment. So you have seen investments being made across the state in the urban centers, and that has not been the case in the rural areas of the state.

So as a result, when you're a small business in a rural area of the state trying to compete with a like small business in an urban center, you're not in a position to compete on a level playing field.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, if I could speak on the bill so that -

ACTING PRESIDENT MEIER: Senator Paterson, on the bill.

SENATOR PATERSON: I may have another question for Senator Wright in a moment.

But this is a problem that has an historical nature in this country, and it really accompanies the invention of different facilities that have obviously changed the course of doing business and changed the culture of our nation. And what's interesting about that is that in the issues involving the invention of electricity and also the invention of the telephone, that government actions preceded the one that I assume we're going to take today in trying to pull all

segments of the population together and, actually, particularly those who live in the rural communities.

For instance, when the electric lightbulb was first invented, it took 36 years to get electricity into what would be the threshold that would mean that it was in most of the homes in the United States. Now, when the telephone was invented, it took only 16 years. So already we saw the movement, the inertia of the society catching up with a new invention.

But interestingly enough, it took the computer only seven years. And the general feeling is that Internet access, when it first became available in the mid-'90s, only took four years to inculcate most regions of the country. But there have been many areas that, while they may meet the threshold test in accordance with what were the perimeters of the study, nonetheless there are huge numbers of individuals who are not able to be online. The connection with schools and libraries onto the Internet is very important when it's related to our educational

processes. Particularly upstate, where there's been service delivery of health care issues -- as there have been all over, but particularly magnified upstate -- the issue of Internet access for health care would assist there too.

Some of the other communities around the state, the minority neighborhoods have also lagged behind what would be the rate of access of the rest of the state. The African-Americans in this state who have salaries that exceed $75,000 a year interestingly enough have equal access to their white counterparts. So do Hispanic-Americans with salaries of $75,000 a year or more, with a little less effectiveness, but still falling within the ambit of what would be equal protection if we divided by race.

But it seems to be more what Senator Wright was talking about in terms of the companies and flooding the urban markets quicker. As they flooded the urban markets, they have also neglected the inner city markets.

At this point, Mr. President, if Senator Wright would yield for a question.

SENATOR WRIGHT: Yes, I will.

SENATOR PATERSON: Thank you.

Mr. President, my question is, do you think it would be possible in future proposals and studies to include some of the other neighborhoods around the state that are still bereft of the vital need for Internet capacity?

SENATOR WRIGHT: I certainly wouldn't exclude that, but we're talking two different issues in terms of what we're speaking to in this bill.

We're basically looking to establish the backbone that would link the various regions of the state with the high, wide fiber band that we need, otherwise known as the backbone system. I believe what the Senator is speaking to is really what's referred to as the last mile or last 100 feet, where you're actually talking individual access.

So that the bill that we're advancing addresses a different issue than the

one that Senator Paterson raises. I'll be the first to agree that Senator Paterson does in fact raise a valid issue, but it is not germane to what we're attempting to do with this bill.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, that's actually quite interesting. If the Senator would yield for a follow-up question.

ACTING PRESIDENT MEIER: Senator Wright, do you yield?

SENATOR WRIGHT: I will.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: So, Senator, what I should understand is that when I was talking about the linkage between libraries and schools and the information superhighway and the healthcare systems and their connection, then I was a lot closer to what is really the genesis of this legislation.

In other words, those individuals who live in the upstate regions who are obfuscated from full capacity of service

regarding online capacity would not necessarily be -- that that goal and objective to include them would not necessarily be enhanced through the study that you're proposing, but a completely different type of study that would probably be analogous to the issue that goes on in some of the inner cities of our state. Is that accurate?

SENATOR WRIGHT: Well, Senator, what I believe what we're attempting to do with this bill is establish that multilane interstate highway which that you referred to. And once that's established, then be it a school district or a hospital or a residence, the individual neighborhood or individual residence of a neighborhood, then have a second series of access questions that we have to address.

But prior to reaching that second series of questions, we need the actual highway or infrastructure in place. And in the rural regions of the state, that does not exist at all. We believe that that needs to be documented, we believe that there needs to be alternatives explored on how that system or

that highway we're referring to becomes in place and can be utilized, whether it's done through a system of fiber optics, whether it's done through wireless, whether it's done through some combination thereof, there truly needs to be a system and infrastructure in place.

That's what we're trying to focus on first, because without an initial infrastructure being in place, the secondary question is really moot at that point.

SENATOR PATERSON: Thank you, Mr. President. I appear to be a little bit of ahead of myself. But if Senator Wright would yield for another question.

ACTING PRESIDENT MEIER: Senator Wright, do you yield?

SENATOR WRIGHT: Thank you, Mr. President. I would never accuse the Senator of being ahead of himself.

ACTING PRESIDENT MEIER: I believe he yields.

SENATOR PATERSON: Mr. President, my question relates to the information that we are to derive out of the study. I get the

impression that this is a study in which even just a cursory examination of the issue would reveal that it's going to demonstrate more specifically that which we already know, which is that many of the facilities of the regions in the rural communities are not connected to the Internet as readily as we would like them to be.

Senator, what would we be proposing to do with the information when we actually complete the study?

SENATOR WRIGHT: Well, it's our intent to do several things. First of all, in many instances we're talking about proprietary information that is held by the telecommunication providers.

So while I think we can generically agree or acknowledge that what is known as the concept of "digital divide" and has been articulated across this nation as it reflects rural communities, while we know that New York is not unique compared to other areas of the nation, what we don't know are specific locations, capacities that are in place. And that's what we're attempting to identify.

We utilize the Public Service Commission because they in turn frequently are dealing with proprietary information of these private companies. So while we're not looking to put them at a competitive disadvantage, we do need to have that information available so that we can plan and design an appropriate system.

Speaking to that issue, you've had a -- we've had a report prepared. It was chaired by the Lieutenant Governor, who unfortunately isn't here with us now, was earlier, identifying New York's priorities across the state under the Quality Communities Interagency Task Force. And one whole area of that task force report deals with using technology to distribute information, create development tools, and eliminate barriers to quality development.

So we believe that when we can ascertain the technical, detailed information from the communities that will identify what is in place and what is available, we can then design the necessary priorities to move ahead and develop a cohesive policy that will

encourage and facilitate a private and public partnership to facilitate expansion of that information highway.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT MEIER: Senator Paterson.

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

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

SENATOR WRIGHT: I will, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Mr. President, will the study be comprehensive in the sense it will inculcate itself into all the different regions of the state that we would describe as being rural? Or will it be kind of the dialectic study where we would assume that there isn't a variance between different neighborhoods and different counties around the state to the extent that we might only conduct the study in a few areas that the

Senator might want to be specific about and conclude from that what the alternative plan that the Senator laid out for us just a moment ago would be?

SENATOR WRIGHT: No, I do not anticipate that it would be limited to a few exclusive areas. But it would cover all of the regions of the state.

ACTING PRESIDENT MEIER: Senator Paterson.

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

ACTING PRESIDENT MEIER: Senator Wright, do you yield?

SENATOR WRIGHT: I will.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Senator, preliminarily, just even including the entire country, are you aware of any studies that have created that comparison between those providers who, in a rush to accommodate telecommunications services, have moved right into the more heavily populated areas and have eschewed the opportunity to cover the country

as a whole?

Do you have an idea of what the breakdown or what the lessened opportunity has been for people who live in the rural areas, not only if it's been done in this state -- I assume not -- but just nationally?

SENATOR WRIGHT: I can't cite a specific study, because I've simply not done that in terms of reviewing studies. But if one spends any time all reading the literature involving the telecommunications industry, you'll find that there's extensive discussions of the concept of the digital divide and the delineation between urban centers and more metropolitan areas and rural areas in their ability to access high-speed, wide-band capacities.

That concept of digital decide is not unique to New York or the Northeast, but in fact is nationwide. A number of states have looked at different approaches. There's even a concept of community ownership of a fiberoptic network system being implemented in some areas of the nation as well as some regions of this state, simply to have a

community investment to facilitate the participation of the private sector, which typically starts with primary markets, those being the major metropolitan areas.

And if you look at our state, that same phenomenon holds true, starting in the city, working north along the -- literally, the Thruway corridor, moving north to the Capital, then taking a left-hand turn and moving west across the state, again following that Thruway corridor to Buffalo.

So that you find that Buffalo, Rochester, Syracuse, Albany, Utica, and then further south, down to the city, you'll find that you have a high degree of access there. You find that there are multiple private sector providers competing with one another. You go into the more rural regions of northern and western New York, and you'll find that there are very limited providers, very limited access.

So we're trying to document exactly what's available, trying to develop a strategy that will enable those rural regions of the state to participate in the same way that the

primary markets of this state have.

And as we've met with telecommunications providers in the state, you know, they acknowledge the fact that they're going to focus on the primary markets initially, then they'll be moving into secondary markets.

Unfortunately, when you live in areas that are in the tertiary market, you know that you're going to be waiting a long time. And with the technology changing as rapidly as it's changing now, we don't believe that we should be waiting that long. We need to facilitate and encourage that investment.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Wright would be willing to yield for another question.

SENATOR WRIGHT: Yes, I will, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Senator, I'm in favor of this report.

The question I guess I want to ask you is that in the meetings with telecommunications companies and the like, they've indicated that this was their plan all along. So is the nexus of the report the idea to accumulate information to kind of speed the plan up?

Because otherwise, I would wonder why we were going to do a report if the needs of the marketplace serving priority to the initial and secondary markets and then eventually getting around to the tertiary markets would actually relieve themselves just by the inertia of commerce.

So the real desire of this report to document the information to in a sense force the industry to speed it up a little bit?

SENATOR WRIGHT: Yes.

SENATOR PATERSON: If the Senator would continue to yield.

ACTING PRESIDENT MEIER: Senator Wright, do you yield?

SENATOR WRIGHT: I will.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR PATERSON: Senator, I'm just curious about the report itself and its deadline.

Will -- since I thought that you would probably use some sample counties, and you enlightened me to the fact that we're going to try to go into all the rural areas around the state, would February of 2002 be adequate time to accumulate that amount of data?

SENATOR WRIGHT: I believe so, yes.

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

SENATOR WRIGHT: I will.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: When we are able to access what would be the mechanisms or, as I have now learned, the apparati with which we might actually transfer this kind of information to try to get the systems more in line with each other, is there going to be any replication of effort?

In other words, wouldn't it have been more prudent and still commercially successful to have connected all of the regions originally in the same system? Or is the compliance with the system that is already in place going to be more difficult given the fact that the technological increases are probably going to be sent to the cities and the initial markets while we on the back end are just beginning to connect some of the tertiary markets?

SENATOR WRIGHT: I guess I kind of lost the point of the question, Senator.

SENATOR PATERSON: Well, Mr. President, the point of the question is by the time the train gets to some of our rural areas, wouldn't some of the technological advances be again directed back to the cities, in a sense almost eliminating the value of trying to connect some of these areas that have not been addressed?

SENATOR WRIGHT: No.

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

ACTING PRESIDENT MEIER: Senator

Wright, do you yield?

SENATOR WRIGHT: I will yield.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Then I guess my final question -- and I want to thank Senator Wright for his patience with me -- is just in terms of the whole scope of the region. I got the impression that you were not as alarmed as I would be hearing that the industry was in a sense taking its time, as I see it, and ignoring people that live in rural communities, as I would not want them to do.

Senator, are you assured enough by them to feel that they're addressing this quickly enough? Because they don't seem to be doing it minus this report.

SENATOR WRIGHT: No, I'm not assured that they're moving ahead enough, which is why we're moving ahead with this initiative, why you see the Lieutenant Governor leading the effort to focus on telecommunications and those rural issues, why you see the administration working through the Office of Technology to move ahead on these

issues.

We recognize that the companies, certainly while we're looking at broader public policy initiatives, they are looking at it from a commercial-venture standpoint where they have an investment that has to be made. That capital investment has to be subject to prudent management decision-making and receptivity to their shareholders. All of which is the standard, typical private-sector model that works so well in New York State and other states.

However, that does not preclude our ability to encourage, to incentivize, to move ahead and try to establish broader public policy goals that we believe are in the best interests of the state and believe are in the best interests of the people in various communities of the state.

There are a number of examples in the past where the state has done that. In fact, the Senator is very well informed as he speaks about the electricity and that being extended throughout this state and the nation through a rural electrification program,

similar activities done with telephones and now, of course, the Internet and the whole aspect of information technology.

So as we continue to advance that, there's a long history of precedent where government has partnered with the private sector when the private sector would not necessarily be in a position to commercially advance these endeavors. So that is the justification or part of the rationale for why we're moving ahead with this report.

And I appreciate the Senator's cooperation and questions this afternoon.

SENATOR PATERSON: Thank you, Mr. President. And kudos to Senator Wright for his work on this issue and informing us this afternoon.

If I may speak on the bill.

ACTING PRESIDENT MEIER: Senator Paterson, on the bill.

SENATOR PATERSON: Senator Wright is, I think, very balanced in his approach and I think is a little more patient with some of the telecommunications professionals in the industry than perhaps I am.

And the reason just is that at the same time that these companies have a real bias for geographic location -- and listen, I live in New York City, so I would be a beneficiary of that bias at times. New implementations come to our areas before they get to other areas.

But at the same time, it's interesting that, for instance, in the telecommunications in New York City, we are paying the same rates as our neighbors are in New York City, but let's take cable, for instance. We've been hearing about changes that are supposed to come to the neighborhood that I live in, and I meet with the telecommunications people, they have a dinner up here every year and they tell us about the new advances and how they're coming. But they still haven't gotten here.

And I've been hearing about these things for about three years, about how you will actually want to go on the cable to speed up Internet access, that they can move faster than some of the providers, but this exists in some parts of the city and it doesn't in

others. Yet at the same time, they will take your billing register just as quickly.

And so what I'm pointing out is I want to see a little more of a hurry. I'm very happy that Senator Wright is doing this study, and I hope it will be a precursor to a different study that addresses individuals, homeowners, people that live in apartments, people that are coopers who are hoping to receive the same type of service and don't want to wait two and three and four years to see it provided because the industry is making money.

Now, we have nothing against the industry making money. But we as public servants have an opportunity to regulatory that. But they're not going to take huge amounts of payments from people when they haven't provided adequate services that they've provided to others based on where they live or how profitable it is for the actual company. Certainly, left to the marketplace, we understand that.

But that's why we have established commissions, to try to make sure that the New

York State taxpayer gets equal services regardless of the geographic location where they live, regardless of the neighborhood where they live, regardless of the economic plight of the people who live in the neighborhood with them.

So I'm in favor of this bill. But in the same way that Senator Wright and we as the Legislature are going to encourage the industry to speed it up a little bit and create access to the different mechanisms around the state, I want to encourage us as well to make sure that we do everything we can in our power to hasten the day when every resident of this state will receive the same type of services for the same money that we're spending every month when we get a bill from the cable company, an Internet provider, or some other service that is providing greater services in other parts of the state.

ACTING PRESIDENT MEIER: Senator Duane.

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

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

SENATOR WRIGHT: I will, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Is the study designed to find out a way to do this at any cost? Or are they authorized to come to a conclusion -- I mean, in other words, does it matter how much it costs, or are they directed to just do it at any cost?

SENATOR WRIGHT: Well, the Public Service Commission is directed to do the study and we believe in conversations that that can be done at a reasonable cost.

SENATOR DUANE: Through you, Mr. President, to just get a clarification, I don't mean the study and how much that would cost, but I mean the cost that would be incurred through its mission.

SENATOR WRIGHT: Well, that's the intent of the study, to try to identify the system that is in place and then to offer a series of recommendations.

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

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

SENATOR WRIGHT: I do, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: And so those conclusions will also have a dollar sign attached to them?

SENATOR WRIGHT: I don't know that for a fact. The language of the bill does not specifically require that.

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

ACTING PRESIDENT MEIER: Senator Wright, do you yield?

SENATOR WRIGHT: I will, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Might it not,

though, be important to know how much it would cost for the different proposals that might come as a result of the study?

SENATOR WRIGHT: Well, it certainly would be germane to the decision-making when it comes to implementing those recommendations, but not viewing the recommendations in and of themselves.

So I'm sure before anyone, be it the administration or this legislative body, made a decision on implementation, there would certainly be numbers tied to them.

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

ACTING PRESIDENT MEIER: Senator Wright, do you yield?

SENATOR WRIGHT: I will, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Would that require another study?

SENATOR WRIGHT: I don't believe so.

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

SENATOR WRIGHT: I will, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Then who would be responsible for telling us what that cost would be and how would they going about finding out the cost?

SENATOR WRIGHT: Well, since I don't know what the recommendations are going to be, it's rather difficult to predict how that would be done.

But since both houses have fiscal committees and the administration has a budget office, I believe the wherewithal would be there to establish the cost.

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

SENATOR WRIGHT: I will, Mr. President.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR DUANE: Is there an Assembly sponsor for the bill?

SENATOR WRIGHT: We are currently having conversations with the Assembly on that issue. Last year it was sponsored by Assemblyman Vann. We're currently speaking with the Speaker's office in terms of a sponsor this year.

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

SENATOR WRIGHT: I will.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Thank you.

Could the sponsor maybe just list the advanced telecommunications that we're talking about here?

SENATOR WRIGHT: Well, essentially we're talking about, in the broadest sense, access to the Internet and the ability to access high and wide-band fiber optics.

SENATOR DUANE: And through you,

Mr. President, if the sponsor would continue to yield.

SENATOR WRIGHT: I will.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Is the sponsor aware of anything that's being done at the county level to deal with this issue?

SENATOR WRIGHT: Yes. In fact, there are several counties in the state that are pursuing this same type of initiative.

They in fact have asked for and are seeking funding in the budget to develop local strategies to begin implementing this kind of initiative. They are supportive of our initiative, feeling that one supplements the other and that we have a mutual focus on telecommunications.

We've been having those conversations with the State Economic Development Council, which represents economic development agencies at the county level across the state.

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

yield.

SENATOR WRIGHT: I will, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I'd like to ask the same question about federal efforts on this, if this is envisioned to dovetail off the federal efforts on expansion of access.

SENATOR WRIGHT: It certainly would be compatible. I'm not aware of any specific federal effort at this particular point in time.

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

SENATOR WRIGHT: I will, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: In light of the regrettable circumstances which we had last week about a report not being accomplished on time, I'm wondering what would happen in this case if the report is not done on time.

SENATOR WRIGHT: I suspect it would be deemed late.

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

ACTING PRESIDENT MEIER: Senator Wright, do you yield?

SENATOR WRIGHT: I will, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Is there any punishment associated with that? Does the law -- I mean, what's the point of passing the law, then?

SENATOR WRIGHT: Well, I think the point is that we're articulating our expectations. And I think that our expectation is that that will be met with in good faith.

And it's been my experience in previous legislation that I've initiated that has a deadline, those deadlines have been met.

As you can tell by reading the bill, there is no specific penalty if it is

late.

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

SENATOR WRIGHT: I will, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Could this kind of a study have just been done at the request of the Governor?

SENATOR WRIGHT: That's possible.

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

SENATOR WRIGHT: I will, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Had that possibility been explored before the bill went to the Committee on Energy and Telecommunications?

SENATOR WRIGHT: No.

SENATOR DUANE: Through you, Mr.

President, if the sponsor would continue to yield.

ACTING PRESIDENT MEIER: Senator Wright, will you yield?

SENATOR WRIGHT: I will, Mr. President.

ACTING PRESIDENT MEIER: He yields.

SENATOR DUANE: Is it envisioned that the study would have a component of public hearings?

SENATOR WRIGHT: The bill does not call for that.

SENATOR DUANE: Through you, Mr. President, would the sponsor continue to yield?

SENATOR WRIGHT: I will continue to yield.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: The sponsor indicated that there had been conversations with the Public Service Commissioner. I'm wondering whether the issue of public hearings ever came up in those discussions.

SENATOR WRIGHT: I don't know. I didn't have the discussions.

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

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

SENATOR WRIGHT: I will, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Would it be appropriate to ask who did participate in the discussions, if not the sponsor?

SENATOR WRIGHT: It would be appropriate to ask.

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

SENATOR WRIGHT: I will continue to yield, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Then I'd like to be so bold as to ask who was involved in those

discussions.

SENATOR WRIGHT: I believe it was a member of my staff.

SENATOR DUANE: Thank you, Mr. President.

Thank you.

SENATOR WRIGHT: Thank you.

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 Wright, do you yield?

SENATOR WRIGHT: I will yield.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Thank you.

My question really relates to the sponsor's earlier statements and the colloquy with Senator Paterson. I'm not sure I understand what you're talking about when you talk about the need for the development of a backbone for the rural areas. And I must admit I know something about the Internet and

law relating to the Internet; I really don't know what the situation is in the rural areas of New York State.

But is the situation relating to telephone cables, the need for T1 or T3? Does it relate to satellite access? What does it mean when you say we have to investigate what we need in the way of a backbone?

SENATOR WRIGHT: Well, what we're talking about is ensuring that rural areas have the same access to the higher levels of technology, the DSLs and other areas of technology that currently exist in the urban areas. They are typically not made available to the rural areas.

That can be in the form of fiberoptic access, but it equally can be in the form of wireless, satellite, et cetera.

SENATOR SCHNEIDERMAN: Through you, Mr. President. I guess my question is this. Anyone who has access to a telephone, as far as I'm aware, has access to the Internet. And we actually do have a very serious problem, which Senator Paterson and others have mentioned, in urban areas that I

think we may need to address in this or a similar bill.

And my question really is aimed at identifying the difference. Is the difference really in the access to telephone services in rural areas?

SENATOR WRIGHT: No, it's not a question of access to phone service. Certainly rural areas have access to phone service and, by virtue of that. You have access to dial-up service, which of course is slow and expensive.

As opposed to the high, wide-band technologies that are available, and as a result you have much quicker utilization, much quicker access, you can move a great deal, particularly data. So it becomes very critical to businesses that are trying to compete, trying to move video, trying to move data, that, while to varying degrees that can be done, it cannot be done at the same speed and the frequency that exists in more sophisticated, higher levels of technology.

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

continue to yield.

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

SENATOR WRIGHT: I do, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Well, I think that that answer really underlines the concern that I have with this bill.

This is a bill that is limited to rural areas, finding that persons -- it says the Legislature finds that persons living in rural areas may not have access to advanced telecommunications services and capabilities.

The difficulty I have is that in most of the poor communities in the cities of our state, they do not have access to ISDN, they don't have access to broadband service or -- well, broadband doesn't really exist, but T1 or T3 cables.

And I'm not sure that we're not suggesting by this bill that it's a problem in rural areas that is not a problem in urban areas. And I still must say if we're not

talking about telephone service, I don't really understand what the difference is between a poor community in the city, where all that's available is dial-up, and a rural community where all that's available is dial-up.

Is there some difference I'm missing?

SENATOR WRIGHT: I'm not sure what you're missing, Senator.

SENATOR SCHNEIDERMAN: Well, through you, Mr. President, if I may follow up.

ACTING PRESIDENT MEIER: Senator Wright, do you yield to a follow-up question?

SENATOR WRIGHT: I do, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: My point is -- and I appreciate the fact that, you know, the sponsor represents a predominantly rural area and is concerned about the need of those communities for Internet access.

My concern is that if we pass a

bill with a legislative finding that persons living in rural areas may not have access to advanced telecommunications services, it sounds -- it suggests that we do not have the same concern for people in urban areas.

And I guess my question is, is there any difference between someone in a poor urban community who only has access to dial-up services and someone in a rural community that only has access to dial-up services that would necessitate us making that distinction in this bill?

SENATOR WRIGHT: Well, I don't know, Senator, I've not had the occasion to compare the two. What I have been doing is focusing on the literature and the issue that speaks to the concept of the digital divide focusing on the rural communities, thereby the origin of this bill.

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

ACTING PRESIDENT MEIER: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I think this is a bill to address a tremendously

important problem. I think, though, that the issue that has come out through these questions -- and again, I think Senator Wright is doing a good job for his constituents.

I would urge, though, that in his capacity as our leader on issues of telecommunications, you take a look at the fact that this bill expresses a concern about rural communities that as far as I can tell is a concern that exists for a far larger number of New Yorkers who live in poor communities in our urban areas.

And the story of access to cable is still something that we're dealing with in the City of New York. I mean, there was a tremendous difficulty in any of the predominantly black or Latino neighborhoods of New York City getting cable in. I remember at one point we discovered that there was an illegal cable operation going on in the South Bronx because none of the regular cable-service providers would provide cable services, as they were on some long timetable that was constantly delayed. The way we found out about the guerilla service was that they

were the only people who could install cable in the office of the local congressman and state legislators.

So the problem of access to telecommunications in poor and predominantly minority communities is very serious. And if we're going to undertake a study like this for rural communities to find out what is required for them to have access to this, I would urge that we also consider communities in urban areas that may face very similar problems.

I think that if you look at the provision of Internet technology in the City of New York, you will find that Senator Wright is absolutely correct, there are many major businesses that have access to ISDN lines, they have their own cable wiring system, they have faster access. Most people who live in the city who live in poorer communities do not have such access. Most of the small businesses in poorer communities do not have such access.

I think the problems addressed here are equally present in the city and in many suburban areas as well. And I think that we

would be doing ourselves a disservice if we only have a study by the Department of Public Services of rural areas. I don't think it would be that much more difficult to expand this to include suburban and urban areas. I think it would probably save money, because rather than conducting two separate studies, perhaps they could do it all at the same time.

And also, I think that the solutions for this problem, to the extent that we want to provide some incentives for the private sector or provide some direct government investment in some of these technology services, I think you'll find it much more cost-effective, much easier to influence industry to partner with us if we are including the areas with larger populations as well.

So I commend you for looking into this. I just would urge that such a study be expanded. And I think it can be, even without legislation, to include urban and suburban communities.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Does any

other member wish to be heard on this bill?

Senator Malcolm Smith.

SENATOR MALCOLM SMITH: Thank you, Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Malcolm Smith, on the bill.

SENATOR MALCOLM SMITH: I believe that Senator Wright's intentions as well as the bill itself is a good one. There's no question about that.

But I believe my colleagues, Senator Paterson, Senator Schneiderman, raise an issue which is very real for us in New York City, and that is that there many neighborhoods in our area where we are struggling now to get basic service to them, whether it is the Internet, access to even DSL, which is not accessible in some of the areas of our community.

I also believe that if Senator Wright takes the time and -- not that he has not listened to some of the business entities that are probably the ones that are pushing this particular issue, because as you know, the Internet now becomes a market access

instrument more so than just information. And I think if he approaches it that way, he will also find out that the businesspersons throughout the entire state would be more than happy to have this type of study conducted, not only in the rural areas but also in the downstate area.

Because the entire access to information today, while at one point it was a commodity, is now a way of life. And the information that one can receive and have access to is clearly a wonderful business market for many business entities throughout this state.

Upstate New York, while it is suffering in an economic way, clearly having access to rural customers upstate and having access to more customers downstate will put businesses upstate at a very supportive situation as it relates to trying to do business throughout the State of New York.

I think it's a good bill. I think there's no problem with it, and I think Senator Schneiderman is right. My research tells me that once this bill is passed, it

really does not require further legislation to make the study beyond just the rural areas but that it can also be promulgated just through administrative agreement within the PSC, and they will go further and expand this.

So perhaps, Senator Wright, if it is okay with you, upon passage of this -- and obviously I'm not sure if it passes both houses. But if we can do a letter, not only supporting your bill and explaining why we have supported the bill, but also asking that the PSC take the study beyond just the limits of just the rural areas and also does it throughout the State of New York.

Thank you.

ACTING PRESIDENT MEIER: Any other member wish to be heard on the bill?

Debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Senator Fuschillo's bill, Calendar Number 290.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 290.

THE SECRETARY: Calendar Number 290, by Senator Fuschillo, Senate Print 1070, an act to amend the Vehicle and Traffic Law, in relation to increasing fines.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Fuschillo.

SENATOR FUSCHILLO: Can I ask who requested the explanation?

ACTING PRESIDENT MEIER: Senator Fuschillo, Senator Paterson has asked an explanation.

SENATOR FUSCHILLO: Thank you, Mr. President.

The bill increases the penalties for repeat alcohol- and drug-related driving offenses. Specifically, it would raise the

minimum find from $1,000 to $2500 -- the maximum fine of $5,000 is unchanged -- when a person convicted of DWI or driving while his ability is impaired.

The bill also increases the license revocation period from one year to two years and adds a new section which would have a permanent disqualification for repeat offenders.

As stated, the bill targets repeat DWI offenders. The national rearrest rate of DWI offenders is approximately 31 percent, whereas in New York State it's about 52 percent.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. And if Senator Fuschillo, my friend, will yield for a question.

ACTING PRESIDENT MEIER: Senator Fuschillo, do you yield?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Senator, would

you define for us the difference between a permanent license revocation and a permanent disqualification? Because for the life of me, I don't know the difference.

SENATOR FUSCHILLO: Yes, I will. Through you, Mr. President, the changes, Senator Paterson, in this is a permanent disqualification for repeat offenders who have been convicted two times previously within the last 10 years. What we did in the bill was gave the Commissioner of Motor Vehicles the discretion after 10 years, if there's no violation of the VTL, to allow for a probationary license given back to the individual, solely at his discretion.

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

ACTING PRESIDENT MEIER: Senator Fuschillo, do you yield?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Senator, I'm interested in perhaps the last time that the

amount of the fine was raised. Because we're going to increase it by 250 percent here, and I just wanted to know when was the last time we did this.

Because I don't think anyone would really ever vote against an increase in the fine for that type of violation. But if we did this recently, I would wonder why we're doing it again. I'm just a little hesitant about piling on. We have an offense, we have a punishment for it, and I just want to make sure we're not just relegislating issues that we've already addressed.

SENATOR FUSCHILLO: Senator, which part are you referring to?

SENATOR PATERSON: The increase.

SENATOR FUSCHILLO: From $1,000 to $2,500?

SENATOR PATERSON: Right.

SENATOR FUSCHILLO: Senator, I don't have that information, but I'll be happy to supply it to you when I get it.

The bill did pass last year, Senator, but one member did vote against it as well.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: For the moment, Mr. President, we're kind of -- what I'll do is -- I think that completes my questioning for the time being of Senator Fuschillo.

ACTING PRESIDENT MEIER: Senator Schneiderman.

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

ACTING PRESIDENT MEIER: Senator Fuschillo, do you yield?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: I want to understand what the sanction for permanent license revocation really means. Is it any different from a permanent disqualification?

SENATOR FUSCHILLO: Through you, Mr. President. Senator, in the sense that after a 10-year period, the Commissioner does have discretion to issue a probationary

license after a 10-year period.

SENATOR SCHNEIDERMAN: And through -- oh, I'm sorry, I didn't mean to interrupt.

SENATOR FUSCHILLO: Not a problem.

SENATOR SCHNEIDERMAN: Through you, Mr. President, then I gather that under the current law there's no provision -- is there a provision for any kind of a revocation in this?

SENATOR FUSCHILLO: Permanent, Senator? No.

SENATOR SCHNEIDERMAN: Because it doesn't seem to me in reading this that this permanent revocation really is necessarily permanent. Is there a provision currently for a different type of revocation?

SENATOR FUSCHILLO: There is a permanent -- let me just look at the law, Senator. In reading the bill, there is a revocation for five years for a different type of license, for commercial vehicles only, right now under the current law.

SENATOR SCHNEIDERMAN: Through

you, Mr. President.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: So just so I understand, the current law is five years, but limited to commercial licenses. So for noncommercial licenses in the current law there is presently no provision for revocation?

SENATOR FUSCHILLO: Right. Suspension, Senator.

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

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

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: I think that again, as Senator Paterson has stated, it's hard to oppose increasing penalties in this area.

But I wonder if in addition to the

emotional and moral aspect of this, is the sponsor aware of any study or report that indicates that increased sanctions and fines actually have reduced the incidence of drunk driving in other jurisdictions?

SENATOR FUSCHILLO: Through you, Mr. President, the National Transportation Safety Board has issued statistics. And, Senator, I'd be happy to provide you with them at any time.

I believe since the early '80s, when the Mothers Against Drunk Driving made this a priority of theirs and fought for greater laws throughout the country, the statistics have shown that greater penalties have decreased the incidence.

SENATOR SCHNEIDERMAN: Thank you. Through you, Mr. President, I just want to make sure I understand one other point, if the sponsor would yield for another question.

ACTING PRESIDENT MEIER: Senator, do you yield?

SENATOR FUSCHILLO: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: You drew a distinction earlier between commercial licenses and noncommercial licenses. Now, as I read this, most of the language, the specific language relating to commercial motor vehicles is left intact in the statute. Does the provision for a permanent disqualification or permanent revocation apply to commercial licenses?

SENATOR FUSCHILLO: Through you, Mr. President, no.

SENATOR SCHNEIDERMAN: So if I understand correctly -- again, through you, Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT MEIER: Senator Fuschillo, do you yield?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Someone who has a commercial license and drives as a part of their job -- and in a real sense is under tighter state control because it is a business enterprise and potentially is, you

know, subject to more pressure for those reasons -- really now would face a lesser sanction than a private driver if this bill was passed; is that true?

SENATOR FUSCHILLO: Senator, the bill specifically deals with noncommercial.

SENATOR SCHNEIDERMAN: But through you, Mr. President, if I understand correctly, then that the result of this bill that only deals with noncommercial is that commercial drivers who had problems with DWIs would actually be subject to less punishment than noncommercial drivers; is that correct?

SENATOR FUSCHILLO: Senator, the changes deal strictly with noncommercial vehicles.

SENATOR SCHNEIDERMAN: Is there any reason -- and it doesn't sound like there is, but I must ask the question, if the sponsor would continue to yield, is there any -

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

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR SCHNEIDERMAN: Has there been any determination or is there any reason for restructuring the law so that the penalty for drunk driving when you're a commercial driver is now going to be less than for a private driver?

SENATOR FUSCHILLO: No, Senator. Again, we were dealing only with noncommercial vehicles when drafting the amendments. But this has been a bill that's come before this house for many, many years. My predecessor, Senator Levy, chairman of the Transportation Committee, had pushed this through for the Senate. And myself, when I was elected. But again, we were dealing strictly with noncommercial vehicles.

SENATOR SCHNEIDERMAN: All right. Thank you very much.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I think that, you know, we are in the glorious day of the activist Legislature here. And as Senator

Connor pointed out earlier, bills that have been sliding along with little inspection or questioning now in this bright new post-enlightenment realm are getting some scrutiny.

And I think that I voted for this bill last year. I certainly don't oppose the notion that there should be enhanced penalties for noncommercial drivers. But it does strike me as a bizarre twist of public policy in the State of New York that a commercial driver who is driving to make money, pursuant to a business, working for a corporation, would be subject to a lesser standard than a private driver who, you know, presumably has to get around for all of their personal business of life.

I mean, if anything I think those who would come into New York State, operate commercial vehicles, make use of our highways for profit-making enterprises, engage in business activities in their capacity as drivers, really if anything should be subject to a stricter standard. And I'm afraid that, intentionally or unintentionally -- and we all

share in the blame for not having more closely examined this in past years -- I think this bill will produce that sort of an anomaly. And I think it's unfortunate.

I would urge that this gets some attention. It may be that in the unlikely circumstance this bill does not pass the Assembly in its precise current form, and we have a chance to look at it again, Senator Fuschillo perhaps -- I don't mean to distract you from more conversation. Well, or less interesting conversation -- Senator Fuschillo perhaps could take a look at this anomaly and if this doesn't pass the Assembly, maybe we could broaden it to deal with that problem.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Montgomery, and then Senator Duane.

Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President.

There's some confusion for me that I would like to have clarified, if I could.

I have information here that says that there are some -- in 1997, this is a

little bit outdated, but nonetheless the staff has supplied me with this information. In 1997, an estimated 513,200 offenders were on probation or in jail or prison for driving while intoxicated by alcohol.

So my question, if the Senator would yield, Senator Fuschillo would yield for my question -

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR MONTGOMERY: Okay, thank you.

My question to Senator Fuschillo, through you, Mr. President, is I'm confused about what is the meaning of this legislation vis-a-vis the fact that hundreds of thousands of offenders are already serving time in one way or another. So there seems to already be some kind of a conviction that people receive, and so you're now removing their license - Senator Fuschillo is removing their license, for some of them permanently.

So I'm just trying to figure out

how these two pieces fit together, removing the license as a punishment as well as or instead of arresting and incarcerating people for similar offenses.

SENATOR FUSCHILLO: Through you, Mr. President. Senator, I don't know where you receive your statistics from, but I stated when I opened up regarding the bill that the national rearrest rate is approximately 31 percent and in New York State it's approximately 52 percent. And the overall statistics of arrest rates have declined in the past decade.

But what we're trying to do is here is to strengthen the anti-DWI laws and take them off the road. Because as I said to you, 52 percent in New York State are being rearrested.

SENATOR MONTGOMERY: Through you, Mr. President.

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

SENATOR FUSCHILLO: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR MONTGOMERY: Thank you.

So does that mean, then, that the current law that we have which requires a jail or prison term for DWI people is not enough? In other words, we now -- we can at this point in time charge them with criminal behavior, based on the laws that are on the books now. They can be jailed, they can go to jail, they can go to prison under certain circumstance. But that still is not enough.

So, Mr. President, my question is do we still need further action; i.e., removing their license permanently?

SENATOR FUSCHILLO: Through you, Mr. President. Senator, in 1999 there were approximately 19,000 DWI arrests. There were approximately 26,000 driving while impaired arrests.

Now, I think that we as a legislative body and we as a state constantly have to review these laws and make them as strong as possible. So I do think there's a strong desire for it, yes.

SENATOR MONTGOMERY: Mr. President, if Senator Fuschillo would continue

to yield.

ACTING PRESIDENT MEIER: Senator Fuschillo, do you yield?

SENATOR FUSCHILLO: Yes, I will.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Okay, thank you.

Senator Fuschillo, the other question that I have for you is I note that the large number of DWIs or at least a percentage of the DWIs are in areas upstate, sort of the rural areas, suburban areas, many of them in places where one is required to use a vehicle when they are trying to get to and from work.

So I'm just wondering if you have -- in addition to suspending the license, if there is a strong enough program of other incentives so that people essentially don't lose completely their capacity to drive, since they need to drive, but have some access to some counseling, some kind of remediation of their driving behavior.

Is that -- I'm just wondering if

you thought about using that as a means of addressing this issue, as opposed to removing their license permanently.

SENATOR FUSCHILLO: Senator, you know, once again, this bill specifically deals with raising the fines and adding a new section. There are state-run programs, Senator, that deal with that. But this bill is limited specifically to the fines and the permanent revocation.

SENATOR MONTGOMERY: All right. Thank you, Senator Fuschillo.

SENATOR FUSCHILLO: Thank you.

SENATOR MONTGOMERY: That sort of answers my question.

And on the bill, Mr. President, I certainly can identify with and I am in agreement that we must address the issue of people who drive while intoxicated. I just - I'm just careful. I think that we need to proceed carefully since, in some areas of our state in particular, there basically is no transportation system. And if there is, even in places where there is a transportation system, very often it shuts down at an hour

that leaves many people unable to get to jobs unless they have access to their own personal transportation.

And I would further add that I'm certain that a large percentage of our DWIs, especially the ones that are most lethal in their outcome, are very young drivers. So there is a possibility that we can remediate their behavior, we can address the way that they are engaged in sometimes what ultimately is -- what I consider to be suicidal behavior without penalizing them in a way that essentially jeopardizes their ability to support themselves and their families, to get to school, to get to their jobs and so forth and so on.

So I am going to support the legislation. I wish that we had another section in here that talks about looking at alternative programs to address the source of the problem as opposed to just addressing the problem. So perhaps, Senator Fuschillo, we can -- Mr. President, we will come -- Senator Fuschillo will come with another kind of bill at some point that will help us address the

problem on the other level.

But I certainly will vote yes on this particular bill. Thank you.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: Thank you, Mr. President, if the sponsor would yield.

SENATOR FUSCHILLO: Yes, I will.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: There was discussion about this not passing the Assembly, only the Senate. Does the bill in fact have an Assembly sponsor?

SENATOR FUSCHILLO: Yes, it does, Senator.

SENATOR DUANE: And through you, Mr. President, if the sponsor would yield -

ACTING PRESIDENT MEIER: Senator Fuschillo, do you yield?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: -- and share with us who that is.

SENATOR FUSCHILLO: Assemblywoman O'Connell.

SENATOR DUANE: And if the sponsor would continue to yield.

ACTING PRESIDENT MEIER: Senator, do you yield?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I'm wondering if the sponsor has any statistics on what the numbers are of repeat drunken drivers.

SENATOR FUSCHILLO: Yes, I do. Through you, Mr. President. Senator, convictions in 1999 in New York State, 18,069 for DWI. For DWAI convictions in 1999, 25,956.

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

ACTING PRESIDENT MEIER: Senator Fuschillo, do you yield?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Is that broken down by drugs and alcohol and combination?

SENATOR FUSCHILLO: The driving while ability is impaired is, but the DWI is strictly driving while under the influence.

But the statistics I have, Senator, are broken down as far as the priors, were there any priors and, if there were, how many were there.

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

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR FUSCHILLO: Yes, I do.

SENATOR DUANE: Have the -- has the State Police weighed in on the bill?

SENATOR FUSCHILLO: With regard to what, Senator?

SENATOR DUANE: Whether they support the bill or not.

SENATOR FUSCHILLO: I have not spoken to the State Police, but I'm confident they would support the bill. Anything to help them, Senator, I'm sure would be welcome.

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

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: And how about DAs or judges, have they weighed in on the bill?

SENATOR FUSCHILLO: We've conferred solely with MADD, Mothers Against Drunk Driving, who have worked with us on this, Senator.

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

ACTING PRESIDENT MEIER: Senator Fuschillo, do you yield?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Were there hearings on this bill?

SENATOR FUSCHILLO: No, Senator. This bill has -- again, since I've been in the Senate, we've introduced it for the three past

previous years. But I know my predecessor, Senator Norman Levy, has had it for many years as well, and he was chairman of the Transportation Committee.

I have not had any hearings, and I don't know if he had any.

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

SENATOR FUSCHILLO: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: In that the fine is being raised to $2,500, or the potential fine is being raised to $2,500, could the sponsor tell me where the extra money would go, of the fine would go? Does it just go into the general fund or -

SENATOR FUSCHILLO: State general fund, I believe, Senator. I'm being advised the state general fund.

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

ACTING PRESIDENT MEIER: Senator,

do you yield?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Does the sponsor think there might be -- since the bill may not have had as much attention recently as in Senator Levy's days, do you think it would make sense to have some or all of that money go towards treatment or deterrence?

SENATOR FUSCHILLO: It may be a possibility, Senator. We'll be happy to look into that.

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

SENATOR FUSCHILLO: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Has there been any consideration of requiring ignition locks, the technology of making sure that a person hasn't been drinking before they can start the car up?

SENATOR FUSCHILLO: Senator, this

bill is specific with its intent. I know that there are bills introduced in the Senate that deal specifically with that issue. When it comes about, I'd be happy to discuss that with you.

SENATOR DUANE: Through you, Mr. President, if the sponsor would be willing to yield.

ACTING PRESIDENT MEIER: Senator, do you yield?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: The reason I raised that is that in this bill has been around for quite a while and the technology of ignition locks, you know, has moved forward, I'm wondering whether or not consideration can be made to, instead of what I consider to be taking away judicial discretion on sentencing, to instead encourage as part of the sentencing ignition lock technology for those convicted of numerous drunk driving or serial drunk driving incidents.

SENATOR FUSCHILLO: Again,

Senator, this bill deals with a specific issue. It doesn't deal with that. If that bill comes up before the house, I'd be happy to discuss it with you.

But have I considered it, with whether or not I would support it? Yes, I would.

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

ACTING PRESIDENT MEIER: Senator, do you yield?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I'm wondering if the sponsor is concerned that the bill does take sentencing discretion away from the trial court judge when in fact they already have the ability under present law to not exactly sentence according to this bill but pretty close to it.

SENATOR FUSCHILLO: No, I don't, Senator. I think we have to continually review and strengthen our anti-DWI laws. And

based on the conviction numbers that I read to you previously, I think we have to take more of a hard stand.

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

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

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Could the sponsor tell me when this bill was first introduced?

SENATOR FUSCHILLO: I don't know the original date when Senator Levy had introduced it, Senator, but I've reintroduced it for three years now.

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

ACTING PRESIDENT MEIER: Senator, do you yield?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: It's actually a

two-parter.

I'm wondering why there are no Minority sponsors for the bill and if the sponsor would be willing to allow Minority sponsorship of the bill.

SENATOR FUSCHILLO: Senator, we're dealing -- through you, Mr. President - with specific issues here that increase fines and revocation periods, not with cosponsorships. I'll be happy to deal with that at another time.

SENATOR DUANE: On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Duane, on the bill.

SENATOR DUANE: Well, first, I just think it's weird that we only have bills come before us here that are sponsored by the Majority party. It just -- I mean, if you visited here from someplace else and saw that the only legislation we have in this house is Majority-sponsored legislation, frankly, I think that's weird.

I don't think that we can really put up with the excuse anymore, well, the

other house does it, because you know what? We're the Senate. And perhaps it's up to us to set an example about how legislation should be crafted and passed in this state.

I'm concerned that this bill and the technical parts of the bill and the effectiveness of the bill, should it be passed, has not been revisited in who knows how many years. I mean, as I understand it, Senator Levy was here for a long time. So this bill could be very old. In fact, it could be from -- it's certainly before there were pilot programs on the ignition lock technology.

Of course, we've started studies on ignition lock technology. I've never seen any results of them. I'm wondering whether they have or whether we've broken yet another law by requiring a study and then not seen the results of the studies. But I was afraid to ask that because I thought I would be ruled out of order if I raised that.

I also think that we've gotten a lot further along in understanding the disease of alcoholism and we have a better

understanding of what kind of treatments work. And so to tie a judge's hands and not really provide for treatment modalities and interlock technology I think is somewhat irresponsible.

I also think if we're going to raise the fines, then we ought to raise the amount of money which we spend on treatment in this state of alcoholism and drug addiction.

You know, previously I served on the Alcoholism Committee here, and the only bills we ever really looked at had to do with drunk driving. We never, ever had any legislation having to do with treatment for drugs or alcohol. That's why I got off it. I mean, I can vote on drunk driving bills from now till kingdom come, but what I'd really like to hear about is the most recent technology on interlock and what's happening with those studies. I'd like to know what other states are doing, what's successful in other states on the issue of driving under the influence of alcohol and drugs. I'd like to talk more about how we need more programs in this state for people who are suffering from substance abuse.

But I have to tell you, that committee was a wasteland about it. The only thing we did was have bills on stricter penalties for drunk driving. And we never had a hearing on it, never had a hearing on any of these drunk driving bills.

And, you know, I have a tremendous amount of respect for MADD. I think they've done a great job. However, I don't think that we can only consider what they believe to be -- and for that matter, this could be a MADD bill from, you know, twenty years ago. We don't really know. Certainly things have changed over the past twenty years in our understanding of addictions and how it impacts on drunk driving.

Anyway, you know, I actually consider myself to be very tough on the issue of driving under the influence of drugs and alcohol. I think it's a really terrible thing and your ability to drive is a license, not a right, in this state, in this country. So the dangers of driving drunk are such that I think that we should have strong penalties at the discretion of a judge.

I find myself in a difficult position. I'm not opposed to raising penalties, provided a judge has the discretion to raise penalties, depending on the compliance of the defendant. But I also think the judge should have the discretion to use interlock technology and also to require treatment.

I look at alcoholism and drug addiction as the disease and not just a criminal justice issue. I understand and also believe that people have to take responsibility for their actions even while they're addicted. That's true. They have to take responsibility for their actions. And the punishment should be commensurate with their actions. But I also believe that we have to have a health component to it as well which deals with the underlying addiction. Because in fact, someone who is a drunk driver is probably someone who is very unhealthy at home as well and doesn't just impact on the person or death or injury that they may have killed but is probably destroying the family and the household in which they're living.

And so, yes, I think they should be punished for what it is that they've done. And the proof of their addiction and alcoholism is repeat drunken driving. But that's only a terrible symptom of a disease which is probably impacting a lot of other people besides those that are directly injured by it.

And I think that it is the responsibility of a judge to look at all of that. And in fact, in this kind of case a judge has a very, very powerful position. And if they had the ability to sentence someone to rehabilitation, I think that that would be a very important power for them to have. But I don't see that in this bill.

And I also think that it would be a further problem because there are not that many places where people can go to deal with their alcoholism and drug addiction. In fact, it used to be that people could go to rehabs for a 28-day program, but now they can't. The most you can get, pretty much, and be covered in insurance is about 14 days. And that's really not enough time to take someone out of

their environment.

And if the person happens to be a woman and she happens to have children, there's virtually no place for them to go to get treatment in this state.

Many of us have been pushing for more treatment slots. Not only would that help on the issue of what we're talking about here, repeat driving while under the influence of drugs and alcohol, but it would probably also help to not make it so that so many people are being sentenced to our prisons under the present drug laws.

In California, someone who is stopped for being under the influence of drugs or selling drugs automatically has the option or is required to be sent into treatment. I actually think that's a model that we should start looking at here. But there isn't the money for that.

So, you know, I find myself conflicted because I certainly am tough on drunk driving, but I think the issue is much more complicated than what's just in this one bill. So I'm going to wait and listen to the

rest of the debate until I make up my mind on it.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. On the bill.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson, on the bill.

SENATOR HASSELL-THOMPSON: A great deal of what Senator Duane says I concur with. I have the same concern, sitting on Transportation and sitting on the Committee on Alcoholism and Substance Abuse. And I think that it continues to be a concern for me and for others that at the same time we are increasing the penalties, we are not looking at the substantive causes and making the parallel kinds of allocations into the budget to support those.

Having said that, however, I also have a major concern when I look at statistics that tell me that one-third of all drunk drivers have been on probation or have been repeaters on several occasions. And it's

unfortunate that it takes high-profile incidences of drunk driving for us to become consciously or continually aware of the hazard of drunk driving as well as under the influence of other substances.

I must support this bill, but I support it in the same way that I did as in committee. Many times I do without recommendation, and I do primarily because until we get to the point that we begin to have hearings -- not just hearings to do a show and tell, but to have hearings for us to be able to seriously substantiate that we're not -- there is no real strong parallel between the numbers of -- the increases in penalties and the reduction in incidences, rather, that there needs to be a parallel that's drawn between treatment and a reduction in instances.

So I continue to support these bills, even on the floor, without recommendation, primarily because I think we're not doing enough in the State Legislature to ensure that treatment runs parallel with the increase in penalties that

we impose in the Senate.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Onorato.

SENATOR ONORATO: Mr. President, will Senator Fuschillo answer a question?

ACTING PRESIDENT MEIER: Senator Fuschillo, will you yield for a question?

SENATOR FUSCHILLO: I'd be delighted to, Senator.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR ONORATO: I think Senator Thompson asked part of it.

I was wondering, Senator Fuschillo, do you have any previous statistics to compare? Has there been more of a reduction in reducing DWI through the fines or through the imposition of mandating some sort of treatment? Which was more effective in cutting it down somewhat?

SENATOR FUSCHILLO: I don't have any specific statistics, Senator, but from my past experience in running a nonprofit agency that dealt with alternatives in treatment

facilities, I would say it's a combination of both.

SENATOR ONORATO: Through you, Mr. President, will you would continue to yield.

ACTING PRESIDENT MEIER: Senator Fuschillo, do you yield?

SENATOR FUSCHILLO: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR ONORATO: Do you know of any other states that currently have the same law on the books for three convictions?

SENATOR FUSCHILLO: Are you talking about the permanent disqualification of the license?

SENATOR ONORATO: Right.

SENATOR FUSCHILLO: Senator, I'm sorry, I'm not aware of any other states that have it.

SENATOR ONORATO: I wanted to find out if we had any statistical comparison. But there are no other states that you know of.

SENATOR FUSCHILLO: There may be,

Senator, but my information doesn't provide for that.

SENATOR ONORATO: Thank you.

ACTING PRESIDENT MEIER: Any other member wish to be heard on the bill?

Senator Bruno.

SENATOR BROWN: Yes, thank you, Mr. President. Through you, would Senator Fuschillo yield for a question?

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

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BROWN: Senator Fuschillo, I certainly know of your reputation in running community-based organizations, and in fact through you had the ability to read and learn more about the organization that you operate.

And like many of those who have raised some questions before me, I'm just a little bit concerned about taking the discretion away from the trial judge to make a decision about whether or not to revoke the

license or for how long a period to revoke the license.

In your researching this, was that a concern of yours, and how did you decide to come to this point in the legislation?

SENATOR FUSCHILLO: Senator - and you've been sitting here, and I think the numbers clearly speaks for themselves. It's about getting the drunk drivers off the street.

You know, how many times do we open up the papers, and I'm sure in your community, in your district, do you read about the fatalities and how they're repeat offenders? And that's really the basis for the decision here to get them off the street. And I've seen with my experience and the clients that the agency handles, they are repeat offenders.

In New York State, as I stated before, the average for repeat offenders is much higher than the national level.

SENATOR BROWN: Through you, Mr. President, would Senator Fuschillo yield for another question?

ACTING PRESIDENT MEIER: Senator

Fuschillo, do you yield?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BROWN: Senator, certainly through your experience you worked with alternatives to incarceration, and certainly you assisted people in their rehabilitation.

The other concern that I have, an 18-year-old goes out, in a year's period of time abuses alcohol, clearly has a problem, has three offenses, 10, 15 years goes by, this person has gotten their life turned around. This would then still prevent them from ever having a driver's license even if after a long period of time they've gotten their alcohol or substance abuse problem under control?

SENATOR FUSCHILLO: No, Senator. And exactly what you're stating is why we put in the bill to allow, after a ten-year period, give the Commissioner of Motor Vehicles the discretion to evaluate on a case-by-case basis and issue a probationary license.

SENATOR BROWN: Okay. I'm sorry,

I misread that. I confused that. If I may, through you, Mr. President.

ACTING PRESIDENT MEIER: Go ahead, Senator Brown.

SENATOR BROWN: I confused that.

Is there also a ten-year provision that if they had an offense in another state, they're -

SENATOR FUSCHILLO: Right. Yes, there is, Senator.

SENATOR BROWN: Okay, I was confusing that.

SENATOR FUSCHILLO: But again, to deal specifically with what you're talking about, first of all, this legislation does not take away the judicial discretion to authorize somebody to go to a treatment program. And hopefully, you know, after a ten-year period, if there's no violation of the Vehicle and Traffic Law and they successfully complete it, there would be a favorable rating from the Commissioner of Motor Vehicles to give back the license on a probationary period.

SENATOR BROWN: If I may, on the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Brown, on the bill.

SENATOR BROWN: Let me just take a moment to thank Senator Fuschillo for his work and his response to mine and other questions. I do have a better understanding of the bill.

And like many other Senators who have spoken, I too feel that we need to do something about people who drive while under the influence of alcohol or illegal substances. And like many others in my district, I have seen the pain and heartache of families who have lost loved ones to people who drive drunk or drive while under the influence of some kind of drug. So I do think that we have to crack down.

I was concerned that this might have some negative impact on the ability of people to rehabilitate themselves and then have the ability, once rehabilitated, to be able to drive to earn a livelihood. But Senator Fuschillo has sufficiently explained to me how the legislation works, and I feel comfortable that we can crack down on driving

while drunk and on drugs and, at the same time, if the person has turned their life around and has gotten their substance or alcohol problem under control, at some future point they will be able to obtain a license to operate a motor vehicle.

Thank you.

ACTING PRESIDENT MEIER: Senator Stachowski.

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

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

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR STACHOWSKI: Why do we use the term "permanent revocation" if it's really not permanent?

SENATOR FUSCHILLO: Through you, Mr. President, if the Commissioner of Motor Vehicles does not give the license back, Senator, it would be permanent.

SENATOR STACHOWSKI: That's one

of the confusions I have.

The other one is in the bill it says after the ten-year period they really don't get their license back, they get a permanent temporary -

SENATOR FUSCHILLO: Probationary license.

SENATOR STACHOWSKI: Permanent probationary license. The question I have is what would be the insurance ramifications of trying to get car insurance with a permanent prob -- probationary license? Easy for me to say.

SENATOR FUSCHILLO: Through you, Mr. President, I don't know. I don't know, Senator.

SENATOR STACHOWSKI: Thank you, Senator.

On the bill. I would think that the fact that you had DWIs, for one, would put you on a list that it would be extremely difficult to afford insurance unless you were particularly well off.

And secondly, if you had a permanent probationary license due to a past

history with DWIs, I don't know where they'd fit you in in car insurance and if that would a new, special part of the risk pool. I'm not sure. But I'd think that the average working guy couldn't afford to drive.

I'm not sure that Senator Brown's worries are completely answered, because the fact is if you can't afford car insurance, you'd better not be driving, because you got a whole other set of problems coming up if you're driving without it.

So not that I'm against increasing the penalties, but I don't see anyplace where we're increasing the treatment available. And with the edge of the change in the Rockefeller Drug Laws and the increase in the number of people that are going to be using our drug and alcohol treatment facilities just through that area alone, and the fact that we're short on spaces right now for people that need this kind of help, I'm just not sure how we're doing all these things without putting any kind of accompanying money into treatment facilities.

Not that people deserve extra

consideration if they're driving drunk. However, the fact is that if you're a constant repetitive drunk driver, more likely than not you're a person suffering from alcoholism. And the fact is if you are actually a person suffering from alcoholism, you have a physical disease.

That's what the studies have shown, that contrary to former beliefs that it was some sort of character weakness or some sort of escape kind of behavior, the fact is that more times than not, it really is a physical disease. And that's what they've found with their research that originated in Houston, Texas.

So the fact is that these people need help. And the fact that they constantly drive knowing that they can lose their license forever is kind of their way of crying out for the help they need, because they can't stop. And I don't know that we're helping them by not providing any accompanying treatment money for every time we do one of these bills.

There's nothing wrong with these bills. We should get drunk drivers off the

road. But we should also recognize when we're doing that that a lot of these people happen to have an illness. And nobody is addressing it, particularly the person that has it, because they probably don't recognize that they have it or don't want to admit that they have it.

So that's the one problem I have with this, is that we don't ever talk about those things, we just talk about increasing penalties. And I'm not against it, I - Senator, if you'd yield for one more question, I have one more.

ACTING PRESIDENT MEIER: Senator Fuschillo, do you yield?

SENATOR FUSCHILLO: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR STACHOWSKI: Actually, before Senator Brown and you exchanged and I read that little section, I didn't have any other ones except this one.

Do you have any idea why the Assembly continues not to pass this bill?

SENATOR FUSCHILLO: No, I don't,

Senator.

SENATOR STACHOWSKI: Thank you.

SENATOR FUSCHILLO: Senator, but on the treatment side, that is a separate issue with this. Again, you know this is specifically dealing with the fines and revocation periods.

The Senate Majority previously put forth a very ambitious program called "Road to Recovery," which adds $20 million for exactly what you're talking about.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: I have a question for the sponsor, if he would yield.

ACTING PRESIDENT MEIER: Senator Fuschillo, will you yield for a question?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR OPPENHEIMER: We were just talking about something which I really have to question you. What if the person who is accused of drunk driving doesn't have a license? There's a lot of people driving who

do not have licenses. What would happen to them?

SENATOR FUSCHILLO: Senator, I don't know the exact penalties for that. I mean, this bill is specifically for the revocation and increasing fines.

SENATOR OPPENHEIMER: Well, you know, I'm one of the founders of MADD in Westchester. So obviously this is something I think is important.

Though I have another question, if you would yield.

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

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR OPPENHEIMER: This bill has been around a long time.

SENATOR FUSCHILLO: In my opinion, too long, Senator.

SENATOR OPPENHEIMER: Well, obviously years and years is very long.

The opposition in the other house, if you could tell me?

SENATOR FUSCHILLO: Senator, I don't know what the opposition was. The former sponsor is no longer a member of the Assembly. I'm hoping with the new sponsor any obstacles will be overcome and it will become law.

But I can guarantee you, Senator, I will not give up on this. And I appreciate the support that you've given in the past.

SENATOR OPPENHEIMER: Thank you.

On the bill.

ACTING PRESIDENT MEIER: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: You know, we seem to be giving the same message from this side of the aisle, which is -- and I thank Senator Stachowski for giving us the information that he had on the fact that there is no question, you don't have to cite reports, there is no question that alcoholism is an illness and should be treated as an illness.

And we ought to be putting a whole lot more money into the prevention and helping them -- not that they are ever cured, but they

consider themselves recovering. And if they are strong of will, they can really help themselves once they get the initial help.

So that's, you know, an issue I feel strongly about, because very often young people make mistakes too. And aside from the actual substance abuser who is ill, we have instances of young people making mistakes. And to think that they will never be able to get this mark, black mark off their records, having to get a probationary license for the rest of their lives, and God knows how they would be able to pay for the insurance, that's very concerning.

One thing that I would like to mention here, which isn't exactly on the bill, is that we ought to be doing more for our young people as far as driving, and we ought to be giving them the opportunity to have a graduated driver's license so that there will be a period of time where they will be able to learn how to drive. It is required that 30 hours of driving time be demonstrated, and six months of learning time to elapse before a junior license could be offered to them. And

I think this is the direction we have to go to make for safer roads and to make our children more knowledgeable about driving.

I'll be voting yes.

ACTING PRESIDENT MEIER: Senator Brown, why do you rise?

SENATOR BROWN: Mr. President, I don't mean to belabor it, but if I may ask Senator Fuschillo if he would yield for another question.

ACTING PRESIDENT MEIER: Senator, do you yield?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BROWN: Senator, on the point of the restoration, potential restoration of a license after a ten-year period where the person would be able to get a probationary license, counsel just mentioned to me that that's kind of a new provision.

And what would be the process by which a judge or DMV could actually consider restoring a -- well, providing a probationary license after ten years?

SENATOR FUSCHILLO: Senator, it's at the discretion of the Commissioner of Motor Vehicles.

And the correct term for the license would be a permanently probationary license. But -

SENATOR BROWN: I'm sorry, I didn't hear.

SENATOR FUSCHILLO: Permanent probation license.

But again, the decision made would be at the discretion of the Commissioner of Motor Vehicles.

SENATOR BROWN: Through you, Mr. President, would Senator Fuschillo yield for one additional question?

ACTING PRESIDENT MEIER: Senator, do you yield?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BROWN: My other concern related to this, Senator, is there seems to be an absence of criteria by which DMV would be able to restore a license under this

provision.

SENATOR FUSCHILLO: Senator, it's referenced in the bill that during such ten-year period -- and, Senator, if you want to look at the bill, I could reference you.

SENATOR BROWN: Yes, I have it, Senator.

SENATOR FUSCHILLO: Page 2, starting at line 18 down to line 30.

SENATOR BROWN: Through you, Mr. President, if Senator Fuschillo would yield for a question.

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

SENATOR FUSCHILLO: Yes. Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BROWN: Senator, thank you for bringing the section to my attention. I see it, and I have read it.

Though it doesn't prescribe whether there is a hearing or how someone would trigger the process.

SENATOR FUSCHILLO: Senator,

again, you know, the discretion in the regulation would lie solely with the Commissioner of Motor Vehicles.

SENATOR BROWN: Thank you, Senator.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Does any other member wish to be heard on this bill?

Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Fuschillo would allow me to come back and ask a couple of more questions.

SENATOR FUSCHILLO: Yes.

SENATOR PATERSON: Senator, right now if someone is convicted of DWI or DWAI drugs or vehicular homicide, can't the court prohibit their use of an automobile for a period of time as it stands in the law right now?

SENATOR FUSCHILLO: Yes.

SENATOR PATERSON: Thank you, Senator. This is something that Senator Duane raised earlier, and I think it bears a little further scrutiny.

So it's also true that the court

right now has the authority to limit the privileges of individuals with respect to the operation of automobiles? That's also the case; right, Senator?

SENATOR FUSCHILLO: Is that a question, Senator?

SENATOR PATERSON: Yes.

SENATOR FUSCHILLO: I believe so.

SENATOR PATERSON: Then, Senator, would you explain to me -

ACTING PRESIDENT MEIER: Senator Paterson, do you wish Senator Fuschillo to continue to yield?

SENATOR PATERSON: Yes, please, Mr. President.

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

SENATOR FUSCHILLO: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Then, Senator, you know, what I'm just feeling is that we're cutting out the middleman. In other words, we're writing a law and we're enforcing it, but we're really diminishing the need for the

trial judge. And since the trial judge does have these powers, I'm just wondering whether or not the enactment of this legislation is even necessary.

SENATOR FUSCHILLO: Senator, based on my experiences -- and it was limited, to a certain extent. But I saw all too often repeat offenders. And then the question has to be asked, when is enough enough?

And hopefully, if this becomes law, it would be a strong enough deterrent. But I'm sure, Senator, in your career here you have seen mandatory sentences throughout this house for many years.

But again, back to my experiences in the nonprofit world dealing with this issue, all too often we see repeat offenders and the tragedies that are associated with that.

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

SENATOR FUSCHILLO: Yes.

ACTING PRESIDENT MEIER: Senator Fuschillo yields.

SENATOR PATERSON: Senator, my

question will certainly call for a really, in many respects, subjective conclusion on your part.

But seeing myself in the position of the trial judge, I just would not want to have to take the responsibility of people who have violated the law in this respect once, twice, sometimes three times, who come before the court. I think that would be a little bit too much of a burden for my conscience to bear. And I'm sure it's, as the drafter of this legislation, the same point of view that you have.

And I'm just looking around the chamber at our colleagues. And if they were sitting in that same situation, I'd say that the reasonable person would see it your way.

But taking your word for what you've seen, I'm just wondering what did you think was the reason that so many times you observed individuals getting a chance to get back on the road due to the, you know, perhaps failure of the trial judge to restrict or prohibit the use of the license?

SENATOR FUSCHILLO: Senator, are

you asking the question why they would get behind the wheel as a drunk driver once again?

SENATOR PATERSON: No, I'm asking why the -- what would have been the reason that these individuals got back out on the streets when they were in the trial court. Why did you think this happened?

SENATOR FUSCHILLO: Senator, separate and apart from the specific issues that we're dealing with in the legislation here, alcoholism is a disease. And it's a serious problem. Many individuals face that.

And I'm not an alcoholic, Senator, so I can't tell from experience what goes through somebody's mind.

SENATOR PATERSON: Thank you. I'm sorry, Mr. President, I didn't phrase the question properly. I take responsibility for that.

What I'm saying is, what was in the contemplation of the trial judges on these occasions that you were referring to where individuals who probably went out and broke the law again were allowed to leave in possession of their licenses?

I know it's a subjective conclusion on your part.

SENATOR FUSCHILLO: Yes, a very subjective conclusion on it, Senator.

But through you, Mr. President, each case is different, Senator. And I did not personally evaluate these cases. But in most cases when -- in all cases when they were sentenced to us, it was for the treatment.

SENATOR PATERSON: Okay. Thank you, Mr. President. I have another question, if Senator -

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

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Senator, the permanency of this legislation bothers me, and especially with respect to an issue that Senator Schneiderman raised earlier. He was talking about the difference between the commercial and private use of an automobile.

I want to talk about the private use of an automobile that's commercial to the

individual themself. In other words, people are granted limited licenses to drive back and forth to work, to earn a living. Aren't we in many respects restricting it by establishing the permanency as we are in this legislation?

SENATOR FUSCHILLO: Senator, I believe that would come under personal and that would not be a commercial vehicle.

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

ACTING PRESIDENT MEIER: Senator Fuschillo, do you yield?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: No, I'm aware of that, Senator. I'm just talking about the ability of individuals to go back and forth from work each day, that would qualify as a commercial vehicle?

SENATOR FUSCHILLO: No.

SENATOR PATERSON: It would not. Well, Mr. President, if the Senator would continue to yield.

ACTING PRESIDENT MEIER: Senator,

do you continue to yield?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Well, that was what I thought, Senator. And I'm just asking you that the permanency -- because I would never use, in the presence of my counsel, the word "permanentize." The permanency of this legislation as it's established, in my opinion, would restrict the court from in situations allowing the person to operate the automobile only for the purposes of satisfying the needs of their employment.

Don't you think that that is hurt by the passage of this legislation? Because it affects other people, not just the individual who is employed.

SENATOR FUSCHILLO: Senator, I fully understand your position on this. It's very strong, and the purpose of it is to serve as a deterrent.

SENATOR PATERSON: Thank you, Senator Fuschillo.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Paterson, on the bill.

SENATOR PATERSON: I feel that perhaps the issue of recidivism as it respects -- in respect to treatment is something that perhaps is an area that many of our trial court judges might want to become more familiar, sometimes. It's surprising how high the recidivism rate is.

And yet I feel that very reasonable people make these decisions every day and have a real caution about the establishment of mandatory sentencing of any kind. And I have a real problem with it. Not to in any way minimize the gravity of concern that Senator Fuschillo exercises when he writes a piece of legislation such as this.

But I would hope that it would be recrafted to grant some leniency where often the family members, the relatives of the individual who is convicted is -- are still given the opportunity to receive their just reward from the employment of that individual, so long as the person goes right back and forth to work. And any violation of that

obviously would be punishable at that particular time.

But it is an important issue when it comes to a number of the areas where the automobile becomes the primary source of connection between a person and their job.

And I think for that reason, I'd like to really see another piece of legislation that shows a little more faith in the judicial system, particularly in the criminal justice system, and also to the families of the people who are involved.

There definitely have to be deterrents. This is an area that Senator Fuschillo has I think in many respects properly addressed in the fashion that our late colleague Senator Levy did. Senator Balboni has also offered some legislation here. And it's an area that we're addressing.

But I think that I'm a little chagrined that we don't have a little more faith in public servants who try to make decisions based on information that will protect the public.

ACTING PRESIDENT MEIER: Does any

other member wish to be heard on this bill?

Debate is closed.

Read the last section.

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

SENATOR PATERSON: A slow roll call, please, Mr. President.

ACTING PRESIDENT MEIER: More than five Senators have arisen.

The Secretary will call the roll slowly.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Balboni.

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

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

SENATOR BALBONI: I am always amazed when I hear debate on driving while intoxicated or driving under the influence when there's so much compassion shown for the driver for the loss of their license.

The reason why I say this is

because there is a failure, a basic failure to recognize that driving is nothing more than a privilege. It may be a necessity for many people in this day and age. It is still a privilege that is governed by the rules of the Department of Motor Vehicles.

But what is not a privilege is to drive on our roads safely. Talk to one family who's suffered a death through DWI and watch one persistent violator get up in court and try to explain why they continue to drive drunk, and the reasons why this bill is absolutely essential become patently obvious.

Senator Fuschillo is to be congratulated on his leadership in this area. And this is another bill that recognizes the reality of what this dreaded situation can cause and the havoc it wreaks on the lives of New Yorkers.

I vote aye, Mr. President.

Thank you.

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

The Secretary will continue to call the roll.

THE SECRETARY: Senator Bonacic.

SENATOR BONACIC: Yes.

THE SECRETARY: Senator Breslin.

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

SENATOR BRESLIN: Thank you, Mr. President.

I commend the sponsor for his perseverance over the last several years and also for his patience during this debate.

I am voting for this bill. But I do have some reservations dealing with taking some judicial discretion away from judges. I also concur with Senator Balboni that there are judges that it seems to me are much too lenient. But there are also judges that review cases, and they review cases in a very careful and a very precise way.

And, you know, at times I've seen studies that talk about driving under the influence of alcohol and drugs, and that disproportionately -- some of those statistics say it disproportionately affects poorer communities. And if that's so, then you're taking away at times a breadwinner and the

ability of that breadwinner to support a family.

And if in fact there is evidence of rehabilitation, rehabilitation through the treatment modality, a treatment that is consistent and fair, and there is the recovery that is indeed necessary to allow that person to be eligible to have that license back, which helps put the family back together.

So I think that that statute has to be more flexible, and I hope that we can look in the future to make it more flexible.

I vote in the affirmative.

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

THE SECRETARY: Senator Brown.

SENATOR BROWN: To explain my vote, Mr. President.

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

SENATOR BROWN: Let me too commend Senator Fuschillo for this piece of legislation.

Let me make it clear, I don't weep for the perpetrator. But I do believe that we

need to allow for rehabilitation for people who have had problems and who have turned their life around.

Driving while under the influence of alcohol or drugs and doing that repeatedly is a terrible thing, something that we have to try to protect the public from. And because of that, I will vote for this piece of legislation in the affirmative.

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

THE SECRETARY: Senator Bruno.

(Senator Bruno was indicated as voting in the affirmative.)

THE SECRETARY: Senator Connor.

SENATOR CONNOR: No.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator Dollinger.

(No response.)

THE SECRETARY: Senator Duane.

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

SENATOR DUANE: Thank you, Mr. President.

I have to admit I'm getting a little tired about hearing explanations of bills which, you know, the explanation starts with "Well, this bill has passed for the past twenty years." It just -- you know, it's just not compelling to me anymore.

I mean, this is 2001. Senator Levy, you know, was -- I'm sure he was one of the greats of the Senate. But, you know, he started quite a while ago, maybe 30 years ago or something, I don't know exactly. But that's, you know, kind of a different era.

I just think it's time to dust off some of these oldies but goodies and look at them anew. I mean, I think that we're paid to actually revisit legislation and not just pass tired old legislation.

So I think we could do better than this bill. I think we could have an excellent bill instead of just a bill that, you know, just gets passed by one house. You know what? We could even have a hearing. Imagine that, a hearing on this. Wouldn't that be special, to

have a hearing on this bill.

I think there's a lot of people out there who can help us to craft better legislation. DAs, judges, people in the addiction field, people who are working on the ignition lock technology. I think all of them could bring something to the table. Also those people who have been convicted of drunken driving, and find out what it is that they think could have stopped them before they did that.

You know, I think that 1980 was a great year. I remember it well, it was a great year. But this is 2001. And I think it's time to move on and look at legislation anew.

I'm going to vote no on this, not because I'm not tough on drunk drivers -- I am. But I'm voting no on this because you know what? We could do better than this.

Thank you.

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

Continue to call the roll.

THE SECRETARY: Senator Espada.

(No response.)

THE SECRETARY: Senator Farley.

(No response.)

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: Aye.

THE SECRETARY: Senator Gentile.

SENATOR GENTILE: Yes.

THE SECRETARY: Senator Gonzalez.

(No response.)

THE SECRETARY: Senator Goodman.

SENATOR GOODMAN: Aye.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Aye.

THE SECRETARY: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Aye.

THE SECRETARY: Senator Hevesi.

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

SENATOR HEVESI: Thank you, Mr. President.

I too rise to support this legislation. And I have in the past commented on other legislation of a similar nature, some

of which was sponsored by Senator McGee, and criticized that legislation for being too lenient in its scope.

So I support this bill here because, as I've said on the floor of this house many times before, particularly for nonviolent felony offenses, I'm perfectly willing to be lenient the first time around, but when somebody commits a repeat offense, whether it's a violent felony or a nonviolent felony offense, unless that person is afflicted with a disease -- and alcoholism is a disease, so in that case you can make the argument that tough love is required -- but leniency goes out the window.

And Senator Fuschillo indicated the recidivism rates in respect to this kind of offense. It's time we take action. I would go further than this, even. And I know some of my colleagues have some reservations, but we have to be completely intolerant of this type of behavior.

So I support this legislation. I vote aye.

ACTING PRESIDENT MEIER: Senator

Hevesi will be recorded in the affirmative.

Continue to call the roll.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Aye.

THE SECRETARY: Senator Johnson, excused.

Senator Kruger.

(No response.)

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lachman.

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

SENATOR LACHMAN: Briefly on the bill, Mr. President.

I strongly support this bill. I think it relates to the issue of drunken driving in a most positive manner. I've supported similar bills by one of the outstanding members of the Senate in the past, Senator Norman Levy.

And I think Senator Fuschillo has done an excellent job in recrafting this. I only hope that he will be able to get a sponsor in the Assembly to cosponsor this so

that this bill becomes law.

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

The Secretary will continue to call the roll.

THE SECRETARY: Senator Lack.

(No response.)

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Aye.

THE SECRETARY: Senator Libous.

(No response.)

THE SECRETARY: Senator Maltese.

(No response.)

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: Aye.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Aye.

THE SECRETARY: Senator Markowitz.

(No response.)

THE SECRETARY: Senator Maziarz, excused.

Senator McGee.

SENATOR McGEE: Yes.

THE SECRETARY: Senator Meier.

SENATOR MEIER: Aye.

THE SECRETARY: Senator Mendez, excused.

Senator Montgomery.

ACTING PRESIDENT MEIER: Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President.

As I indicated when I had my opportunity to question Senator Fuschillo, I am voting yes with reservations. I think that we need to do more to look at what the problem is rather than just addressing the symptoms of a problem.

And I do believe that we need to think very carefully about the possibility of removing the only option that some people have to get to and from their work, because they have a problem that is only -- that comes out in this business of them continuing to risk

their own lives and the lives of others by drinking while driving.

So I'm voting yes, but I want you to know and I want the record to show that I would like to see us address this in this another fashion as well.

Thank you.

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

THE SECRETARY: Senator Morahan.

SENATOR MORAHAN: Yes.

THE SECRETARY: Senator Nozzolio.

(No response.)

THE SECRETARY: Senator Onorato.

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

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

I'm going to vote for this legislation. I think it's a worthy piece. But I also want to -- I'm sure we're going to be revisiting this again. It hasn't passed the Assembly yet.

And I certainly would like to

address the problem that has been expressed here on this side of the aisle, that we should certainly be looking at ways and means of preventing an individual from not ever reaching the third conviction. Somewhere between the first and third, we should make it mandatory that there be some type of rehabilitation offered to the individual that was convicted of driving under the influence.

And there's another part that hasn't been addressed here today, and I don't know if it's a part of the bill. While they talk about drugs, there's medicines that have some of these same effects that alcohol does. And many individuals, especially seniors, are not really aware of some of the effects that some of the medications that they take can affect them while they're driving. So I think there's another avenue that we should look at.

But I'm going to vote aye on this bill.

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

Continue to call the roll.

THE SECRETARY: Senator

Oppenheimer.

SENATOR OPPENHEIMER: Aye.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: No.

THE SECRETARY: Senator Rath.

SENATOR RATH: Aye.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Sampson.

(No response.)

THE SECRETARY: Senator Santiago.

(No response.)

THE SECRETARY: Senator Schneiderman.

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

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I have been listening carefully to a lot of very interesting points that have been made in the debate on this bill, and I think it does raise some serious questions.

I am concerned about the issue of

the lessening of judicial discretion and how this fits into the overall statutory scheme and the difficulty we have in New York State of too many people perhaps being punished for crimes at an inappropriate level. And that is a subject that I know we'll be addressing as the session wears on.

I also am very concerned about the fact that this creates an anomaly in our law whereby commercial drivers actually are held to a lower standard or subject to a lesser punishment than private individuals driving, citizens of the State of New York. And I think that is really a shame.

I hope that Senator Fuschillo, who I would commend, if I could see him, would - I hope that he will take that into account when we are revisiting this issue, because I suspect we may another chance to address this. I think that with that adjustment, we can make this a better bill.

I am voting yes in the hopes that we can move forward to correct some of these issues and provide an increase in penalties in an area that is called for, but perhaps not

with this precise legislation. I will vote yes.

Thank you, Mr. President.

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

Continue to call the roll.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Aye.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Aye.

THE SECRETARY: Senator A. Smith.

ACTING PRESIDENT MEIER: Senator Ada Smith, to explain her vote.

SENATOR ADA SMITH: Thank you, Mr. President.

Like my colleagues on this side of the aisle, I have some trepidations about taking away judicial empowerment. I'm also greatly concerned that we do not have adequate facilities for treatment of those who may be convicted under this bill.

However, I'm greatly concerned about drivers on the road who are under the influence of either drugs or alcohol and who

put all of our lives in danger. And because of that, I will be voting in the affirmative.

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

THE SECRETARY: Senator M. Smith.

(No response.)

THE SECRETARY: Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator Stachowski.

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

SENATOR STACHOWSKI: Mr. President, briefly to explain my vote.

First of all, I'd like to thank Senator Fuschillo for his courtesies in answering all the questions and his patience with everybody's different concerns with the legislation.

I think that we have to get the drunk drivers off the road. I would hope that in the future, now that this bill is obviously going to pass this house again, that a concerted effort would be made to find out why the Assembly won't pass it and maybe try to

work out the differences, rather than just come back here year after year passing the same legislation that's not moving anywhere in their house.

I would rather see maybe even a slightly less step forward if that would be able to become a law, rather than just have a real strong, powerful bill in the Senate that never passes the Assembly.

I vote aye.

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

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky.

ACTING PRESIDENT MEIER: Senator Stavisky, to explain her vote.

SENATOR STAVISKY: Yes, Mr. President. All of us are appalled at the number of people who have been arrested for driving while impaired or drunken driving. And we're also concerned about the recidivism rate.

Nevertheless, I'm also concerned

about the discretion that is at the hands of the sentencing judges, and at the lack of rehabilitation facilities and our lack of emphasis on rehabilitation.

I wish the people in the other house could have listened to the debate here today on this and on other bills. They would have learned a great deal about the problem, as I have.

And, Mr. President, I vote aye.

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

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Velella.

(No response.)

THE SECRETARY: Senator Volker, excused.

Senator Wright.

(No response.)

ACTING PRESIDENT MEIER: Call the absentees.

THE SECRETARY: Senator Dollinger.

(No response.)

THE SECRETARY: Senator Espada.

(No response.)

THE SECRETARY: Senator Farley.

(No response.)

THE SECRETARY: Senator Gonzalez.

(No response.)

THE SECRETARY: Senator Kruger.

(No response.)

THE SECRETARY: Senator Lack.

(No response.)

THE SECRETARY: Senator Libous.

(No response.)

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: Aye.

THE SECRETARY: Senator Markowitz.

(No response.)

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Sampson.

(No response.)

THE SECRETARY: Senator Santiago.

(No response.)

THE SECRETARY: Senator M. Smith.

(No response.)

THE SECRETARY: Senator Velella.

(No response.)

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Wright.

(No response.)

THE SECRETARY: Ayes, 42. Nays, 3.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

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

ACTING PRESIDENT MEIER: We have three substitutions, Senator.

SENATOR SKELOS: Can we make them at this time.

ACTING PRESIDENT MEIER: The Secretary will read the substitutions.

THE SECRETARY: On page 18, Senator Lack moves to discharge, from the Committee on Judiciary, Assembly Bill Number 7298 and substitute it for the identical Senate Bill Number 2934, Third Reading Calendar 247.

On page 21, Senator McGee moves to discharge, from the Committee on Alcoholism and Drug Abuse, Assembly Bill Number 60 and substitute it for the identical Senate Bill Number 2512A, Third Reading Calendar 294.

And on page 23, Senator Seward moves to discharge, from the Committee on Insurance, Assembly Bill Number 5259A and substitute it for the identical Senate Bill Number 3168, Third Reading Calendar 313.

ACTING PRESIDENT MEIER: Substitutions ordered.

Senator Brown.

SENATOR BROWN: Mr. President, I move that the following bill, Senate Calendar 3219, be discharged from its respective committee and be recommitted with instructions to strike the enacting clause.

ACTING PRESIDENT MEIER: So ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, I move we adjourn until Tuesday, April 3rd, at 11:00 a.m.

ACTING PRESIDENT MEIER: On

motion, the Senate stands adjourned until Tuesday, April 3rd, at 11:00 a.m.

(Whereupon, at 7:39 p.m., the Senate adjourned.)