NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 18, 2001

11:13 a.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

I ask everyone present to 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 each 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, Tuesday, April 17, the Senate met pursuant to adjournment. The Journal of Monday, April 16, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos, we have one substitution.

SENATOR SKELOS: Would you please make it at this time, Madam President.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 11, Senator Padavan moves to discharge, from the Committee on Cities, Assembly Bill Number 3145 and substitute it for the identical Senate Bill Number 1793, Third Reading Calendar 124.

THE PRESIDENT: Substitution is ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, could we please adopt the Resolution Calendar, with the exception of Resolution 1239.

THE PRESIDENT: All those in favor of adopting the Resolution Calendar signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, may we please take up Resolution 1239, by Senator Marcellino, have it read in its entirety, and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Marcellino, Legislative Resolution Number 1239, commemorating the 31st Anniversary of Earth Day on April 22, 2001.

"WHEREAS, It is the sense of this Legislative Body to recognize and pay tribute to those organizations dedicating their purposeful work to increasing public awareness of, and appreciation for, the natural resources of New York, recognizing the role all citizens have in protecting the environment and the quality of life in this Empire State; and

"WHEREAS, on April 22, 1970, approximately 25 million Americans participated in the first Earth Day demonstration to express their concerns over the environment and the fate of the planet; and

"WHEREAS, In the 31 years that have passed since the original Earth Day, the planet has been subjected to the continuing burdens of world population growth, increasing commercial and residential development, ocean pollution, increasing stores of toxic and nuclear waste, and other similar assaults which have exacerbated the growing dangers of global climate change, ozone depletion, toxic poisoning, deforestation and mass species extinctions; and

"WHEREAS, Following the first Earth Day and the demonstrations of concern of over 20 million Americans, a collective national action has resulted in the passage of sweeping new laws to protect the invaluable resources of air, land and water; and

"WHEREAS, April 22, 2001 marks the 31st Anniversary of Earth Day; a day set aside

to celebrate the beauty and bounty of our environment and to revitalize the efforts required to protect and maintain respect for the environment and its resources; and

"WHEREAS, Earth Day 2001 activities and events will educate all citizens on the importance of acting in an environmentally sensitive fashion by recycling, conserving energy and water, using efficient transportation, and adopting more ecologically sound lifestyles; and

"WHEREAS, Earth Day 2001 activities and events will educate all citizens on the importance of supporting the passage of legislation that will help protect the environment, and will highlight the importance of a heightened awareness of environmental concerns amongst our State's leaders; and

"WHEREAS, The goal of Earth Day 2001 is not to plan only one day of events and activities, but to continue worldwide efforts to protect all aspects of the environment; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to commemorate

the 31st Anniversary of Earth Day on April 22, 2001; and be it further

"RESOLVED, That this Legislative Body congratulate all the concerned citizens of New York State who have embraced the responsible work of protecting and preserving the environment for future generations."

THE PRESIDENT: Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR MARCELLINO: Madam President, it has been 31 years since we set aside a day to commemorate and remember this planet and the environment we all live in and depend upon for our lives. I would just hope, and I know it's everybody's hope in this chamber, that it would not be limited to just one day of concern, but that we are concerned about the environment and preserving and protecting it in all its aspects 365 days of the year.

This chamber can be congratulated for the fine bills that we've passed over

these many years to preserve and protect our environment. In partnership with Governor Pataki and the other house, we will continue to do great work in protecting the environment, and I look forward to many more years of good environmental legislation.

I would also, Madam President, ask that, with your permission, that we open the resolution to all members of the chamber.

THE PRESIDENT: Any member who does not wish to be included as a sponsor of this resolution please notify the desk.

The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senators Farley, Nozzolio, and Bruno, Legislative Resolution Number 1351, memorializing Governor George E. Pataki to proclaim the week of April 22 through 28, 2001, as National Crime Victims' Rights Week in New York State.

"WHEREAS, Every man, woman and child who is victimized by crime in America deserves to be treated with dignity and compassion, and deserves services and support to help them in the aftermath of crime; and

"WHEREAS, Annually there are 28.8 million Americans who are victimized by crime, 7.4 million of whom are victims of violent crime; and

"WHEREAS, Crime Victims' Rights Week activities will begin with a Crime Victims' Vigil at the Presbyterian New England Congregational Church in Saratoga Springs, New York, on April 22, 2001, and a Memorial Brick Dedication will take place at the New York State Crime Victims' Memorial at the Empire State Plaza on April 28, 2001, and

activities will take place on Long Island and New York City and throughout New York State; and

"WHEREAS, The Capital District Coalition for Crime Victims' Rights includes organizations, both public and private, that advocate and support the rights of all crime victims; and

"WHEREAS, While New York State has adopted laws to protect the rights of victims of crime and provide them with essential services, it remains the responsibility of all citizens to ensure that these laws are upheld; and

"WHEREAS, Important efforts have been implemented to ensure treatment to help victims to begin healing; volunteers and professionals who work toward this end include law enforcement officers, prosecutors, victim service providers, corrections officers, parole and probation officers, counselors, physicians, health care professionals, and the many others whose dedication and service to crime victims helps to lessen trauma and assists in personal recoveries; and

"WHEREAS, Victims' rights organizations in America have for nearly two decades dared to dream of a nation that is free from violence and where crime victims are consistently provided supportive services to help cope with the trauma of crime and victimization; and

"WHEREAS, As we carry crime victims' rights into 2001 and beyond, we must 'Reach for the Stars,' striving to create a world where respect and dignity will be basic rights for everyone who has been victimized by crime, and where those responsible for necessitating the rights of victims are accountable for their actions; now, therefore, it be

"RESOLVED, That this Legislative Body pause in its deliberations to memorialize Governor George E. Pataki to proclaim the week of April 22 through 28, 2001, as National Crime Victims' Rights Week in New York State; and be it further

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

the State of New York, the Capital District Coalition for Crime Victims' Rights Week, the Long Island Metropolitan Area Chapter of Parents of Murdered Children, Incorporated, and the Downstate Coalition for Crime Victims, along with the National Crime Victims' Rights Week Coalition."

THE PRESIDENT: Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

Let me just say that this house has been in the forefront of recognizing crime victims. And, you know, it's only in recent years that the victims of crimes have been recognized by our society. And I think it's so very, very important that every one of us who have crime victims in our Senate districts recognize this, and we urge the Governor to declare it Crime Victims' Week.

Let me just say that on behalf of the Senate Majority, I'd like to open up this resolution to every member of the Senate, because you've all been part of Crime Victims' Week.

And I think it's so very, very

important that we go forward in this area, because particularly throughout the state, different organizations are recognizing crime victims. And I think it's very significant that we have Crime Victims' Week in the month of April.

Thank you, Madam President. The resolution is opened.

THE PRESIDENT: Senator Skelos, Senator Farley wishes to open this resolution.

SENATOR SKELOS: No objection.

THE PRESIDENT: Hearing no objection, then, the resolution is open. And any member who does not wish his or her name to be included on the resolution, please notify the desk.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. I -

THE PRESIDENT: First, Senator, on the resolution.

SENATOR SCHNEIDERMAN: Yes, thank you.

I want to thank Senator Farley for opening this.

The Capital District Coalition for Crime Victims' Rights, which someone who I personally work with has been very involved with, is a great example of people who go into what for many people would be a tragedy that would cause them to withdraw from society, but instead returning with a commitment to make things better for others. It is a tremendous example in our state of people bringing out the best in themselves.

The problems of crime victims were neglected for many decades, where the focus was always on prosecution of the accused. And I think that we are moving in a direction of dealing more effectively with issues relating to crime victims. But I think that that's really largely a tribute to the coalitions that have formed around this state educating us, working with community groups, working with law enforcement. We are moving in the right direction, but we have a ways to go.

I'm very grateful that we're joined today by some members of the Capital District Coalition, and I think this is a very, very fine occasion for the Governor to recognize

this important work.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you very much, Madam President.

I also want to rise and say that I think that a lot of the good work that the Legislature has done on this issue is in part due to the hard work of Pat Joya and the Capital District Coalition. I know that Pat Joya, who worked for one of our predecessors here, Senator Leichter, was one of the driving forces on this.

And I also have had the privilege of working with many of the groups in New York City as well.

And it's really a tragedy that we have to do this kind of recognition at all, because so many people have suffered as a result of crime. But it is good that people can find the strength to be involved and to support this wonderful cause even in light of their own personal tragedies.

Thank you, Madam President.

THE PRESIDENT: The question is on the resolution. All those in favor signify

by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a privileged resolution at the desk by Senator Hassell-Thompson. I ask that the title be read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Hassell-Thompson, Legislative Resolution Number 1363, congratulating Helen Roach Bayne Lightbourne upon the occasion of her 100th Birthday.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Please adopt the resolution.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a privileged resolution at the desk by Senator Sampson. I ask that the title be read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Sampson, Legislative Resolution Number 1364, honoring Dr. Cynthia Perry Ray upon the occasion of her retirement as President of the Women's Auxiliary to the National Baptist Convention, USA, Incorporated.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is

adopted.

Senator Skelos.

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

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

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 131, by Senator Farley, Senate Print 1994, an act to amend the Environmental Conservation Law.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 213, by Senator LaValle, Senate Print 2355A, an act to amend the Education Law.

SENATOR PATERSON: Lay it aside, please, Madam President.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 216, by Senator Hoffmann, Senate Print 532, an act to amend the Agriculture and Markets Law.

SENATOR PATERSON: Lay that one aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 218, by Senator Padavan, Senate Print 1814, an act to amend the Agriculture and Markets Law.

SENATOR PATERSON: Lay that aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 229, by Senator Wright, Senate Print 2198, an act to amend the Penal Law.

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 that one aside also, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 291, by Senator Alesi, Senate Print 1128, 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 293, by Senator Maziarz, Senate Print 1897, an act to amend the Vehicle and Traffic Law.

SENATOR PATERSON: Lay that aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 301, by Senator LaValle, Senate Print 2589, an act to amend Chapter 554.

SENATOR PATERSON: Lay that

aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 366, by Senator Morahan, Senate Print 3715A, an act to amend the Penal 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: Thank you, Madam President. If we could go to the controversial calendar and start with Calendar Number 218, by Senator Padavan.

THE PRESIDENT: The Secretary will read Calendar Number 218.

THE SECRETARY: Calendar Number 218, by Senator Padavan, Senate Print 1814, an act to amend the Agriculture and Markets Law, in relation to spectators.

SENATOR PATERSON: Explanation.

SENATOR LACHMAN: Explanation.

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

SENATOR PADAVAN: Thank you, Madam President.

THE PRESIDENT: I believe by Senator Paterson.

SENATOR PADAVAN: Over the years, we have attempted, somewhat successfully, to deal with the issue of inhumane treatment of animals by virtue of their use in organized fighting among the animals. Cockfighting, fighting among pit bulls bred for that purpose are some of the more well-known activities that we've attempted to deal with.

We've passed laws going back to 1984 imposing strong penalties against the operators of those events. More recently, we passed a law dealing with those who participate by buying tickets and gambling at those events.

The ASPCA brought to our attention in the enforcement of those laws a loophole; namely, that they would raid an activity that I've described and there would be people standing around who obviously at that moment in time were not wagering a bet nor had a ticket on them or any other indication that

they had paid for admission. Yet those individuals are part and parcel of this odious activity which we are seeking to eliminate.

And so this bill expands those who would be subject to the appropriate penalties as spectators or those who facilitate the endeavor that we are talking about.

That is the explanation.

SENATOR PATERSON: Thank you.

SENATOR PADAVAN: You're welcome.

THE PRESIDENT: Senator Lachman.

SENATOR LACHMAN: Yes, Madam President. Will the sponsor yield for a question or two?

THE PRESIDENT: Senator Padavan, will you yield?

SENATOR PADAVAN: Yes.

THE PRESIDENT: You may proceed, Senator Lachman.

SENATOR LACHMAN: Senator Padavan, I'm interested in understanding the scope of the bill throughout -- how it applies throughout New York State and whether it is more prevalent, animal fighting, in rural areas or in urban areas such as New York City.

SENATOR PADAVAN: It's probably more prevalent in urban areas. I understand they have that problem in various parts of the state. Long Island, I'm told by one of our colleagues, has been plagued by this activity. Certainly in New York City, according to the reports from the ASPCA where they've raided and taken action against a number of promoters.

But I would guess that it's more prevalent in urban centers.

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

THE PRESIDENT: Senator Padavan, do you yield?

SENATOR PADAVAN: Yes.

THE PRESIDENT: You may proceed, Senator Lachman.

SENATOR PADAVAN: Speaking of the issue at hand.

(Laughter.)

SENATOR LACHMAN: Siamese twins.

Could we possibly, Senator Padavan, receive some statistics relating to where this takes place, primarily in rural areas, in

urban areas, and how many of these incidents take place in the City of New York?

SENATOR PADAVAN: I don't have that information at hand, Senator. We could get it from the enforcement folks at ASPCAs and other humane societies throughout the state, as well as local law enforcement agencies.

However, I would suggest to you that no matter where it is or to whatever extent it might be prevalent in any geographic area of the state, it is still wrong, morally and otherwise. And we are attempting to deal with it.

SENATOR LACHMAN: Madam President, will the Senator yield?

THE PRESIDENT: Senator, will you yield?

SENATOR PADAVAN: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR LACHMAN: Has the State District Attorneys Association taken a position on this, Senator Padavan?

SENATOR PADAVAN: Not to my

knowledge. I have no memos from them. Obviously, if they were opposed to it, I would have heard of it. They've never been opposed to any of the prior statutes that we've put in law. So I would assume they have no problem with this bill either. But to answer your question directly, I have not heard from them directly.

SENATOR LACHMAN: Madam President, will the Senator continue to yield for one or two more questions?

THE PRESIDENT: Senator, will you yield.

SENATOR PADAVAN: Yes.

THE PRESIDENT: You may proceed.

SENATOR LACHMAN: Do we know the impact of gambling in the area of animal fighting in the state?

SENATOR PADAVAN: The impact?

SENATOR LACHMAN: Yes.

SENATOR PADAVAN: Well, obviously that's one of the major reasons for having these animal fighting events, is people come there and gamble on one of the two participants in the ring. And so gambling is

certainly a factor, a major factor. It's both a spectator sport and a gambling activity.

SENATOR LACHMAN: One more question, and then on the bill.

THE PRESIDENT: Senator, will you yield?

SENATOR PADAVAN: Well, I wouldn't use the word "sport" in any term that you and I would normally accept.

SENATOR LACHMAN: I agree.

THE PRESIDENT: Senator, will you yield to a question?

SENATOR PADAVAN: Yes.

THE PRESIDENT: You may proceed, Senator Lachman.

SENATOR LACHMAN: Am I correct in assuming that this would be -- the bill is a felony for those who organize the events and a misdemeanor for those who participate in the events?

SENATOR PADAVAN: That's correct.

SENATOR LACHMAN: On the bill, Madam President.

THE PRESIDENT: You may proceed, Senator Lachman.

SENATOR LACHMAN: Thank you kindly.

I think it is an excellent bill. I think we're long overdue in strengthening such bills that have existed in this area. When you realize that the State of New York approved a bill denying animal fighting in 1886, in Massachusetts in 1831, it is shocking for me to learn that there are three states today -- Oklahoma, Louisiana, and New Mexico -- that permit animal fighting.

I think it's disgraceful, it's outrageous, and it leads to many, many negative problems, one of which, of course, is the whole issue of gambling in the State of New York.

I will support this bill, Senator Padavan, and congratulate you in sponsoring it.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President. If Senator Padavan would yield for a couple of questions.

THE PRESIDENT: Senator, will you yield?

SENATOR PADAVAN: Yes.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Senator, I think you quite properly described this conduct as odious. And I just have a little bit of worry about some of the people at these events. You say that they don't have a ticket, and you also point out that they're not gambling at the events. What you're saying is that they probably paid their way in, but there's no real way of making a record, and it's a loophole but they actually did pay their way in and they are a part of the event, they're observing it.

In other words, it's such a ghoulish thing that there are people that would see something and just kind of stop, you know, just out of their own sense of excitement or whatever. And while, you know, you would find their conduct to be somewhat prohibitive, I don't know that I would consider it to be a misdemeanor. In other words, they're not part of the organizing, they might not have bought a ticket.

So I just wanted you to clarify to me who the people are that we're charging under this statute.

SENATOR PADAVAN: Senator, I've never been to one of these events, but I've seen videos of them. Typically, it's in the basement of a vacant building, a warehouse or some other establishment. The people who are there, even though you may not catch them in the process of making a wager, are there for a purpose. You may not find a ticket on them, but they gained admission. And therefore, they are culpable, because without them these events could not exist.

Now, there are other people who participate in a fashion that the current law would not identify. A guy stands on the roof looking for the cops and rings a bell when he sees them coming. The security individuals at the event, to make sure if there's anything happening that shouldn't happen, they take action. There are many individuals associated with this activity who neither are gambling nor paid admission, and they are also an integral part of the activity.

We wish to involve all of them in some level of penalty so that we can eliminate this activity.

SENATOR PATERSON: Madam President, on the bill.

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

SENATOR PATERSON: Senator Padavan has answered my questions. I have never witnessed one of these events, nor have I, such as Senator Padavan did, seen a video of these types of events. And what I got from his answer that relieves my concern is that you have to know where you are when you go to these events.

In other words, that they're not being held on the street, they obviously would attract a lot of attention and the police would therefore come. So in other words, you have to go out of the regular path of seeing something that looks interesting or strange, to a basement or someplace where there's obviously some security, there's a lookout.

And so those, I think, are the perimeters in which you have willingly gone

beyond where I think the people who are there, to my satisfaction, the explanation is that they understand that they're at what's basically an illegal event.

Now, I'm going to restrain myself, Madam President. I accept Senator Padavan's explanation. I'm dying to ask him if he thinks it should be a misdemeanor to watch videos of these events. But I'm not going to ask him that question, I'm going to vote for the bill.

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 on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, would you please call up Calendar Number 366, by Senator Morahan.

THE PRESIDENT: The Secretary will read Calendar 366.

THE SECRETARY: Calendar Number 366, by Senator Morahan, Senate Print 3715A, an act to amend the Penal Law, in relation to requiring.

SENATOR PATERSON: Explanation, please.

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

SENATOR MORAHAN: Yes, Madam President. This is an appropriate bill for today, after having passed the crime victims' resolution proclaiming next week as crime victims' recognition, if you will, of their plight in the State of New York.

We have today two crime victims who lost their sister in a heinous murder that was committed in New Jersey, but the body of the victim, who was killed by a schoolteacher from my county, was found in my county. The family has appealed and has worked for several years

to amend the law in New Jersey. They now are asking to amend the law here in the State of New York.

This bill would amend Penal Law by adding a new subdivision 5 to Section 125.25 that would expand the definition of a sexual degree murder to include sexual molestation and the murder of a child under 14, with a mandatory sentence of life without parole.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, when I read a bill like this, sometimes I wonder why it took us so long to get around to looking at what Senator Morahan is proposing.

And if the Senator would yield for a couple of questions, I just want to learn a little more about it.

THE PRESIDENT: Senator, will you yield?

SENATOR MORAHAN: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Senator, would

you be willing -- Madam President, would Senator Morahan be willing to share with his colleagues what the current law is and what the discretion of the trial judges has been in? Other words, in these types of situations, what is the usual outcome as it stands under the law now?

SENATOR MORAHAN: Well, under the law now, the crime that was committed in 1973 that affects this bill, which we're calling Joan's Law, that was only given, as under second degree murder, 25 years to life or 20 years to life, which makes the perpetrator eligible for parole after five years.

The family has been fighting the release of this killer for several years. And each time that the killer is up for parole, they have to marshal the family, they have to marshal support to keep the person in prison.

Under current law, prosecutors have a discretion in charging under murder one or murder two. A murder one conviction, as you realize, can carry a sentence of death if agreed -- if put on by the jury, life without parole, or 20 to 25 years to life. Murder two

can only carry a sentence of 15 years to life, with the eligibility for parole.

I don't know if I answered your question, Senator.

SENATOR PATERSON: Yes, Senator, you did answer my question.

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

THE PRESIDENT: Senator, do you continue to yield?

SENATOR MORAHAN: Yes, I do.

THE PRESIDENT: You may proceed with a question, Senator Paterson.

SENATOR PATERSON: Senator, I'm trying to imagine the situation where a parole board would actually release someone in this situation even if they had the authority to do so. I'm just curious, have there been any instances where this has actually occurred?

SENATOR MORAHAN: I don't know of any incidents where specifically parole was given that met a crime with all the specifics of this particular crime.

I do know, however, as long as that authority to release is there, the possibility

of parole is there. And I think that's what I'm trying to eliminate in these particularly heinous crimes.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, I want to thank Senator Morahan for his answers.

On the bill.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: These are such macabre circumstances that bring us to our deliberations today that there's no doubt that all of us sitting here -- and you can feel it in the room -- feel the anxiety and the frustration that the members of this family are feeling and what causes them to have to be diligent on an issue sometimes many years after the act that created the pain that they feel has existed.

And we would not want them to have to conduct, in some cases, lifelong crusades to try to have to intervene every time a period has elapsed and there's a further opportunity for parole.

And I think that's what Senator

Morahan is trying to point out, that between the perpetrator and the surviving victims, that we don't want to put anyone through this process if we already know what the outlook is.

I would just like to point out that these issues of sentencing and issues of parole have different types of effects on people. And it's something that we debate and we deliberate here in this chamber. But that should never confuse anyone to the heartfelt anxiety that we feel hearing about these loathsome cases and the fact that it is in all of our minds that people who commit these types of crimes be punished most severely, not only for the crimes that they have committed but for the damage that they've done to those who still try to carry on in the midst of it.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes, Madam President, through you, if the sponsor will yield for one question.

THE PRESIDENT: Senator Morahan, will you yield?

SENATOR MORAHAN: Yes, I do, Madam President.

THE PRESIDENT: You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you.

This is really technical question. The way this statute is drafted, does this provide that if -- and again, these are such bizarre circumstances it's even hard to talk about it -- that the victim of the murder has to be the same person that is the victim of the sexual assault or -

SENATOR MORAHAN: Yes. The victim has to be the same and the perpetrator has to be the same. The perpetrator has to be the one who did the molestation and the murder.

SENATOR SCHNEIDERMAN: Thank you.

Through you, Madam President, on the bill.

THE PRESIDENT: You may proceed.

SENATOR SCHNEIDERMAN: I don't - I mean, these are such horrendous circumstances, you know, as a parent, this is the kind of thing you never even want to allow

into your consciousness.

I would note, though, to the extent that I'm aware of any actual crimes being committed that would fall into the parameters outlined by this bill, I think there have been occasions -- in fact, one of the instances that has been cited -- where there was an interstate element. And I think this really speaks to the need for us to pass a federal Violence against Women Act, which we have sought to pass and unfortunately the current Supreme Court has indicated that they believe it to be unconstitutional.

But this is an area of law where I think the need for interstate cooperation and interstate law-making is very, very much necessary, and I hope that we will be able to address this at the federal level before too much time goes by.

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 4. This

act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Civil Service and Pensions Committee in the Majority Conference Room.

THE PRESIDENT: There will be an immediate meeting of the Civil Service and Pensions Committee in the Majority Conference Room.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could call up Calendar Number 301, by Senator LaValle.

THE PRESIDENT: The Secretary will read Calendar 301.

THE SECRETARY: Calendar Number 301, by Senator LaValle, Senate Print 2589, an

act to amend Chapter 554 of the Laws of 1996, relating to creating.

SENATOR PATERSON: Explanation.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR LAVALLE: Thank you, Madam President.

Before I explain some of the details of this chapter amendment to Chapter 554 of the Laws of 1996, I think it's important to know why that law came into effect as well as why we are doing this chapter amendment to that law.

During the period shortly before 1996, there was a leak of the nuclear reactor, small reactor that had been housed on the grounds of Brookhaven National Lab for a period in excess of twenty years. Leading up to that leak, however, there had been environmental damage done on the property of Brookhaven National Lab and there had been much debate within the surrounding communities

about tritium leaks into the Peconic River and its environs.

And so the community really wanted changes at the lab, because, believe it or not, environmental safety and procedures were really not a priority at the lab at the time.

Subsequent to the leak of the reactor, in 1995, there were changes made at the lab in terms of not only change in director but a change in the management agency at that oversees and runs the lab. And today, State University at Stony Brook is that management agency, and the new director is the former president of State University at Stony Brook, Dr. John Marburger.

But at the time, there had been no oversight of the community or even governmental agencies until we passed Chapter 554 of the Laws of 1996.

In the intervening years, with the help of various members of environmental organizations, we have come to make changes that are before us today in terms of increasing the number of voting members on the oversight board. And that's really the

changes that we are making.

We increase from 7 members to 13 voting members, plus 5 ex officio members who are nonvoting members. Four appointments are made by the Governor, two of whom must be residents of Suffolk County, and a third member, of an established environmental organization on Long Island, and also an additional member of the four a member of an established public health organization on Long Island. And that had not been in the previous bill.

So these additional appointments really strengthen the appointments. We have three appointments by the county executive, two of whom must be residents of Suffolk County and one a member of an established environmental organization. And that's one that -- other than the environmental organization that has been appointed by the Governor.

We have one member appointed by the Majority Leader of the Senate who must be a resident of Suffolk, one member appointed by the Speaker of the Assembly which must be a

resident of Suffolk County, and one -- the one appointment which is the Commissioner of Suffolk County Department of Health, the Commissioner of Health, or her designee.

We also have an appointment, the president of the Citizens Affiliated Brookhaven Civic Association, or his or her designee. That is already in the present law. I wanted to make sure that civic association participation was important in the oversight board.

One appointee, the supervisor of the Town of Brookhaven, or his designee. And one member who shall be a current employee or a retired employee from Brookhaven National Lab and shall be selected by the Department of Energy.

The five ex officio members are as follows: The Commissioner of New York State Department of Environmental Conservation, or her designee; one appointment is the Secretary of the U.S. Department of Energy, or his or her designee; one member of the Brookhaven Roundtable, by members of the Brookhaven Roundtable; and one member chosen by the

Congress member from the First Congressional District, and that person must be a resident of the county of Suffolk. And also the director of the Waste Reduction and Management Institute at Stony Brook, or their designee.

The other and most critical piece of this bill is, under the present law, the chair of the committee is the director of the Brookhaven National Lab. And we believe that while that served some purpose to get the oversight committee up and running, that that is not a good appointment, the director being the chairperson. And so the members of the committee would appoint both the chair and vice chair of this oversight board.

That basically is the major changes here in this chapter amendment, is to really -- once we got running and operating, we saw that the appointment system in the existing chapter presented some problems in terms of day-to-day operations or regular operations of the oversight committee.

This legislation in its development had input from the environmental community and the legislation, as many of the members know,

has a memorandum of support from the Sierra Club, the Atlantic Chapter, which is the Long Island chapter of the Sierra Club.

Madam President, that's my explanation in its entirety of this bill before the body.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you.

Through you, Madam President, if the sponsor would yield for a few questions.

SENATOR LAVALLE: Yes.

THE PRESIDENT: Thank you. You may proceed, Senator Padavan, with a few questions.

SENATOR SCHNEIDERMAN: Or Senator LaValle.

THE PRESIDENT: You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you.

Through you, Madam President. Certainly even at the far western end of downstate New York we hear about Brookhaven, although there are many people who live in my district who also spend time out in the

eastern end of Long Island. And I'm concerned about what we frequently hear in situations like this, and I gather this is an attempt to address that, which is that these are -- that we have some committees or commissions that are supposed to provide oversight but don't necessarily do everything they're supposed to do.

So my question is, has the local oversight committee been in existence been fulfilling its mandate, have they been issuing reports, have they been meeting?

SENATOR LAVALLE: Senator Schneiderman, yes, they have met. They have issued one report, is my understanding.

And of course this legislation before us I think would strengthen the membership body and help provide the kinds of quorums and so forth that you need to have the kind of attendance that we require.

Under the law in this chapter amendment, they must meet at least quarterly, or they can meet more frequently at the call of the chair. And I believe that they have met their mandate of meeting at least

quarterly.

SENATOR SCHNEIDERMAN: Thank you.

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

SENATOR LAVALLE: Yes.

THE PRESIDENT: Senator LaValle, you will yield.

You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you.

Is there any estimate of how much will need to be provided by way of resources so that the staff necessary to perform all of the commendable tasks set forth in this legislation, that it would actually be able to take place?

SENATOR LAVALLE: That's actually a very good question. And it's always a problem that money has to come from various government sources -- the town, the county throws in some money, Brookhaven Lab throws in some money to make this operative.

I am sure, and it's something that we as members always put off, that this oversight committee will at some juncture need

a sustainable stream, revenue stream in order that they properly -- and I underline that word "properly" -- fulfill and execute their duties and responsibilities.

SENATOR SCHNEIDERMAN: Thank you.

Through you, Madam President, again, if the sponsor will continue to yield.

SENATOR LAVALLE: Yes.

THE PRESIDENT: Senator LaValle, you will yield.

SENATOR LAVALLE: Yes, I will.

THE PRESIDENT: You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: And again, I very much appreciate the intent here, which as I gather it is to reenergize the oversight of Brookhaven, which is a concern.

But as I evaluate or look at this list of changes in the appointees, it strikes me that the portion of the committee that is really just a -- forgive the expression, political appointees by the Governor, the county executive, and others -- gets larger and the appointee who is represent sort of independent, public-interest-type groups

actually gets smaller. Is there some reasoning behind that?

SENATOR LAVALLE: No, that is not true, Senator Schneiderman. Because what we have done here is we went out of our way in this chapter amendment to provide, in the additional members, both public health consideration and environmental appointments, three additional appointments that really were not included in the first -- in the law as it exists today.

And as I indicated, as we went through this, we literally -- I literally met and dealt with the environmental community and how these appointments would be made and so forth.

So we actually strengthened outside public intervention in the committee.

SENATOR SCHNEIDERMAN: Through you, Madam President, maybe I'm then just reading it wrong. I see one environmental - someone who is a member of a Long Island environmental organization is to be one of the appointees of the Governor, and one of the Suffolk County executive.

SENATOR LAVALLE: That's correct.

SENATOR SCHNEIDERMAN: Are there more appointments here that are required to be environmentalists?

SENATOR LAVALLE: Yes. There should be -- there's one appointment for a public health organization, of an established public health organization. That's one of the Governor's appointments. And we also, as I had indicated with some pride, have civic association involvement on the committee.

SENATOR SCHNEIDERMAN: Okay. Thank you. Then I accept that. That does sound like a good addition.

Through you, Madam President, if the sponsor would yield for one more question.

SENATOR LAVALLE: Yes.

THE PRESIDENT: Senator, you will?

You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: A concern with oversight panels such as this one, I think, is that while they have authority - and I notice that this statute provides fairly

broad authority -- to monitor, to investigate complaints of residents, which I gather there are more than a few, I don't see in here any requirement that this panel actually perform any of these reviews, investigations, or evaluations.

Is there any mandatory review, evaluation, or investigation set forth anywhere in this?

SENATOR LAVALLE: Yes. Senator, it has the authority to review and investigate local concerns, complaints and observations, to establish a comprehensive list of materials that can be considered a contaminant used at Brookhaven National Lab, review previous sites of potential sources or sites of contamination at the lab and report on present condition, evaluate and report on all remediation plans that Brookhaven Lab puts forth, evaluate laboratory analyses that are undertaken at Brookhaven Lab to ensure credible findings, ensure that all Brookhaven National Lab contaminant generation, storage and removal conform to federal, state, local laws, rules and regulations. And, you know, we go on and

on.

And having said all of that, which just delineates specific responsibilities, you know, of course, in your own dealings that once you have an oversight board, it creates a whole different synergy at the lab. Because now they are responsible, there is someone looking over their shoulder so that they must be better in the safety programs that workers must use and make sure that the workers abide by those safety rules and regulations that the lab may put forward.

So other than the specific list that I mentioned, there is -- just their being there as an oversight committee creates a new dynamic that was never there before.

SENATOR SCHNEIDERMAN: Thank you.

Through you, Madam President, on the bill.

THE PRESIDENT: You may proceed, Senator.

SENATOR SCHNEIDERMAN: Thank you. Thank the sponsor for his answers.

This is, I know, a subject of tremendous concern in Suffolk County. I guess

in 1947 when Brookhaven was established, they thought we're putting this so far out away from people it's not going to be an issue. Obviously, that hasn't been the case for a very long time.

My only concerns are that -- and I hope that it is true that this committee will get the synergy and the energy to pursue everything that the sponsor has suggested. My concern that while there are certain things that the committee is required to do in this legislation, one that is notably absent and is just discretionary is that the committee has the authority to review and investigate local concerns, complaints, and observations relating to contamination.

I would suggest that that opens the door to the possibility that there's some complaints that will be investigated and some that will not. Having said that, obviously there's nothing that precludes the committee from doing that. Hopefully they will do so.

My other concern really is when you expand an oversight board, it doesn't necessarily achieve good results. Sometimes

you end up diffusing the accountability. And with four appointments from the Governor, three from the Suffolk County executive, the Senate Majority Leader and Speaker of the Assembly -- not that those two gentlemen ever make bad appointments. But there is a certain diffusion of responsibility that can take place in these situations which would be a source of concern.

I would like to see more people representing environmental organizations on this board. And I guess we'll have to see what appointments actually come through. But it's a worthwhile cause. I hope we will have the courage to provide the funding necessary for them to undertake all of these tasks.

Thank you, Madam President.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, will the sponsor yield to a couple of quick questions?

SENATOR LAVALLE: Yes.

THE PRESIDENT: Senator LaValle, you will yield.

You may proceed.

SENATOR DOLLINGER: Through you, Madam Senator. Senator LaValle, how do we get jurisdiction over the Brookhaven Laboratory? I mean, this is, I assume, a federal creation. We can't compel them to undertake -- to comply with state law, can we?

SENATOR LAVALLE: Senator, while the funding is operated by the Department or comes through the U.S. Department of Energy, the management is delegated to a third party. In other words, the management is not part of the Department of Energy but a vendee that provides that.

In this case -- and it doesn't necessarily always have to be the State University at Stony Brook, but certainly we have a state university that is providing the management -- running the lab, in the case of Brookhaven National Lab.

So that is our hook. But we always had a hook, because it was not really a -- the management was always through a third party.

SENATOR DOLLINGER: Through you, Madam President, if Senator LaValle will

continue to yield.

THE PRESIDENT: Senator LaValle, will you yield?

SENATOR LAVALLE: Yes, I will.

THE PRESIDENT: You may proceed, Senator Dollinger.

Senator Skelos.

SENATOR SKELOS: Madam President, if I could just interrupt for a minute, there will be an immediate meeting of the Children and Families Committee in the Majority Conference Room.

THE PRESIDENT: There will be an immediate meeting of the Children and Families Committee in the Majority Conference Room.

Senator Dollinger.

SENATOR DOLLINGER: Through you, Madam President, is it possible, Senator LaValle, that if this is a state university, that the board of trustees could set up this monitoring and oversight committee as part of its regulation of campus activities and as part of its regulation of Stony Brook, could this be done even without legislation? It would seem to me it's within the power of the

trustees to do that.

It may not have the same configuration that your bill talks about. But the need to achieve an interaction between the community and this operation which does -- and apparently, based on past experience, in fact has in the past created environmental contamination, a threat to health in the vicinity, is it possible the trustees could do this themselves?

SENATOR LAVALLE: There are a couple of things here. Senator, I think as we all know here in this Legislature, when we put something into statute, that has an enormous impact, to have statutory presence. And this is the only oversight board or committee that is statutorily rooted. The county legislature and the county have after or from time to time create ad hoc committees to have oversight.

But in the case of the state university, I think what is important here is that you don't have the fox looking at the henhouse. We really need an independent committee outside of whether, in this case, the state university, or another management

company, whether it would be Battelle, to really go through and oversee something.

So I think it is important to have an independent, statutorily rooted committee that can oversee the operation here.

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

THE PRESIDENT: You may proceed.

SENATOR DOLLINGER: I understand and appreciate Senator LaValle's final work on this bill. I agree with some of the sentiments expressed by Senator Schneiderman with respect to the composition of the new board.

My other concern, Madam President, is I always find it fascinating that we pass these bills by what I can only describe as Nebraska margins. You know, in Nebraska football, they always beat Prairie View by 58 to nothing, 61 to nothing. We pass these bills without a single voice of opposition in this house. And yet for some reason in 1999 and the year 2000, the other house didn't approve this bill and didn't pass this bill.

I find it fascinating that -- and I

would suggest to Senator LaValle that a message to the Assembly that says let's get serious about doing the changes in this bill or negotiating the terms of the changes, the composition and the scope of authority of this committee -- it seems to me this is an easy one.

And I would suggest that, Senator LaValle, I would not only vote in favor of this bill, I'd vote in favor of a message to the Assembly telling them to convene a conference committee or some other mechanism to negotiate the differences with the other house. This is clearly an important issue for a part of Suffolk County that has experienced environmental contamination in the past.

And that kind of legislating I think is exactly what we should be here for. I regret that this proposal or something very much akin to it has not become law. And, Senator LaValle, I will not only vote for it, but I'll vote for a message to the Assembly telling them that they ought to put this on the priority list and get a bill or a negotiated conference-committee settlement of

this issue before both houses so that this good piece of thinking can become a good law.

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 SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, would you please call up Calendar Number 131, by Senator Farley.

THE PRESIDENT: The Secretary will read Calendar 131.

THE SECRETARY: Calendar Number 131, by Senator Farley, Senate Print 1994, an act to amend the Environmental Conservation Law, in relation to making technical corrections.

SENATOR DOLLINGER: Explanation.

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

SENATOR FARLEY: Thank you, Madam President.

This bill would repeal authorization for the following three compacts: The Champlain Basin Compact, the Mid-Atlantic States Air Pollution Control Compact, and the Delaware River Basin Water Commission Compact. These compacts were never established. And they are no longer necessary, as they have been replaced by other interstate agreements.

This is a housekeeping bill. I think there's several of them that I'm kind of cleaning up the law. By repealing these obsolete provisions, this bill will try to keep our laws up-to-date and prevent any confusion.

Now, let me just say about the Champlain Basin Compact, this was passed in 1966, the first year that Senator Stafford was here, and was intended to provide for cooperative efforts in watershed management and orderly development of the region.

However, Vermont passed a slightly different version of the compact, and these differences were never reconciled. Vermont subsequently repealed its authorization in 1989.

So this compact is no longer needed, as other cooperative efforts have been undertaken. For example, New York, Vermont, and Quebec signed an agreement in 1988 to foster and ensure cooperation in management, protection, and enhancement of Lake Champlain. In 1990 the federal legislation created the Lake Champlain Management Conference, which developed a management plan for the lake. This plan was adopted by the two states and the United States EPA in October '96.

The Mid-Atlantic States Air Pollution Control Compact was passed in 1967, and it would have created a commission to address interstate air pollution problems. However, the required Congressional consent was never granted, and that compact never went into effect.

This compact is no longer needed, and subsequent initiatives were taken at the federal level to address air pollution through

multistate efforts. For example, the Federal Clean Air Act of 1970 significantly strengthened air pollution laws and programs and established a tristate air quality control region for parts of New York, New Jersey, and Connecticut. In addition, a 1990 federal law established a 12-state Ozone Transport Commission which includes New York.

The Delaware River Basin Water Commission Compact, this compact should not be confused with the existing Delaware River Basin Compact. The Delaware River Basin Water Commission Compact was an earlier version that was never authorized.

This proposed compact, which passed in 1952, would have created a commission to exercise powers relating to developing, utilizing and controlling and conserving the water resources of the Delaware River Basin. Although it was approved by New Jersey and Delaware, it failed to receive the approval of Pennsylvania and consequently never went into effect.

This compact is no longer needed, as these four states and the U.S. federal

government entered into the Delaware River Basin Compact in 1961.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you. Through you, Madam President, if the sponsor would yield just for some brief questions.

THE PRESIDENT: Senator, will you yield?

SENATOR FARLEY: Yes, I will.

THE PRESIDENT: You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you.

I guess this raises a concern that we just were discussing in connection with Brookhaven about committees and commissions that are supposed to perform oversight or to establish policies in areas where individual state legislatures and local organizations are lacking.

Is there some improvement in the case of the Champlain -- on the Champlain Basin Compact that is provided by this new organization that's being performed?

SENATOR FARLEY: We're not

forming a new organization.

SENATOR SCHNEIDERMAN: Through you, Madam President, there is something called the Champlain Management Conference. Was that disbanded?

SENATOR FARLEY: That does exist. That exists now. That's not disbanded. We're not repealing that.

We are repealing the Champlain Basin Compact, which has no existence or no meaning in the law.

SENATOR SCHNEIDERMAN: I see. And what is the -- through you, Madam President, if the sponsor would continue to yield.

SENATOR FARLEY: Yes.

THE PRESIDENT: You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: What has the Champlain Management Conference actually accomplished since it was established, which I believe was in 1990?

SENATOR FARLEY: Well, it has undertaken agreements between Vermont and New York State for the development and management

of Lake Champlain. I think that that's one of the greatest assets that we have, certainly in Senator Stafford's area and certainly for New York and Vermont.

As a matter of fact, I recall -- I think it was Senator Leahy that passed a bill I think that didn't go anywhere to make that a Great Lake.

SENATOR SCHNEIDERMAN: Thank you.

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

THE PRESIDENT: Senator Farley, will you yield?

SENATOR FARLEY: Yes, I will.

THE PRESIDENT: You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Well, it is a great lake, if not one of the Great Lakes. But it certainly is a great lake.

Has the Champlain Management Conference issued any reports since it was formed in 1990?

SENATOR FARLEY: I believe they have. You know, but actually that's not very relevant to this bill, because this bill is

repealing the Champlain Basin Compact, which has no reason or basis to be in our laws.

I'm not fully prepared to address all the reports that was issued by the current compact. But yes, I think they have issued some reports. I'm sure they have.

SENATOR SCHNEIDERMAN: Thank you.

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

SENATOR FARLEY: Yes.

THE PRESIDENT: Senator Farley, you do yield.

SENATOR FARLEY: Yes.

THE PRESIDENT: You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Moving along to the Ozone Transport Commission, which is one of my favorite government names, do you know if the other states that were involved in the Mid-Atlantic States Air Pollution Control Compact have also repealed or rendered inactive their participation in the compact?

SENATOR FARLEY: Yes, they all have.

SENATOR SCHNEIDERMAN: And what

is the current status of the Ozone Transport Commission? Is it still conducting business?

SENATOR FARLEY: As far as I know, it is.

SENATOR SCHNEIDERMAN: Thank you. Thank the sponsor.

Through you, Madam President, on the bill.

THE PRESIDENT: You may proceed on the bill.

SENATOR SCHNEIDERMAN: I think this is -- I think this is perfectly reasonable. I think it sounds as though we've got organizations that are trying to fill the needs that the original interstate compacts were designed to address.

I think that it does point up a problem that we tend to have here where we appoint commissions, we set up compacts and we probably are lacking in the area of oversight. I am not sure what these various commissions and organizations are actually doing on a month-to-month basis. And I think the - probably it changed from administration to administration, and the Executive branch

doesn't necessarily keep us as well-informed as we should be.

I think this seems perfectly reasonable, but I hope that we'll be able to do a better job of oversight over these organizations as we go forward. I will vote for the bill.

Thank you, Madam President.

THE PRESIDENT: Senator Farley.

SENATOR FARLEY: On the piece of legislation.

THE PRESIDENT: You may proceed.

SENATOR FARLEY: I think this speaks to the point that we're trying to look at these things that never existed, never did anything, and are still on our books. And we're just cleaning them out.

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 5. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, could we call up Senator LaValle's bill, Calendar Number 213, at this time.

THE PRESIDENT: The Secretary will read Calendar Number 213.

THE SECRETARY: Calendar Number 213, by Senator LaValle, Senate Print 2355A, an act to amend the Education Law, in relation to information.

SENATOR ONORATO: Explanation.

SENATOR SKELOS: Madam President, can we lay that bill aside temporarily and call up Calendar Number 216, by Senator Hoffmann.

THE PRESIDENT: The bill is laid aside temporarily.

The Secretary will read Calendar 216.

THE SECRETARY: Calendar Number 216, by Senator Hoffmann, Senate Print 532, an act to amend the Agriculture and Markets Law,

in relation to defining dangerous dogs.

SENATOR ONORATO: Explanation.

THE PRESIDENT: Senator Hoffmann, Senator Onorato has requested an explanation.

SENATOR HOFFMANN: Thank you, Madam President.

This legislation has not been voted on before in this house. It does amend the definition of "dangerous dog" by amending Section 108, subdivision 24 of the Agriculture and Markets Law. This is a definition and section of law. The definition is inconsistent at the present time with the dangerous dog section of the law, Section 121 of the Agriculture and Markets Law.

Section 108 does not mention domestic animals in the definition, while Section 121 does. The legislation has no impact on penalties. It just conforms the two sections of law.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Yes, Madam President. Through you, Madam President, will the sponsor yield to a question?

THE PRESIDENT: Senator Hoffmann, do you yield?

SENATOR HOFFMANN: I do.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: The conformity provision, that conforms with what other provision of state law, if I could just -

SENATOR HOFFMANN: I can't hear Senator Dollinger, Madam President.

SENATOR DOLLINGER: The bill that you're proposing is to bring this section into conformity with another section of the law; is that correct?

SENATOR HOFFMANN: Yup. 121.

SENATOR DOLLINGER: And what does the other section of the law provide?

SENATOR HOFFMANN: Senator Dollinger, in 1978, Section 121 stated: "If any dog shall attack, chase or worry any domestic animal," and so forth. And it deals with the killing or the injury of a domestic animal.

But in 1997 we passed a measure,

Section 108, subsection 24, which defined "dangerous dog" meaning a dog which attacks a person.

So the 1997 and the 1998 statutes are right now not reconciled, and this piece of legislation would simply those two disparate pieces of legislation.

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

THE PRESIDENT: Senator Hoffmann, will you yield?

SENATOR HOFFMANN: Yes, I will, Madam President.

THE PRESIDENT: You may proceed.

SENATOR DOLLINGER: Is the lack of irreconcilability due to some factor? I mean, we have a different penalty for the destruction by a dog of an animal versus an attack on a human being. Is that the distinction that we're talking about?

And if so, why was that done? I assume there's some well-reasoned basis for the first amendment that we did in 1996 or '97.

SENATOR HOFFMANN: In 1997, when the Governor signed the bill dealing with dangerous dogs, he made the following comment, and I quote from his approval memorandum of 1997: "The above amendment strengthens the law with regards to the serious problem of dogs which attack human beings and properly places responsibilities for such dogs on their owners. Therefore, I am approving the bill despite certain deficiencies that have been brought to my attention.

"For example, by limiting the definition of dangerous dog to a dog which has attacked a person or poses a serious threat of harm to a person, an attack by a dog on a domestic animal will no longer provide a basis for a judge to declare a dog to be dangerous."

The Governor very wisely stated in his approval memorandum that we needed to take action to bring into compliance both pieces of the statute so that both attacks on humans and on animals, domestic animals, including the definition of livestock previously in statute, would be covered.

And all of this discussion today

really deals with the need for us to reconcile these two provisions of law, Senator Dollinger.

SENATOR DOLLINGER: Madam President, I yield to Senator Skelos.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Thank you, Senator Dollinger.

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 Dollinger.

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

THE PRESIDENT: Senator Hoffmann, will you yield?

SENATOR HOFFMANN: I will.

THE PRESIDENT: You may proceed.

SENATOR DOLLINGER: Is there a

definition of "domestic animal" in the Agriculture and Markets Law that this particular bill would apply to that -- my only concern, Senator, is that obviously there's some dogs that might attack a cat or some other thing.

Ferrets? Parrots? Parrots or ferrets?

And my question is purely, is there a definition of what animals are included in the domestic animal category?

SENATOR HOFFMANN: Madam President, I will find that section. I have it here. It is in Section 7 of 108.

And interestingly enough, from a lay perspective, I was satisfied that it would not exclude livestock as we know it.

Section 108, subsection 7: "Domestic animal means any domesticated sheep, horse, cattle, fallow deer, red deer, sica deer, white-tailed deer which is raised under a license from the Department of Environmental Conservation, llama, goat, swine, fowl, duck, goose, swan, turkey -- confined to domestic - hare or rabbit, pheasant or other bird which

is raised in confinement under a license from the State Department of Environmental Conservation before release from captivity, except that the varieties of fowl commonly used for cockfights shall be considered domestic animals for the purpose of this article."

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

I appreciate Senator Hoffmann's response -

THE PRESIDENT: You may proceed.

SENATOR DOLLINGER: Just briefly, I think Senator Hoffmann's description of those animals that are involved might be an indication that the inclusion of the phrase "domestic animal" is too broad.

I would suggest that a dog attacking a rabbit or a dog attacking some other form of animal, which would be a natural reaction on the part of any dog, wouldn't - shouldn't put that dog in a position or its owner in a position where they're going to have to be subject to fine and penalties under Agriculture and Markets, or where someone who

destroys that animal is then alleviated from any responsibility in the event it's destroyed.

My concern is that the definition of "domestic animal," as Senator Hoffmann has read it, may be far too broad. And while I agree that vicious propensities on behalf of dogs should be dealt with, and I'm willing to concede that an attack on human being could be -- or could justify the same kinds of penalties that would be incurred if they attacked and killed a cow or a sheep, an animal of value in our farm system, it seems to me that this bill may go too far if it says that a dog attacking a rabbit and destroying the rabbit, killing the rabbit, is a sufficient justification for obviating the penalties that would otherwise accrue to someone who is destroying an animal without the owner's permission or that it would subject the owner to penalties and fines under the Agriculture and Markets Law.

I would just suggest to Senator Hoffmann that what's needed is a special definition of "domestic animal" in this

portion of the bill that will achieve her laudable goal of saying certain animals who are vicious to domesticated animals would be subject to those penalties.

But I think that, frankly, the natural propensities of dogs to chase rabbits or chickens or other forms of domesticated animals really may take this bill too far.

And so, Madam President, I'm going to think about it and then make up my mind and vote.

THE PRESIDENT: Senator Hoffmann.

SENATOR HOFFMANN: Yes, thank you, Madam President.

I think that Senator Dollinger might be reassured to know that the Unified Court System Advisory Committee on Local Courts rendered an opinion on the need for this law, and in a memo received earlier this year, and I quote: "Local court judges, particularly town and village justices, often address issues related to dangerous dogs. It would be most helpful for those judges if the definition could be clarified to include dogs that attack domestic animals."

The advisory committee went on to ask to be advised on the progress of the bill and requested that we contact them with any additional need for clarification. And I'm happy to say that they've supported the change in legislation that has been proposed today.

I also have, just anecdotally, a good example of why the judges have felt somewhat handcuffed by not having a good definition that would include domestic dogs.

A family living in Ballston Lake contacted this office and the Assembly sponsor to give an example of why they were interested in having the language clarified. They stated that they had been forced to sit through a trial to have a dog euthanized for having attacked and killed their Nubian goat, one of their Nubian goats. The dog in the same attack also mangled one of the pigmy goats.

The goat which was killed was a family pet raised as a kid from a bottle. At the time of his death as a result of the dog attack he weighed in excess of 200 pounds. For reference, Nubian goats do not have top teeth. And without horns, as Willy was -

Willy is the name of the Nubian goat -- goats are defenseless except for being able to run.

The attack by a neighborhood dog - well, the dog resided a quarter mile away. The attack occurred on their own property and took place inside a securely latched goat house which was completely enclosed by a four-foot-high wire mesh fence. The dog surmounted the fencing and killed the goat inside its own house. Because the goat could not get back out the way it entered, the floor of the enclosure being part of the outside, it had no way to escape.

And then they go into some rather lured details describing what they found. They discovered the dog inside the goat house with blood covering its mouth, "lunging at and menacing and snarling in an extremely aggressive attitude towards our other goats. The goats themselves were unable to rise due to multiple bites and puncture wounds and were profusely bleeding from the attack, which the veterinarian stated must have occurred over a sustained period of time."

They go on to discuss the trial.

At the trial, counsel for the defense raised a legal challenge to the prosecution on the basis that the term "dangerous dog" as defined in subsection 24 of Section 108 of Ag and Markets Law is one which attacks a person and makes no reference to domestic animals.

So the bulk of this letter goes on with a very poignant plea in memory of their sadly destroyed goat, Nubian goat, Willy, to please consider making this amendment as quickly as possible.

And I'm sure that Senator Dollinger and all of my colleagues in this house would want to see that domestic animals are respected and treated fairly, and recognize that the judges of this state would have discretion and would recognize that penalties for the destruction of an animal and any harm to a person would obviously be somewhat different, depending upon the circumstances, but domestic animals should not be omitted from the justice system in this case.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Explanation

satisfactory.

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 on the 30th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, please call up Calendar Number 213, by Senator LaValle.

THE PRESIDENT: The Secretary will read Calendar Number 213.

THE SECRETARY: Calendar Number 213, by Senator LaValle, Senate Print 2355A, an act to amend the Education Law, in relation to information.

SENATOR ONORATO: Explanation.

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

SENATOR LAVALLE: Senator Onorato, this bill deals with faculty ratios at both the State University and the City University.

And what we are requiring on each state-operated campus or, in the case of City University, its senior college, that in its course catalog the percentage of classes in each department that are taught by adjunct faculty, the percentage of classes in each department taught by teaching assistants, and/or the percentage of classes in each department taught by graduate students.

And of course what we're really doing here is this is a disclosure bill hoping that students understand what courses, what percentage of courses in their department are being taught by full-time faculty or other instructors or professors.

So I believe this bill was reported by our Higher Education Committee unanimously. And I hope it will be another tool that will help us build up our numbers of full-time faculty.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: Madam President, if Senator LaValle will yield for a number of my concerns about the bill.

SENATOR LAVALLE: Yes.

THE PRESIDENT: You may proceed with a question, Senator Stavisky.

SENATOR STAVISKY: If this bill were to be enacted and students were able to determine whether they were going to be taught by a regular full-time faculty member, an adjunct, a teaching assistant, or a graduate student, what would be the impact upon the courses that are going to be taught at that university?

SENATOR LAVALLE: Well, Senator, as you know, only in an ideal world would you have a hundred percent of the courses taught by full-time individuals. You can even take it one step further and say full-time faculty that are tenured in a university, because of the dynamics we use, variety, adjunct professors should be used, have expertise, should be used, as well as in some cases teaching assistants and graduate students.

What this bill simply does -- it

doesn't take a particular course, but in a department it at least allows a student to see in the department that they are taking a course or a department that they are majoring in, they should see a good balance between full-time faculty, adjunct professors, and teaching assistants. And that's all this bill really attempts to do.

SENATOR STAVISKY: Madam President, if Senator LaValle will yield.

SENATOR LAVALLE: Yes.

THE PRESIDENT: You may proceed, Senator Stavisky.

SENATOR STAVISKY: Line 6 and line 13 in the bill refer to adjunct faculty, teaching assistants, and graduate assistants. How do you define those terms?

SENATOR LAVALLE: I think what you're probably parsing over are the words "teaching assistants" and "graduate assistants," Senator, is that -

SENATOR STAVISKY: Yes.

SENATOR LAVALLE: I think those terms and the reason we use them, because in different institutions the -- they may be used

interchangeably or they may be used in one institution and maybe not in another, and we wanted to make sure that both situations were covered in the legislation.

SENATOR STAVISKY: Thank you, Senator. A couple of other questions, if the Senator will continue to yield.

THE PRESIDENT: Senator LaValle, do you yield?

SENATOR LAVALLE: Yes.

THE PRESIDENT: You may proceed.

SENATOR STAVISKY: It seems to me that the problem here -- and this is a step, as far as I can see, in the right direction. But it seems to me the real problem here are the full-time-equivalent ratios. The legislation says faculty ratios, in the bill itself.

And yet isn't the problem really the low percentage of full-time faculty - regardless of how you define full-time faculty -- the low percentage in CUNY and, to a lesser extent, at SUNY? It's a little bit better at SUNY than at CUNY. But isn't that the real problem?

SENATOR LAVALLE: Easy answer? One word, yes.

SENATOR STAVISKY: Yes. I knew you were going to say yes too, because I agree with that.

The problem -- Madam President, if the Senator would yield for another question.

SENATOR LAVALLE: Yes.

THE PRESIDENT: Senator, you do yield.

You may proceed, Senator Stavisky.

SENATOR STAVISKY: From what I understand from my expert at SUNY Albany, the problem is often the fact that the classes are not available, that the courses may be set aside. The student may know that the class is being taught by an adjunct faculty member and that adjunct faculty member may, for example, have, let's say, six sections of 30 students, but there are 300 students who wish to take the class. And this maybe a class required for graduation, a requirement for graduation. How would this legislation solve that problem?

SENATOR LAVALLE: This legislation would not solve that problem,

Senator. But I think it is a good question to bring up in this debate as a kind of a sidebar issue.

Certainly our community has been involved over many, many years, as we have, both as committee members and as Senator -

THE PRESIDENT: Senator Bonacic.

SENATOR BONACIC: Thank you, Madam President. I'd like to apologize to Senator LaValle and Senator Stavisky. We would like to call immediately a Senate Consumer Protection meeting at the Majority Conference Room, please.

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

Please proceed, Senator LaValle.

SENATOR LAVALLE: To continue, we have received input directly from constituents who have said, Look, I'm supposed to take Course 101, and I need that for graduation and it's not being given, it's oversubscribed, I can't get in.

I would say to you, Senator, that in more recent years the input from students,

the input to the committee has been less, which means that State University and even at City University -- but you would know better than I about City University -- that they're doing a better job in addressing that problem. Are they a hundred percent? No, they're not.

This bill, however, again does not address that concern. But that concern that you raise as a sidebar issue is something we need to be vigilant about and we need to make sure that both City University and State University are doing the best jobs to get the students in four years out the door with their degrees.

SENATOR STAVISKY: Thank you.

On the bill, Madam President, very briefly.

THE PRESIDENT: You may proceed, Senator.

SENATOR STAVISKY: Very briefly on the bill. I'm going to vote for the bill, but I truly wish we would address the issues that higher education presents, both at SUNY, at CUNY and in the private colleges, in terms of the budget resolution which we seem to be

doing in a piecemeal manner.

I have attended a number of Senator LaValle's hearings on this very issue of full-time faculty and the inadequate ratios and the public colleges. It seems to me perhaps we could add a section to the bill which talks about how many seats are available. If you're going to say how many faculty, how the classes are taught by part-time faculty, we ought to let the students know how many seats are available for the students who wish to take the course.

The problem is a larger one, obviously, where we've had a serious decline in the last ten years or so in the percentage of faculty who are full-time. And while this bill is helpful, it does not address the real basic issue of full-time faculty. And I hope that as we get -- if we ever get closer to a budget, I certainly hope we do, because this is one of the issues that has to be addressed in whatever budget resolution we come to.

Thank you, Madam President.

THE PRESIDENT: Senator Lachman.

SENATOR LACHMAN: Yes. Time is

afleeting, so rather than ask questions of Senator LaValle, on the bill.

THE PRESIDENT: You may proceed.

SENATOR LACHMAN: Thank you.

THE PRESIDENT: You're welcome.

SENATOR LACHMAN: I also feel this is a first step but does not get to the overall issue involved, which is not only the full-time-equivalent ratios, which in my opinion are unconscionable when SUNY has 70 percent faculty full-time ratio, CUNY has between 50 and 55 percent, depending upon the full-time ratio, and the private universities and colleges have much more.

But this goes further. Because, Senator LaValle, there is a -- Madam President, through you. Senator LaValle, there are distinct differences between full-time faculty, adjuncts, and graduate assistants. And these distinctions are exemplified by the salaries they get.

And since in the past I have and Senator Stavisky have brought to the fore - and I know that Senator LaValle agrees with us -- the issue of full-time ratios, I would

like to bring to the fore something which has not come to the surface as yet, and that is the abominably, abysmally low salaries that graduate students who are working on their Ph.D.s. receive in both SUNY and CUNY. We have men and women in their thirties, forties, and fifties who cannot make a living and have to sometimes drop out of their Ph.D. programs because of the salaries that they receive as graduate assistants to full-time faculty.

I had one student who had to drop his course work in the Ph.D. program in anthropology, another one in sociology, when they were working for me, because their salaries are abysmally low, even much lower than adjunct faculty and certainly much, much lower than full-time faculty.

And I think we have to address that problem if we consider ourselves, both in SUNY and CUNY, a full-time university on many levels that produces some of the best Ph.D.s in the country. Thank you.

But I will support this bill.

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 3. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

Senator Bonacic.

SENATOR BONACIC: Madam President, we'd like to return to reports of standing committees. I believe there is a Finance report at the desk.

THE PRESIDENT: Reports of standing committees, Finance Committee report.

The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following bills:

Senate Print 5102, by the Senate Committee on Rules, an act making appropriations for the support of government.

And Senate Print 5103, by the Senate Committee on Rules, an act to amend

Chapter 20 of the Laws of 2001.

Both bills ordered direct to third reading.

THE PRESIDENT: Without objection, both bills ordered direct to third reading.

SENATOR BONACIC: Madam President, we'd like to call up Calendar 406, please.

THE PRESIDENT: The Secretary will read Calendar 406.

THE SECRETARY: Calendar Number 406, by the Senate Committee on Rules, Senate Print 5102, an act making appropriations for the support of government.

SENATOR STACHOWSKI: Explanation.

SENATOR BONACIC: Madam President, is there a message of necessity and appropriation at the desk?

THE PRESIDENT: Yes, there is, Senator Bonacic.

SENATOR BONACIC: I move to accept.

THE PRESIDENT: The motion is to accept the message of necessity and

appropriation. All those in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

SENATOR DOLLINGER: Nay.

THE PRESIDENT: The message of necessity and appropriation is accepted.

Senator Stafford, Senator Stachowski has asked for an explanation.

SENATOR STAFFORD: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR STAFFORD: It is a pleasure, my colleagues, to rise and to continue government here in this great Empire State. Without this bill, we would not have services, we would not have really any government at all. And of course that is not a viable alternative.

I would say, Madam President, that I no doubt will be saying this a number of times today, that we all look forward to a budget being enacted. It will be. But we also have to have cooperation. And I refer to the north side of the third floor. I have it

right today. And we are of the -- we understand that it is the position of those who are in that area of the Capitol that it is their position that they will not negotiate unless the Governor gives up his right to veto. And of course the Governor should not and will not give up his constitutional right.

So we hope we will have cooperation, we hope we will have understanding. And I have pointed to where we feel the juggernaut is.

With that, Madam President, Senate Bill 5102, it appropriates $6.6 billion to meet scheduled payments for the period April 23 through May 20, a four-week period. Included in this bill is $1.4 billion in scheduled school aid payments, $2 billion in Medicaid payments, and $330 million in capital contracts. These appropriations reflect required commitments as they come due within this coming four-week period.

ACTING PRESIDENT KUHL: Senator Stachowski, why do you rise?

SENATOR STACHOWSKI: I'm glad I was looking up before I just jumped up and

said something improper.

But, Mr. President, if Senator Stafford would yield to some questions.

ACTING PRESIDENT KUHL: Senator Stafford, do you yield to a question from Senator Stachowski?

SENATOR STAFFORD: By all means.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR STACHOWSKI: And ahead of time, I'll say that I'm going to ask a few, and I may come back after some other members ask, but I have a few that I'm going to ask.

And to start out with, I notice the length of this emergency appropriation is four weeks. It would lead the cynical people among us in the Capitol to say that it looks like we're not planning on getting anything done for another month. And since April 1st has come and gone, and since the March avails economic forecast meeting took place and we're supposed to agree on avails shortly after that, and no one, regardless of whether the Assembly is waiting for a veto-proof negotiation, or anyone else in the building

has moved forward to try to bring together on agreement, which we were supposed to do, by law, shortly after the economic forecast meeting on what the avails are so that we could move ahead with conference committees. And I might point out that we did conference committees once before without agreement on avails, at which time the large committee or the mother ship, as some other people casually refer to it, eventually said this is the avails agreement that we're going to work with.

Having said that, is there a specific reason why we're doing a four-week extender rather than a two-week extender or a one-week extender?

SENATOR STAFFORD: Well, I think, Mr. President, I would point out the length of the extender I don't really think is what it's all about. I think what it's all about is for the Assembly to do, as has been done here in the Senate -- conference committees have been, appointed, and we certainly are ready to negotiate.

We have to have the other house to

negotiate with. That's where the problem is. You could have two weeks, you could have one week. I think really we just keep working toward doing our best.

I can remember one of the first things I was told when I became involved in the work of serving in public office, I was told, Don't become cynical. I have to admit I have not always lived up to that suggestion or advice, but I do my best. We can't become cynical. We have to continue.

But again, I get right back to what I said before. We have to have cooperation from the other house.

SENATOR STACHOWSKI: Mr. President.

ACTING PRESIDENT KUHL: Senator Stachowski.

SENATOR STACHOWSKI: If the Senator can please continue to yield.

ACTING PRESIDENT KUHL: Senator Stafford, do you continue to yield?

SENATOR STAFFORD: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR STACHOWSKI: I found it an interesting comment, because we had a brief conversation earlier in the committee about conference committees, and this is the second time I've heard the comment that conference committees in this house are already set, but nobody has seen them. Maybe you have in your conference, Majority conferences, but publicly they're not out there.

However, that's not the question. Maybe it should be, but it's not. At least not by me and not at this time.

In the various state agencies - Legislature, judiciary -- there's some amounts for Social Security. There's one amount for $42,200,000 in Social Security for April 25th and May 9th administrative payrolls, 18,600,000 for Social Security for May 3rd and May 17th institutional payrolls, and $1,900,000 for PEF longevity payments for the April 25th administrative payrolls.

Why would we be making the Social Security payments again on PEF longevity payments? Why wouldn't we have done that the first time in the emergency appropriation?

SENATOR STAFFORD: Well, as I mentioned -- first, since you did not ask the question, I will answer the issue about conference committees. They are public and they were released, I believe, today. So we look forward to you having those, and I think you will enjoy the reading and find that we are moving forward.

The next question, on Social Security, you will find as we do these extender bills that we do the appropriations as they come due. And the appropriations you have suggested, pointed out, they are now coming due or will be coming due within the next four-week period.

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

SENATOR STAFFORD: Yes.

ACTING PRESIDENT KUHL: Senator Stafford?

The Senator yields.

SENATOR STACHOWSKI: There's a $19,000 payment to the TIAA and CREF fund. Does -- what does this cover? And it

certainly -- and the second part to that, I don't mean to make complicated questions, but on this one, it -- the 19,000 doesn't possibly cover the over 50,000 employees in CUNY and SUNY, does it?

SENATOR STAFFORD: No, it's called -- you find -- you and I, and I always like to recall, because you pointed it out, you and I are simple people. And we're proud of it, proud of it. Well, we have a number of colleagues also.

And it's called TIAA-CREF. And that's the lingo that is used here. But it is very important. Because it involves, as you just mentioned, the retirement for the employees that are involved in higher education. And this $19,000 is due and it's an appropriation that was required and that's why, of course, we included it.

SENATOR STACHOWSKI: If the Senator -- Mr. President, if the Senator would continue to yield.

ACTING PRESIDENT KUHL: Senator Stafford, do you continue to yield?

SENATOR STAFFORD: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR STACHOWSKI: In the area of workers' comp there's an appropriation for $100,000. The schedule of payments requires one payment in April, which we made last month, and one in September. Last month we appropriated 18,200,000 for judiciary -- oh, that's another one.

What is this payment for, this one? Is that -- the 100,000 is that separate from the workers' comp we made on the first appropriation bill?

SENATOR STAFFORD: Oh, sure. They're all -- they're all separate.

Again, these are all required and commitments that will come due or are due for this next four-week program.

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

ACTING PRESIDENT KUHL: Senator Stafford, do you continue to yield?

SENATOR STAFFORD: Yes.

ACTING PRESIDENT KUHL: The

Senator continues to yield.

SENATOR STAFFORD: Mr. President, I would also point out there's other ways of stating this. I believe my answer was accurate, because it is due.

But also, when we do an appropriation, often it's an estimate. And then when it is actually fulfilled, you find that maybe some additional money is necessary because of not -- it isn't exact, what was - what we were planning on.

I get back to what I often said, Mr. President, budgets are -- budgeting is indeed a science. And I'd even go so far as to say it's not an exact science.

SENATOR STACHOWSKI: If Senator Stafford would continue to yield.

ACTING PRESIDENT KUHL: Before we ask that question, Senator Bonacic, why do you rise?

SENATOR BONACIC: Mr. President, I just apologize for the interruption to this important discussion between Senator Stafford and Senator Stachowski.

But there will be an immediate

meeting of the Senate Veterans Committee in Room 328, please.

ACTING PRESIDENT KUHL: Immediate meeting of the Senate Veterans Committee, immediate meeting of the Senate Veterans Committee in the Majority Conference Room.

SENATOR BONACIC: No, the small room. Room 328.

ACTING PRESIDENT KUHL: In Room 328. Room 328.

Senator Stachowski, the floor is yours.

SENATOR STACHOWSKI: If Senator Stafford would continue to yield.

SENATOR STAFFORD: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR STACHOWSKI: Senator, the last time we were doing an appropriation bill we had a little extended conversation on DOT and the letting program. So far, I don't know, maybe your area are satisfied, but my information has it that a lot of the upstate areas are terribly dissatisfied. The contractors are in a mild uproar, so to speak.

There's a tremendous fear that by the time we do a budget or we start letting out at a decent amount, the construction season for in year will have passed us by.

In particular, not only the fact that they put contracts out to bid, but that when they are let to individual contractors, it's not just getting men and their equipment there. There are certain materials that they have to sometimes have custom-made to do the job -- for example, certain types of piping and things of that nature -- that may not be available for that job this season if we continue to push back the letting program.

Now, my understanding is that there is some letting in some areas, and as mine is also. But, for example, in Rochester there was just a big job let -- I mean bid but not let yet, a very large job. Secondly, in my area a lot of jobs are being held, they're not being let.

The fact is that I understand that we had a bond issue. I also understand that because of lack of effort on some people's parts, that bond issue lost. I'm not going to

saw whose part, but some of the major people that were supposed to support the bond issue sat on their hands, and it lost. But the fact is that because of that, we have a hole in the transportation budget.

There are a lot of people that work in that industry, there are a lot of companies that survive or may not survive because of the tremendous overhead they have because of the large equipment that they have to pay for that if they're not working isn't being used and they're losing a tremendous amount of money.

Now, the fact is that there are some things being let. Can you tell me at what level are we letting projects now? Is it -- the second part of that is, will it continue to be that slow and that low and so that we can tell contractors that it's not looking like a good year, that because we can't get a budget we can't let at a better level?

If the first answer is that it is a low level. For example, maybe it's last year's level, we all know that was a terribly low level, hoping for the bond issue to pass

so that we'd have a big boost this year.

So I don't know if I confused you with all that conversation, but the fact is, what is the letting level? Is something going to move on this? Or is the construction season going to pass us by this year before we get moving?

SENATOR STAFFORD: Mr. President, the Senator never confuses me.

SENATOR STACHOWSKI: Thank you.

SENATOR STAFFORD: One thing about it, you and I can communicate. And as far as I'm concerned, it's clear as a hound's tooth.

There's no question that, again, we are very desirous of having a budget passed. And I point out to where we are suggesting that the problems are.

I would suggest that there's a $1.6 billion appropriation or program going on right now, being let. It is done through the Thruway Authority. It's complicated. But we are going to see the contracts let, and the construction will carry on.

No question about it, it would be

much better if we could have a final budget. I would be in favor. But again, I point out that we're going to see the required -- you got it, $1.6 billion. Your aide has it.

SENATOR STACHOWSKI: Thank you, Senator. For this time that's all I'm going to ask at this point. I may come back and ask some more later. But I know there's other people that want to ask some questions, so I don't want to take up all the Senator's time and drag this on too long. If those questions that I have in mind aren't asked, then I'll get up again.

Thank you, Senator.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the bill?

Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Yes, Mr. President. Will Senator Stafford yield for a for a couple of questions?

ACTING PRESIDENT KUHL: Senator Stafford, do you yield to a question from Senator Dollinger?

SENATOR STAFFORD: By all means.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: One of the things, through you, Mr. President, that's contained in this bill is a bailout for a company called Developmental Disabilities Institute, which is currently in bankruptcy. Could you tell me why the State of New York is making a policy judgment to intervene in the bankruptcy process with our funds to an entity that is now currently bankrupt?

SENATOR STAFFORD: I was asked about this a week ago, and it was explained to me. Then I asked, and it was explained to me. And now it's been explained again. I think maybe on the second explanation I'll be able to throw light on the subject.

If this goes into bankruptcy, the State will have to take over this facility. I believe there are 1500 employees involved. And it is very, very important that they continue their work. It's for disabilities and for education and for health. And it's very worthwhile and it is something that, yes, on a policy level we feel that the State

should take this action.

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

ACTING PRESIDENT KUHL: Senator Stafford, do you continue to yield?

SENATOR STAFFORD: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: Senator Stafford, are you aware of any other institutions such as this that when it's in bankruptcy -- my understanding is that it filed bankruptcy in February, it's been in bankruptcy for about 2½ months.

My question is (a) are you aware of any other instance in which we have undertaken this kind of emergency loan to an entity in bankruptcy? And, secondly, is this a policy initiative that the administration is going to embark on whenever institutions -- albeit doing beneficial work for the people of this state, which I won't dispute for a second. But are we making the policy choice that we will now be involved in the bankruptcy of

these organizations?

SENATOR STAFFORD: Mr. President, I'm sure Senator Dollinger is -- you know exactly what I'm going to say, I can tell. You can tell.

I'm sure Senator Dollinger is acquainted with New York City.

SENATOR DOLLINGER: Mm-hmm.

SENATOR STAFFORD: The answer is yes. And I refer to -- by the way, the judge that came up here that time is Judge Rifkind. We tried to remember that name. He came up here with Felix Rohatyn during the problem.

So that certainly is a precedent. And I would point out that I think the policy was correct then, and I think the policy is correct now.

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

ACTING PRESIDENT KUHL: Senator Stafford, do you continue to yield?

SENATOR STAFFORD: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: The Bundy Aid provision in this I guess emergency appropriation, is it consistent with last year's funding, or is there a reduction in the funding for Bundy Aid?

SENATOR STAFFORD: As I pointed out, Mr. President, a number of times, these extensions are at the level of what the appropriations were last year. So to answer the question, there is no reduction.

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

ACTING PRESIDENT KUHL: Senator Stafford, do you continue to yield?

SENATOR STAFFORD: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: So I understand, Senator Stafford, how can you tell that in this budget, in this appropriation? My understanding is there is $14 million in a continuing appropriation. But there's no commitment to fund the Bundy Aid at $47 million, which is what the number was last

year, 47 million and change. And there's no guarantee that we won't fall back to the Governor's appropriated number in his executive budget as delivered to us, which was about $40 million, a $3 million cut.

How can we be assured that this appropriation for only a partial period of time reflects the higher level of funding?

SENATOR STAFFORD: Mr. President, once again, Senator Dollinger's question is on target. But it goes to the theory of our representative democracy. And remember, back in the days of the '70s there was a precedent where there were appropriations but the money wasn't provided.

We appropriate the money, the Executive follows the appropriation with the expenditures. And the Executive has the power for the expenditures. So I think that clears up what you're -

SENATOR DOLLINGER: I'll accept that, certainly, Mr. President, as an answer.

Will Senator Stafford yield to two more questions, Mr. President?

SENATOR STAFFORD: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Thank you.

The first one deals with the EPIC program continuation. About two-thirds of the EPIC program is supported by HCRA funds that are raised from the tobacco tax. Yet there's no appropriation in this piece of legislation that appropriates the HCRA tax portion to the EPIC support. Can you tell me why that's the case?

SENATOR STAFFORD: Yes. These funds, Mr. President, are spent -- the first one to authorization of the statute. And we do not appropriate HCRA funds. And my expert -- two experts are nodding yes.

And I'm sure you might want to ask -

SENATOR DOLLINGER: I think, Senator Stafford, under the Senate rules I'm not permitted to ask Senator Hannon a question, because he is not the sponsor of this bill and has not previously spoken. So despite his invitation and readiness, I believe -- I would ask Senator Hannon a

question, of course, but I am sure that the President would rule me out of order. So -

SENATOR STAFFORD: Well, you and I are doing well. We're doing very well.

SENATOR DOLLINGER: Well, I think we are.

(Laughter.)

SENATOR DOLLINGER: Let me just ask, if I can, Mr. President, just a clarification of that. My understanding is -

ACTING PRESIDENT KUHL: Are you asking Senator Stafford to yield again?

SENATOR DOLLINGER: Yes, I would, Mr. President.

ACTING PRESIDENT KUHL: Senator Stafford, do you yield?

SENATOR STAFFORD: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: My understanding is that two-thirds of the HCRA money comes out of the additional funds created from the tobacco tax.

And my question is, why doesn't the emergency appropriation, if we're going to

fund the EPIC, why doesn't it include an appropriation from the tobacco tax money, as it was originally designed to do? Is this a change in the policy of using the extra HCRA funds to support EPIC?

SENATOR STAFFORD: Mr. President, I'm very surprised that Senator Dollinger didn't get the answer, because he usually does, and he is a person who really understands. So I'll say it once again.

The funds you are asking about are spent pursuant to authorization by statute. And they aren't appropriated through the budget. The statute hasn't expired, and it's still operating. Of course I think that's de minimus, really, as far as the explanation.

SENATOR DOLLINGER: Okay. I'll deal with that in one second, Mr. President. Just one final question, through you, Mr. President, if Senator Stafford would continue to yield.

ACTING PRESIDENT KUHL: Senator Stafford, do you yield to another question from Senator Dollinger?

SENATOR STAFFORD: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Senator, in a recent announcement from the Department of Transportation, they were withholding about $160 million in contracts that were to be let in early April, early May, and middle May from the market, apparently without explanation, at least to the contractors that I've spoken to.

And my question is, does the capital project spending in this emergency appropriation provide for the letting of contracts by the Department of Transportation that were scheduled for early and late April and early and late May, for those contracts to be let so we can put the people of the State of New York to work?

SENATOR STAFFORD: To answer Senator Dollinger's question, as far as appropriations, we don't really let contracts through appropriations. They're done through authorizations, which are statutory, and then we appropriate the payments.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Stafford would yield to one final question.

ACTING PRESIDENT KUHL: Senator Stafford, do you yield to another question?

SENATOR STAFFORD: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Is it your understanding, Senator Stafford, that if we pass this emergency appropriation that the contracts that have been designed, evaluated, cost-estimated, that the contracts pending from the Department of Transportation for April and May will be let and offered for bids in that period of time?

SENATOR STAFFORD: Yes, Mr. President. As I pointed out earlier, they will be let within the $1.6 billion that's been appropriated. And that's really where we are.

The $1.6 billion wasn't really appropriated. Authorized, not appropriated.

SENATOR DOLLINGER: Okay. Through you, Mr. President, I'd like to thank

Senator Stafford for his colloquy on some of the budget issues.

I think that one of my concern as I read through the massive materials with respect to this emergency appropriation -- and that's what it is. It's an emergency. The emergency is that the constitution of this state, which requires us to get something done on time, has once again been repealed through the lethargy of the Legislature. We have once again allowed a command from the people to this Legislature to go unheeded.

And I would suggest to all my colleagues -- we had a debate about this briefly in the Finance Committee, where all this discussion was about it's a three-person tango. We've got a dance, three people have to dance.

Anybody who believes that in this state, it is absolutely, totally, completely untrue. It isn't true. We in this Legislature, right here in this room have the power to pass a budget that is veto-proof. We can pass a budget with two-thirds of the votes of this house. The other house can pass a

budget with the two-thirds of the votes of their house. If those budgets are identical, the Governor can wield his veto pen till the cows come home. He can wield his veto pen and take every penny out of it that he wants. He can take every appropriation favored by the Senate Republicans, he can take every appropriation favored by the Assembly Democrats, or by the Senate Democrats, or by the Assembly Republicans, he can veto them till eternity. And guess what? By two-thirds of the votes of this house, we can take back the power of governing this state.

We have, in the last twenty years, completely abdicated that responsibility. We've given the Governor a place at the table that he doesn't deserve. We've let him into this dance. This is a two-piper music. We blow one of the pipes, the Assembly blows the other pipes, and if two-thirds of us get together, we can do whatever we want.

What I don't understand is why the partisanship chasm between these two houses, between the two sides of this chamber, is apparently so broad that we can't agree on

taking back the power of governing.

Senator Stafford, you said that government needs to go on. I would suggest to you that what's not going on is governing, the action of governing. It's so simple. I believe there's so many similarities in this house between Democrats and Republicans, about appropriations for working people, about tax cuts, about relief for the EPIC program, about use of the HCRA funds to support the EPIC program. There's an enormous, an enormous - in my judgment, an enormous unity in this house for state spending that we could take back and we could control.

But instead, for some reason, the Majority in this house says, No, we're not going to invite the Democrats in. We don't want a veto-proof budget. We want our version of the budget. We'll let the Governor have his. We'll let the Assembly have theirs. And if we don't get it till August or September, that's okay.

Mr. President, I think that the problem here is not that we're going to continue government -- which we should do.

The people are entitled to it. But what we're not doing is governing the way the constitution said we should.

Let's pass a veto-proof budget. Let's cut the Governor out of the deal completely. Let's let him sit on the second floor and do whatever he darn well pleases. He gives us the budget, let's work together. Let's have a joint conference committee with the Assembly and forget the Governor. And we'll get to a deal. The only deal we need is that when that budget is produced and handed to the Governor, two-thirds of both of these houses will vote to override any veto. That's all we have to agree to do.

The minute we do that, we take back the power of governing. And I guarantee the first time we do that, the very first time we have the guts to do that, there will never be a late state budget again. We will simply say, We're going to take control of the process. Give us the budget on January 17th, we're going to get give you a budget back on April 1st. And if you touch any portion of it, we will then debate overriding the veto.

And when we do, we will take back the power that we have abdicated to this Governor and governors before him and governors in the future.

Frankly, I'm tired of hearing about three men in a room. One of them doesn't belong there. And if we did what we were constitutionally required to do and what makes good sense, he wouldn't have to be there. And we could forever say to him, We in the Legislature going to control this process, we are going to band together and decide the important spending objectives in this state. We can do it, except for some reason we don't want to.

And I would suggest to my colleagues on the Republican side who say, We're ready to go, frankly, I don't believe that either. I know Senator Bruno was committed to try and get it on time. I know he's worked hard. I don't mean to undercut those efforts. But the bottom line is, he hasn't called for the conference committees, he hasn't put the meetings together to make this thing happen.

My strong suggestion is let Senator Bruno tomorrow announce that we're going to start conference committees. Let us start working together on fashioning a veto-proof budget to present to this Governor, and I guarantee we'll have a budget by Monday.

I'll be voting no, Mr. President.

ACTING PRESIDENT KUHL: Senator Schneiderman, why do you rise?

SENATOR SCHNEIDERMAN: Recognize Senator Bonacic.

(Laughter.)

ACTING PRESIDENT KUHL: Senator Bonacic.

SENATOR BONACIC: Mr. President, I'd like to interrupt this discussion and have an immediate meeting of the Senate Local Government Committee in the Majority Conference Room, please.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Local Governments Committee, immediate meeting of the Local Governments Committee in Room 324, the Majority Conference Room.

Senator Schneiderman, why do you

rise?

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

ACTING PRESIDENT KUHL: Senator Stafford, do you yield to a question from Senator Schneiderman?

SENATOR STAFFORD: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR SCHNEIDERMAN: Thank you.

Is there an appropriation in the proposed legislation for the state Superfund program?

SENATOR STAFFORD: Mr. President, the capital appropriations can be used for the Superfund where there are requirements.

SENATOR SCHNEIDERMAN: Through you, Mr. President.

ACTING PRESIDENT KUHL: Senator Stafford, do you yield to another question from Senator Schneiderman?

SENATOR STAFFORD: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR SCHNEIDERMAN: Is there any provision in this legislation that designates any portion of those capital funds for the state Superfund program? Through you, again, Mr. President.

SENATOR STAFFORD: As I mentioned earlier, Mr. President, you have to really get the big picture here and to really get a feel for what we're doing. These are emergency appropriations. And really, these are appropriations just to really keep the requirements that we have during this next four-week program, four-week period. And the answer is no specific appropriations.

ACTING PRESIDENT KUHL: Senator Schneiderman.

SENATOR OPPENHEIMER: Thank you. Again through you, Mr. President, I'm just trying to find it in the bill. What is the -

ACTING PRESIDENT KUHL: Excuse me, Senator Schneiderman.

Senator Stafford, do you yield to another question?

SENATOR STAFFORD: I didn't hear, Mr. President.

ACTING PRESIDENT KUHL: Well, I was just asking if you yield to another question from Senator Schneiderman.

SENATOR STAFFORD: Yes.

ACTING PRESIDENT KUHL: The Senator yields to another question.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. What is the capital appropriation, if you could help me identify it, that could conceivably include some funds for Superfund?

SENATOR STAFFORD: The capital appropriation, Mr. President, is of course included in the bill. And it of course can be used for such appropriations. And $330 million of those funds are appropriated for payments on new and existing capital contracts. So that money could be used, $330 million, Mr. President.

SENATOR SCHNEIDERMAN: Thank you. Thank the sponsor.

On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: Before I

go to the big picture, I just wanted to address the smaller picture of the issue relating to Superfund. I spoke about this when we did our last extender, that there were not funds in the last budget extender to cover the need of the Superfund program. As fate would have it, several days after that, on March 30th, the Commissioner, Erin Crotty, stated that the Department of Environmental Conservation is in a crisis mode -- her words -- crisis mode regarding Superfund cleanups.

We have still 766 toxic sites that have been abandoned and that we do not have funds to address. I don't really see any reason why Superfund should be treated differently from any of the other programs addressed in this bill. We have a need. The Commissioner states that we're in a crisis mode. It would not be too difficult to add some funds in this budget extender to deal with the program.

I think what is happening, quite frankly, is that the Governor is holding this up in an effort to get us to pass his version

of a Superfund bill. I don't think that's proper, I don't think that is something this house should support. And I strongly urge that if we are forced to do another budget extender, which I hope we are not, that we include funds for the Superfund program in this extender.

This is a crisis. And I urge the sponsor that I have obtained a list of sites that are not where action has ceased or action cannot go forward due to this lack of funds. And that includes a site in upper Manhattan, very close to the rolling hills of Morningside Heights, it includes sites in Nassau and Suffolk County and really throughout -- all throughout the state of New York. This is an important need, and I urge that we address it.

On the big picture of the bill, I concur with Senator Dollinger. I do not think it is reasonable for us to tell the people of the State of New York that we have to pass a four-week extender to get a budget done. We have more money than we thought we had when we started this process. We are told that there's really not much going on in the way of

negotiation or conversation about the budget. I don't understand that. My constituents don't understand it. And I think all that we're doing here is showing a certain level of cynicism in relying on the fact that the public's attention span on these matters is short.

I think we should pass a budget. I think four weeks is way too long. And I think that, frankly, If we were all required, Senate and Assembly, to stay here till we got it done, I think we could get it done. I think we would also have to require the Governor to stay in Albany, which I think would result in the budget being passed immediately.

But short of that, I don't think that these sorts of extenders are appropriate, certainly not for four weeks. I know we can't bring government to a halt, but this is just too much for me and I will be voting against this bill.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Oppenheimer, why do you rise?

SENATOR OPPENHEIMER: I hadn't

yet. Thank you, Mr. President.

Well, my colleague has just covered some of the questions I was going to ask on the Superfund. I think we have to face the fact that the Superfund is bankrupt and that it is in a crisis mode and that we have to do something and do something quickly. And this casualness about it is very worrisome.

Particularly worrisome is something that we have just read about in the last few days, which is that the PCBs that were just in the Hudson River have now been found in much of the dredge spoils that is found between Glens Falls and Albany. It's on land, where crops are growing. And this is a new, serious concern and I think a significant threat to our health.

I'll move away from the Superfund to ask a couple of questions, if the Senator would yield for a couple of questions.

ACTING PRESIDENT KUHL: Senator Stafford, do you yield to a question from Senator Oppenheimer?

SENATOR STAFFORD: Yes.

ACTING PRESIDENT KUHL: The

Senator yields.

SENATOR OPPENHEIMER: We talked about this earlier, Senator. It concerns the Summer Youth Jobs Program. And in this continuing resolution, we see that $10 million which had been spent last year is not proposed for the coming year, because the Governor saw fit to put a budget out of $25 million instead of $35 million.

The reason I raise the question and urgently do so at this time is that this is a Summer Youth Employment Program, jobs program. It isn't something that can be postponed. The summer is coming up. I would like to know if this can be moved in a more expeditious fashion to bring it to the level that it was at or, even better, to the level at which the Assembly wishes to see this funded in the coming year, at $40 million, two of which would be from the general fund and the rest of the money from TANF, as we now get it.

SENATOR STAFFORD: Mr. President, I haven't made this point today, so I think it's time that I give my minilecture on the really where we are today as opposed to where

we were six years ago.

Mr. President, I remember us coming to January of 1995, and we had a $5 billion deficit. And all of us saw the state going in the wrong direction and losing 500,000 jobs in '92, '93, '94. And also, we had so many programs that were completely out of hand.

Mr. President, all of us want to do what's right. We want to provide for programs that we feel are very necessary. These programs are very important in my district. They're important in every single Senator's district. And on the other hand, we can only spend what is really there and what makes sense. And I'm trying to think of the word when you use -- "prudent." I'm trying to think of the word "prudent." We only want to spend what is prudent.

The Governor has provided here $25 million here in this appropriation, and it is for the program, of course, to which you refer.

SENATOR OPPENHEIMER: If I may, Senator. The Summer Youth Employment Program has been a very important step for our

youngsters. It offers them some money in the summer, it offers them activity, perhaps it offers them some training in an occupation. And it has been an important program for us.

This money does not come out of the general fund, it comes out of TANF money. And the $35 million in the past has all been appropriated out of TANF money. And the importance of what the Assembly did in adding $2 million to our general fund is to show that the state also has a role here, that TANF is going to run out soon and that the state should be looking to take over this program.

I think this is an important program for our youth, and we want to do the best job we can to train them in occupations, keep them occupied in the summer. And I feel very strongly about it. I think it's a prudent investment in the future for all of our youth.

But let me turn for a moment to the bill. Like my colleagues, I have a lot of problems passing an emergency bill when apparently there is no emergency. Nobody seems pressured. When you ask some of our

leadership when will the budget be passed, and they'll give you a humorous comment of "I hope in my lifetime" or "If you thought August 4th was late, wait till you see this year."

There simply seems to be no energy, no emergency here. And to pass the bill for four weeks instead of for two weeks as we had in the past shows that perhaps there's something going on, and maybe in two weeks we'll have something. But to pass this bill for four weeks and not see any action occur at all makes you wonder where is the emergency.

And so I will vote in favor of this bill this month, but I feel that unless there's some kind of activity going on in the next few weeks, I find it very difficult to continue to pass emergency bills where I see no emergency, I see no concern, and I see no activity.

And I know that we have been told that our leadership is ready. But as one of the my colleagues said, "Ready just means that you're at the starting gate, it doesn't mean that you're doing." And I really have to be shown that there will be something productive

happening in the next few weeks.

But I'll be voting yes on this bill.

ACTING PRESIDENT KUHL: Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Yes, Mr. President, if Senator Stafford would yield for a question.

ACTING PRESIDENT KUHL: Senator Stafford, do you yield to a question from Senator Montgomery?

SENATOR STAFFORD: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MONTGOMERY: Yes, Senator. Senator Oppenheimer just talked about the summer youth employment. And I'm just wondering if the $25 million that we're talking about that we're voting on today for summer youth employment represents simply a portion of the level that we funded it last year, or does this represent in fact a $10 million decrease in that funding?

SENATOR STAFFORD: That's a good question, Mr. President. I would not be

presumptuous and say that it will be increased to what it was last year. We are of -- we understand that the Governor and his representatives want to see how we spend this money, the $25 million that's in this budget, in the context of the entire TANF program. And therefore, it appears that there's a possibility. And we understand your concerns, and this is important to all our districts.

SENATOR MONTGOMERY: So if I could continue, Mr. President.

ACTING PRESIDENT KUHL: Senator Stafford, do you continue to yield?

SENATOR STAFFORD: Yes.

SENATOR MONTGOMERY: I'll take that. Thank you.

So that means, then, that we in our house, you and us, are committed to funding at last year's level, it's just that the Governor has not put forth the entire amount that we ourselves are looking to invest in the Summer Youth Employment Program?

SENATOR STAFFORD: Senator Montgomery, you're being very perceptive and also being very effective and also being a

staunch protagonist. You're making the point very, very well. And we understand.

But I have to answer the question by saying that, yes, we are willing to look at the increase, but it would be within the framework of the entire TANF program.

SENATOR MONTGOMERY: All right. So, Mr. President, I am interpreting that to mean that we are still negotiating the final allocation for this program. This is the Governor's idea, but then we are still negotiating, Mr. President. I'm just assuming that that's the answer that I'm getting. That's how I interpret it.

And I thank you, Senator Stafford.

Just another question, Senator -

ACTING PRESIDENT KUHL: Senator Stafford, while you're on your feet would you yield to another question from Senator Montgomery?

SENATOR STAFFORD: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MONTGOMERY: Okay. Sorry to antagonize you.

But the Assembly did put in the $2 million from the general fund. And as Senator Oppenheimer has indicated, the purpose of that $2 million is not -- is symbolic in terms of it establishes the fact that this is a program that the state is committed to by virtue of us putting in some of the funding.

One of the issues that the people who run summer youth employment in our state have brought to us is the fact that since we have no program in place, that it's a very - a situation where we can never really depend on funding for summer youth employment. Even though we've done it over the years, there really is no structure that we have incorporated into our government and funding process.

So the next question that I have is, what is our commitment? I don't remember what Senator Bruno's and your resolution said regarding this, and I'm just wondering if there is an agreement that we should be doing this. And, if so, have we also proposed, vis-a-vis our own budget resolutions, a small commitment now with the intention of making it

part of our structure, our budget structure for summer youth employment funding?

SENATOR STAFFORD: Mr. President, I'll go -- I sort of lapse into these philosophical discussions as I answer these questions. And this one involves a word that we hear around here that's kind of a catchword, but it's rather important. And it's called avails. And what that means, I believe, is what's available to be expended, what's agreed that's available to expend.

And as far as your question goes with our resolution, we don't specifically point to this area. But with us, it's subject to what's available and what's negotiated.

SENATOR MONTGOMERY: All right. Just one last question, if Senator Stafford -

ACTING PRESIDENT KUHL: Senator Stafford, do you continue to yield?

SENATOR STAFFORD: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MONTGOMERY: There's another related area in this continuing budget that I wanted to just ask you about. It's

also in the Department of Labor, and it is the Youth Employment and Training Program. You have proposed 785,000, I believe it is. And I'm just wondering what that figure represents. It is not the same amount that we budgeted for the same program last year. It's also a reduction in a similar way that the $25 million represents a reduction.

So is this -- again, my same question, is this part of what we are going to be asking for in our own budget resolutions, or does this represent in fact a reduction in that program?

SENATOR STAFFORD: Mr. President, it would be really premature to call any appropriation in these bills reductions. It's what is required for the next four-week program. And as I point out each time, there are various requirements for various periods. And therefore, this really is just what is needed in the next month.

SENATOR MONTGOMERY: Okay. Thank you, Senator Stafford.

Mr. President, briefly on the bill.

ACTING PRESIDENT KUHL: Senator

Montgomery, on the bill.

SENATOR MONTGOMERY: Certainly I'm going to be voting in favor of this continuing resolution. But again, it's just a little troublesome that we are voting on essentially the Governor's version of the appropriations for programs. Many of them have such tremendously important implications for our constituents in our districts across the state, and we really have not had an opportunity to negotiate especially some of the fine points, as in the case of the Youth Employment Program and many others.

So it's unfortunate. And in addition to which, we still have all of this work to be done, we're only passing continuing resolutions, and we're not being paid.

So if there were any way that I could line-item out the Governor's pay and vote against it, I would. Because if we don't -- if we're not paid because of the fact that the budget has not been passed, then I think the Governor should not be paid, because he is one of the three parties to this whole process. And if two parties are having to pay

the consequences of our not coming to an agreement, then I think the third party should also pay.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the bill?

Senator Brown.

SENATOR BROWN: Yes, Mr. President. I rise to speak on the bill.

ACTING PRESIDENT KUHL: Senator Brown, on the bill.

SENATOR BROWN: Like many who have spoken before me I'm going to vote in favor of this appropriation bill. But I'm going to do so grudgingly. I feel that we have a responsibility to pass the state budget on time. I'm ready and willing to vote for an on-time budget. But unfortunately, I don't have the option of being able to do that. And that saddens me.

One of the things that I said to voters in my district is that they could count on me to be prepared to vote for this budget on time. But as a member of this body, I don't have the opportunity to do that.

And I think we have taken this process all too lightly with these appropriation bills and with these extenders, and we have lost sight of the fact, in my estimation, that we have a responsibility to pass a budget on April 1st.

So I'm going to hold my nose and I'm going to vote for these. But I have to say honestly, and maybe this is not as civil as it should be, but I think it stinks not passing the state budget on time. I think it's absolutely rotten that we sit here and we're not pushing more aggressively for this budget to be passed on time.

I think it's also terrible that the conference committee process has not begun. I mean, for us to be here voting for this appropriations bill for four weeks when we are not meeting to discuss the difficulties that separate the Governor and the two leaders is distressing. And to me, there's no reason for it. What stops people from sitting together in a room and talking about their differences on the budget when they recognize that this budget should be passed on April 1st?

So, like Senator Dollinger and others, I just want to remind you of what you need no reminder of, that we have a responsibility and by our action today we're not living up to those responsibilities.

Senator Montgomery pointed out an important issue that I just want to touch on briefly, and that's the Summer Youth Employment Program. Since I've been here, we've done a number of things, some of which I have supported -- and my colleagues have talked to me about this, but we've done a number of things to be tougher on crime and to criminalize certain activities. And at the same time that we do things to be tough on crime, in this budget we are making less of a commitment to providing resources to our youth in the state of New York.

To me, this is a sad, sad action and a real serious lack of commitment to the youth of this state, by saying that instead of making at least the same commitment that was made to our youth last year, a commitment of $35 million for summer jobs, in this budget it looks like we're making a commitment of

$25 million, $10 million less for the youth of this state.

The final point that I would make is that I think that this will be a last extender, this will be the last appropriations bill -- if we're not close after this four-week period, I don't think I could in good conscience vote for these anymore after this period. Because while I want to see the operation of state government go forward, to me this is an admission that we're not doing our jobs and this is an admission that it's going to be business as usual.

So I'm hoping that this is the last time we'll have to pass an appropriations bill or an extender bill. But if it is not, it will probably happen without my vote, because I'm not prepared to vote for one of these after today.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 52. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Stachowski, to explain his vote.

SENATOR STACHOWSKI: Mr. President, I'm going to briefly explain my vote.

First of all, I'd like to thank Senator Stafford for his courtesy and his congeniality in answering all the questions.

Secondly, I'd like to point out that I still have a major concern about the fact that although there's money there to start letting projects, that for whatever reason DOT is not letting a sufficient amount, and we're going to end up with a terrible situation because the construction season will have passed us by.

Hopefully we'll get going and get a budget done. I think that Senator Brown made couple of good points. And the fact is that there is a problem. And I listened to Senator Stafford talk about his little lecture on where we were and how we had a deficit. And, yeah, we have a surplus, but also our debt has

increased by $10 billion, and that's not exactly a great thing.

So the fact is that we got to pass this extender, I think, because it's our job to keep government going. We don't want to take the Newt Gingrich style of government. But I would like to see people moving ahead. I'm glad to hear that in his answers Senator Stafford said Senator Bruno is releasing his conference committee makeup today. So maybe that will get the Assembly to release theirs today, and maybe we'll get moving.

And for all the conversation -- and I'm not going to tell you who said it, but somebody had a great line today, that with all the complaints about three men in a room to do a budget, we found a way to beat that. And that's with no men in a room and no budget.

I vote yes.

ACTING PRESIDENT KUHL: Senator Stachowski will be recorded in the affirmative.

Senator Oppenheimer, to explain her vote.

SENATOR OPPENHEIMER: I thought

my good friend was going to say maybe we should put three women in that room, but he lost the opportunity. Knowing what a feminist we're talking to here.

Earlier we were talking in committee about how the Governor feels that it is not possible for him to surrender to the Assembly's sort of request and demand that he assure them that he will not veto any portion of the budget, and the Governor feels that it's his responsibility not to surrender this veto power.

Well, I would have to pick up where my colleague Senator Dollinger left off, which is we are surrendering our responsibility, according to our New York State Constitution, by not bringing the two houses together. And after the two houses have come together and changed the Governor's budget, then there is the opportunity for him to act after we present him with the budget.

So I feel that, in essence, we are also surrendering our power which is accorded to us in our state constitution, and that is for the two houses to sit down, just two

people in a room or two bodies in the room, to arrive at changes made to the Governor's budget.

So I also will be voting for this continuation of government.

I would like to just take a moment to say that I'm concerned about what's been happening recently, which is all of our committee meetings have been called while we're in session, and this gives us very little opportunity to have discourse and also leaves the chamber with very few people seated, because we're constantly being called off into committee meetings. So I would like to call the attention of the Majority Leader to perhaps changing this policy, because in the past it's worked very effectively having our meetings independent of the session.

ACTING PRESIDENT KUHL: Senator Oppenheimer, in the affirmative.

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I said I was going to vote against this. I'm going to ask to be recorded in the negative.

A couple of observations. One is only in New York State would a body, an elected body, a statewide elected body say, We have an emergency appropriation, and we created the emergency. We can somehow justify this as an emergency appropriation, and yet the only basis for the emergency is that we created it by failing to do what we were required to do. It's one of those great anomalies that I don't understand in New York politic.

The second thing I don't understand is with all due respect to Senator Stafford and others who have pointed the finger at our Democratic colleagues in the Assembly. Why is it when something good comes out of this chamber there isn't a single Republican who's shy about standing up and saying, We did it, it's our victory, it's the victory of this house, it's the Majority of this house speaking with a single voice for the people of this state. I've heard Senator Bruno said that numerable times.

Well, let's flip the situation around. In my view, it's just as easy to say

it's the Republicans' fault, it's the GOP's fault that this budget isn't done. You want the credit, you don't want the blame. I think it's a wonderful legerdemain that you can bring off this wonderful trick that somehow fooled the public in this state. But why don't you face it. If you want the credit, you ought to take the blame as well.

The other concern I have, Mr. President, is that this appropriation has a creeping policy shift. We're not taking funds out of the HCRA tax account, the tobacco tax account to fund EPIC. We had done that in the past. That's a policy shift. We're bailing out a bankrupt corporation with a million dollars. That's another policy change. And we're in danger of changing the way we let public contracts by not allowing them to be let at the start of the construction season. Again, a policy shift.

What's the final casualty of this process, Mr. President? It's absolutely clear to me the greatest casualty is the public's confidence in this body. We don't meet our time frame, the public looks at us and says,

We don't have any confidence in those guys, they can't do the job on time, why should we pay our taxes, why should we obey the rules -

ACTING PRESIDENT KUHL: Senator Dollinger, how do you vote?

SENATOR DOLLINGER: I'm going to vote in the negative, Mr. President. That's why we're called the New York State "Laissez-ture."

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

Senator Stavisky, to explain her vote.

SENATOR STAVISKY: To explain my vote, Mr. President.

I'm going to vote for this this time. But I resent it being called an emergency appropriation, because when you have too many emergencies, you begin to wonder.

Secondly, many of the items being funded in this, both in the language bill and in the appropriations part, are not being funded at the proper levels to which many of us think the appropriations ought to be made. It seems to me that it's time for three people

to sit down and work out the details. The longer we wait, the more difficult it becomes. And I will be very reluctant one month from now to vote for another emergency appropriation.

I vote for the bill this time.

ACTING PRESIDENT KUHL: Senator Stavisky, in the affirmative.

Senator Hassell-Thompson wanted to be recognized. She's no longer in the chamber.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 406 are Senators Dollinger, Duane, and Schneiderman. Ayes, 55. Nays, 3.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President. May we take up Calendar Number 407, please.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 407, by the Senate Committee on Rules, Senate Print Number 5103, an act to amend Chapter 20 of the Laws of 2001.

ACTING PRESIDENT KUHL: Senator Fuschillo.

SENATOR FUSCHILLO: Is there a message of necessity at the desk?

ACTING PRESIDENT KUHL: There is.

SENATOR FUSCHILLO: I move to accept the message.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Calendar Bill 407. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

SENATOR DOLLINGER: Nay.

ACTING PRESIDENT KUHL: The message is accepted. The bill is before the house.

SENATOR DOLLINGER: Explanation, Mr. President.

ACTING PRESIDENT KUHL: Senator

Stafford, an explanation has been requested by Senator Dollinger.

SENATOR STAFFORD: Thank you, Mr. President.

Mr. President, we now have the second of our extender bills. This bill extends the authorization until May 20th, again a four-week period, for the following statutory provisions: The deposit of revenues into the Division of Military and Naval Affairs Armory Account, the authorization to separate rather than sequester juries, and the Commercial Revitalization Program for Lower Manhattan.

ACTING PRESIDENT KUHL: Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Through you, Mr. President, will Senator Stafford yield?

ACTING PRESIDENT KUHL: Senator Stafford, do you yield to a question from Senator Dollinger?

SENATOR DOLLINGER: The issue of the waiver of jury sequestration, how much money is at stake in this or how much money do we save through this measure?

SENATOR STAFFORD: Mr. President, I understand that the savings will be 1 million a year.

SENATOR DOLLINGER: So through you, Mr. President, can we assume that, say, about $80,000 per month, the four-week period in which this extender will be granted?

SENATOR STAFFORD: Once again, Mr. President, I have to go back on explaining that every month, every four-week period is different. And of course with this subject, it would be, you know, how often you have situation arise.

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

ACTING PRESIDENT KUHL: Senator Stafford, do you yield to another question?

SENATOR STAFFORD: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: How many anticipated jury sequestrations would occur in the next month that by waiving this provision, continuing this extension in time we would

actually not have to be sequestered?

SENATOR STAFFORD: You know, there comes a time, Mr. President, when you make something possible but you don't know how much will really happen. And it will be possible not to have sequestration, but how often that will be the case we really don't know.

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

ACTING PRESIDENT KUHL: Senator Stafford, do you continue to yield?

SENATOR STAFFORD: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Will it be the approach of the Majority in this house to enact a permanent waiver of sequestration provision in the context of the next budget so that we never have to deal with this what appears to be very minor $80,000 expense month to month in our need for reappropriations or, in this case, for continuing the period of time in which sequestration was not needed?

Can we just do away with that as the -

SENATOR STAFFORD: Mr. President, that actually is a good question. I'm trying to think of the years, but I believe, I believe in 1986 and '87 I was chairman of the Judiciary Committee. This issue was right there, and it was being debated and being negotiated. And the answer is that there will be -- I'm of the opinion we would suggest that it will be in budget negotiations.

SENATOR DOLLINGER: Through you, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: The other area that's affected by this is the budget of the Naval and Military Affairs, the Armory rental account. How much income do we anticipate from the Armory rental account for one month?

SENATOR STAFFORD: I've got that right on the tip of my fingers, because I was thinking about that a minute ago. And as I look around here -- as I recall, I recall it's approximately $2 million.

SENATOR DOLLINGER: Through you, Mr. President, is that $2 million per year or $2 million per month? Through you, Mr. President, I apologize. I should ask Senator Stafford to continue to yield.

SENATOR STAFFORD: That's all right.

It would be per year, Mr. President.

SENATOR DOLLINGER: Okay. Just on the bill briefly, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: That's a savings, as I see it, of about $160,000, $170,000 a month in revenue, but yet we're going to extend it and continue to apply it to this account. It seems to me that we are bringing before this house an emergency appropriation to collect, to continue to accumulate $125,000 for the next 30 days from the Department of Military and Naval Affairs, $125,000. And we're going to save somewhere around $80,000 if we continue to allow certain juries not to have to be in sequestration. So

for the equivalent of $200,000 for the next month, we have an emergency appropriation.

Now, we do have the Lower Manhattan Commercial Revitalization Program, which I think, based on what I know of it, has lots of merit. But it just seems to only in New York would we say it's an emergency, with an $85 billion budget, to preserve something akin to $200,000 in income stream to flow for the next four weeks while we can't pass a budget. It's just inconceivable to me that that qualifies as an emergency. $200,000? My gosh, the interest on our debt alone is accumulating at this rate of about -- I think the number is about $10 million a day, to get up to $4.2 billion. It's something like $10 million in day in debt that we're paying out day after day after day after day. But yet we have an emergency appropriation that involves the collection of $200,000 in the next four weeks.

This may be somebody's definition of an emergency, but I don't think that a common New Yorker would claim this as an emergency under any circumstance.

Again, Mr. President, my views on doing this kind of stuff at this time are well known. I reiterated them a couple of minutes ago. The public is out there listening, looking to us for signs, and all they see, quite frankly, is that any confidence in the budget process is unjustified, and that's a real shame.

ACTING PRESIDENT KUHL: Any other member wishing to speak on the bill?

Senator Paterson, why do you rise?

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

ACTING PRESIDENT KUHL: Senator Stafford, do you yield to a question from Senator Paterson?

SENATOR PATERSON: By all means.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator Stafford, I just heard Senator Dollinger make mention of the Lower Manhattan Commercial Revitalization Program. And it's kind of interesting, because I'm pretty familiar with

it. We talked about it here in October of 1995. It's a great program, not only for Lower Manhattan, but it's something I think could be replicated around the state.

As you may remember, the whole area in Lower Manhattan was very adversely affected by the construction of the World Trade Center and had really had economic problems really going back to the late '70s and really all through the '80s. And this program has flourished.

And we have only attached a four-week extender to it in this extension, and three weeks to get it past its sunset on March 31st. We've got other programs in here like Quick Draw, which is very controversial, which goes through only June, already all the way to June.

And this was something that was actually proposed by Mayor Giuliani. This is something that's had bipartisan support. Everybody really sees the value of it. And I'm just wondering why we would want to be constantly reextending this program at a time when it's something that the state looks upon

with great admiration.

Why would we want to put it in this short an extender? As Senator Dollinger kind of implied, but I just wanted to make it a specific question.

SENATOR STAFFORD: Once again, Mr. President, my good people have given me an answer that I had right in my head. I'm glad that I agree with them.

First, let me share with Senator Paterson -- because I know he always likes to be accurate, and he's always right there when it comes to the facts -- this bill does not have Quick Draw in it. We never would want you to, you know, think that. And I'm sure that you feel much better now that we sort of set the record straight.

Now, with all of that, I've forgotten what your question was. But I'll explain to you that this is really a request from the city, and it's a city program, and therefore it's included in this bill.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: I actually was aware that Quick Draw was not in this bill, and that was actually my point.

Quick Draw was in the last extender which we voted on, and it's running, I believe, through June. And that was my whole point. Why would we do that for Quick Draw, which is highly controversial around the state, when in fact we have this program, which some people at the ESDC are talking about replicating around the state, which everybody likes, it's got bipartisan support and complete success, no matter who you are, in Lower Manhattan.

And I just thought it was important enough that if we're really going to try to extend government, that it would have had a longer extension than the one it had. That was my question, why did we choose to just put it in here for four weeks with the other?

SENATOR STAFFORD: Well, Mr. President, now that we've put Quick Draw to rest and Senator Paterson and I understand each other -- I'll have to go back to the record, because I understood what Senator

Paterson was driving at, but I think that the way it was said, it was a bit confusing.

SENATOR PATERSON: Oh, I'm sorry.

SENATOR STAFFORD: But with all of that, I again point out that yes, this is an important program, and this is all that the city asked for, and that's why we've included it in this bill.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Yes, Mr. President. Thank you.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the bill?

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negative votes and announce the results.

THE SECRETARY: Ayes, 56. Nays, 2. Senators Dollinger and Duane recorded in

the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bonacic.

SENATOR BONACIC: Mr. President, I ask that you recognize Senator Paterson for an announcement, please.

ACTING PRESIDENT KUHL: Senator Paterson, for an announcement.

SENATOR PATERSON: Mr. President, there come those times in government when one must confer. And to that end, we are going to have a conference of the Minority in Room 314 immediately. I'd like to bring that to your attention and would like to invite you to come and be a part of it.

ACTING PRESIDENT KUHL: Is this an open conference, Senator Paterson?

SENATOR PATERSON: Always.

ACTING PRESIDENT KUHL: Is that immediately?

SENATOR PATERSON: Immediately.

ACTING PRESIDENT KUHL: Okay. There will be a conference of the Minority immediately.

Senator Schneiderman, did you wish to be recognized relative to a vote?

SENATOR SCHNEIDERMAN: Yes, I think so. Mr. President, I just request unanimous consent to be recorded in the negative on this one.

ACTING PRESIDENT KUHL: Calendar 407?

SENATOR SCHNEIDERMAN: Yes, Mr. President.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Schneiderman will be recorded in the negative on Calendar Number 407.

Senator Stachowski, why do you rise?

SENATOR STACHOWSKI: Just as long as we are making announcements, for those that aren't aware of it, today, besides being Wednesday, also happens to be Senator Smith's -- Ada Smith, not M. Smith - birthday. And I think she's in the lounge currently, but I just wanted to make sure everybody knew that so if you pass her by, you too can tell her that she's getting better,

not older. Thank you.

ACTING PRESIDENT KUHL: Thank you, Senator Stachowski.

Senator Bonacic.

SENATOR BONACIC: Thank you, Mr. President. The Senate will stand at ease.

The Majority will not have a conference. We expect to be back reconvening between 10 to 15 minutes.

ACTING PRESIDENT KUHL: The Senate will stand at ease for 15 minutes.

(Whereupon, the Senate stood at ease at 2:22 p.m.)

(Whereupon, the Senate reconvened at 3:14 p.m.)

ACTING PRESIDENT MEIER: The Senate will be in order.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 291, by Senator Alesi.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 291.

THE SECRETARY: Calendar Number 291, by Senator Alesi, Senate Print 1128, an

act to amend the Vehicle and Traffic Law, in relation to extending.

SENATOR CONNOR: Explanation.

ACTING PRESIDENT MEIER: Senator Alesi, an explanation has been requested of Calendar 291 by Senator Connor.

SENATOR ALESI: Thank you, Mr. President.

This bill would increase the penalties for refusing to submit to a chemical test from six months to a year in one instance and from one year to a year and a half in the second instance.

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

Senator Paterson.

SENATOR PATERSON: Mr. President.

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

Senator Paterson, why do you rise?

Senator Hevesi.

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

ACTING PRESIDENT MEIER: Senator Alesi, will you yield for a question?

SENATOR ALESI: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you.

Mr. President, through you, if the sponsor would please indulge us in the necessity for this legislation in light of any numbers that he may have at his disposal reflecting the need for this legislation in terms of the number of individuals who have refused tests and whether those numbers are trending upwards or downwards.

I'm generally favorably disposed to this legislation, but I want to gauge the true extent to which this is necessary.

SENATOR ALESI: Through you, Mr. President, I don't have any specific numbers. But the Senator correctly mentioned the trends. And the trends in this instance do go up in a corresponding fashion with the amount of efforts to enforce DWI.

And although I don't have any specific numbers, even if things were staying the same or in the event that they're going

down, even, it would be part of our comprehensive effort to do all we can to make DWI and anything related to that -- for example, the refusal to take a chemical test -- and make that a very serious offense. And by raising the penalties for failing to take or refusing to take a chemical test, that would be part of our comprehensive efforts to reduce DWI.

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

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

SENATOR ALESI: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you. Through you, Mr. President, does this legislation apply both to alcohol and tests for any other narcotic substances?

SENATOR ALESI: It says chemical tests. And a chemical test in this instance, through you, Mr. President, would be either

blood, saliva, or urine. And I believe that under those circumstances those tests would reveal the presence of either alcohol or any contraband.

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

ACTING PRESIDENT MEIER: Senator Alesi, will you yield?

SENATOR ALESI: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you.

Through you, Mr. President. Senator, if you would indulge me, here's where I'm going in terms of my concern with the specific language of the bill. My question to you is whether or not the language of the bill would require the mandatory revocation that you're calling for, as defined by a chemical test, which would include a Breathalyzer test on the scene, as opposed to a chemical test which might be taken at the police station or at some time afterwards. Because it's a

common tactic of those looking to avoid prosecution to extend the time period from the time that they are first stopped by the police so that their reading is lower and lower.

So can you address that for us, please?

SENATOR ALESI: Well, through you, Mr. President, in response, I believe that there's a two-hour window that the driver has to either take the test or refuse the test. And any time within that two hours, he or she can, if they have refused, say that they will take the test. If that's what you were driving at.

SENATOR HEVESI: Through you, Mr. President.

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

SENATOR ALESI: Yes, I will.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: If you would clarify that point. The refusal would apply to any chemical test given on the scene or back at a law enforcement facility?

SENATOR ALESI: Yes, it would.

SENATOR HEVESI: Mr. President, through you.

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

SENATOR ALESI: Yes, I will.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: If I refuse - if I'm stopped by the police and I refuse to take a Breathalyzer but agree to submit at some later time to a chemical test, this law does not take effect because I have in fact agreed at some point to submit to a chemical test?

SENATOR ALESI: Through you, Mr. President, as I understand it, you have two hours to do exactly that. That as long as you consent to a test -- again, this is my understanding -- within that two hours, then you would be okay with this.

But that would have no bearing, obviously, on the outcome of the test.

SENATOR HEVESI: Understood.

Mr. President, would the sponsor

yield to a final question?

ACTING PRESIDENT MEIER: Senator Alesi, do you yield?

SENATOR ALESI: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Do we have any sense or whether or not legislation of this nature, laws of this nature which may -- I'm assuming we have laws on the books in other states that are as strict or more strict as what we're proposing to do here today - whether or not the passing of those laws in other states actually had a positive impact of either providing a deterrent effect or reducing the amount of chemical test refusals by individuals who have been stopped on the road?

SENATOR ALESI: Through you, Mr. President, no, we don't. But I would like to assume that if there even isn't any in the other 49 states, that we can take a leadership role in pursuing again what I believe is a comprehensive effort to do everything we can

to deal with DWI.

SENATOR HEVESI: Okay, thank you.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Hevesi, on the bill.

SENATOR HEVESI: Actually, Mr. President, would the sponsor indulge me for one final question?

ACTING PRESIDENT MEIER: Senator Alesi, do you yield for one final question?

SENATOR ALESI: Mr. President, I remember that TV show "Columbo:" one more question. I'd be happy to.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you.

Well, through you, Mr. President, you'll be happy to know I think this is a terrific bill. My concern and my final question is we passed this legislation the last two years in a row. So I'll give you the blanket question I often ask, what's holding this up? What's the problem? Can you shed some light on that?

SENATOR ALESI: Through you, Mr.

President, it almost seems like I just was thrown a softball. But I think that the problem we have would be the Assembly Majority, who typically is loath to do any kind of legislation that raises penalties for any kind of misbehavior.

SENATOR HEVESI: Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Hevesi, on the bill.

SENATOR HEVESI: Thank you, Mr. President. Thank you, Senator Alesi.

This is an important piece of legislation. I don't know whether the answer to the last question is in fact the reason why this has not become law.

I would suggest to everyone, though, that this is one of those commonsense pieces of legislation that should not be left languishing year after year after year, because it's sending absolutely the wrong message to those who refuse to submit to chemical tests.

This is an area where the logic is fairly clear on why we should be doing this.

And even if it doesn't provide a deterrent effect, having this type of legislation on the books, which provides a greater punishment, more of a punitive result for somebody who decides that they're not going to take a test, that's appropriate.

It's much in the same way that I've always found it was ironic that we have not outlawed speed -- radar detectors in New York State, because the only purpose of having a radar detector is to break the law.

And so if you are refusing a chemical test, there is -- from my point of view, there's really no other reason why you'd be choosing to take that route unless you wanted to hide from the authorities the fact that you may have been breaking the law by whatever intoxicants that you had consumed. And as a result of that, we should not be lenient at all with individuals who refuse to take the test.

So I think this is a good piece of legislation. I would like to know -- it doesn't hinder me from voting for it -- I would like to know whether this works, whether

other states have done this, and whether it's had an impact. But notwithstanding that, it's a good bill. We should act on it.

And whomever is responsible for this legislation having passed in this house for the past two years and it not being law should take a closer look at it. I'm not sure I agree with Senator Alesi's assessment of that, because I know that there are a number of bills that we've have passed here in this house before that haven't become law, and it wasn't because the Assembly decided to act out of some nefarious reason. In fact, I will go so far as to suggest to you that I don't know anybody in the Assembly who wouldn't want to take measures to reduce the incidence of drunk driving or driving while under the influence of a controlled substance to protect our citizens on the roadways.

This is a commonsense bill. I think we can reach consensus on it. I would urge the other house to adopt this immediately and for the Governor to sign it, for all my colleagues to support the bill today. And I commend you, Senator Alesi, on bringing this

bill.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you. Through you, Mr. President, if the sponsor would yield for a couple of very brief questions.

ACTING PRESIDENT MEIER: Senator Alesi, do you yield?

SENATOR ALESI: Be happy to.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Thank you.

I find this whole area of the Vehicle and Traffic Law to be a little bit confusing in general. Does this legislation only apply to people under the age of 21, or does it apply to everyone?

SENATOR ALESI: Through you, Mr. President, it applies to everyone. The circumstances are different for those people who are under the age of 21.

SENATOR SCHNEIDERMAN: And through you, Mr. President, if the sponsor will continue to yield.

SENATOR ALESI: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: And does this have an exemption for a person who operates a commercial motor vehicle, which is a provision in another section of this area of law?

SENATOR ALESI: Through you, Mr. President, this bill does not specifically mention commercial driver's license.

SENATOR SCHNEIDERMAN: So through you, Mr. President.

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

SENATOR ALESI: Yes, I will.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: So that unlike some provisions of this statute, the extension of the time of suspension of license would apply to a driver of a commercial vehicle equally with the driver of a noncommercial vehicle; is that correct?

SENATOR ALESI: Through you, Mr.

President, that would be a logical assumption.

However, I'd like to reiterate that the bill doesn't specifically identify what type of driver we're talking about under these circumstances. With the exception of a driver under the age of 21 versus someone over the age of 21.

And I am advised by counsel as far as commercial driver's licenses are concerned, they already have higher penalties.

SENATOR SCHNEIDERMAN: Thank you. Thank the sponsor.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: This seems like a perfectly reasonable piece of legislation. I must say that the concern that I expressed is a concern with other areas of the law. It appears to me -- and this has come up earlier in this session -- that there are times when we penalize people driving their own private vehicles more than we penalize drivers of commercial vehicles.

And in my mind, if anything, it

should be the other way around in every section of New York law, that if you come here for the purpose of doing business by driving a vehicle, the standards should, if anything, be higher and we shouldn't be giving anyone a break in terms of alcohol consumption while driving.

But this -- I'm assured by the sponsor's remarks and the great staff work behind the sponsor's remarks that that's not the problem with this particular section, and I do intend to vote yes.

Thank you.

SENATOR CONNOR: Last section.

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

Hearing none, debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 382, by Senator Saland.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 382.

THE SECRETARY: Calendar Number 382, by Senator Saland, Senate Print 3435, an act to authorize the payment of ordinary disability benefits.

SENATOR CONNOR: Explanation.

ACTING PRESIDENT MEIER: Senator Saland, an explanation has been requested by Senator Connor.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, this is a bill which we have seen in this house on, I believe, two prior occasions, on each of which I believe this house has seen fit to pass it unanimously. It deals with a rather tragic situation which occurred in my district involving a gentlemen, now deceased, named Kim

Harvey, who was a state employee and who, in February of 1999, as he was terminally ill, languishing, quite literally, on his deathbed, chose to change his retirement option so as to make specific provision for his then wife and now his widow.

Apparently he accomplished that change on, I believe, the 12th of February. The option that he chose would have permitted his wife to secure a death benefit from the retirement system.

His family at about that time was summoned to his bedside. Apparently he lingered for a couple of days thereafter, two or three days thereafter. The form had been signed on February the 12th. It had been notarized on February 12th. Unfortunately, it was not mailed.

Mr. Harvey passed away, I believe on February 16th, with the notarized form, signed, notarized form not having been mailed. It was subsequently mailed by his family. It was rejected by the retirement system for not having been received prior to his death.

And the family now has found

itself -- and particularly his widow -- found themselves hard-pressed. She has managed to get by the past couple of years, apparently based on the proceeds of an insurance policy.

And the community in which she lives held a fundraiser, some type of a Chinese auction and, I believe, a spaghetti dinner that managed to raise several thousands of dollars, I believe somewhere in the area of $15,000.

Those monies have since run out. She is now threatened with the loss of her home -- a home which, incidentally, her husband had substantially built himself -- by way of foreclosure. And she finds herself in a desperate and time-is-of-the-essence situation, and that is the purpose of my bringing this bill before this house at this time.

ACTING PRESIDENT MEIER: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

I would note that the Senate passed unanimously this bill last year and the year

before, and the Assembly hadn't acted on it. I'm delighted that the Assembly is taking action, apparently, today.

I think it's something that we all supported in the past. I know it requires a two-thirds vote here. I'm sure it will get the overwhelming support of all of my colleagues, in view of the extraordinary circumstances in which this widow finds herself.

Thank you.

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

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, will the sponsor yield to just a question?

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Through you, Mr. President, my understanding is that the

retiree selected an ordinary retirement option which would have been solely on his own life; is that correct?

SENATOR SALAND: I'm going to assume that is correct. I do know what he chose subsequently, and I can't tell with absolute certainty that was his choice. But he chose what I think is called the joint allowance pop-up as his option, under which he received a -- would have received a lesser amount had he lived, and his wife would receive that lesser amount.

SENATOR DOLLINGER: Right. Payable over both years -

SENATOR SALAND: Correct.

SENATOR DOLLINGER: Thank you, Mr. President.

First of all, Senator Saland, I think that, again, this effort, like many others, is a good piece of legislative work. We recognize there's a problem. The problem is we have set up a retirement system with enormous constrictions on the ability of people to make optional choices and then change them.

And, Senator Saland, there are two things that I'd just like to call to your attention which I think are part of which this bill demonstrates the flaws in our retirement system. First of all, under New York State law, a retiree in our system can file a retirement request without the approval of their spouse. In every other pension system, by, as a matter of federal law -- private pension systems like the Eastman Kodak Company, IBM -- in order to select your annuity under your pension system, you need the approval of the husband and the wife if they're married.

We are one of the few states which still has a pension system which allows a single individual, the retiree, to make the choice without consultation with their spouse.

And I just call that defect in our law to your attention, because I think it's something that should be remedied. I have a bill that does it. I know there are a number of other bills that do it. But the whole notion of allowing couples who have been related while they earn their pension

benefits, a single couple -- one of the two people to make that election is, in my opinion, unfair. The federal government recognized it in private pension plans. We ought to do the same here in the State of New York.

And the second thing -- through you, Mr. President, I'm just going to talk on the bill. And again, I commend Senator Saland. But there's a woman from my district whose name is Sylvia Kless, in a bill that I carry, and what happened in that bill is almost the same exact circumstances.

A father of two children, an 8-year-old and a 6-year-old boy, elected a single life annuity. When he found out he had melanoma, he attempted to change the annuity and was told that he couldn't change it because he'd already retired. And therefore, the state retirement system wouldn't let him change his option.

As a consequence, the 32 years that he worked in the state teachers' retirement system, his wife drew three payments. Her children won't be able to go to college

because she can't get her hands on the $44,000 that is in the pension plan to be paid to her under the joint allowance that you talk about, the fact that you could select the benefit that is payable over your life and the benefit for the life of the spouse.

I've brought that bill back before the house. I hope that if that bill comes to the floor, and I'm going to do everything I can to bring it to the floor this year, that the same intensity of bringing the bill to the floor to rectify a wrong in our pension system, that we will vote that so that Sylvia Kless, who happens to live in my district, can get the same benefit.

My view is -- and, Senator Saland, I know you've done a lot of these similar kinds of bills -- we ought to look at the very tight restrictions we put on people's elections under the state retirement system, because as this case graphically demonstrates, this can be the only major asset that a hard-working state employee gets to leave for the benefit of a spouse.

And I think we ought to look at

establishing that spousal consent -- not just the retiree, but the spouse as well -- and we should also look at providing the pension system with the ability, much as we did when Senator Trunzo was working on -- remember the bill we did to allow people to buy back into the system and make certain changes in the system? We ought to do the same thing with this as well.

Because the injustice of someone working so hard for so long and then finding out that they've suffered an infirmity and not being able to pass the retirement benefits on to their spouse and their children is a drastic tragedy. It's present in this case. I'm going to vote in favor of it.

It's present in Mrs. Kless's case. And I would hope that she could count on both your support and the support of the Majority of this house to rectify the wrong in her case as well.

And with that in mind, Mr. President, I'll vote in favor of this bill.

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

Hearing none, debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar 36 on the Supplemental Active List, by Senator Balboni.

ACTING PRESIDENT MEIER: The Secretary will read Calendar Number 36.

THE SECRETARY: Calendar Number 36, by Senator Balboni, Senate Print 853A, an act to amend the Civil Rights Law, in relation to confidentiality.

SENATOR PATERSON: Explanation.

SENATOR BALBONI: Mr. President, this bill would amend the Civil Rights Law so as to prohibit the disclosure of a witness's or a victim's telephone number, home address,

or business address during the pendency of a hearing or a trial.

Thank you.

ACTING PRESIDENT MEIER: Senator Gentile.

SENATOR GENTILE: Yes, Mr. President. If the sponsor, Senator Balboni, would yield to some questions.

ACTING PRESIDENT MEIER: Senator Balboni, do you yield to a question?

SENATOR BALBONI: Yes, I do.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR GENTILE: Thank you, Mr. President.

Through you, Mr. President. Senator, you're aware, obviously, having worked in the courtroom, that on a fairly frequent basis there are situations in which, in choosing a jury, a juror will ask -- rather than elicit information in public, will ask to approach the bench or the judge will ask that juror to approach the bench. And so technically information that is given at the bench between a juror and the judge and the

attorneys is not in open court.

Would that situation be covered in the bill that you're proposing here today?

SENATOR BALBONI: No, it would not.

SENATOR GENTILE: So in that situation -- through you, Mr. President, if -

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

SENATOR BALBONI: Yes, I do, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: So, Senator, in that situation, where the questioning is being done at the bench, outside the hearing of the open court, a witness would then still, if asked, be required to give an address or a phone number if that occurred at the bench and not in open court?

SENATOR BALBONI: Mr. President, I understood the Senator's question to involve a juror.

SENATOR GENTILE: A juror, yes.

SENATOR BALBONI: Okay, so

your -- this bill would not cover jurors. This bill would cover only witnesses or victims.

SENATOR GENTILE: Okay, I'm sorry. Then I correct myself. Victims or witnesses.

Okay, even in that situation there have been occasions, there have been occasions whereby a witness, a witness, has asked the judge to allow the witness to speak to the judge with the attorneys present. And so I'll repeat my first question, then. In that situation, since it's not technically in open court, would you -- would that situation be covered under this bill?

SENATOR BALBONI: The bill as currently drafted does not make a -- I'm sorry, Mr. President, through you. The bill as currently drafted does not make a distinction in the statutory language as to whether or not the colloquy needs to be on the record, off the record, in open court, in camera, or pursuant to a discussion with the judge, known as a sidebar.

SENATOR GENTILE: A sidebar,

right.

SENATOR BALBONI: However, the court is given specific authority to determine when the disclosure is relevant to the nature of the proceedings and therefore can direct that the information in fact be disclosed. It is that discretion that would guide the court in determining what information would be available.

It would work this way. Now, under this law, victims, particularly in domestic violence cases, and witnesses in domestic violence cases, that if you talk to any of the DAs in this state, will tell you it is so difficult to get people to testify, they will now have a presumption not to disclose their information about where they live, where their businesses are, what their telephone numbers are, so as to prevent further -- or not further, but intimidation by people who don't want them to testify, whether it be an abusive spouse, whether it be -- in fact, right now they do this in witness protection cases dealing with organized crime, it's done all the time. And we do have similar exemptions

for undercover police officers.

So now what this will do is it sets up a presumption that the information not be disclosed, and the burden would fall upon the defense attorney to make an application for the disclosure of the information, in an attempt to bring their defense forward.

An example would be the witness says that they saw the incident, but they live in Alaska, you know. And this is several months later, and he says, you know, that he's lived there all his life, but we know that he's been living in Alaska for the last -- to attack the credibility of the witness, if there was something that obvious, you can make that application. And the court in their discretion would decide whether or not to disclose that information.

SENATOR GENTILE: Through you, Mr. President, if -

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

SENATOR BALBONI: Yes, Mr. President.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR GENTILE: My concern, Senator, is just the words "open court" as you use it in the bill, shall not be disclosed in open court.

Should there be a sidebar or an in camera discussion in which the defendant is, by right, able to be present, the fact that this only covers open court, do you see that there is a gap here where that is not covered by this legislation whereby, should it be in camera or at sidebar, where that information is being elicited, this bill would not cover that situation?

SENATOR BALBONI: Mr. President, through you, I would respectfully disagree, Senator. I think that open court is the broadest description we can have for any proceedings that take place in court. And of course the intent behind it is open and readily accessible information. And that's why the phrase "open court" was utilized.

This bill was drafted in conjunction with the DAs Association, who came up with this language. And they felt it was

broad enough to cover all instances. And any prosecutor worth their salt would make an objection to the disclosure and cite the Civil Rights Law as the basis for their denial of revealing the question. And therefore, it would be up to the judge in that regard in any event.

SENATOR GENTILE: Through you, Mr. President.

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

SENATOR BALBONI: Yes, I do, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR GENTILE: Thank you, Mr. President.

Might it, then, Senator, be maybe more instructive to say on the record, any testimony on the record as opposed to testimony in open court? Because if that's the case, that would cover the in camera hearings or the sidebars.

SENATOR BALBONI: No -- I'm sorry, Mr. President, through you. Actually,

Senator, sidebar discussions are frequently held off the record.

SENATOR GENTILE: Some are, some aren't.

SENATOR BALBONI: Most of them - I mean, put yourself in a courtroom just a second. You know, you have the jury sitting there. Unless you make a motion for the jury to retire for the purposes of a discussion in front of court, they're sitting there. So you go up to the bench and you then lean over the bench, and you now have the discussion with the court. Very rarely -- in fact, I've never seen it in the 12 years of trial work where there's been a reporter taking down the minutes of that discussion. Just because if you're going to do that, then you're going to make a formal discussion, a formal argument with the jury absent. So I've never seen a sidebar conducted in such a way that a reporter would be taking down the minutes of the actual discussion itself.

So that's why we used "open court." Because it's my belief that saying testimony or saying on the record would in fact narrow

the scope. And that's not what we want to do.

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

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

SENATOR BALBONI: Yes, Mr. President, I yield.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: I would agree with you, Senator, in the instances where there's a sidebar involving just the two attorneys and the judge. But there are instances where a witness -- either the judge or the witness asks to speak in that -- in camera. And whether the jury is present or not, that type of situation is on the record.

SENATOR BALBONI: Not necessarily. Not necessarily.

SENATOR GENTILE: I would say - in criminal prosecutions, I would say it is.

ACTING PRESIDENT MEIER: Gentlemen, Senators, I'm delighted that you can have this exchange, but will you both please address the chair.

SENATOR GENTILE: If the Senator would continue to yield, I just have one or two more questions.

SENATOR BALBONI: Yes, I continue to yield.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: In the event - and I notice here that you've indicated it's up to the discretion of the judge. This legislation, am I correct, doesn't set forth any guidelines as to the parameters of that discretion?

SENATOR BALBONI: No, it does not.

SENATOR GENTILE: So it's the total discretion of the judge.

SENATOR BALBONI: Mr. President, through you, I'm not sure what the concern is with the phraseology of "total discretion." I mean, almost every ruling in these cases as regards the testimony of a witness is at the discretion, whether the testimony is relevant or whether it's something that should be disclosed, whether it's privileged

communication, that's always -- you know, it's hearsay. Those are all the types of evidentiary decisions that a judge makes on a day-to-day basis.

SENATOR GENTILE: If the Senator would continue to yield.

ACTING PRESIDENT MEIER: Senator Balboni -

SENATOR BALBONI: Yes, Mr. President, I yield.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: The only reason I say that, Senator, is because indeed Senator Skelos has a bill on today, on today's calendar, dealing with child witnesses. And in those child witnesses, there is in the law a series of guidelines for a judge to determine, in his or her discretion, whether that child who is to be a special witness, special child witness, fits those parameters.

So there is precedent for guidelines being placed in the law, although a judge has discretion. So my concern to you was that this situation does not have those

same guidelines.

SENATOR BALBONI: Mr. President, through you, in drafting the bill I was aware of Senator Skelos's legislation. However, his deals with children in their role as a witness. And there are other aspects involved that are not involved with general witnesses or victims in this case.

And remember the information we're talking about. There, the context of that bill is to prevent the trauma of the actual testimony of a child. So -- and the difficulties associated with trying to get truthful examination of a child witness without causing problems for the child.

Here, you're just talking about a specific set of information that deals with where they live and what their business phone number is, what their home phone number is. So it's a much more narrow scope of information and it does not go to the manner in which the witness would testify, which is what Senator Skelos's bill takes into account.

SENATOR GENTILE: Thank you, Senator.

On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Gentile, on the bill.

SENATOR GENTILE: I want to thank Senator Balboni for this legislation and certainly for his discussion and responses to the questions.

Certainly, in bringing forth a bill like this, I personally have experienced many instances as a prosecutor where a victim or a witness to a crime has expressed great reservations about having to testify and being subject to questions as to where they now live, where they now work, and whether or not those are relevant or whether or not where they worked or lived at the time of the crime was relevant. And we'd always get into discussions and debates and arguments in the courtroom as to whether or not this testimony was necessary to a case.

So to have a bill like this that gives the presumption that this testimony is not to be elicited and prohibits disclosure is a good step in the right direction in protecting victims, protecting witnesses to

crimes, particularly, as Senator Balboni said, in protecting victims of domestic violence.

So in that, I think Senator Balboni has done a good job on this bill. Whether or not there should be guidelines for the discretion of the judge remains to be seen. But certainly I think the way it's drafted now is a good step in this state, protecting those witnesses and those victims who otherwise have a very difficult time in getting on the stand and responding to those questions.

So, Senator Balboni, I think this is a good bill. Thank you.

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

Debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

SENATOR DOLLINGER: Just briefly,

Mr. President.

I appreciate the questioning of my colleague Senator Gentile, who I think highlighted a number of the issues in this bill.

I would just add one caution. I guess I'm always afraid of the use of the phrase "open court," only because that may lead to the temptation on the part of judges to try to close the courtrooms. And whenever I see that phrase -- I'm not so sure it's a phrase of art, I can't remember seeing a lot of that phrase, "open court," in our CPL, our Criminal Procedure Law, and my fear is that may be an inducement to the courts to start closing our courtrooms at any stage of the criminal process.

I believe that the open court process, the right to a public trial and the right of the public to know what goes on in our courtrooms is, oh, so critical. And I would just want to make sure that this is never interpreted to suggest that the judges in this state should be closing portions of the criminal proceedings simply because

there's a chance that the witness's name, address, location and other information might be disclosed.

So with that caveat, I'm still going to vote in favor, Mr. President. Record me in the affirmative.

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

Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Duane.

SENATOR DUANE: Thank you, Mr. President. With unanimous consent, I'd like to be recorded in the negative on Calendar Number 291.

ACTING PRESIDENT MEIER: Without objection, Senator Duane will be recorded in the negative on Calendar 291.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 252.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 252.

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

SENATOR DOLLINGER: Explanation, please.

ACTING PRESIDENT MEIER: Senator Skelos, an explanation has been requested.

SENATOR SKELOS: I'm delighted to give an explanation and expound on Senator Balboni's explanation of my bill during the previous debate.

Presently, a child victim of a sexual offense and/or incest who is 12 years old or less is allowed to give testimony in a criminal proceeding by means of live, two-way, closed-circuit television if the child is declared vulnerable by the court. This bill merely raises the child witness age from 12 to 16.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. If the Senator will yield

for some questions.

ACTING PRESIDENT MEIER: Senator Skelos, do you yield to some questions?

SENATOR SKELOS: Yes, Mr. President.

SENATOR HASSELL-THOMPSON: Thank you, Senator. This is a bill that very obviously I'm not going to be able to vote against, but it is a bill that I need you to help me with some questions, if you will. Through you, Mr. President.

The sponsor's memo cites the increased incidence of teenage sexual victims as the reason for the change in age. Do you have any numbers of studies to show why we have changed the age from age 12 now to age 16?

SENATOR SKELOS: Well, there was a couple of incidences in Nassau County where 14-year-old girls that had been raped were forced to be cross-examined by the rapist, the alleged rapist, in the courtroom, in his presence, because he had opted to defend himself. This was a traumatic experience.

And, Senator, many times we don't

necessarily need statistics and studies to pass good legislation. A lot of it comes from our own thinking, our own philosophy, our own heart, our own common experience. And I think this legislation, which has passed unanimously in the Senate four times noncontroversial, is certainly legislation that is good legislation to protect young children that have been sexually victimized. And they should not have to be subject to being in the courtroom with their -- the aggressor.

SENATOR HASSELL-THOMPSON: Thank you, Senator.

On the bill.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson, on the bill.

SENATOR HASSELL-THOMPSON: Mr. President, I'm in appreciation of the sensitivity of Senator Skelos in his approach to this bill. And I certainly, like him, would not need to have a long list of statistics in order to make me want to make those kinds of changes.

The reason I posed the question, however, had a lot to do with the fact that

this legislation seems to turn on whether a young person, someone between the ages of 13 and 16, is considered vulnerable under the law. And I think that this bill raises a number of important issues relating to how young people are treated under our criminal justice system, not just as victims but as offenders as well.

In researching this legislation, I found that this house, as recently as 1998, approved the Juvenile Justice Accountability and Procedural Reform Act. And among its provisions, that legislation would have expanded the coverage of current law to make 12-year-olds eligible to be prosecuted as an adult where certain Class A felonies had been committed. And also, it expanded the class of designated felonies for which youths under the age of 18 could be prosecuted as adults to include a long laundry list of felony offenses.

I hope my colleagues see, as I do, the obvious incongruity between the bill before the house today and the so-called Juvenile Justice Reform Bill this house has

approved in the past.

And while I share Senator Skelos's concern about the need to protect young people who are victims of sexual crimes, and I would mean to add that even though the numbers of sexual crimes that we hear most prevalently about are females, we have a very, very high number of males who also are sexually abused. And so knowing that, any sexual offenses are heinous crimes and the very nature of the offense means that we should be treating it in a special fashion by prosecutors in the courts.

But I can't help but be disturbed by the mixed message that this house sends to the public when it passes legislation of this nature while also lowering the minimum age at which a young person can be prosecuted.

So let's be clear. Young people are not simply small adults who can be treated in the same way under the law. Young people, especially those in their early and mid-teens, are not yet adults. And we who make the laws must keep this simple, undeniable fact in mind when we write the laws.

In a day and an age when the Columbine type of school shootings have become all too commonplace, we have do remember the inherent vulnerability of young people, no matter whether they are victims or the perps. They are not adults and cannot be treated in the same way as adults.

So I thank you, Senator Skelos, for reminding us of that fact. And know that I will be supportive of this bill, primarily because in these situations teenagers are already been victimized once and by having to appear before the court and before their accusee, they are victimized again.

But know that it continues to disturb me when there is not a balance between how we speak about young adults one day and how we speak about them another day.

ACTING PRESIDENT MEIER: Senator Gentile.

SENATOR GENTILE: Yes, Mr. President. If Senator Skelos would yield to some questions.

ACTING PRESIDENT MEIER: Senator Skelos, do you yield to a question?

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: Thank you, Mr. President. Through you.

Senator, obviously when this legislation was first passed in 1985, this was groundbreaking legislation, because in effect what it does is take a party outside the courtroom to render testimony outside the courtroom, and in that case being the vulnerable child witness who is not physically in the courtroom but somewhere outside the courtroom rendering testimony.

Certainly we've talked about the implications for the child witness and why we think that needs to be done. I'm just curious, Senator, from your study of this bill and this law, whether or not we have the implications here, the constitutional implications of a defendant having the right under the constitution to face their accusers, particularly in cases where it might be a sexual abuse or a rape or things of that

nature.

Has that issue been addressed and resolved as to the constitutional implication of having the defendant and the person testifying in separate rooms?

SENATOR SKELOS: There's a very simple answer to that, if I may, Mr. President. The law has been held constitutional for 12 and under. All we're doing is saying 16 and under. So obviously it would continue, in my opinion, to be constitutional legislation. All we're doing is raising the age. That's it.

SENATOR GENTILE: But if you will continue to yield, by that I -

ACTING PRESIDENT MEIER: Hold on. Hold on.

SENATOR GENTILE: Okay, I'm sorry.

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

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: By that I take it there have been constitutional challenges, that the court has upheld the fact that this is a constitutional way of providing testimony?

SENATOR SKELOS: I'm told by learned counsel Maryland v. Craig.

SENATOR GENTILE: That's a U.S. case or -

SENATOR SKELOS: U.S. Supreme Court.

SENATOR GENTILE: So I assume that under that case -

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

SENATOR SKELOS: Yes, I will continue to yield, saying that it is constitutional. It is now 16 years later; it is still in effect for 12 and under. So as you assuming something -- and we know at times we shouldn't assume, but I'm assuming that it is totally constitutional and we should be focused on raising it from 12 to 16. This is what this legislation is doing, 12 to 16.

SENATOR GENTILE: And certainly I understand exactly what this legislation - but it comes within the context of the larger bill, which is setting up this system of vulnerable child witnesses. Am I correct?

SENATOR SKELOS: It's not a larger bill, it's -- if I may, Mr. President, it's existing law.

SENATOR GENTILE: The law. I should say the law.

ACTING PRESIDENT MEIER: Senator Gentile, can I ask you please to address the chair.

SENATOR SKELOS: The bill that we're passing today changes from 12 to 16.

SENATOR GENTILE: Through you, Mr. President.

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

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: Under this bill, is the vulnerable child witness limited

only to the prosecutor, or is that available to either side or the court sui sponte?

SENATOR SKELOS: Either side can make a motion. Either side can make a motion.

SENATOR GENTILE: So it can be any party, any party including the judge, as sui sponte, to render this decision?

SENATOR SKELOS: Yes.

SENATOR GENTILE: Through you, Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos, will you continue to yield?

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: And again, Senator, I'm talking about not only your bill to increase it, but the law itself, is it limited only to the trial phase, a criminal trial phase?

SENATOR SKELOS: If I may, Mr. President, again, I'd like to narrow it down to the issue of 12 to 16. The existing law is the law. If you disagree and, in your

opinion, a 15- or a 14-year-old girl, like I mentioned, that is raped should have to sit in front of her accusee and be cross-examined by him, then you should vote against this legislation.

In my opinion, raising the age to 16 is appropriate. And this is what this is about. It's not -- the constitutionality of the bill has obviously been decided. The issue here should narrow it down in focus, 12 to 16. That's what this legislation does.

SENATOR GENTILE: In that realm, then -

ACTING PRESIDENT MEIER: Senator Skelos, I think Senator Gentile in his eagerness for this debate has forgotten to ask if you would yield.

SENATOR SKELOS: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: Thank you. Thank you, Mr. President. In that realm, then, Senator, I obviously was not here in 1985 when the law passed making it up to age 12. You may have been, I don't know offhand.

SENATOR SKELOS: I was here. But I believe I've heard you mention on numerous occasions how you've prosecuted cases in the DA's office, so I'm sure you would be very familiar with this legislation.

SENATOR GENTILE: Absolutely. And that dovetails into my question. I'm curious and always have been why it had been 12, what caused the law to be made at 12, and now that we're revisiting it and increasing it to 16.

SENATOR SKELOS: You would have to ask the sponsor of the bill back in 1985. I'm not familiar with who that was. But as you know, we amend bills constantly in this Legislature. And this is what this bill is about, changing it from 12 to 16.

SENATOR GENTILE: Then, Senator, if I may -

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

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: I'll ask you on the other end, then. Why is it that you've determined that 16 as opposed to 17 would be the appropriate age at which to cut off the availability of a vulnerable child witness?

SENATOR SKELOS: Because I feel that -- if I could, Mr. President -- that this is an appropriate age. And perhaps down the road, a few years from now, if I think in another bill, or another member does, that it should be raised even higher, as some states have done, we could certainly consider that legislation. Right now, it's 12 to 16.

SENATOR GENTILE: Great. Thank you, Senator.

On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Gentile, on the bill.

SENATOR GENTILE: Mr. President, I appreciate Senator Skelos's discussion. And certainly he is correct, this bill deals with increasing the age from 12 to 16.

I might say that I have always been perplexed by the fact that the original legislation limited vulnerable child witnesses

to the -- up to the age of 12.

Back in 1985, I was one of the first prosecutors in the County of Queens to use this new legislation in putting on a vulnerable child witness via closed-circuit television. I've also had the unfortunate experience of having 14-year-olds and 15-year-olds who were just as vulnerable as the 12-year-old that I put on the stand not eligible for this law and not eligible to be declared vulnerable child witnesses, and they were as vulnerable as the 10- and the 11-year-olds that I put on the stand via closed-circuit television.

So this legislation addresses an issue that has bothered me for many, many, many years, that it should be at least to 16, and maybe even more. So, Senator Skelos, you hit a home run on this one. And I can go home happy now knowing that I voted for it.

Thank you, Senator.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Will Senator Skelos yield to a question, just one, Mr.

President?

ACTING PRESIDENT MEIER: Senator Skelos, do you yield?

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: The definition of vulnerable -- and I know there's case law emerging on that. But why would we have any age restriction at all? Why wouldn't the court be able to say if you're 24 or 25 or if you suffer from a psychiatric illness or a psychological impairment, why wouldn't you just abolish the age limit and say if you're determined to be vulnerable, in essence, you engage in an enormously stressful or an unreasonable pressure of testifying, why wouldn't you just make it -- forget the age specific and just say if there's a determination of vulnerability regardless of age, you should be able to testify?

SENATOR SKELOS: Well, first of all, we're dealing with sexual offense cases right now.

And I don't know the answer to that, Senator Dollinger. Maybe there are other sections in the Mental Hygiene Law or the Penal Law that I'm not familiar with that would permit this. But right now, I'm focused on this one section of the law.

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

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I think I've voted in favor of this in the past. I'm going to vote in favor of it again.

But I think the point that Senator Skelos makes with this legislation is a correct one. In instances in which sexual offenses, sexual predators are involved, it seems to me that the declaration of vulnerability involves so many factors -- it can the psychiatric impairment, psychological impairments, physical intimidation, a whole gamut of potential reasons why a witness would be determined to be vulnerable.

And if the court reaches that determination, then the otherwise requirement

that they actually appear in the courtroom and testify in front of a jury and all the defense counsel and the prosecution and, of course, the judge, it seems to me that we should make the determination of vulnerability based on the fact that this will have an enormous and unwarranted impact on the witness rather than simply setting it at a specific age.

I'm going to vote in favor of this bill because I don't mind expanding the protection from children between ages 12 and 16. But I would suggest to Senator Skelos that the amendment that he talked about in his discussion with Senator Gentile about perhaps expanding it to other ages or why it's age-specific, I don't think it should be.

I think we should say that anybody who is vulnerable -- that means uniquely threatened by testifying because of psychological impairment or other impairments -- if they are vulnerable, then they should be in a position where they don't have to testify in an open courtroom because of the enormous pressure, intimidation with relation to these offenses, sexual offenses,

that it can involve.

So I'm going to vote in favor, but I would look forward to that day when we just wipe out the age restriction completely and look at vulnerability alone.

Thank you.

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

Debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to motions and resolutions, I believe there is a resolution at the desk by Senator Bruno. Could we have the title read and move for its immediate adoption.

ACTING PRESIDENT MEIER: Motions and resolutions.

The Secretary will read the title of the resolution.

THE SECRETARY: Legislative resolution by Senators Bruno, Velella, Maltese, and Mendez, Number 1379, urging the New York State Congressional Delegation to seek the permanent cessation of all United States Navy military training activities on the Puerto Rican Island of Vieques.

ACTING PRESIDENT MEIER: The question is on the resolution -- Senator Mendez.

SENATOR MENDEZ: Mr. President, I really want to congratulate Senator Bruno and my colleagues who are in this resolution, because it speaks to an issue that is of great importance to all Puerto Ricans, whether they reside in the island of Puerto Rico or in the mainland.

We all feel that for 60 years the Navy has been bombarding continuously the Island of Vieques. The environment has been totally reduced to practically nothing. Because of the trade winds, the winds bring the chemicals of those bombs into the area

where the people live in the island. And that explains why so many people are suffering from cancer in that island.

We visited, with the Governor, Vieques, and we saw house after house how the relatives of people who live there are suffering, have been suffering from cancer in inordinate fashion.

And we all Puerto Ricans feel that if in fact the security of this nation, this nation that we love so very much, would depend on keeping the bombings going on, we will just swallow hard and keep -- and don't do anything to prevent the bombing. But that is not the case.

In fact, let me tell you, Japan, who is a less wealthy country than ours, built an island to engage in that sort of training for their troops.

Also, Puerto Ricans, Puerto Rican men and women have fought in every single war that our country has engaged in. They have defended the freedoms that we all enjoy with valor and with dignity. Many have died.

So it is kind of poignant to me and

to many other Puerto Ricans to see that our co-American citizens are engaging in that kind of a situation.

So I am most appreciative, Mr. President, of Senator Bruno and the other colleagues that in fact are following the leadership of Governor Pataki and joining us in fighting for something that is just, for something to stop that bombing. Because the nation doesn't need it, and the arrogance of the Navy should be stopped.

I thank you, Mr. President.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, if a member wishes to be on the resolution, they should notify the desk, please.

ACTING PRESIDENT MEIER: Members wishing to be placed on the resolution, please notify the desk.

Could I ask Senators wishing to go on the resolution to come up to the desk after we get through the session.

Senator Paterson.

SENATOR PATERSON: Mr. President, would it be easier for all of us to come up? Or might it be possible -- all of us here in the Minority would like to be on the resolution.

SENATOR SKELOS: No objection.

ACTING PRESIDENT MEIER: All right. Senator Skelos, should we follow the custom of anyone who doesn't want to be on the -- for the Minority, I'm saying. No?

SENATOR SKELOS: No, why don't we do it if you wish to be on the resolution, you should notify the desk. The Minority has made a request that all members be on it. We have no objection to that.

ACTING PRESIDENT MEIER: All right. All Minority members will be placed on the resolution. Other Senators inform the

desk if they wish to be on the resolution.

Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

I'm sorry, if we could return to motions, Senator Dollinger has a motion.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Yes, Mr. President. I hereby give notice, as required by Rule XI, that I will move the Senate to amend and add a new rule, XI, which pertains to the ethical standards for members, employees and officers of the New York State Senate.

ACTING PRESIDENT MEIER: The notice is received, and it will be entered in the Journal, Senator.

Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT MEIER: No, there is not, Senator. It's clean.

SENATOR SKELOS: Mr. President, there being no further business, I move we

adjourn until Monday, April 23rd, at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Monday, April 23rd, at 3:00 p.m. Intervening days will be legislative days.

(Whereupon, at 4:15 p.m., the Senate adjourned.)