NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 2, 2001

11:12 a.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, May 1, the Senate met pursuant to adjournment. The Journal of Monday, May 30, 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 Velella.

SENATOR VELELLA: Madam President, may we offer up a privileged resolution by Senator Morahan and have the title read.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Morahan, Legislative Resolution Number 1598, commending the Rockland Business Association upon the occasion of its designation as recipient of the Small Business Not-For-Profit Organization of the Year Award by the New York State Small Business Advisory Board, on May 7, 2001.

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 Velella.

SENATOR VELELLA: Madam President, I believe there's a privileged resolution at the desk by Senator Hassell-Thompson. May we read the title.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Hassell-Thompson, Legislative Resolution Number 1599, commending Reverend Robert Keith Williams upon the occasion of his Second Anniversary as Pastor of the White Rock Baptist Church, Mount Vernon, New York.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Velella.

SENATOR VELELLA: Madam President, I'd ask you to recognize Senator Dollinger for his daily recitation.

And I hope that you will not reflect back to your prior life and move a motion to dismiss for failure to prosecute the resolution.

But Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

THE PRESIDENT: Moving right along.

Senator Dollinger.

SENATOR DOLLINGER: I will keep it short and ripe, for the lawyers in the room.

I just hereby give notice of an intention to move an amendment to the Senate Rules. That notice is given pursuant to Senate Rule XI, that I will move to amend the rules to add a new rule, XV, which will create ethical standards for officers, employees, and members of the New York State Senate. I'd ask that it be recorded in the Journal, Madam

President.

THE PRESIDENT: The motion has been received and will be filed in the Journal, Senator Dollinger.

Senator Velella.

SENATOR VELELLA: Madam President, I understand there are some substitutions at the desk, if we can do those at this time, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 8, Senator Spano moves to discharge, from the Committee on Health, Assembly Bill Number 7184 and substitute it for the identical Senate Bill Number 3659, First Report Calendar 632.

On page 11, Senator Saland moves to discharge, from the Committee on Children and Families, Assembly Bill Number 3535A and substitute it for the identical Senate Bill Number 4664, First Report Calendar 659.

And on page 12, Senator DeFrancisco moves to discharge, from the Committee on Tourism, Recreation and Sports Development, Assembly Bill Number 4917 and substitute it

for the identical Senate Bill Number 4427, First Report Calendar 669.

THE PRESIDENT: Substitutions ordered.

Senator Velella.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 185, by Senator Alesi, Senate Print 520, an act to amend the Public Health Law.

SENATOR CONNOR: Explanation.

THE PRESIDENT: We're on the noncontroversial calendar, Senator Connor.

SENATOR CONNOR: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 435, by Senator Spano, Senate Print 3069, an act to amend Chapter 667 of the Laws of 1977.

SENATOR CONNOR: Lay it aside.

THE PRESIDENT: The bill is laid

aside.

THE SECRETARY: Calendar Number 437, by Member of the Assembly Vitaliano, Assembly Print Number 6612, an act to amend the Civil Service Law.

SENATOR CONNOR: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 438, by Member of the Assembly Vitaliano, Assembly Print Number 6614, an act -

SENATOR CONNOR: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 439, by Member of the Assembly Vitaliano, Assembly Print Number 5733 -

SENATOR CONNOR: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 440, by Member of the Assembly Vitaliano, Assembly Print Number 5734 -

SENATOR CONNOR: Lay it aside,

please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 457, by Senator Kuhl, Senate Print 2215, an act to amend the Penal Law.

SENATOR CONNOR: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 462, by Senator Wright, Senate Print 3059, an act to amend the Penal Law.

SENATOR CONNOR: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 465, by Senator Kuhl, Senate Print 3337 -

SENATOR CONNOR: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 481, by Senator Larkin, Senate Print 3998, an act to repeal Chapter 987 -

SENATOR CONNOR: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 532, by Senator Rath, Senate Print 1453, an act to amend the Public Authorities Law.

SENATOR CONNOR: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

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

SENATOR VELELLA: Thank you, Madam President. May we now have the reading of the controversial calendar, in order.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 185, by Senator Alesi, Senate Print 520, an act to amend the Public Health Law, in relation to mandatory reporting.

SENATOR CONNOR: Explanation.

THE PRESIDENT: Senator Alesi, Senator Connor, I believe, has asked for an

explanation.

SENATOR ALESI: Thank you, Madam President.

This bill provides for the mandatory reporting of suspected abuse of a person who is physically or mentally incapable of reporting that abuse themselves.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Through you, Madam President, if the sponsor will just yield to a question, please.

THE PRESIDENT: Senator Alesi, will you yield?

SENATOR ALESI: Yes, Madam President. I'll be happy to.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: This statute, as I understand it, Senator, is patterned after our child abuse reporting requirements. And I just -- do you have any sense or any information about how effective or how the system has responded to those kinds of complaints?

We have similar penalties, we have criminal penalties, minor criminal penalties for failing to report. Do you have any sense of how that system has worked vis-a-vis increasing our ability to detect and report and prevent child abuse?

SENATOR ALESI: Through you, Madam President, I don't have any specific numbers to report, because that would be impossible to do. Because of the number of incidents that probably go unreported, we couldn't weigh that against them.

But I would venture to say that we have laws that cover virtually everything, and there may or may not be a way of saying how effective they are in terms of dealing with or preventing circumstances.

The point is that this broadens the number of people who would be required to report the abuse, rather than just leaving it up to their own conscience as to whether or not they would report it.

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

THE PRESIDENT: Senator, do you yield?

SENATOR ALESI: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Do you know whether there have been actually any prosecutions under the child abuse reporting requirement for failure to report?

I mean, we have minor criminal penalties, I think misdemeanor penalties associated under the child abuse laws with a requirement that you report and if you don't report you can actually be prosecuted. Have there been many of those? Has it worked as a spur to report this?

SENATOR ALESI: Madam President, as much as I'd like to say that the child abuse reporting law is the template for what we're doing here today, I'd prefer to debate the bill at hand. And I appreciate Senator Dollinger's concerns about the fact that since we are patterning it after the child abuse laws, that we could say whether it has been

successful or not.

But I would prefer to proceed with the bill at hand, Senator, with your good graces.

SENATOR DOLLINGER: Okay.

Through you, Madam President, just one final question.

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

SENATOR ALESI: Yes, Madam President. I'd be happy to.

THE PRESIDENT: You may proceed.

SENATOR DOLLINGER: The issue of good faith in the reporting as creating a certain immunity from any kind of civil liabilities, could you just explain -- I mean, I don't know whether there's a good faith provision in the child abuse reporting law. I mean, has this triggered civil litigation?

Has this -- I know the trial lawyers, I gather, have raised this issue of the good-faith immunity. Has that triggered litigation? Has there been litigation over the child abuse -- failure to report child abuse as creating civil liability for the

nonreporting person?

SENATOR ALESI: Madam President, at least as far as the bill at hand is concerned, there is, as you correctly point out, an immunity for good-faith reporting for many civil liabilities. And I think that my response would be specific to the bill at hand in that matter.

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

THE PRESIDENT: You may proceed.

SENATOR DOLLINGER: I've voted for this bill in the past; I'm going to vote for it again.

I commend my colleague from Monroe County in putting this bill together. I think it has a clear beneficial intent. I think it drives home the importance of reporting incidents involving abuse of some of our most vulnerable New Yorkers.

I do hope that when the bill gets to a conference committee, which I think is a good thing, and this bill is ironed out with our colleagues in the Assembly -- I know we passed it last year. I would suggest that I

would certainly vote in favor of a message to the Assembly telling the Assembly to come to the table on this issue, to come up with a bill that will achieve the goal that my colleague from Monroe County is attempting to achieve, which is provide additional protections for people who suffer from mental disease or defect, and that they have an opportunity to enjoy that same kind of protection. This kind of abuse should not be tolerated.

I don't mind a strict reporting requirement. I think it will be beneficial. And I just think that this bill deserves the attention of both houses and should become a part of our law.

The issues of the good-faith immunity, the issues that involve the reporting and the written reports and how the system has worked, I think that's worthy of an extensive discussion with the other house. My hope is that we get to there and that this bill eventually becomes law.

I feel that continuing to pass it as a one-house bill does a disservice to my

colleague from Monroe County as well as to the people he's trying to protect. We ought to do this as a companion bill with the Assembly and get this bill or something very much like it into law as quickly as possible.

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

SENATOR CONNOR: Last section, please.

THE PRESIDENT: 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, 44.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 435, by Senator Spano, Senate Print 3069, an act to amend Chapter 677 of the Laws of 1977.

SENATOR CONNOR: Explanation.

THE PRESIDENT: Senator Spano,

Senator Connor has requested an explanation.

SENATOR SPANO: Thank you, Madam President.

This is a bill that extends the agency shop fee for two years.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Madam President, if the Senator will be so kind to yield for a question.

SENATOR SPANO: Yes.

THE PRESIDENT: The Senator does yield.

You may proceed, Senator Connor.

SENATOR CONNOR: Thank you, Madam President.

Madam President, I would inquire of the Senator whether any consideration was given to a longer extender than two years with respect to the agency shop fee.

SENATOR SPANO: Senator Connor, we discuss this every two years. And I do have the -- I am carrying the bill that would allow for a permanent mandatory agency shop, and that possibly that we may address before the end of this session.

But I think it's important that we at least put in place an agency shop fee proposal that we can get to the Governor, have it signed into law for a two-year extender.

This is something that we have discussed with our public employee representatives across the state, and they very strongly feel that this measure is the most prudent way to go.

So to answer your question directly, have we thought about it, yes. We do have a bill in to do that. I agree that we should. But at this point, this is just the two-year extender.

SENATOR CONNOR: Madam President, if Senator Spano would yield for another question.

SENATOR SPANO: Yes.

THE PRESIDENT: You may proceed, Senator Connor.

SENATOR CONNOR: Thank you, Madam President.

I would ask Senator Spano is he aware that I put in a bill for a permanent agency shop in 1979 and carried it for many

years thereafter. And I believe that predates the Senator's membership in this body.

SENATOR SPANO: I remember that. I was in the Assembly then, and I remember that bill.

(Laughter.)

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

SENATOR SPANO: You continue to be a pioneer, Senator Connor.

SENATOR CONNOR: On the bill, Madam President.

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

SENATOR CONNOR: In 1977 a great experiment was enacted, and that was to allow, through our public employee collective bargaining agents, the ability to collect an agency shop fee because of the work that they do representing all employees in the bargaining unit, whether or not they be union members and pay dues because of being members.

Under the fundamental principles of collective bargaining, the union has to represent everyone who works in the unit,

whether or not they belong to the union. And of course that imposes expenses on the union for lawyers and arbitration fees and representation and all sorts of other responsibilities that the union has as part of their duty of fair representation to represent all.

It was originally a two-year experiment in 1977 with a promise that if it worked out, it would be made permanent. We are now -- let me get my math right -- 24 years later, doing another two-year extender.

And frankly, there have been occasions -- I confess to exploiting this issue politically myself in 1979. Because the history was such that until just a few years ago, a minority of the Majority members supported this bill, and virtually every Democrat did support it.

And in 1979 I offered an amendment to make it permanent. It failed, as happened to all but two amendments that I've ever seen introduced on this floor since I've been here. And then all the Democrats voted against the main bill, because that's what the unions

wanted, a permanent agency shop. And of course the extender failed.

And for about six or seven weeks, there was rather a crisis in the public employee union quarters until the bill to extend it for two years was brought back, with a promise to look shortly thereafter -- this being 1979 -- at a permanent agency shop.

I have over the years offered an amendment to make it permanent which has failed. It's 24 years later. And frankly, no one is fooled by the -- and I've said this on the floor before, Madam President, the political intent of a mere two-year bill is to force the public employee unions to come back, hat in hand, to this Legislature every two years and be nice and make nice in order to get another two-year extender on what in fact is financially of utmost importance to them because it allows them to have the capacity to represent all their members to the best of their ability.

I think it's time we end this charade and have a permanent agency shop. I hope, Madam President, that Senator Spano is

serious in pursuing the idea this year of doing a permanent agency shop. The issue is -- frankly, it's not pretty to have this every two years as a hammer over the unions by the two majorities.

And frankly, Madam President, after 24 years the issue is getting rather boring, and I wish we'd put it to rest.

Last section, please.

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

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, 48. Nays, 1. Senator Marcellino recorded in the negative.

THE PRESIDENT: The bill is passed.

Senator Balboni.

THE SECRETARY: Also Senators Hannon and Balboni.

THE PRESIDENT: The debate has been closed, and we're ready to announce the results.

THE SECRETARY: In relation to Calendar 435, those recorded in the negative are Senators Balboni, Hannon, Maltese, Marcellino, and Skelos. Ayes, 44. Nays, 5.

THE PRESIDENT: Senator Duane, did you wish to explain your vote, sir?

SENATOR DUANE: No, Madam President, I was going to raise a point of order. I was just wondering what the delay was.

THE PRESIDENT: It's moot at this point, Senator.

Senator Velella.

SENATOR VELELLA: Can we proceed? Since he doesn't have a point of order, can we proceed with the reading of the calendar? Thank you.

THE PRESIDENT: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 437, by Member of the Assembly Vitaliano,

Assembly Print Number 6612, an act to amend the Civil Service Law, in relation to extending.

SENATOR CONNOR: Explanation, please.

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

SENATOR LEIBELL: Thank you, Madam President.

This would amend Paragraph D of Section 209 of the Civil Service Law to extend the provisions of the law which grants police and firefighters binding arbitration rights for an additional two years, until July 1, 2003. Without this bill, such binding arbitration rights would sunset and expire this year on 1 July.

Binding arbitration has been a huge success since its inception in 1977, but through its provisions it supports the Taylor Law prohibition against strikes or slowdowns by critical public safety employees by providing a guaranteed outlet to settle labor disputes. Firefighters and police, who already have the heavy burden of performing a

difficult and dangerous job, should not have to carry an additional burden of worrying about how to resolve a concern with respect to compensation or working conditions.

It should be noted that there have been very few -- there have been no significant increases or decreases in settlements due to the use of arbitration as opposed to settlements imposed prior to its institution. As a result, binding arbitration has provided no disadvantage to either party in the labor process but has ensured that the process it has a determined fair finality.

This law helps police, firefighters, municipalities, the general public, and it merits extension.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Yes, Madam President. If Senator Leibell will be so kind to yield to a question.

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

SENATOR LEIBELL: Yes.

THE PRESIDENT: You may proceed, Senator Connor.

SENATOR CONNOR: Yes, thank you.

Madam President, I would like to inquire of Senator Leibell whether or not he gave any consideration to sponsoring binding arbitration for other public employees. And, if not, why not.

SENATOR LEIBELL: To answer your question, Senator, we constantly review in our committee and look at all segments of the labor workforce to see what protections they need, what benefits are out there. And yes, to answer your question, they are constantly reviewed.

SENATOR CONNOR: Madam President, if the Senator will be kind enough for yield for another question.

THE PRESIDENT: Senator Leibell, will you yield?

SENATOR LEIBELL: Yes.

THE PRESIDENT: You may proceed, Senator Connor.

SENATOR CONNOR: Thank you, Madam President.

Madam President, I would like to know from Senator Leibell whether any

consideration was given to making this provision of the law permanent rather than a mere two-year extender.

SENATOR LEIBELL: There are, Senator, many, many, as you are aware, provisions of law that have extenders on them that are not permanent. And there's a reason this Legislature has done that over the course of years, and that's a reflection of our understanding that times change and situations can change and facts can change.

So that by doing a two-year extender, it allows us to constantly stay abreast of any changes that may occur at the same time that we're making sure that these members of our labor force are protected.

I would also note that this provision has already been passed by the Assembly, and Assemblyman Vitaliano sponsored it.

SENATOR CONNOR: Madam President, on the bill.

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

SENATOR CONNOR: I agree with

this bill because it strikes at a fundamental problem that's created by the Taylor Law, and that is that we forbid public employees to strike.

Obviously, in the case of police and firefighters, that's very, very important that we ensure that the public safety is not disrupted because of a labor dispute. And our solution to that problem in 1977 was to adopt binding arbitration for police and fire. It didn't apply in those days, and for many, many years thereafter, to New York City.

And the fact is, it was fair. You tell these people under all circumstances you must go do work with or without a contract, with or without a collective bargaining agreement. There has to be some way to resolve those disputes.

I would only suggest that when we look at other public employees who are forbidden from engaging in strike activities -- and many of those unions have been fined severely. We've had union leaders on occasion imprisoned because of strikes in the public sector -- that we ought to afford

those unions and their employees some method of working out collective bargaining disputes in a way other than through a strike, which we've made illegal.

I guess the best way to look at it is if one is a bus driver or a union representing bus drivers, if it happens to be a privately owned bus company, the employees can strike. If it's a publicly owned bus company, the employees can't strike.

So unlike in this bill, where the very nature of the work, police and fire, is so unique. There's no such thing as private, paid fire-fighting forces or police forces. But when you -- it's clearly appropriate here, but when you translate it to what we do to other employees, the ban on striking and the lack of providing an alternative is really, really egregious, because it really -- we should look at the function.

Private school teachers can strike; public school teachers can't. I talked about bus drivers and others. And I think we ought to look at the whole thing, health care workers, and we ought to look at it

functionally, we ought to provide where we forbid someone from striking, we ought to provide an arbitration process that resolves the dispute in the interests of fairness.

With respect to the issue of another two-year extender, this is another one 24 years old, a great experiment. I've yet to see any real reports or analysis that evaluates this experiment over any two-year period. Senator Leibell is correct, many areas of the law sunset. But many don't. And if circumstances change, we have a Legislature that can react to those circumstances.

I sometimes think all these laws - and there are several we're taking up today for two-year extenders -- to an outsider might look like the "Full Employment of the Legislature Act." It gives us stuff to do every two years. We can say we passed - well, today we're going to pass four bills, I assume, and we can say, Well, that's four more laws we passed.

And harking back to an earlier day when the Minority was accorded a little different consideration in this house, I can

assure my colleagues my walls are full of PEN certificates. I don't understand why every two years we have to keep passing the same law over and over again. Let's save the public the expense. Let's make this a permanent provision of law.

I don't really think -- and I didn't mean that, by the way, to address either Assemblyman Vitaliano or Senator Leibell. I'm sure they have plenty of PEN certificates too. And I daresay who would want to hang one that's the same as the one you hung -- hung, is that the right word? - hanged two years ago.

But I guess some people would rather be right than hanged, or something like that. Did someone say that?

So, Madam President, I'm going to vote for this. But I think we ought to really, after 24 years, stop this silliness of forcing now the police and fire unions to say, Please give us our binding arbitration once again.

Last section, please.

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, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 438, by Member of the Assembly Vitaliano, Assembly Print Number 6614, an act to amend Chapter 695 of the Laws of 1994.

SENATOR CONNOR: Explanation.

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

SENATOR LEIBELL: Thank you, Madam President.

This bill would amend Section 209A of the Civil Service Law to extend the provisions of the Fair Employment Act relating to granting injunctive relief for improper employment practice cases until June 30, 2003.

This extension will provide for the continuation of an expedited method to resolve improper labor practice issues.

The injunctive relief continued by this bill was enacted in 1994 to provide for this expedited method to resolve improper practice cases in the public sector where that was deemed to be an immediate and irreparable harm that would result absent such an injunction.

Since its enactment, this law has enabled labor and management to resolve numerous issues and has proven an effective tool to protect workers' rights. It merits extension.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Madam President, on the bill.

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

SENATOR CONNOR: Madam President, this is an example of retrogression. In 1994, it was enacted, and it was a three-year bill. Then in 1997, it was enacted as a two-year extender. So frankly -- and a two-year

extender again in '99, and now a two-year extender.

My question, Madam President, what was wrong with the three-year provisions of the bill? What analysis or evaluation didn't take place over three years that could then take place over two years at a time?

This measure is a good measure, but it was first enacted in 1994. It's seven years later. It's now on a two-year instead of three-year cycle. I see another 24 years coming here, Madam President.

If it's a good law, let's make it permanent. Maybe we can take a day off in two years if we make all these laws permanent, and we don't have to come back and go through the whole legislative process to extend them over and over and over and over again.

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, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 439, by Member of the Assembly Vitaliano, Assembly Print Number 5733, an act to amend the Retirement and Social Security Law, in relation to extension.

SENATOR CONNOR: Explanation.

THE PRESIDENT: Senator Leibell, an explanation has been requested by Senator Connor, I believe.

SENATOR LEIBELL: This bill would amend Sections 470 and 480 of the Retirement and Social Security Law to provide for the extension of the temporary benefits and supplementation programs until 1 July, 2003.

It would also amend Sections 615 and 625 of the Retirement and Social Security Law to provide for the extension of certain temporary designated rights and benefits for public employees until 1 July, 2003.

Specifically, this bill would extend the right of public employees and

public employers to negotiate for retirement benefits not requiring approval by act of the Legislature, thereby extending for two additional years every temporary right, privilege, or retirement benefit conferred by law for a member of a public retirement system.

This bill stems from a 1973 act of this Legislature that determined that changes in retirement benefits payable by a public retirement system should be made only by way of collective negotiations. Accordingly, these sections extended today were enacted to provide all negotiations between public employers and their employees must be made in the context of coalition bargaining.

This law has proven very successful and merits extension.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Madam President, on the bill.

THE PRESIDENT: You may proceed, Senator.

SENATOR CONNOR: Now, this is an ancient one, Madam President. It goes back to

1973. We're extending it every two years, two years after two years after two years, since 1973.

If someone had had the wisdom to make it a ten-year bill, we could revisit it but we wouldn't have to take up our time nor have this whole privilege relating to certain members of the retirement system up for grabs every two years.

Madam President, it's not like we're seeing any creativity or originality here. It's extended every between years in its present form. It's not made any better, it's not made any worse, it just keeps getting older.

1973 was long before I ever came here. And whoever had the good idea then ought to get credit for it rather than seeing new authors and new sponsors every two years extending the same old good idea. Can't we make it better? Can't we change a semicolon or a comma? Can't we do something to make this interesting and worthy of the Legislature's attention, rather than just change the date constantly?

Let's pick a different date. I don't know, pick a different day or something, so that we have some justification for the effort that goes into printing and reporting and the passing this legislation.

It's a good bill. It's just 1973, an experiment in 1973 that is still on the experimental list for two-year extensions. It starts to, frankly, in my opinion, bring into question the credibility of the entire Legislature and the way we make laws.

Maybe we could have a session every other year instead of every year and save everybody a lot of money if we didn't constantly have these things expiring that we well could have made a little longer in duration.

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, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 440, by Member of the Assembly Vitaliano, Assembly Print Number 5734, an act to amend the Retirement and Social Security Law, in relation to the membership.

SENATOR CONNOR: Explanation.

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

SENATOR LEIBELL: This bill would amend Section 440 of the Retirement and Social Security Law to extend the provisions of the law granting certain police officers and firefighters reduced retirement contributions until July 1, 2003.

Specifically, this bill would continue the provisions that placed police officers and firefighters who have enrolled in a public retirement system on or after July 31, 1976, under the provisions of Article 11 of the Retirement and Social Security Law for purposes of reducing their amount of

retirement contribution. Effectively, this makes them Tier 2 members for that purpose.

This bill is essentially identical to previously extender legislation that's been passed by this Legislature. This bill keeps a promise to those police and firefighters for their retirement contributions and merits extension.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Madam President, if Senator Leibell would yield for a question.

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

SENATOR LEIBELL: Yes, I do, Madam President.

THE PRESIDENT: You may proceed, Senator Connor.

SENATOR CONNOR: Thank you, Madam President. I would ask the Senator, when was this particular Tier 2 provision first enacted into law?

SENATOR LEIBELL: I don't have the history of it. We're going to try and check that out in front of us. The last extender we did was '99.

SENATOR CONNOR: Thank you, Madam President.

If I may, on the bill.

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

SENATOR CONNOR: I don't have that number either, and I guess that proves my point, Madam President.

Here we go, two-year extender after two-year extender, we kind of lose sight of where this originally came from. It seems to work, it isn't broke, so we don't fix it, we just extend it for two years, we don't make it better, we don't make it worse, it just goes on and on and on, two-year extender after two-year extender.

I don't know. I have a number in mind. How about four, Madam President? Maybe four-year extenders ought to become something that we do just in the interest of efficiency and moving along the legislative process.

Two-year after two-year. Now we have the tier status of police officers and firefighters at jeopardy, every two years has to be renewed.

Madam President, for fear of being odd, may I humbly suggest five years, an odd number, that we do that just to move things along.

In the meantime, I guess we're stuck with this. I've probably said all I'm going to say today. It looks like someone's legislative agenda is concluded with two-year extenders. But I know, Madam President, they'll all be back in two years. Hopefully most of us will be back to see them again.

Thank you.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. I just want to echo the sentiments of the Minority Leader.

I guess what I find so astounding about this entire process is that only in the state of New York, only in the State of New York could we take what was seen as a government reform measure -- that is, the concept of sunset bills, Senator Connor, where what we would do is we as a government would say, This is an idea we're going to try, and

before we make it permanent, what we're going to do is we're going to analyze how it works and then we will make a judgment as to whether it should become permanent or not.

That was a reform born in the mid-1970s. Let's put sunsets on things, let's force government to work again, to rethink and see whether its proposed solutions are solving the problems. And if they don't, let's let them go out of business.

A wonderful, an interesting movement in the government reform movement in this nation was to put sunset provisions, to force government to, over a period of time, rethink whether its proposed solutions are resolving the problems of this state.

Only in New York would we take that reform movement and turn it into something that has an appearance of what I believe is the corrupting influence of biennial elections. I will never understand it. I find it astounding that that's what New York has done. Our democracy works somehow contrary to the democracy to such an extent that we can even take what is perceived as a

reform and turn it into a chain that ties certain interest groups to having to come back to this chamber.

I just don't understand it. I think it's a terrible, terrible indictment of our democracy in this state.

And what I would say again, the greatest casualty in the corruption of that reform is the public's confidence in their government. No wonder they seem to have so little about us in this state.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: Madam President, very briefly on the bill.

THE PRESIDENT: You may proceed on the bill.

SENATOR STAVISKY: Yesterday we had a bill which involved retirees' health benefits and the non-diminution of their benefits. And I said yesterday that I had never seen a bill with so many sunsets. And I was wrong, Madam President, because we saw today these bills have seen more sunsets than the space ship revolving around the earth.

I think it's wrong, and I urge the

Civil Service and Pensions Committee to put an end to these sunset bills and to make all of them permanent.

Thank you, Madam President.

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

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 457, by Senator Kuhl, Senate Print 2215, an act to amend the Penal Law, in relation to criminal possession.

SENATOR PATERSON: Explanation.

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

SENATOR KUHL: Thank you, Madam President.

This bill is a bill that would set a penalty for a person found to have possession of a rifle or a shotgun within ten years of the time that they'd had a previous felony conviction.

Currently there is no provision in the law that would make it a felony to possess a rifle or a shotgun if you've had a felony conviction before. There is a provision for a misdemeanor, but that is not an increasing sanction, if you will. And so that's what this bill intends to do.

THE PRESIDENT: Senator Paterson.

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

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

SENATOR KUHL: Be happy to.

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

SENATOR PATERSON: Madam President, my understanding, if Senator Kuhl would reflect on this, is that what this bill really does is it punishes repeat violations

of the statute. Because there's no provision for that right now in Section 265.01 of the Penal Law, so that's why we would add Section 256.02, to not only enforce repeat violations but to upgrade this from an A misdemeanor to a D felony. Is that correct?

SENATOR KUHL: I think Senator Paterson's explanation is probably better than mine, Madam President.

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

SENATOR KUHL: I'd be happy to.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Senator, is there any distinction between nonviolent felony offenders and violent felony offenders in the law right now?

Or, more specifically, is it your desire for the nonviolent felony offenders that they violate the statute on a repeated number of times whereas the violent felony offender would only violate the statute once and then would qualify to be prosecuted under

the felony statute?

SENATOR KUHL: No. There's no intent, Senator, to pick on any one group as opposed to the other. This bill applies equally to both groups, nonviolent and violent felons.

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

THE PRESIDENT: Senator Kuhl, will you yield?

SENATOR KUHL: I'd be happy to.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Well, Madam President, I'd like to inquire of the Senator, what are the penalties for rifle or shotgun use right now?

And if he would further enlighten us on perhaps the possibility of registration for shotguns and for rifles. Because what appears to be the problem here, at least for me, Madam President, is that I'm not quite understanding in which way the person would have possession of a rifle or of a shotgun.

In other words, had not there been a conviction within ten years of the possession, then the possession would be lawful; is that correct, Senator?

SENATOR KUHL: Senator, currently -- I think you're hitting on a point that I think is correct, but let me explain it to you.

There is currently no requirement for registration of a rifle or a shotgun. What this bill attempts to do is to make it a felony for the second possession of a rifle or a shotgun if you have previously been convicted of a felony. It's an attempt to take guns out of the hands of felons, particularly on the second occasion, by increasing the penalty from a misdemeanor which is a Class A misdemeanor to a Class D felony.

SENATOR PATERSON: Thank you, Madam President. And thank Senator Kuhl for his responses.

Madam President, on the bill.

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

SENATOR PATERSON: I'm going to vote for the bill. I endorse the bill, actually. I think it's a good idea that a person that has been convicted -- although my understanding of the bill memo differs from that of Senator Kuhl.

I think there is somewhat of a distinction between the violent felony offender and the nonviolent felony offender, in the sense that the repeated violation of the statute by the nonviolent felony offender becomes the qualification for the prosecution under the felony statute, and yet only one act of violence by a felony offender would qualify them.

And I don't even disagree with it even as much as I think we had two different understandings of what it said. That's perfectly fine with me. The whole bill is fine with me.

I just wanted to point out that if we were registering shotguns and registering rifles, it would make it easier for us to determine those individuals -- or at least it would deter those individuals from even

thinking about possessing them. Whereas the way it stands now, even with the upgrade from a violation of possession of this type of weapon, upgrading it from fourth degree to third degree is also a deterrent, but you would have to first be caught with the actual weapon.

What I'm suggesting is if we had a registration process, you might be afraid to even have the weapon. Because at any time, if your registration is challenged, it would be easy to determine that there was no registration, perhaps because the person knows that they couldn't register anyway. As opposed to this situation where there would have to be a determination of what the previous conviction is of the violator to actually stop them.

But the intent of the bill is good. And even if my suggestion were added, the upgrade from fourth degree to third degree also seems quite satisfactory.

Thank you, Madam President.

THE PRESIDENT: Senator Hevesi.

SENATOR HEVESI: Thank you, Madam

President. Would the sponsor please yield?

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

SENATOR KUHL: Yes.

THE PRESIDENT: You may proceed, Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President.

I very much appreciated Senator Paterson's comments. I have made similar comments on this floor and in private about the need, in my opinion, to have registration of rifles and shotguns in New York State. The response has repeatedly been that rifles and shotguns are almost never used in the commission of crimes, and therefore we don't need rifle and shotgun registration and licensing in New York State.

My question to the sponsor is whether or not he believes that that's true.

SENATOR KUHL: Well, Senator, I don't know as I have a position in response to your question.

What this bill intended to do was essentially to take guns out of the hands of

people who have been convicted of felonies.

And Senator Paterson raised a good point, in the summary of -- which I'd just like to comment on. In the summary in the memo, the summary of the provisions, unfortunately the word in the third line - and I don't know whether you have that in front of you, Senator, or not, but it talks about this new subdivision would provide penalties, actually, that an individual who has been convicted of a violent felony.

Well, that is true. But it probably should have said a violent and a nonviolent felony, because it applies to all of them. So it is not totally correct when it says what it does say. It's not -- it's only telling half of the story, in essence. And I just want to make that point clear in our discussion, Senator.

But this bill is totally aimed at not license or registration or anything like that, it's just meant to recognize that in fact there have been people who have been convicted of felonies before, they have been found in the possession of weapons, there is

there is a crime upon their possession, but there's no additional penalty for somebody who's caught the second, the third, the fourth or the fifth time.

So what this does is increases the severity of the penalty on that second conviction for possession of a weapon.

SENATOR HEVESI: Madam President, would the sponsor continue to yield?

THE PRESIDENT: Senator, will you yield?

SENATOR KUHL: Yes.

THE PRESIDENT: You may proceed, Senator Hevesi.

SENATOR HEVESI: Thank you.

And I appreciate that explanation. I have a pretty good grasp of what this legislation does, and I support this bill.

But it begs the question, since the area we're exploring here is to provide protection to the citizens of New York from individuals who would use rifles or shotguns in the commission of a crime. And the licensing of these rifles and shotguns has been an issue, and the response has been

they're not used in the commission of crimes with frequency at all. Yet in your memo, you dispute that by suggesting rifles and shotguns may be the weapons of choice for felons who cannot obtain pistols or sidearms requiring permits.

And I believe that that's true. I believe your memo is correct. But if it is true and if it is correct, is that not a strong argument, in addition for everyone to support the bill that you've sponsored, but for a licensing requirement for rifles and shotguns?

SENATOR KUHL: Senator, let me respond to you this way. I don't have any quantitative information that would tell you that in the course of the commission of 20,000 crimes by violent felons that they have used a shotgun or they have used a pistol. I don't know that information.

I only know that in fact that there's no disincentive, if they've been convicted once, to use that a second time or to even have it in their possession. Many crimes are not committed, as you know. That's

why we have attempted crimes, where there's an intent to do something but they never get to the actual commission.

The intent of this is to increase the severity of the penalty to eliminate any possibility that in effect they'll even anticipate or even consider committing a crime with a shotgun or rifle. If there were one individual that this might stop, that might be one life they would save.

And so that's the intent of this. It's more preventative than it is in reaction to something that's out there that we know of quantitatively.

SENATOR HEVESI: Madam President, would the sponsor continue to yield?

THE PRESIDENT: Senator, do you yield?

SENATOR KUHL: Yes.

THE PRESIDENT: You may proceed, Senator Hevesi.

SENATOR HEVESI: With the greatest of respect to the sponsor, I would suggest that the exact opposite is true, that this legislation in fact is not preventative,

this is punitive after the fact. Which is fine.

And what would really be preventative is by going ahead and imposing a licensing requirement that would preclude somebody from getting a rifle or a shotgun in the first place so that we then wouldn't be in the unfortunate situation of having had that individual get the rifle or shotgun because there is no licensing, and then go out, having been previously convicted of another violent or nonviolent felony, and then be subject to your additional penalties.

So if we really wanted to be preventative, wouldn't a licensing requirement which would stop the individual from getting a rifle or shotgun in the first place really be the way to address this, in addition to what you're trying to do here?

SENATOR KUHL: Well, one of the elements of this, Senator, is just as Senator Paterson has addressed, that there are deterrents in this world. And I believe that this particular proposal would be a deterrent to a prospective violator.

SENATOR HEVESI: Thank you. Madam President, on the bill.

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

SENATOR HEVESI: Madam President, I fully appreciate what Senator Kuhl is trying to do, and I don't dispute the need for the legislation that's before us.

But I want to state again, I brought this issue up on any number of occasions. You can go right now anywhere in New York State, with the exception of the City of New York -- anywhere outside of the City of New York, and you can walk in as long as you're 18 years old to any gun store, and buy a long gun, a rifle or a shotgun, without any kind of background check.

And when I did this with my predecessor, Senator Gold, a number of years ago, what we had to do was fill out an Alcohol, Tobacco and Firearms Bureau -- ATF Bureau Form 4473, where we, as the people who were purchasing the weapon, certify on that piece of paper that we are not fugitives from justice, where we certify that we are not

mentally incompetent, those types of self-certifications. And there's never a background check. That form never even gets sent to BATF unless the store, the gun store, closes at some point.

So there's -- and that exists today. So I can go right now and buy a rifle or a shotgun. And it seems to me that the argument that was always advanced against licensing of rifles and shotguns -- and I've heard it on this floor and I've heard it on numerous occasions from my colleagues on the other side of the aisle that you don't need to do that because rifles and shotguns are almost never used in the commission of violent crimes. Or any crimes, for that matter.

And then -- and I disagree with that wholeheartedly, and I'm glad to know that Senator Kuhl, who sponsors this good bill, disagrees with that too, because he's put it in his legislation that this is necessary, and he states rifles and shotguns may be the weapons of choice for felons who cannot obtain pistols or sidearms requiring permits.

There could be no stronger

statement, there could be no more definitive proof that we need licensing of rifles and shotguns than the statement contained within the sponsor's memo on Senator Kuhl's bill.

It's time we do this, we take the right step. If we're going to punish somebody on the back end for using a rifle or a shotgun in the commission of a crime, it's almost criminal of us not to make it difficult, if not impossible, for these prospective criminals to get the rifles and shotguns in the first place that we're going to punish them for after they get it. You know, bizarrely, it's almost strange, it's almost unjust to do to the criminal. This is really a bizarre circumstance.

We've got to take the additional preventative action. This bill is a good bill, but it's after the fact. Let's hit this on the front end, since we now know from the sponsor that rifles and shotguns are used in the commission of crimes, and the lack of licensing, according to the sponsor, is one of the reasons why this legislation is necessary.

I agree with Senator Kuhl

completely. I support this bill, Madam President.

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: Just briefly on the bill, Madam President.

I'm glad to see that my young colleague agrees with everything that I say. But that's not -- his interpretation of what is in the bill memo really isn't as it's stated. And I'll just state it for the record.

And it simply says that rifles and shotguns, and I underline the word "may," may be the weapons of choice. That's what we're trying to do, is to prevent the opportunity for them to be able to do that, establish a deterrent.

There is nothing here that suggests that rifles and shotguns should go through registration, nor will this sponsor ever propose legislation to do that.

Thank you, Madam President.

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

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 462, by Senator Wright, Senate Print 3059, an act to amend the Penal Law, in relation to the crimes of vehicular assault and vehicular manslaughter.

SENATOR PATERSON: Explanation, please.

THE PRESIDENT: Senator Wright, Senator Paterson has requested an explanation.

SENATOR WRIGHT: Thank you, Madam President.

The act is to amend the Penal Law. It adds two new crimes, one vehicular murder, the other aggravated vehicular assault, and

then takes the existing crimes of vehicular assault and vehicular manslaughter and redrafts those two provisions.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if Senator Wright would be so kind as to yield for a question.

THE PRESIDENT: Senator, will you yield?

SENATOR WRIGHT: I surely will, Madam President.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Senator, I'm just a little confused on the upgrade of the punitive quality of the bill. In other words, what will be the difference in the punishment?

I can certainly see why we want to have a difference; I just want to know what it is.

SENATOR WRIGHT: Well, in the case of vehicular assault, Senator, we're changing that from a Class E felony, which is one to three years, to vehicular assault in the first degree, which is a Class D felony,

three to seven years.

In the case of aggravated vehicular assault, it's established as a Class C felony, which is 4½ to 15 years. Vehicular manslaughter in the second degree is a Class D known, three to seven. And vehicular murder is established as a Class B felony, 8 to 25 years.

THE PRESIDENT: Senator Hevesi.

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

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: The Senator will yield.

You may proceed, Senator Hevesi.

SENATOR HEVESI: Thank you.

This is a little bit of a complicated bill. I just want to make sure that I have all the specifics down in terms of what this legislation does.

So just for clarification's sake, the amendments to the current provisions of law as they pertain to vehicular assault and vehicular manslaughter in the second degree,

this bill seeks to take out the element where the prosecutor has to prove criminal negligence and at the same time provides an affirmative defense that if the intoxication was not a cause of the accident, that the individual should be not guilty of the crime. Is that accurate?

SENATOR WRIGHT: That is accurate, Senator. It provides for the elimination of the statutory requirement of criminal negligence and then also provides for the creation of an affirmative defense.

The intent being that it's to provide that accommodation while at the same time we are increasing the penalties so that we provide an additional tool for the prosecution of these cases and can facilitate that prosecution.

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

THE PRESIDENT: Senator Wright?

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: You may proceed,

Senator Hevesi.

SENATOR HEVESI: Thank you.

My understanding, though, is for those two crimes, vehicular assault and manslaughter in the second degree, that you need, one, the element -- under current law, the element of criminal negligence and, two, the person who's being accused to have driven while intoxicated. If we remove the criminal negligence standard, we are left just with the individual having driven while intoxicated.

My question to you is, what categories of criminal negligence or what types of behavior that constitute criminal negligence exist within the law right now that we are removing under this bill?

SENATOR WRIGHT: You're correct in terms of the criminal negligence provision being removed. But at the same time -- there is the requirement that you are intoxicated, number one, but, at the same time, either cause death or serious physical injury.

SENATOR HEVESI: Thank you.

Madam President, would the sponsor continue to yield?

THE PRESIDENT: Senator Wright, will you yield?

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: You may proceed, Senator Hevesi.

SENATOR HEVESI: Thank you.

I'm just a little bit unclear. Under current law, if I drive while intoxicated and cause a serious injury or death to somebody, under current law I need an additional element of criminal negligence in order to be convicted of vehicular assault or manslaughter two. What additional element, for example -- can you give an example of what additional element of criminal negligence may have to exist for me to get this type of conviction? Because we're now removing that element from this statute.

SENATOR WRIGHT: That is the point, Senator. We are removing that element, so there is not that additional requirement.

SENATOR HEVESI: Madam President, would the sponsor continue to yield?

THE PRESIDENT: Senator, will you

yield?

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR HEVESI: I understand what the bill does. I'm just trying to ascertain the ramifications. Can you give me an example of criminal negligence that would apply under the current statute that will no longer apply after this bill is passed?

SENATOR WRIGHT: The intent in removing the additional requirement of criminal negligence is that the defense has consistently been that due to the intoxication, you couldn't meet the standard or the requirement in terms of demonstrating criminal negligence.

Therefore, to focus upon the aspect of the intoxication as well as the death and serious physical injury provisions, the requirement for that additional criminal negligence is being removed.

SENATOR HEVESI: Madam President, would the sponsor continue to yield?

THE PRESIDENT: Senator Wright?

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: You may proceed.

SENATOR HEVESI: I'm having difficulty with this. Under the current statute, you have to have criminal negligence and the additional element of the individual having driven while intoxicated. Obviously the driving while intoxicated cannot constitute criminal negligence under current law, because current law requires the two elements. So we're removing criminal negligence.

I don't understand what the bill is designed to do or how we would make it easier for prosecutors, which I'm interested in doing, because I don't know what criminal negligence is that we are now removing as an element to vehicular assault and manslaughter two.

SENATOR WRIGHT: Thank you, Madam President. Senator, what we're attempting to do is eliminate the prosecutor's obligation to prove criminal negligence, in that that

definition is when he fails to perceive a substantial or unjustifiable risk.

SENATOR HEVESI: Madam President, would the sponsor continue to yield?

THE PRESIDENT: Senator Wright?

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR HEVESI: Could that be the individual, in addition to driving while intoxicated, is speeding, changes lanes without signaling? Is that -- you know, is that one of the elements that would constitute criminal negligence that we're now removing?

SENATOR WRIGHT: Thank you, Madam President. That could be, although it's not a specific requirement.

The fact is, under this bill, the fact that you are intoxicated would be sufficient.

SENATOR HEVESI: Thank you.

Madam President, would the sponsor continue to yield?

THE PRESIDENT: Senator Wright,

do you yield?

SENATOR WRIGHT: I will, Madam President.

SENATOR HEVESI: Thank you. And I very much appreciate the patience of the sponsor.

Here's my question to you, in light of what we're learning about this bill. If now you only require the element of an individual having driven while intoxicated and obviously caused the injury or death of somebody for that to constitute vehicular assault or vehicular manslaughter in the second degree, doesn't that statute exist right now and if we pass this we will have two penalties for the exact same crime of differing degrees?

Because right now, if you simply drive drunk without the additional other element of criminal negligence -- you know, speeding or something else -- you're guilty of a crime. And now we're going to have, if this passes, two sections of law that provide a punishment for the exact same crime that have two different penalties. Is that accurate?

SENATOR WRIGHT: No, Senator, we don't believe that to be the case. But by making the elimination, there will be two criteria. Therefore, it will not be the same crime.

SENATOR HEVESI: Madam President, would the sponsor continue to yield?

THE PRESIDENT: Senator Wright, will you yield?

SENATOR WRIGHT: I will.

THE PRESIDENT: You may proceed, Senator.

SENATOR HEVESI: Thank you.

Under current law, if I drive while intoxicated and injure or kill someone without any other criminal negligence, what crime have I committed?

SENATOR WRIGHT: Senator, I don't know which particular statute you would be charged in violation of. That would up to the officer and the prosecuting attorney.

But under current law, the statute requires that you be charged with criminally negligent homicide -- or, excuse me, criminal negligence, which is the difficulty in

prosecuting some of these cases. So as a result, that is the standard we're attempting to eliminate.

SENATOR HEVESI: Madam President, would the sponsor continue to yield?

THE PRESIDENT: Senator Wright, will you yield?

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: You may proceed, Senator Hevesi.

SENATOR HEVESI: So just so I'm clear, if I drive drunk and seriously injure or kill somebody, I get charged with criminally negligent homicide?

SENATOR WRIGHT: I don't believe I said that, Senator. But if I did, I spoke inaccurately.

SENATOR HEVESI: I'm just trying to get a clarification of what are the offenses I will have committed if I drive drunk and injure or kill someone.

SENATOR WRIGHT: Well, it's possible you could be charged with vehicular manslaughter.

Again, I think my statement was based on the circumstances of the officer investigating the case and the prosecutor in question.

SENATOR HEVESI: Madam President, would the sponsor continue to yield?

THE PRESIDENT: Senator Wright?

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR HEVESI: Thank you.

And again here, I'm not trying to be difficult. But if I, under current law, drive drunk and kill or injure someone, according to my reading of the statute that we're seeking to amend today, I can't be convicted of vehicular assault or vehicular manslaughter in the second degree because there wouldn't exist, under the hypothetical I'm proposing here or presenting here, the additional element of criminal negligence.

Since I know that you're not allowed to drive drunk and kill or injure someone and that that is punished under the

law, we will then, by definition, have -- if we pass this and it becomes law, have two different statutes that punish the exact same crime with presumably different degrees of punishment.

And if that's true, my question is, is that what the sponsor intended?

SENATOR WRIGHT: Well, Senator - through you, Madam President -- no, I don't believe that to be the case. And that was not our intent.

SENATOR HEVESI: Madam President, would the sponsor continue to yield?

THE PRESIDENT: Senator Wright?

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR HEVESI: Let me ask one last question on this, and I'll move on to another point. How could that not be the case?

SENATOR WRIGHT: Because I believe that's the case, Senator.

SENATOR HEVESI: Madam President,

I'll move on. But if the sponsor would yield to a question on a different point.

THE PRESIDENT: Senator Wright, will you yield?

SENATOR WRIGHT: I'll continue to yield, Madam President.

THE PRESIDENT: You may proceed, Senator Hevesi.

SENATOR HEVESI: Thank you.

According to my reading of this bill, we're creating, in addition to amending the sections that we were just discussing, two additional crimes, vehicular murder and aggravated vehicular assault, the first being a B felony, the second being a C felony.

I'm trying to determine the difference between vehicular assault and vehicular manslaughter and the new crimes, vehicular murder and aggravated vehicular assault. Both presumably occur when somebody has driven while intoxicated. The penalties are much higher for the new crimes that we're creating here.

My question is, what's the difference between the crimes we're creating

and the crimes which currently exist which we're seeking to amend under this bill?

SENATOR WRIGHT: Madam President, the difference would be acting recklessly and the definition of "recklessly" meaning the injury or death was foreseeable.

SENATOR HEVESI: Well, Madam President, would the sponsor continue to yield?

THE PRESIDENT: Senator Wright, will you yield?

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: You may proceed.

SENATOR HEVESI: So recklessly, under the new statutes we're creating, is if there was a foreseeable risk that the individual had.

And the criminally -- criminal negligence portion of vehicular assault and manslaughter two that we're removing was what? Could the sponsor tell us again what that was, the standard which we removed from the lesser offenses?

SENATOR WRIGHT: Excuse me, Madam

President. I believe the definition was "recklessly" means the injury or death was foreseeable, Senator.

SENATOR HEVESI: Thank you, Madam President. Let me clarify the question.

The question was I understand that that is the standard for "recklessly" under the new provisions we're attempting to create here. What was the standard of criminal negligence as defined in the current law which right now exists as one of the two elements for vehicular manslaughter or assault in the second degree that we're removing?

SENATOR WRIGHT: I believe, Senator, that goes back to the old issue of -

SENATOR HEVESI: Yes.

SENATOR WRIGHT: -- criminal negligence that is being eliminated, and this is a new provision that is being added.

SENATOR HEVESI: Yes, I understand that. I'm asking if you could, so that we could juxtapose the two -- because we're removing one, and we're elevating the penalties for the other, where we're adding that element -- if you could just refresh my

memory from the debate five minutes ago what's the standard for criminal negligence that exists under current law for vehicular assault and manslaughter two that we are now removing?

SENATOR WRIGHT: Madam President, through you, for the third time, Senator, I'll read: When it fails to perceive a substantial and unjustifiable risk.

SENATOR HEVESI: Thank you.

Madam President, would the sponsor continue to yield?

THE PRESIDENT: Senator Wright, will you yield?

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR HEVESI: Thank you.

Could you explain to me the difference between failing to perceive a substantial risk or your definition of "reckless," which was the inability to foresee the events which would occur?

SENATOR WRIGHT: Thank you, Madam President. My layman's interpretation would

be meaning that "recklessly" means you were aware of the risk and in the prior instance you were not.

SENATOR HEVESI: Madam President, would the sponsor continue to yield?

THE PRESIDENT: Senator Wright, will you yield?

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: You may proceed.

SENATOR HEVESI: Thank you.

But in both cases, the individual should have known that the risk existed; is that correct?

SENATOR WRIGHT: No, I'm advised that "recklessly" means they knew it exists and in the first instance did not.

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

THE PRESIDENT: Senator Wright, will you yield?

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: You may proceed,

Senator.

SENATOR HEVESI: Thank you.

Is this legislation supported by the District Attorneys Association or any other law enforcement organizations in New York?

SENATOR WRIGHT: Yes, Madam President, through you, I'm informed that it's supported by the District Attorneys Association.

SENATOR HEVESI: Madam President, would the sponsor continue to yield?

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

SENATOR WRIGHT: And MADD as well, Madam President.

Yes, I will continue to yield.

THE PRESIDENT: You may proceed.

SENATOR HEVESI: Thank you.

I don't have that memo, and I don't know why it wasn't circulated to me or any of the other members of my conference.

Is there anyone else who's supported this or who has opposed this particular piece of legislation? Because now

I'm a bit concerned because I don't have all of the advocacy from both sides here.

SENATOR WRIGHT: Madam President, to my knowledge no one has opposed it. It has been supported by the Stop DWI Coordinators Association as well.

SENATOR HEVESI: Thank you.

Madam President, would the sponsor continue to yield for one final question?

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

SENATOR WRIGHT: Certainly, Madam President.

THE PRESIDENT: You may proceed, Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President.

In light of the fact that we're having some difficulty in actually ascertaining what the earlier provisions would do in terms of amending this section of the law and potentially leaving two sections of the law -- or creating two similar sections of the law with different punishments, would the sponsor consider starring this legislation to

have a discussion about the language in it?

Because I think this is potentially a good bill, I'm just very unclear about how -- you know, some of the technical approaches that we've taken here and what the repercussions might be. Would the sponsor consider starring this?

SENATOR WRIGHT: Thank you, Madam President. No, Senator, I would not. I decline that opportunity.

Perhaps I think it's your perception as opposed to mine, but in fact while I'm not a lawyer and practicing, I have confidence in the people who have drafted the technicalities of the legislation, as, in looking at the vote last year, do a number of members of this house when it passed 55 to 1.

SENATOR HEVESI: Madam President, I know I said one last question. I promise this is the last one. Will the sponsor yield?

THE PRESIDENT: Senator, do you yield?

SENATOR WRIGHT: Certainly, Madam President, I'll be glad to yield.

THE PRESIDENT: You may proceed

with a final question.

SENATOR HEVESI: I'll just ask it one more time. Because since we're not going to pull this bill for further consideration, I've got to vote on this. And notwithstanding the fact that I supported it last year, I'm not sure I debated it last year. And so I wouldn't have, then, last year asked the questions that I've asked today and gotten the responses that I've gotten today, which have left me with a question that I don't believe has been answered yet, which is the following. And I'll ask it for the last time, and that will be the end of it.

Currently, driving while intoxicated, if an individual injures or kills somebody, that individual is guilty of a crime. If we change the law the way the sponsor wants to change it here and remove from the statutes of vehicular assault and vehicular manslaughter in the second degree one of the two elements which exist under current law -- one being that you are drunk, two being criminal negligence -- if we remove criminal negligence, we've created a new crime

which must already exist.

And I am concerned that there will then be two sections of the law which punish the same crime with different penalties. My question is, how is that not the case?

SENATOR WRIGHT: Thank you, Madam President. Senator, unless you can prove criminal negligence as the current statute provides, one only becomes convicted of DWI. So we obviously are trying to provide a higher standard and higher penalties.

SENATOR HEVESI: Madam President, on the bill.

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

SENATOR HEVESI: Thank you, Madam President.

I have great respect for the sponsor and what he's trying to accomplish, but I absolutely do not understand that response or the similar responses during this debate to that one question that I've asked.

And I don't know what I'm going to do here. This is very difficult for me. Because I did vote for the bill last year. I

didn't know that we had this problem. It's one of the reasons why the further exploration of legislation that the Democratic conference has undertaken this year has been fruitful. In fact, I've changed my vote on several pieces of legislation.

I'm not sure what I'm going to do here. I don't know if the District Attorneys Association -- which I understand, but don't have their memo, has endorsed this legislation -- but I don't know if they were responsible for the drafting of it and whether there's a good reason why we pulled criminal negligence out as an element, how that makes it is easier to prosecute. It probably does. I would have liked to have known why we should do that. I would like to make it easier for prosecute for these types of offenses.

But the nagging question remains, there's no other condition that can exist except that this bill becoming law will create two similar sections, if not identical sections, which punish the exact same crime, presumably with different levels of penalties. And that, at the very least, is inconsistent

with the way we've structured our penal code; at the very most, is going to provide for a conundrum for prosecutors and for judges, and is kind of irresponsible of us.

And, you know, I would again implore the sponsor to just consider pulling this bill to work out that one detail, because we don't want to have this problem in the law.

This is one of those -- unless somebody can suggest otherwise, this is one of those steps of logic where we all know it's right now a penalty to drive drunk and injure or kill someone. There is -- that is a crime. I asked what the crime was, and I didn't get a definitive response, but I know that that is a crime.

And so if that exists as a crime and we know it's not vehicular assault or manslaughter in the second degree, because in that, there is at additional element necessary of criminal negligence -- now we remove the criminal negligence, and you have the same statute that we're going to create with this bill which is drive drunk, injure or kill somebody, it's vehicular assault or vehicular

manslaughter in the second degree. And whatever the current statute is, if you just drive drunk and have not committed any other offense.

We're creating the same crime in two different sections, and presumably they'll have different penalties. That's -- it's just -- that's incredibly problematic. I don't know -- I don't know what else to say here.

I'm going to again implore the sponsor and all my colleagues on the other side of the aisle, please pull this bill so we can rectify this or remedy it. There's no other logical way that what I've articulated here cannot be true. If it is, somebody please suggest how it's not true.

And if it is in fact true, how can we justify passing this bill today? It creates a major problem.

And I'm not -- listen, Madam President, I'm not trying to score political points, I'm not trying to do one-upsmanship, I want to make sure that the product that we produce out of this body is the best it can be

and doesn't have flaws.

And one of the reasons why I particularly want to do this is if we pass this bill and the Assembly is interested in tackling this important issue and cracking down on drunk drivers, which has been a theme in this house this session, they may be precluded from acting on this bill for the reasonings that I've spelled out here today.

In which case the fatal flaw in the bill today not only is that we have produced a product that is inconsistent with the way we've structured our penal code and will create a problem for prosecutors, it may prevent the Assembly from even acting on this. And we may have to kick it back to redo the bill and amend it anyway.

So, you know, again, and I've said it a bunch of times, with the greatest of respect to the sponsor, who I know is well-intentioned and who is doing something good here, I respectfully request that the sponsor pull this legislation so that we can have a better product here that doesn't create the problems we've been discussing.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Very quickly, I don't agree with you, Senator. And I think the quickest way I can explain this -- and this bill, by the way, is -- and I don't mean to intrude on Senator Wright. He can well handle this.

This is an amalgam of about four bills. We were talking about this yesterday. This bill -- initially part of the bill was a Volker-Tokasz, part of it was obviously Jim's bill, which a good part of it was his bill, part of it was Senator McGee.

At any rate, what I think is -- and I think where you -- I don't know if you realize, presently there is no drunk driving manslaughter. The fact that you're drunk and kill somebody, there really is no penalty for that. You then have to prove criminal negligence in order to -- they say that, but it's true.

What this bill will do is set up a new standard for a person who's intoxicated and kills somebody. I think under -- your question, what happens under the present

situation, you -- the same thing could happen. Because part of the drunk and intoxicated and manslaughter, what you really prove anyway is the negligence. I mean, in other words, that's what happens. It's not really the intoxicated part of it now that happens, you really prove the bad driving and all the rest of the stuff.

Which you're still going to do, except that you have a standard now that says if a person is actually intoxicated, then you're going to upgrade the penalty of manslaughter. That's the way we look at it.

We will certainly look at it. And, Senator, in all honesty, this bill is going to be looked at because we hope to deal with the Assembly on this bill this year. I know Senator Wright intends to try very much to get this bill done. This has been around, aspects of this bill, for some time. But we're going to -- he's going to try to work on that.

SENATOR HEVESI: Madam President.

THE PRESIDENT: Senator Hevesi.

SENATOR HEVESI: May I ask Senator Volker to yield for a question?

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

SENATOR VOLKER: Yeah, although I -- you know, I -

THE PRESIDENT: Senator Hevesi, you may proceed with a question.

SENATOR HEVESI: Thank you.

I'm kind of startled to hear what you're saying. That would be a perfectly good explanation for the question I've been asking, but absolutely startling.

So let me just see if I got it right. If right now I get into my car, I'm drunk, I don't commit any traffic infraction and I happen to kill or seriously injure someone, I have not committed a crime?

SENATOR VOLKER: It's a tough problem. You've got DWI, and you can try to charge somebody with vehicular manslaughter. But you're going to have a tough problem because if you have nothing else but the intoxication, you still have to prove -- for instance, I'll give you a classic example. It's an actual example. A truck driver is sitting at a corner of -- at an intersection

in my district, totally smashed. Okay? Drunk. He's registered like a .28, something like that.

A completely sober driver driving am 80 miles an hour runs into the back of his truck. The truck driver is totally -- he didn't do anything. He was sitting there. That's a DWI accident, by the way. But you can't charge the driver with vehicular manslaughter, because he had no responsibility for it happening even though he was sitting there drunk.

SENATOR HEVESI: Madam President, would the sponsor continue to yield? I'm sorry, would Senator Volker continue to yield?

THE PRESIDENT: Senator Volker -

SENATOR VOLKER: Sure. Sure.

That happened, by the way, just so that you know.

THE PRESIDENT: All right. You may proceed, Senator Hevesi.

SENATOR HEVESI: Thank you.

Senator, I understand that situation. That's somewhat innocuous. But the situation could very well exist where an

individual who is drunk has an accident with somebody, has not committed a traffic infraction, but very easily, because of the fact that he was intoxicated and his reaction time was slow, though he may not have been speeding or what have you, that individual caused the accident, the death or serious injury of somebody.

And I for one am absolutely stunned that that's not a crime under New York State law. And I would then question why it is that we have this complicated change that we're attempting to make here and we've done, God, I don't know, five or six other DWI bills and we done have a simple stand-alone bill to criminalize that act?

SENATOR VOLKER: If you have don't have some sort of criminal negligence involved in it, other than the fact that the person is intoxicated, I don't think you can actually convict somebody of vehicular manslaughter.

What his bill is doing is setting up an actual vehicular manslaughter statute. That's what I think he's doing.

SENATOR HEVESI: Okay. Thank you, Madam President. Thank you, Senator Volker.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: I'm wondering, Madam President, if the Senator would yield for an additional question.

THE PRESIDENT: Senator Volker, would you yield for an additional question?

SENATOR VOLKER: Okay. Sure.

THE PRESIDENT: I think that was a yes.

SENATOR VOLKER: Yes.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Would the very popular Senator Volker yield.

I've been reading in the Albany Times Union and the local television here, because my life at night is rather boring here that -- just the nights -- about a police officer who was just convicted, though, of vehicular manslaughter. And so it seems to me that the law the way it's written now works, because he was convicted by a jury in two

hours of drunk driving and vehicular manslaughter.

Why do we need to tamper with this law if it seems to be working?

SENATOR VOLKER: Quick question. He said no traffic violation. This car was speeding, went off the road, flipped over, if I'm not mistaken, and the police officer was killed as part of the accident.

We were talking about if there was no other traffic violation. There was certainly traffic violations involved in that accident, and it was reckless conduct, speeding and so forth, I remember -- the reason I remember it. So that's the answer.

What Dan was talking about is just being intoxicated, no other evidence of recklessness or whatever, could you convict somebody. And I think the answer is probably no.

SENATOR DUANE: Just one last question, Madam President, if the Senator would yield.

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

SENATOR VOLKER: Yes. Yup.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Then the position of this bill makes it strict liability no matter what and the DA wouldn't have to prove liability?

SENATOR VOLKER: Well, you'd still have to prove some sort of liability.

But what it does is it allows what Dan, I think, was talking about, what Senator -- I'm sorry, what Senator Hevesi was talking about. The fact that you're intoxicated presents some sort of a presumption that your reflexes and so forth are not as good. But if somebody could actually show that someone else was responsible, you probably couldn't get convicted of manslaughter either, quite obviously.

But this at least sets a standard that intoxicated driving and killing someone is a presumption, virtually, of -- given, obviously, the jury's ability to look at no other cause, the presumption that you should

be convicted of a higher standard, which is manslaughter.

SENATOR DUANE: Thank you.

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 7. This act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Hevesi, to explain your vote.

SENATOR HEVESI: Thank you, Madam President.

I'm going to vote for this bill. And the reason I'm going to do it is in recognition of the fact that I just learned, that it's not currently a crime just to drive drunk and kill somebody. Which is startling, to say the least.

What I would suggest we should do here is have a stand-alone bill that says that driving while intoxicated constitutes criminal

negligence and therefore becomes the evidence that you need to convict under the statutes that we're discussing here today. It's pretty stunning that we don't have that type of law on the books right now.

And because this bill, according to the sponsor and Senator Volker, would now create a penalty for what we're talking about, which I and I believe that everybody else in this chamber believed existed, because nobody -- (A) it's common sense, and (B) nobody contradicted me when I discussed it, since it now creates the penalty by removing the second element of criminal negligence, so now, if we pass this, presumably if you drive drunk and kill somebody, you've committed a crime, I support the bill.

But, Madam President, this highlights some real legislative problems that we have in this house, in the other house, and in the state.

I vote yes.

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

The Secretary will announce the results.

THE SECRETARY: Ayes, 56. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

Senator Meier.

SENATOR MEIER: Madam President, may we lay aside the balance of the calendar for the day.

THE PRESIDENT: The remaining bills are laid aside, Senator.

SENATOR MEIER: Madam President, is there any housekeeping at the desk?

THE PRESIDENT: Yes, there is.

Senator Marcellino has a motion.

SENATOR MARCELLINO: Madam President, on page number 46 I offer the following amendment to Senator Johnson's bill, Calendar Number 498, Senate Print Number 3346, and ask that said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: The amendment is received, Senator Marcellino, and the bill will retain its place on the Third Reading

Calendar.

SENATOR MARCELLINO: Thank you.

THE PRESIDENT: Senator Meier.

SENATOR MEIER: Madam President, there being no further business, I move we adjourn until Monday, May 7th, at 3:00 p.m., intervening days being legislative days.

THE PRESIDENT: The Senate stands adjourned until Monday, May 7th, 3:00 p.m., intervening days being legislative days.

(Whereupon, at 12:50 p.m., the Senate adjourned.)