NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 7, 2001

3:17 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

THE PRESIDENT: With us today - again -- we are privileged to have with us the Reverend Peter G. Young, from Blessed Sacrament Church in Bolton Landing, as everyone knows.

REVEREND YOUNG: Thank you, Lieutenant Governor.

Let us pray.

Dear God, as we assemble in Your name to beseech Your blessing and wisdom for our public service in this Senate session, we turn to You for Your continued love for our New York State citizens. The blossoms and the budding of the trees express Your omnipotent creativity.

As we gather in Your mission to intelligently create legislation that will

enhance the life of all of our New York State people, we seek Your guidance for compassionate collegiality for the benefiting laws of our efforts in this chamber today.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Saturday, May 5, the Senate met pursuant to adjournment. The Journal of Friday, May 4, 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 Fuschillo.

SENATOR FUSCHILLO: Madam President, on behalf of Senator Wright, on

page 51 I offer the following amendments to Calendar Number 553, Senate Print Number 1327, and ask that said bill retain its place on Third Reading Calendar.

THE PRESIDENT: The amendments are received, and the bill will retain its place on the Third Reading Calendar.

SENATOR FUSCHILLO: Thank you, Madam President.

On behalf of Senator LaValle, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: Senate Print Number 4501 and Senate Print Number 4502.

THE PRESIDENT: So ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, are there any substitutions at the desk to be made at this time?

THE PRESIDENT: Yes, there are, Senator.

SENATOR SKELOS: If we could make the substitutions, please.

THE PRESIDENT: The Secretary

will read.

THE SECRETARY: On page 9, Senator Marchi moves to discharge, from the Committee on Water Resources, Assembly Bill Number 7299 and substitute it for the identical Senate Bill Number 3516, Second Report Calendar 608.

On page 11, Senator Hannon moves to discharge, from the Committee on Health, Assembly Bill Number 2239 and substitute it for the identical Senate Bill Number 2517, Second Report Calendar 628.

On page 15, Senator Morahan moves to discharge, from the Committee on Veterans and Military Affairs, Assembly Bill Number 5007 and substitute it for the identical Senate Bill Number 4736, Second Report Calendar 665.

On page 23, Senator Morahan moves to discharge, from the Committee on Veterans and Military Affairs, Assembly Bill Number 1632 and substitute it for the identical Senate Bill Number 499, Third Reading Calendar 150.

On page 25, Senator Maltese moves

to discharge, from the Committee on Elections, Assembly Bill Number 6958A and substitute it for the identical Senate Bill Number 2679A, Third Reading Calendar 179.

On page 32, Senator Trunzo moves to discharge, from the Committee on Transportation, Assembly Bill Number 882A and substitute it for the identical Senate Bill Number 1126, Third Reading Calendar 321.

On page 36, Senator Bonacic moves to discharge, from the Committee on Civil Service and Pensions, Assembly Bill Number 4612 and substitute it for the identical Senate Bill Number 2640, Third Reading Calendar 380.

On page 48, Senator Leibell moves to discharge, from the Committee on Civil Service and Pensions, Assembly Bill Number 4379 and substitute it for the identical Senate Bill Number 2364, Third Reading Calendar 525.

And on page 48, Senator Leibell moves to discharge, from the Committee on Civil Service and Pensions, Assembly Bill Number 6615 and substitute it for the

identical Senate Bill Number 3323, Third Reading Calendar 528.

THE PRESIDENT: The substitutions are ordered.

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 178, by Senator Farley, Senate Print 2006, an act to amend the Election Law and the State Finance Law.

SENATOR PATERSON: Lay it aside.

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

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

THE SECRETARY: Calendar Number 315, by Senator Seward, Senate Print 3737, an act to amend the Insurance Law.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid

aside.

THE SECRETARY: Calendar Number 379, by Senator DeFrancisco, Senate Print 2566, an act to reopen the special retirement plan.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 395, by Senator Wright, Senate Print 4029, an act to amend the Public Service Law.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 400, by Senator Stafford, Senate Print 847, an act to amend the Racing, Pari-mutuel Wagering and Breeding Law.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

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

act to amend Chapter 689 of the Laws of 1993.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 479, by Senator McGee, Senate Print 3963, an act to adjust certain state aid payments.

SENATOR PATERSON: Lay it aside.

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 PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 482, by Senator Bonacic, Senate Print 4084, an act in relation to adjusting certain state aid payments.

SENATOR HEVESI: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number

489, by Member of the Assembly Vitaliano, Assembly Print Number 5116, an act to amend the Executive Law.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 492, by Senator Stafford, Senate Print 3760, an act to amend Chapter 485.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 516, by Senator Marcellino, Senate Print 2836A, 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 519, by Senator Skelos, Senate Print 3357, an act to amend the Public Authorities Law.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 520, by Senator Kuhl, Senate Print 4388, an act to amend the Vehicle and Traffic Law.

SENATOR PATERSON: 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 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.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 315, by Senator Seward, Senate Print 3737, an act to amend the Insurance Law, in relation to

risk-based capital requirements.

SENATOR BRESLIN: Explanation.

THE PRESIDENT: Senator Breslin.

SENATOR BRESLIN: Explanation, please.

THE PRESIDENT: Senator Farley.

Senator Seward.

SENATOR SEWARD: Senator Seward, yes.

Did someone call for an explanation, Madam President?

THE PRESIDENT: Yes.

SENATOR SEWARD: Thank you.

THE PRESIDENT: Senator Breslin requested an explanation, Senator Seward.

SENATOR SEWARD: Okay. Thank you, Madam President.

The bill before us would apply risk-based capital standards to the property and casualty insurers of our state. These risk-based capital standards provide what I would best describe as an additional solvency measure based upon the risks applicable to the individual insurers.

Risk-based capital amounts are

calculated on a formula. It's a rather complicated matter, the formula itself, but it's been developed by the National Association of Insurance Commissioners, so this is a national standard that would come to the P&C companies of New York under this legislation. And this formula may be amended periodically by the NAIC to keep up with current and ongoing changing conditions.

And it would also, in addition, to apply the RBC standards to P&C companies here in New York, it would, under this legislation, allow the Superintendent of Insurance, based on the financial solvency of the individual P&C company, it would allow the Superintendent of Insurance to take whatever appropriate corrective action may be necessary, based on the solvency numbers that are reported under the RBC standards.

And that could range everything from asking a company to provide a corrective action plan to the Superintendent of Insurance, or it could be as much as actual liquidation of the company or the Superintendent placing the company under

rehabilitation.

So this legislation is designed to provide an additional measure of some support for the individual consumer in protection out there by helping to insure that the P&C companies in New York are indeed solvent and able to pay the claims as they come in to help our consumers of our state.

THE PRESIDENT: Senator Breslin.

SENATOR BRESLIN: Madam President, would the sponsor yield for a question?

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

SENATOR SEWARD: Certainly.

THE PRESIDENT: You may proceed, Senator.

SENATOR BRESLIN: Thank you, Madam President. Through you, what other types of insurance companies are currently under these risk standards?

SENATOR SEWARD: Well, Madam President, since 1993 the life insurance companies of our state have been under this standard in terms of their own risk standards.

SENATOR BRESLIN: Again through you, Madam President, would the sponsor yield?

THE PRESIDENT: Senator, will you yield for another question?

SENATOR SEWARD: Yes.

THE PRESIDENT: You may proceed.

SENATOR BRESLIN: Could you tell us some of the factors that are -- some of the factors -- the formula is complicated -- but some of the factors that are considered with each insurance company on the risk-based standards?

SENATOR SEWARD: Well, Madam President, the risk-based capital standards as they're applied to an insurance company would take a number of things into consideration under the formula, such as industry performance, individual insurance characteristics, reserve and premium allocations, all of these factors.

Those would be some examples of the types of items that would be included here in terms of meeting this standard.

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

THE PRESIDENT: Senator, will you yield?

Senator Seward does yield.

You may proceed, Senator Breslin.

SENATOR SEWARD: Certainly.

SENATOR BRESLIN: If the Superintendent determines that a particular insurer falls below the standards, what immediate remedies does the insurance commissioner have? The Superintendent, excuse me.

SENATOR SEWARD: Well, Madam President, that would obviously be determined by the individual circumstances.

But the Superintendent of Insurance would have a wide range of options open, everything from just asking the insurance company to provide a corrective plan of action -- in effect, demonstrate how they are financially secure enough to pay whatever claims that may come in, perhaps upping the amount of reserves this they would be required to have.

And in extreme cases, the Superintendent, if the financial condition of

the company were to slip to the point where this would be appropriate, the Insurance Superintendent would in fact be able to place the company in rehabilitation. Or the ultimate extreme is of course a forced liquidation of the company to pay the claims.

SENATOR BRESLIN: On the bill, Madam President.

THE PRESIDENT: You may proceed, Senator Breslin.

SENATOR BRESLIN: Thank you.

It's my opinion that the bill is a fair bill, a consumer friendly bill, and I have every intention of voting in the affirmative on it.

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 6. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 379, by Senator DeFrancisco, Senate Print 2566, an act to reopen the special retirement plan.

SENATOR PATERSON: Explanation.

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

SENATOR DeFRANCISCO: Yes. This bill was brought before this house upon a request from the town board of the Town of Camillus.

There are three police officers who did not participate in an optional retirement program. They informed the town that they were not aware of it. They're recent employees. And the town indicated that since they do want to participate, since they felt it was not due to the negligence of the three employees, that they would be willing to underwrite the cost to allow them into this optional retirement program.

The total cost to the town upon the

first year is $3,600 that they're willing to pay, and in future years, around $3,600. But no more than 6.8 percent of their salaries is the cost to the town.

The board asked us to do this, the town board. It was a seven to zero vote. And it's basically the town that's going to underwrite the costs as a result of allowing these people in the retirement program.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: All right, Madam President. If Senator DeFrancisco would yield for a question, I think we can clear this up.

SENATOR DeFRANCISCO: Yes.

THE PRESIDENT: Go ahead, Senator Paterson. You may proceed.

SENATOR PATERSON: Madam President, I don't have a problem with the amount of money -- it's really not a particularly great amount of money -- in order to bring the officers into the plan. This is equitable relief that presumes the integrity on the part of those seeking it.

I would just like if Senator

DeFrancisco would inform myself and other colleagues as to how these three officers particularly did not know of the deadline in which they were required to file.

SENATOR DeFRANCISCO: I didn't really inquire into that, primarily because the town sent this resolution that was unanimously passed indicating that the failure to enroll was not due to their negligence in any way. And if they've made that determination and they're willing to pay, then I thought that it would be appropriate to give this equitable relief.

If the town thought they were negligent, I would assume they would not be willing to underwrite the cost of this additional -- the additional cost to them by allowing them into the retirement system.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, will the sponsor yield just to one other question?

SENATOR DeFRANCISCO: Yes.

THE PRESIDENT: You may proceed,

Senator Dollinger.

SENATOR DOLLINGER: Senator, your plea of behalf of this bill seems well-founded. And I agree with you: if the town thinks it wasn't negligent who are we, 170 miles away, 150 miles away, to say otherwise.

SENATOR DeFRANCISCO: As a result, you have no question.

SENATOR DOLLINGER: Correct.

Well, here's my question.

(Laughter.)

SENATOR DOLLINGER: Why is there no provision in state law that would allow the town to reopen the 20-year pension plan on its own behalf? Should we look to a statewide bill that would allow towns, communities, school districts, other -- and I know the police officers have special 20-year plans.

But should we look to a bill that says to the State Comptroller if the community is willing to pay the cost, and the individual is willing to finance it through additional deductions prospectively, why not just let them open the plan by themselves without our

having to be involved?

SENATOR DeFRANCISCO: I think in some of these cases, though not with these police officers, since they're newly on the force, only two to three years -- I think in some situations, in some retirement plans there actually is a cost to the state retirement system by allowing people to get into the system at a later date. And I think that's why it's done on a state-by-state basis.

But as far as whether we can do a bill that one size fits all retirement plans and all options, I don't think we can do that, and that's why we're doing it this way.

SENATOR DOLLINGER: Thank you, Madam President.

Just briefly on the bill.

THE PRESIDENT: You may proceed, Senator.

SENATOR DOLLINGER: I think Senator DeFrancisco is to be commended. This is the kind of local bill that we should be doing for everybody in this house. I'm certainly going to vote in favor of it.

However, I would think that given the circumstances of this bill -- that is, the town say it wasn't their fault, the town is willing to pay the back charges to get them into the twenty-year plan and they're willing to finance it as any twenty-year participant would in the future -- it seems to me if you met those three criteria, we should set up a bill that says when those criteria are met by any local community -- city, town, village, wherever -- that they want to put people into special plans like the twenty-year plan for police, they should be allowed to do it.

And it just seems to me that that kind of bill giving the Comptroller the ability to allow them into the plan that those three criteria are met -- and I think the criteria are all present here, and they're good ones, that the community is willing to pay the back charges, they're willing to pay the prospective charges, and there's a finding of no negligence -- I'd be looking forward to the day when we could vote for a bill like that.

Not because we would dissuade

members from carrying these bills in the future, but it just seems to me a much simpler way to do it, to invest the pension system with the ability to make those allowances when conditions require it.

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 -

THE PRESIDENT: There is a home rule message at the desk.

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, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 395, by Senator Wright, Senate Print 4029, an act to amend the Public Service Law, in relation to unauthorized changes.

SENATOR SCHNEIDERMAN:

Explanation.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Wright, Senator Paterson and Senator Schneiderman have requested an explanation.

SENATOR WRIGHT: Thank you, Madam President.

The bill this afternoon amends the Public Service Law and formally prohibits the unauthorized change of a natural gas or electric service provider, not unlike similar legislation we passed in 1997 relative to the telecommunications industry.

In the short version, it prohibits the practice of slamming. It in turn authorizes the PSC to establish requirements of customer consent and authorizes the PSC to punish violators, prescribing and authorizing penalties that are currently reflected in the Public Service Law. It strengthens the consumer protection provisions. And it further tracks similar provisions, consistent with what we have done within the telecommunications statute.

THE PRESIDENT: Senator

Schneiderman.

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

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

SENATOR WRIGHT: I will, Madam President.

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

SENATOR SCHNEIDERMAN: Thank you.

I'm familiar with the situation in respect to -- that you referred to with telephone service. With respect to natural gas and electric service, is this something that is occurring statewide, is it something in particular service territories? I don't have any sense of how broad the scope of this particular problem is.

SENATOR WRIGHT: Well, certainly -- Madam President, through you, it's certainly an issue that has statewide implications. Perhaps the most recent case that we're aware of involves, in the city area, Keyspan and Brooklyn Gas & Electric with

a company called Total Gas & Electric which was accused of slamming literally thousands of residential providers.

So certainly the practice has the potential of existing statewide, the most recent situation having occurred in the city.

SENATOR SCHNEIDERMAN: Thank you.

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

THE PRESIDENT: Senator Wright, will you yield?

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

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

SENATOR SCHNEIDERMAN: Thank you.

I think this does point up another aspect of a very difficult problem that we will be grappling with here for the next few years having to do with our failed deregulation of energy in the state.

I'm not completely clear, though, as to who is doing the slamming in these situations. Is this utilities or brokers or suppliers? Who is actually responsible for

the slamming in a situation like the Keyspan situation you just referred to?

SENATOR WRIGHT: I would describe them as energy service companies -- ESCOs, if you will, for lack of a better term -- that are in -- and frequently they are a broker, as opposed to the actual supplier or generator of the commodity itself. So they are a middleman and frequently work through telemarketing or door-to-door sales activities that are very conducive to slamming itself.

I would not concur with your assumption, though, that this is any reflection of the restructuring activities going on within the state. In fact, the move to competition in natural gas occurred a number of years ago.

The move to competition within electricity right now creates an environment for this, which is why the Public Service Commission has recommended it as a departmental bill.

SENATOR SCHNEIDERMAN: Thank you.

Do we have any reports or any records on how much activity has been

generated by the parallel provisions regarding telephone service? Is this something that is going to require a lot of work by the PSC or have there only been a few instances in the parallel situation?

SENATOR WRIGHT: I don't have statistics to share with you, Senator.

SENATOR SCHNEIDERMAN: Okay. Thank you, Madam President. Thank the sponsor for his answers.

On the bill.

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

SENATOR SCHNEIDERMAN: This sounds to me to be a perfectly sensible bill.

I think we have to look carefully, though, when we're trying to give responsibilities to the Public Service Commission and others in the area of energy regulation and enforcement, to make sure that they have the resources and the ability to actually follow through.

The administrative penalty here of up to a thousand dollars per violation sounds a little bit light to me, to tell you the

truth, but I think it's worth starting at.

I must say I don't -- I'm not sure I quite understand -- and I didn't ask the sponsor this; there's no reason he would know the answer to this either. I'm not sure why this is not moving forward in the other house. It seems like a very sound step, and I certainly will be supporting it.

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 120 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 400, by Senator Stafford, Senate Print 847, an act to amend the Racing, Pari-mutuel Wagering and Breeding Law.

SENATOR PATERSON: Explanation.

SENATOR SKELOS: Lay it aside

temporarily.

THE PRESIDENT: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 465, by Senator Kuhl, Senate Print 3337, an act to amend Chapter 689 of the Laws of 1993.

SENATOR PATERSON: Explanation.

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

SENATOR KUHL: Thank you.

This bill simply would extend the opportunity for Ontario County to have electronic appearances utilized in their criminal justice system with regard to a criminal action.

And it also would extend those provisions that were previously granted to other counties for an additional period of time.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, the explanation is 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 3. 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 479, by Senator McGee, Senate Print 3963, an act to adjust certain state aid payments.

SENATOR HEVESI: Explanation.

SENATOR OPPENHEIMER: Explanation.

THE PRESIDENT: Senator McGee, Senator Hevesi and another colleague, Senator Oppenheimer, have requested an explanation.

SENATOR McGEE: Certainly.

The Whitesville Central School District has received excess aid monies totaling $240,000 during the 1998-99 school year for which the district was not eligible because of an untimely filing for building aid. Due to the substantial amount of this

overpayment, the recovery term has been extended to six years, allowing for a feasible repayment schedule for the already financially burdened school district.

This bill directs the state to recover excess state aid payments made to the Whitesville Central School District in the 1998-99 school year over a term of six years. The bill was requested by the Whitesville Central School.

SENATOR OPPENHEIMER: Thank you, Senator.

SENATOR McGEE: You're welcome.

SENATOR OPPENHEIMER: It's a fair-sized amount of money. It's like almost a quarter of a million dollars.

SENATOR McGEE: Yes.

SENATOR OPPENHEIMER: I just wondered how it happened.

THE PRESIDENT: Senator, first of all, Senator McGee, will you yield for this question?

SENATOR McGEE: Absolutely.

THE PRESIDENT: You may proceed, Senator Oppenheimer.

SENATOR McGEE: It says an untimely filing, so I just assume they didn't file it on time. They then received the state aid, and that means that state aid has to be repaid back to them.

They're asking, because it is a very small school district, to be able to extend that payment time out over six years.

SENATOR OPPENHEIMER: Thank you. I understand, you know, six years is really the common amount of time that we utilize for these things.

How did they finally find -

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

SENATOR OPPENHEIMER: Through you, Madam President.

SENATOR McGEE: Certainly.

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

SENATOR OPPENHEIMER: How did they finally discover this?

SENATOR McGEE: Well, I would assume, Senator, that the State Education Department found out that the -- looked down

through and saw, hey, they hadn't received this and the possibility existed they had received the excess aid. Or perhaps even the school district discovered it. So it's a question of both of them being able to find out or have found out that they were in fact overpaid.

SENATOR OPPENHEIMER: I think it's more likely our state department found it, since they were owed.

Through you, Madam President, if the Senator would yield.

THE PRESIDENT: Senator McGee?

SENATOR McGEE: Certainly. Yes.

THE PRESIDENT: You may proceed, Senator Oppenheimer.

SENATOR OPPENHEIMER: I just have -- following our prior discussion that Senator Dollinger was engaging in, why do we not as a state charge some interest penalty for permitting them to utilize this money in this period of time? And now we are being accommodating, as a state, in saying we're giving you six years to pay it back. I just wonder why we are not asking for interest.

SENATOR McGEE: I'm sure that I can't answer that question for you right now in the manner in which you put it.

I know that they will be paying back, over the period of six years, one-sixth of each one of those payments, so that they pay the total amount back. Now, whether there's interest included in it, I'm not sure, Senator.

But I do know that Whitesville is a very small school district. Any additional amount to them would be extremely costly and would, in fact, add an additional burden on the taxpayers of that school district. It's a very small school.

SENATOR OPPENHEIMER: No, I'm not objecting to it. I was wondering.

Then the last question is - through you, Madam President, if the Senator will yield.

THE PRESIDENT: Senator McGee?

SENATOR McGEE: Certainly.

THE PRESIDENT: You may proceed, Senator Oppenheimer.

SENATOR OPPENHEIMER: I have to

assume the answer is yes. And that is, have they taken steps so this accident won't happen again?

SENATOR McGEE: I suspect that might be the case, yes.

SENATOR OPPENHEIMER: I think that would be a yes.

SENATOR McGEE: Yes. Yes.

SENATOR OPPENHEIMER: Thank you very much.

SENATOR McGEE: You're welcome, I'm sure.

SENATOR OPPENHEIMER: This is something that does happen fairly often, and I often wonder -- may I speak on the bill, Madam President.

THE PRESIDENT: Yes, Senator, you may proceed on the bill.

SENATOR OPPENHEIMER: This does seem to happen with a fair amount of regularity. I think Senator Libous had a school district that owed a half million dollars. I sometimes wonder about our school districts and how carefully they're looking at their books.

But this is certainly within the realm of reason, and we want to help our small school districts, so I certainly think we should all support it.

THE PRESIDENT: Senator Hevesi.

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

THE PRESIDENT: Senator McGee, will you yield?

SENATOR McGEE: Yes.

THE PRESIDENT: You may proceed, Senator Hevesi.

SENATOR HEVESI: Thank you.

Through you, Madam President, it's my understanding that the school district was deemed ineligible for the $240,000 because the building aid was filed late. Is that correct?

SENATOR McGEE: That's correct. It's untimely filing, the bill being a request for building aid.

SENATOR HEVESI: Thank you.

Madam President, would the sponsor continue to yield?

THE PRESIDENT: Senator McGee?

SENATOR McGEE: Certainly.

THE PRESIDENT: You may proceed, Senator Hevesi.

SENATOR HEVESI: Thank you.

That being the case, how was it that they received the $240,000 payment if they were ineligible for the payment when they submitted the aid claims?

SENATOR McGEE: I suspect that - and again, I'm not sure, but I would suspect that it was based on the previous years.

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

SENATOR McGEE: Certainly.

THE PRESIDENT: Senator McGee, you will yield?

SENATOR McGEE: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR HEVESI: Let me clarify. If the district or any school district submits building aid claims that are not filed in a timely fashion, how possibly could the State Education Department pay out a substantial sum of money to any school district?

SENATOR McGEE: I'm sorry, I -

go ahead. I didn't hear you.

SENATOR HEVESI: Through you, Madam President, my question is I don't understand -- maybe you can shed some light on this -- how it is that the State Education Department, having received building aid claims that were invalid because they were late, wound up paying this school district $240,000.

SENATOR McGEE: I certainly can't answer that for you, because you'd have to ask the State Education Department that.

The only thing I'm saying to you is that Whitesville Central School was fully aware of the fact they were overpaid in excess. They have, in fact, requested to be able to pay back that excess aid that they received in six years.

Why the State Education Department did, I can't answer that for you.

SENATOR HEVESI: Thank you.

Madam President, would the sponsor continue to yield?

THE PRESIDENT: Senator, will you yield?

SENATOR McGEE: Certainly.

THE PRESIDENT: You may proceed.

SENATOR HEVESI: Thank you.

Is the sponsor aware that this is probably the fourth or fifth bill we've done this year? And I daresay we've done eight or nine of them last year, and there's another one on the calendar today, where the amount of overpayment was $2 million.

Is the sponsor aware that this is a regular practice of overpayment and that the State Education Department, making these overpayments, has failed repeatedly -- because we are looking at another bill here today - has failed to correct this problem?

SENATOR McGEE: Through you, Madam President, I'm not -- there is another bill on the calendar that requests basically the same thing. And maybe because Whitesville in the W's, that may be why it made it today, we're down to the end of them. I'm not possibly sure about that.

But let's put it this way. I can't be responsible for what the -- am I aware of it? I'm certainly aware of it when the bills

come through. I'm not sure what else you want me to say about that.

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

THE PRESIDENT: Senator, will you yield?

SENATOR McGEE: Sure.

THE PRESIDENT: You may proceed.

SENATOR HEVESI: I asked the question -- and I understand you're trying to do the right thing for your school district. And notwithstanding the question as to whether or not interest should be recouped on this money -- and I'm beginning to believe that it should be -- there have been many individuals, many state Senators representing many different school districts who have brought the same legislation to correct a problem that has never been corrected.

So I don't believe it's an unfair question to ask of any sponsor who brings this bill. And I'll ask the question this way.

Are you concerned that the State Education Department is failing repeatedly to make sure that they are only making payments

that they should be making and as a result the taxpayers of New York State are losing thousands and thousands of dollars because the SED does not recoup interest? Are you concerned about that?

SENATOR McGEE: Through you, Madam President, at the present moment, sir, I'm looking at Whitesville Central School. That's the issue we're working on right now.

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

THE PRESIDENT: Senator, will you yield?

SENATOR McGEE: Certainly.

THE PRESIDENT: You may proceed, Senator Hevesi.

SENATOR HEVESI: Thank you.

Let's talk about the Whitesville Central School District. Whitesville submitted late claims and then received payment for the late claims that they were ineligible to receive. Then Whitesville, my understanding is, went and spent the money that they had received for which they were ineligible.

My question is, obviously we have a problem with Whitesville School District, too, filing late claims, then receiving payments that they shouldn't have received, then spending the money that they shouldn't have received. My question to you is, do we have a problem with the Whitesville School District?

SENATOR McGEE: Through you, Madam President, that's always possible, sir. There may have been a change of personnel. Quite frequently, business managers do change. Whitesville is a very small school, very small district. That's very possible.

Do we have a problem? Yes, there is a problem. The problem has been discovered and is in fact being rectified by this bill.

SENATOR HEVESI: Madam President, will the sponsor yield to one final question? I won't belabor this.

THE PRESIDENT: Senator, will you yield?

SENATOR McGEE: Certainly.

THE PRESIDENT: You may proceed, Senator Hevesi.

SENATOR HEVESI: Thank you.

And I do appreciate your patience with this. It's not your fault. But this is certainly something that anyone who brings this legislation has to take into consideration in reference to the larger picture here. And that's why I'm making these points.

So my final question to you is a very simple one. In the case that has led to this legislation, isn't it true that both the Whitesville Central School District and the State Education Department made a mistake and we have to correct their mistake with this legislation today? Is that accurate?

SENATOR McGEE: Well, it certainly appears that way, since I've told you right from the very beginning that the Whitesville Central School District did not file in a timely basis to receive the state aid.

They did receive the state aid, they're aware of it, the State Education Department is aware of it, the Whitesville Central School is aware of it. They are now making amends to try to be able to solve that,

extend that payment time out to six years. Because to pay it back in the following year would be in fact a tremendous cost to the taxpayers of Whitesville Central School District, a very small district.

And so this bill will say to Whitesville Central School District, you acknowledge that you received the money, you used the money, and it is in fact not yours, so to speak. They will pay it back in a six-year payment.

SENATOR HEVESI: Thank you.

Madam President, one final question if the sponsor will yield.

THE PRESIDENT: Senator, will you yield?

SENATOR McGEE: He said that last one was the final one.

Yes, I will.

THE PRESIDENT: You may proceed.

SENATOR HEVESI: Thank you.

I understand exactly what this bill does, because I've debated every one of these bills that's come before the house, and I've voted for all of them.

My question to you is -- and we'll leave your school district out of it for a second.

SENATOR McGEE: Sure.

SENATOR HEVESI: SED has been negligent, repeatedly, and it's costing the taxpayers of this state thousands and thousands and thousands of dollars.

And so I'm now going to call on the State Comptroller to audit SED's procedures for paying claims that they receive for building aid and any other type of aid for which we have had to come and vote on legislation like this.

My question to you is, since you have now experienced SED's failures and it's caused some kind of a hardship for your central school district, whether you would support the State Comptroller auditing SED to make sure that this doesn't happen again to any other school district.

SENATOR McGEE: I certainly would have to look at any kind of legislation that was proposed in that matter.

SENATOR HEVESI: No, I was

suggesting an audit. Would you support an audit of the SED by the state comptroller?

SENATOR McGEE: I would have to look at what the process would be.

SENATOR HEVESI: Thank you.

Madam President, on the bill.

THE PRESIDENT: You may proceed on the bill.

SENATOR HEVESI: Madam President, the Whitesville Central School District should not be penalized by us not acting today, although I would submit to everybody in this chamber that it's time for the school district to start paying interest on this money. And the reason is because in addition to SED having made a mistake in every one of these cases, the school district has made mistakes.

And in this case, the school district made two mistakes. One, they -- they made three mistakes. One, they filed the aid late. Number two, they accepted the payment from SED without sending it back, knowing that it was ineligible. And, three, they went and spent the money.

And so we're left with a situation

where six years are going to have to elapse before the taxpayers of this state recoup the principal on the $240,000. That means thousands and thousands of dollars that would otherwise have gone for other educational purposes in the classroom -- reducing class size, increasing teacher salaries, whatever the case may be -- we lose.

And this is just one example. Senator Bonacic has a bill where $2 million is going to have to be repaid on a staggered scale -- schedule. And this is just wrong.

It's time for us to ensure that we don't find ourselves in the situation again and again and again. One of the ways to do it is to prevent SED from paying out claims that are ineligible to be paid out.

And I am going to ask the State Comptroller to audit SED, because he should go take a look at why it is that they have failed year after year after year and case after case after case the people of this state. SED is costing the people of this state thousands of dollars.

And frankly, the local school

districts who are receiving this money and have to be bailed out here are getting a benefit because of their own mistakes because their legislators are very diligent legislators. And if it happened in a school district that I represent, I'd probably have to go to bat for them too. But I certainly would, at the same time, be trying to prevent the situation from recurring.

So, Madam President, I'm going to vote for this bill. But if we keep seeing bills like this that have no interest payments built into them, and there has been no effort by anyone in the Majority -- anybody who's brought one of these bills or anybody else - to do anything about this problem, that we're just going to keep putting a Band-Aid on it and wasting our time here and wasting thousands of dollars of taxpayer money, I'm going to start voting no on these bills, and I'm going to urge all my colleagues to do it also.

And in the meantime, I'm going to ask the Comptroller to go ahead and audit SED. And you know what? We may want to do a review

of some school district's procedures and have a better procedure laid out for every school district in the state so that we don't have this problem time after time after time. And I'm not belaboring the point or beating a dead horse here, because the kids in the state are getting cheated out of money here.

I mean, this is just wrong. It's wrong, Madam President. So I'm going to support this bill. I appreciate what Senator McGee is trying to do. I don't want the children in that district to be harmed as a result of the poor performance by that school district and by SED. But they shouldn't have spent the money. Shouldn't have filed it late, shouldn't have received the money, shouldn't have spent the money.

And now we have to bail them out so that they don't get hit in one year having to repay it. But if they had to repay it in one year, that would prevent everybody from being cheated by their failures to have procedures that prevent this from happening.

Now, how do we go and tell all the kids in this state: Thousands of dollars

could have gone to your district, but it didn't because we have a problem that we don't correct, ever. Now everybody knows about it. They know about it because we've brought these bills to the floor countless times.

I'm upset about this, Madam President. And so, with objections, I'm going to vote for this bill. But if we don't do something about this in the future, I'm going to do everything I can to bring as much public attention to this as possible, that we are squandering taxpayer money because we are too lazy, or whatever the reason is, to correct this problem. It's wrong.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR DOLLINGER: Just on the bill, briefly.

Senator Hevesi, I'll sign the letter to Comptroller McCall to ask for an audit of SED.

And I guess I would add just one

other thought. It seems to me that we're in this anomalous situation where the Whitesville School District got money it wasn't entitled to under law, and now is getting an extended period of time to pay it back. And yet as you know, Senator Hevesi, I believe the City of New York is owed about $900 million which it's entitled to, which it's owed by the State of New York, which it's got good claims for, and they've been sitting there waiting for eight, nine, ten years to be paid.

And as you, I think, are familiar, since you advocated for it, one of the things that we now do is we only pay the claims that are about to go out of existence. We only pay those that after ten years are going to expire because we're not willing to pay all the other claims. The $800 or $900 million more that the state owes the City of New York school system would be an enormous benefit to the kids there. It would certainly improve the quality of education.

Here we have the instance where a school district owes us money, in essence. And not only are we creating a diversion from

the usual pay-it-back-in-two-years principle, but as Senator McGee, properly representing her district, has said, this ought to be a delayed payback. Because otherwise, the consequence is that they'd have to go out and raise this $240,000 next year to pay back the state.

What I would suggest is that those who vote for this bill ought to apply the same principle to New York City and say since the City of New York has to find eight or $900 million because we're not paying our bill to them, the same principle ought to apply.

I would just suggest I agree with Senator Hevesi. This needs another statewide solution. We have countless districts that fail to meet their transportation filing dates, they fail to meet their building dates. We preach accountability in education, but apparently we don't have -- we cannot support the people whose job it is to file these applications on time to get it done on time so that we can calculate how much money they need.

That concept of accountability, it

seems to me, would start by making sure that everybody is accountable for the failure to file these requests for building aid or transportation aid.

And I would conclude, Senator Hevesi, I have one other concern. And that is unfortunately we may end up with a rule that generally applies in the districts -- the Senate districts of those who sit in the Majority of this house but not those who sit in the Minority.

That a Majority Senator could pass a bill that says, Oh, you owe the state money? We'll extend the period of time from one year to six years to pay it all back, and we won't charge you interest. And that will become the rule for those who sit in the Majority in this house, and the school districts that owe money back to the state.

Whereas those who sit in the Minority -- since I can't remember, in the nine years that I've been here, that there has ever been a late payment bill that's actually been passed in this house that was sponsored by a Senate Democrat.

So we may have one rule that says: You don't have to pay interest and you get six years to pay it back if you owe the state money and you happen to be a school district in a Republican district. But if you're one of those districts, like all of mine, in which a Democratic Senator sits in the seat: Oh, you have to pay it back next year.

It would seem to me, Senator Hevesi, that that would be a result that is completely unjustifiable. And so I would just suggest if we're going to come up with a rule that says you get a benefit when you owe money back, that benefit ought to be extended to every school district in this state and not just those that are in Republican Senate districts.

I would strongly suggest -- I'm going to vote in favor of this. I've voted for these kinds of bills in the past. But I'm looking for a single, statewide standard that will apply to every school district regardless of the party affiliation of the Senator whose district it sits in.

Thank you, Madam President.

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

Then the debate is closed.

There is a local fiscal impact note at the desk.

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, 56.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 481, by Senator Larkin, Senate Print 3998, an act to repeal Chapter 987 of the Laws of 1972.

SENATOR DOLLINGER: Explanation.

SENATOR STAVISKY: Explanation.

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

SENATOR LARKIN: Thank you, Madam President.

This is a local bill that repeals references to a school district named Sugar Loaf Union Free School District, since this

school district is no longer active, has no students or no employees. The district was created in 1972. It is a special school district that serves the needs of young men who had been in the court system, and was operated by the Archdiocese of New York. A few years ago, the Archdiocese decided that it needed to close the school because it was not ready to continue with the financial expenditures.

The provisions of this bill address the issues of transfer of all the records of the inactive school to the Orange-Ulster BOCES. Should a residue amount of any money be left over once the school district has paid all of is debts and dissolved, such monies would go to the local BOCES to maintain the school's records.

This legislation was requested by the school district. The bill's language was reviewed by the State Education Department. There is no opposition from them to this bill.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: If Senator Larkin would yield for a number of questions

that I have on this bill.

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

SENATOR LARKIN: Yes, I'll yield for a question.

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

SENATOR STAVISKY: Has the Sugar Loaf School District received state aid?

SENATOR LARKIN: They did receive some state aid, as normally any one of those schools would do, for the maintenance of records.

SENATOR STAVISKY: Madam President, through you, if the Senator will continue to yield.

SENATOR LARKIN: Yes.

THE PRESIDENT: You may proceed, Senator Stavisky.

SENATOR STAVISKY: Then I assume they received state aid for the fiscal year - school year 2000.

SENATOR LARKIN: No. They've been closed.

SENATOR STAVISKY: Madam

President, if Senator Larkin will continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR LARKIN: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR STAVISKY: Has there been a local contribution of any sort towards the maintenance of this school district?

SENATOR LARKIN: The Archdiocese of New York.

SENATOR STAVISKY: Madam President, if Senator Larkin will continue to yield.

SENATOR LARKIN: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR STAVISKY: What happened to the students who were attending the school which was sponsored by the Archdiocese?

SENATOR LARKIN: They were returned to their respective districts within New York City.

SENATOR STAVISKY: Let me

rephrase the -

SENATOR LARKIN: Let me explain, if I may.

These students were brought into the court system. And the court system said, You'll either go here or go to reform school. They in turn took the Archdiocese was paying the bill, and it just got out of line with what was costing. So the Archdiocese said, we're closing it down because they weren't being properly reimbursed.

SENATOR STAVISKY: Which leads me, Madam President, to the next question, if the Senator will yield.

SENATOR LARKIN: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR STAVISKY: Why did these students attend that school and not one of the schools -- I believe it's the Division for Youth that operates the educational system in the -

SENATOR LARKIN: I don't know. You'd have to ask the City of New York school district. Because they referred them to the

Archdiocese of New York because they had no facilities available for them to be educated in.

SENATOR STAVISKY: Thank you, Madam President. A couple of other questions, if Senator Larkin will yield.

THE PRESIDENT: Senator Larkin?

SENATOR LARKIN: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Stavisky.

SENATOR STAVISKY: How much money is being returned to that school district in the form of -- or do you propose to return to the BOCES?

SENATOR LARKIN: According to BOCES and according to the school district and the state SED, it's peanuts. It's only - what's left is the maintenance of the records, of which they will be required to -- when this is approved, they will go back to the State Education Department with any monies that were am allocated that were not used in the maintenance of records and transferring the records of the students to the New York City

Board of Education.

SENATOR STAVISKY: Madam President, if Senator Larkin will continue to yield.

THE PRESIDENT: Senator Larkin, will you continue to yield?

SENATOR LARKIN: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR STAVISKY: I'm looking for the term "peanuts" in the -- I don't see the word "peanuts" listed in the bill. Do peanut have a dollar amount?

SENATOR LARKIN: I am told, Senator, that it's a very minimal amount and it would hope -- they're hoping that what is left there will be sufficient for the Orange-Ulster BOCES to maintain these records and do all the others that is required for transfer of a student, a student who was a student of the New York City school district who became, in essence, a ward of the Archdiocese because these students could not function in the school district and had been a

ward of the court and were sent there. Is happening is that this school district is no longer in being. The dollars that are left are for maintenance of records.

SENATOR STAVISKY: $47.60? That's a lot of peanuts.

If Senator Larkin will yield to one last question.

SENATOR LARKIN: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR STAVISKY: Senator Larkin, with the computerization of records and the ability to keep records so compactly and so easily and so readily, make them those so readily available, this is just a simple ministerial effort on the part of BOCES.

Shouldn't the peanuts or the minuscule amount be returned to the State of New York and not to the BOCES school district, since this is state money?

SENATOR LARKIN: Senator, the records are not being maintained by the State of New York. And also, when you talk about the records, you're also talking about medical

records. And there's the privacy aspect of it too.

So this is not just here's two papers off of a form. The requirements by the State Education Department for the maintenance of the records or maintenance of the individuals' health records and the privacy of it, the decision was that all of these schools are a part of the Orange-Ulster BOCES, and therefore the responsibility is assigned to them.

SENATOR STAVISKY: Thank you very much for your explanation, Senator Larkin.

Thank you, Madam President.

THE PRESIDENT: Senator Lachman.

SENATOR LACHMAN: Yes, Madam President. Through you, will the Senator continue to yield?

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

SENATOR LARKIN: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Lachman.

SENATOR LACHMAN: Senator Larkin,

I am interested and intrigued that this occurred in 1972. And with -

SENATOR LARKIN: Could you speak up a little louder, please.

SENATOR LACHMAN: I am interested and intrigued that this occurred in 1972. As you know, I chair a national collaborative of public and nonpublic schools. Do you have any background as to the relationship between the public school system and the Archdiocese in selecting these students and in educating them?

And as we all know, the Archdiocese of New York private school system is not only the three boroughs of Manhattan, the Bronx, and Richmond, but seven upstate counties.

SENATOR LARKIN: I looked at this from just where they're at -- they're located on the Chester-Warwick border, the school is -- and knowing the background of it as I represented it. All of these students came as a result of court action, came to the school district.

SENATOR LACHMAN: Madam President, through you, will the Senator

continue to yield?

THE PRESIDENT: Senator, will you yield?

SENATOR LARKIN: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR LACHMAN: Were these students all from the city of New York or the seven counties of the Archdiocese of New York?

SENATOR LARKIN: New York City.

SENATOR LACHMAN: New York City.

Will the Senator continue to yield? Through you, Madam President.

SENATOR LARKIN: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Lachman.

SENATOR LACHMAN: Okay. Do you recall the arrangement that was worked out between the public school system in the County of Orange and the Archdiocese of New York to create what I think is a unique system of collaboration between the Archdiocese of New York school system and the County of Orange?

SENATOR LARKIN: Two things. When this was done in 1972, I was not a member of this body or any political body. I was a hard-working civilian. And I don't know what went on in that time.

The only thing I know in talking to some of the people in the Archdiocese Office on Education was that that setup was between the courts of New York City -- and I'm not trying to be rude. But the Archdiocese agreed to open up a school in various grades, and that the slots were to be filled by the city of New York, the courts in the City of New York to assign them to Sugar Loaf.

And these were troubled kids, kids from broken homes, kids who had broken the law. And I don't have any records and people I've talked to have no records because the school is actually closed, the people from New York City have gone back to the city. And that's it.

SENATOR LACHMAN: Okay. Through you, Madam President, will the Senator continue to yield?

THE PRESIDENT: Senator, will you

yield?

SENATOR LARKIN: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Lachman.

SENATOR LACHMAN: Senator Larkin, do you have any information as to the results of this endeavor? Were there any longitudinal studies? Did it, in its period of time, achieve positive results?

SENATOR LARKIN: From knowing what I do about the school and visiting it, I think that there was a very positive effort on behalf of the staff and faculty from the Archdiocese. And there were a number of youngsters there that I know that left there and went to Siena, went to SUNY Albany, went to Syracuse.

The bottom line was that the reimbursement for operating the school, it wasn't sufficient. And this wasn't an isolated case to do this. In our papers upstate, and you might have seen it in the Times and others, in the Post two weeks ago, the Archdiocese has closed three or four other

schools for the same reason.

SENATOR LACHMAN: Madam President, through you, for a last question to Senator Larkin.

THE PRESIDENT: Senator, will you yield?

SENATOR LARKIN: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Lachman.

SENATOR LACHMAN: Would it be possible, Senator Larkin, for my own research endeavors, to receive more information from you after you discuss this with the school district and your staff? One, relating to the positive or negative or no results or yes results of this relationship with the Archdiocese of New York and the public school system in the County of Orange. And, two, related to that is the actual legal means by which this relationship was entered into.

I think it's a very interesting precedent.

SENATOR LARKIN: I'd be more than happy to, Senator.

SENATOR LACHMAN: Thank you kindly.

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 July 1.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 482, by Senator Bonacic, Senate Print 4084, an act in relation to adjusting certain state aid payments.

SENATOR DOLLINGER: Explanation, please, Madam President.

THE PRESIDENT: Senator Bonacic, Senator Dollinger is requesting an explanation.

SENATOR BONACIC: I'm surprised that you wanted an explanation, Senator Dollinger.

But having asked for one, this is an act in relation to adjusting certain aid payments to the Delhi Central School District. What happened was they were building a new school back around 1997, and it was estimated to be over a $12 million project. And the State Education Department gives aid -- at that time, it was at the rate of 75 percent of the estimated building project.

They made payments in the year '97-'98 and '98-'99, so it went into two years. In October of 2000, the State Education Department determines that they overpaid, in building aid, $2,166,720. Now, that is a very heavy number. I've come before you for mistakes that the school districts have made in small amounts. Senator McGee, earlier, it was 240,000.

And so we're here asking for a six-year extension to pay the money back. Right now, if I didn't come before you, starting in the year 2001, there's a three-year payback that that school district would owe the State of New York, increasing the tax burden by about 58½ percent.

Keep in mind, now, this is the taxpayers that we're trying to give some relief to. If and when this legislation should pass, the taxpayers still would be paying a tax increase of 49½ percent over a six-year period.

I asked the question how could this happen. We have 735 school districts. We have turnover. We have superintendents that come and go. We have administrators that come and go. And sometimes one hand doesn't know what the other is doing, and mistakes are made.

And they made a big mistake in this school district, and now the taxpayers of that school district are going to feel the pain of paying it back, hopefully over a six-year period.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. Will the sponsor yield to a couple of questions?

THE PRESIDENT: Senator, will you yield?

SENATOR BONACIC: Yes, sir.

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

SENATOR DOLLINGER: Senator Bonacic, as I understand this, the State of New York paid more money to the school district than they were otherwise entitled to; isn't that correct?

SENATOR BONACIC: That's correct.

SENATOR DOLLINGER: If the State of New York -- through you, Madam President, if the State of New York had not paid them that extra money, they would have still spent the money on the project, they simply would have gone out and borrowed; isn't that correct? They would have increased the amount of their borrowing because the amount of their state revenue would go down.

SENATOR BONACIC: In all probability, they would have borrowed unless they had a benevolent donor to a foundation to help them.

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

THE PRESIDENT: Senator Bonacic, will you yield?

SENATOR BONACIC: I do.

THE PRESIDENT: You may proceed.

SENATOR DOLLINGER: If your bill did not become law, the school district would simply go out and borrow the $2 million to pay back the State of New York; isn't that correct?

SENATOR BONACIC: Well, as I've indicated, if this did not become law, they already have an arrangement with the State Education Department to pay it back in three years.

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

THE PRESIDENT: Senator, will you yield?

SENATOR BONACIC: I do.

THE PRESIDENT: You may proceed.

SENATOR DOLLINGER: The prudent thing to do would be to simply borrow all the money that you need, the $2 million, toss it in with the other borrowing that you already

borrowed to build the building in the first place, and in essence you would have the school district borrow the same amount of money that they would have borrowed if the State of New York had given them the correct amount; isn't that a fair assessment?

SENATOR BONACIC: If I were the superintendent of that school, that's exactly what I would have done.

SENATOR DOLLINGER: Through you, Madam President, then how is this school district hurt by the nonpassage of this bill if the effect of it is that if this bill doesn't pass, the school district will end up borrowing the exact same amount of money that it would have had to borrow had this mistake not been made?

SENATOR BONACIC: The school district has elected to go to their public and the taxpayers and have decided to increase the tax levy and not go out and ask for an increase in bonding. That's what they've elected to do.

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

to yield.

THE PRESIDENT: Senator, will you yield?

SENATOR BONACIC: I do.

THE PRESIDENT: You may proceed.

SENATOR DOLLINGER: So in essence it's not the fact that somebody made a mistake in applying for these funds, but it's the school board's election to do this through the tax rate rather than through borrowing which constitutes the reason why we're doing this bill; is that a fair statement?

SENATOR BONACIC: No. The reason we're doing this bill is that they had a building project that they overestimated the costs to be. They submitted cost estimates to the State Education Department. The building project came in less than what they estimated. So the State Education Department paid them 75 percent on the estimate, and they're only entitled to 75 percent of the actual cost of the building.

SENATOR DOLLINGER: Through you, Madam President, then -- but if -- let me go back to the scenario. If they had to pay back

the $2 million this year, they could borrow the money; is that correct?

SENATOR BONACIC: Well, I don't -- I assume they could. I mean, I don't know the debt burden of that school district, what other debts they may have. I'm not familiar with that.

SENATOR DOLLINGER: But my question is -- let's use a round figure. The amount that the State of New York reimburses this school district was for $12 million. All right?

SENATOR BONACIC: Yes, that's correct.

SENATOR DOLLINGER: And it turns out that they should have only reimbursed them 10 million. That's the scenario. That's where the $2 million differential comes through.

SENATOR BONACIC: Yes. Yes.

SENATOR DOLLINGER: If the total project costs 20 million, that means that when they did it the first time around, they only borrowed 8 million, because they got 12 million from the State of New York, so

therefore they only had to borrow $8 million. Is that correct? I mean, just to, again, sort of using the -

SENATOR BONACIC: Generically, they didn't have to borrow as much.

SENATOR DOLLINGER: Now, in order to pay the school district back, they have do go borrow 2 million more. Which is what they would have had to borrow had they not gotten the state money in the first place. Correct?

SENATOR BONACIC: The answer is yes.

SENATOR DOLLINGER: My question -- through you again, Madam President, is -

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

SENATOR BONACIC: I do.

THE PRESIDENT: You may proceed.

SENATOR DOLLINGER: -- what then is the practical effect of doing this bill? Because as I understand it, if we don't do this bill, they'll be in exactly the same position that they should have been in to start. They'll have to borrow and pay, over a

longer period than a year or two years or three years, they'll pay it out over 30 years. They'll pay 2 million more, which is what they should have paid in the first place. Isn't that correct?

SENATOR BONACIC: My answer to you is that the school board and the present administration has already gone to the public and has apprised them that it's necessary to increase the tax levy to pay the State Education Department. That's the avenue they have chosen and gone for the support of their taxpayers to do it this way.

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

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

SENATOR DOLLINGER: I appreciate Senator Bonacic's candor in assessing this.

But, Senator Bonacic, with all due respect, this -- what we are doing is not, in essence, shielding the district from the consequence of some failure of an administrator. What we're doing is we're basically bailing out a political choice made

by the school board to put all the costs into the first year.

The sensible way to do this, Madam President, is to simply borrow the $2 million and pay it out over the term, the longer term of the original financing for the reconstruction.

Under those circumstances, we're not in the same situation we were with Senator McGee's bill, where in essence we had a failure to meet a time issue. In essence, what we're doing is we're giving this school district a special way to deal with a problem that is entirely of its own making.

And my suggestion would be to go back to the school board and say: You want to shield your taxpayers, the way to do it is not go to your taxpayers and say, oh, we've got to pay back this $2 million all in one year for a capital project. No. What we're going to do is the same thing we do with the financing of the remaining portion of the building, which is borrow the $2 million and pay it out over 30 years, when the effect on the taxes would be substantially less than the 49 percent that

they now face because of the school board's decision.

Madam President, I'm going to vote against this bill. I appreciate Senator Bonacic's efforts, and I understand how this may be a scenario that as a Senator representing a district he wants to stand up and defend. But at the same time, it seems to me that this problem has a very eminently reasonable solution, and it's one that we shouldn't be in the position of being an insurance policy for a bad choice made by the school district.

The right choice here is to borrow the money, pay it out over the same period of time that you would have in the original construction, and then the taxpayers will be made whole. They'll be financing exactly what they should have financed in the first place, which is the true cost that is not reimbursed from the state.

Senator Bonacic, I think you're doing the right job for the people of your districts, and my guess is you will convince the majority of this house to do it. But in

this particular instance, based on your explanation, I have to vote no.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: If Senator Bonacic will yield.

SENATOR BONACIC: I do.

THE PRESIDENT: You may proceed, Senator.

SENATOR STAVISKY: My sheet is scribbled with arithmetic mentioning exactly the points that Senator Dollinger made. But I have a number of other questions.

I was intrigued when you said that the State Education Department is permitting them three years in which to pay off the $2 million that is owed. Can you tell us a little bit about that?

SENATOR BONACIC: What I can tell you is that the State Education Department has accepted an arrangement, if the school district was so inclined, to pay them -- pay the money back over a three-year period. And the school district feels that that's very onerous on the taxpayers. They came to me with a home rule message and asked could I get

it extended.

I would have preferred more than six years, but it's been the custom and practice of this house to do six years, so I'm here proposing legislation to allow them to pay it back over a six-year period.

SENATOR STAVISKY: If Senator Bonacic will continue to yield.

SENATOR BONACIC: I do.

THE PRESIDENT: The Senator does yield. You may proceed, Senator.

SENATOR STAVISKY: I find that fascinating. They're forum shopping. And they're figuring that they can get a better deal from the State Senate. But the worst that will happen is that they'll pay it out over three years.

Question. The first payment, if this bill passes, will be due in June of the year 2001; is that correct?

SENATOR BONACIC: That's correct.

SENATOR STAVISKY: How can they determine what's going to happen so promptly? In other words, why was that effective date selected for the legislation where we don't,

for example, have a budget, they don't have a budget, and so on?

SENATOR BONACIC: There's two points I would like to respond to. First, the State Education Department discovered the problem in October of 2000. The prudent thing to do when discovering that a mistake has been made, to immediately commence payments the next year irrespective of what the state aid package is.

Number two, the administrators and the superintendent made a terrible mistake for the school district, and it's the taxpayers that are going to suffer, irrespective of this legislation that we're going to -- that's going to have the burden of paying it back.

So I'm trying to buy them a little more time, six years instead of three. But it's still a heavy hit on them.

SENATOR STAVISKY: And I have one last question, if the Senator will yield.

THE PRESIDENT: Senator Bonacic, will you yield?

SENATOR BONACIC: I do.

THE PRESIDENT: You may proceed,

Senator.

SENATOR STAVISKY: I'm taking a look at the memo that you attached to the bill. And under "Purpose" it says to adjust certain state aid payments made to the Delaware Central School District.

SENATOR BONACIC: No, Delhi.

SENATOR STAVISKY: It's a mistake, it's a typographical error?

SENATOR BONACIC: Oh, I'm sorry. Mine has Delhi.

SENATOR STAVISKY: Okay. Thank you very much, Senator Bonacic, for your patience.

SENATOR BONACIC: Thank you.

THE PRESIDENT: Senator Hevesi.

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

SENATOR BONACIC: I do.

THE PRESIDENT: You may proceed, Senator.

SENATOR HEVESI: Thank you.

Through you, Madam President. I just want to be clear on this, because I - this is -- from what I understand from Senator

Dollinger's questioning and your responses, this really is same genre, different category as Senator McGee's bill and some of the other ones that we've done.

My question is, very simply, why should the taxpayers of New York State essentially give an interest-free loan of $2 million to this school district when they could right now go out and borrow $2 million -- which is, as Senator Dollinger pointed out, what they would have done had they not made the mistake in the first place -- and they'd pay interest on that loan? Why should the taxpayers have to subsidize their mistake? I don't understand.

SENATOR BONACIC: Well, is your question why is it interest-free? That's a different question than the bonding question.

SENATOR HEVESI: Well, I think they're related, but if you want to -

SENATOR BONACIC: Well, I think we've had a policy, and until it changes -- we have tried to help the taxpayers in school districts where superintendents and administrators have made mistakes and we

didn't want to punish the taxpayers for their mistakes.

It would be nice if we could go to those superintendents, administrators, and take that tax deduction out of their payroll and have them pay the interest, but we don't do that. We try to run our government with a little compassion, with a little heart. Because when we do interest-free, we're trying to help the children in that school district by not bankrupting that school district.

And you can make an argument for interest, because it was a mistake. But we've elected, as a state policy, not to do that up to this point.

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

SENATOR BONACIC: I do.

THE PRESIDENT: You may proceed, Senator Hevesi.

SENATOR HEVESI: Thank you.

I just -- this one is different. And it's different because had they not made the mistake, this school district would have borrowed an additional $2 million, and they

would be paying interest on it that the taxpayers in that locality would be paying.

As it is, we are now, instead of having them go back and borrow the money to pay the interest, which is what they would have had to do, we are subsidizing their $2 million. It just -- I don't know how else to phrase it as a question.

SENATOR BONACIC: I believe, Senator, that the problem we have here is that the price that the school came in was low. And when you got the state money, to go out and get another $2 million would be bonding the project more than the market value of the building. That's one of the problems we have with this particular facility.

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

SENATOR BONACIC: I do.

THE PRESIDENT: Senator Bonacic yields.

You may proceed, Senator Hevesi.

SENATOR HEVESI: So you're suggesting, then, that based on that cost estimate, that this solution is the only

solution that is fair and just for the taxpayers in the district?

SENATOR BONACIC: That's the solution that they have come in a home rule message.

Obviously, Senator Dollinger's proposal is less painful. Spread $2 million over 30 years, it has a much smaller minimum impact on taxpayers. But I don't believe that election was available for this school district.

They have Delhi University in their school district. 73 percent of the land in that school district is tax-exempt. So there's just not a big base to go out and borrow more money on top of a school facility that came in a lot less in market value than the money that was advanced against it.

That's the explanation.

SENATOR HEVESI: Madam President, on the bill.

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

SENATOR HEVESI: Thank you. I thank Senator Bonacic for his explanation.

One point before I begin speaking on the bill that I'd like to make is during my previous questioning with Senator McGee, I was a little bit harsh in my questioning, though I maintain on the substance that I was on point. And I apologize to Senator McGee for that; it should not be that tone. And so I apologize for that.

On this legislation, this bill is different than Senator McGee's bill and the other bills that we've done in this house. And I understand what Senator Bonacic is trying to do here; I just don't agree with it.

I think that this school district, which made a mistake, should go out, borrow the money and pay interest on that money. And therefore, since they have essentially gotten what I believe to be an interest-free loan, they are getting a benefit that they should not be getting, number one.

And, number two, that benefit is quite analogous with the benefit that the Whitesville Central School District will be getting if Senator McGee's bill becomes law, and what all the other school districts that

have gotten interest-free money have gotten. And it's wrong.

And Senator Dollinger pointed out -- and it's somewhat ironic that my distinguished colleague from Rochester raised the point, prior-year school aid claims owed to the City of New York. But that's the point. The point is that at the same time we're providing interest-free money in overpayments to school districts in other areas of the state, New York City is owed close to a billion dollars -- that's a billion dollars -- in prior-year school aid claims.

And what's particularly galling for me is that there is a law, a section of the State Education Law which says that of any money to be spent to repay prior-year school aid claims, that only 40 percent of that money make available in any one year can go to any one municipality.

So New York City, which has 88 percent of the claim money in for prior-year claims, can only get 40 percent of whatever small amount of money is put into that category every year. And as Senator

Dollinger rightly pointed out, when the oldest of the claims age to 10 years, because of accounting mechanisms they have to be written off. In my first year here in the Senate, we had to do battle to get $39 million restored to the budget so that we wouldn't blow a hole in the Board of Ed's budget.

And the City doesn't recover any - and all those claims from New York City are legitimate claims and not mistakes that the City of New York made. Most of those prior-year school aid claims come as a result of a lack of computerization that resulted in building aid claims not being late, but filed years after they could have been had there been computerization set up between the Board of Ed of the City of New York and SED.

And so it pains me every time we have a bill like this that denies the taxpayers of the City of New York access to their money, which could be used for educational purposes. And in the case of this bill that's before us, the Delhi Central School District, that's thousands of dollars in interest on a $2 million-plus loan.

In Senator McGee's case, the Whitesville Central School District, $240,000, we're denied any interest payments on it for six years. Earlier this year, the Greene Central School District got $500,000 in an interest-free loan for six years.

Last year, the Berkshire Falls School District, $458,177 in an interest-free loan, I believe for six years. Last year, Greenville School District, $343,900. Schenectady, $946,808. Cobleskill-Richmondville, $189,522. Nyack Union Free District, and on and on and on.

And that count that I just listed here, it was close to $5 million over six years. How much interest is that at the going rate? It's thousands and thousands of dollars, hundreds of thousands of dollars that we're just denying to people who could use that money, like the City of New York, which is rightly owed the money and never gets paid on it.

I mean, it's really outrageous. It's really outrageous. Not even taking into consideration the fact that the City of

New York already gets shortchanged on the education runs, and a judge just told us legally what we all knew and have been trying to rectify for years and years. And so we're giving gifts now to other school districts.

And I want to help the other school districts, but I don't want to do it at the expense of the children in New York City. And that's how I see it. I really don't see any other way to view it.

And in this one particular case of the bill we're speaking about here today, it's a mistake not by SED, evidently, but of the local school district. And again, I'll just reiterate the contention that I made earlier that there need to be uniform procedures both for local school districts and for SED in making sure that we don't have this problem in the future.

I'm not going to vote for this bill. I voted for Senator McGee's bill because we haven't yet established whether or not all bills pertaining to those types of overpayments should be recovered with interest. I'm now beginning to think that

they should be. I still voted for that bill.

This bill I believe is wrong, because this is essentially an interest-free loan to a school district that could right now go out and borrow the money and pay it back, as they should. I don't know why the taxpayers of the state should have to subsidize it.

These are two different bills within the same general area. I will support Senator McGee's bill, as I did earlier, and I may not support similar bills like that in the future unless they have interest built in back to the state. But I cannot in good conscience support Senator Bonacic's bill, though I very much appreciate what he is trying to do for his school district.

Thank you, Madam President.

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

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Onorato, to explain your vote.

SENATOR ONORATO: Madam President, after hearing all of the discussion here this evening on these aid to school districts, I am definitely going to be voting no this particular time, only because of the unfairness that I have been recalling here.

And I think that in the future we shouldn't be paying off debts for other school districts before the State of New York actually pays what is owed to the City of New York, to the tune of $900 million.

We are continually subsidizing other school districts, interest-free, who got money that they didn't deserve, and we're not paying the City of New York money that is deserved and owed to them. So in all good conscience, I cannot support anything that is going to continue to bring injustice to the students and children of the City of New York I vote no.

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

SENATOR STAVISKY: Yes, Madam - Mr. President.

ACTING PRESIDENT MEIER: That's okay, we changed quickly.

SENATOR STAVISKY: I wish to be recorded in the negative.

I too believe that this is a form of welfare. And we all agree that welfare ought to be reformed, and a good place to start is in that school district.

There is a very specific distinction between this bill, Senator McGee's bill, and the other bills that we have passed in the last couple of weeks. This is wrong. It's wrong, and I urge all of my colleagues to vote no. Money is owed to the City of New York. $2 million would be a good start. And I just think it's wrong.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 482 are Senators Dollinger, Gentile, Hevesi, Montgomery, Onorato, Paterson, and Stavisky.

Ayes, 50. Nays, 7.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Alesi.

SENATOR ALESI: Regular order. Thank you, Mr. President.

ACTING PRESIDENT MEIER: The Secretary will read in regular order.

THE SECRETARY: Calendar Number 489, by Member of the Assembly Vitaliano, Assembly Print Number 5116, an act to amend the Executive Law, in relation to designating.

SENATOR DOLLINGER: Explanation, please.

ACTING PRESIDENT MEIER: Senator Marchi, an explanation has been requested of Calendar Number 489 by Senator Dollinger.

SENATOR MARCHI: Well, I believe, Mr. President, that a cursory examination of the events that took place in Bastogne, in the Ardennes, in the Belgian-Luxembourg area, will commend all of you to support this legislation.

It states very mildly that they want to designate December 16 as Bastogne Day.

And if it meant only that and we didn't take into account the larger implications, historical implications, of the victory that the United States and the Allied powers were able to gain in Bastogne, it would not be enough.

This was a very critical area coming at a most anxious moment in the history of the world, one of the historic -- perhaps greater than the episode at Pearl Harbor, greater than almost anything in ancient history. But in terms of its impact on the martial division of strength, this was decisive.

And back in World War I, when the Italian troops had overcome resistance in Austria, Ludendorff buzzed off to warn, notwithstanding the fact that German troops were still in France, although the lines were static.

This time the southern flank was secure, and there was a titanic battle going on in the east with the Russian -- advancing Russian armies. So this was a surprise attack. Nothing wrong with that, because they

were involved in very, very high stakes.

But they launched this great attack, and the nexus had come to Bastogne, in this very critical area, where at the juncture of 101st Airborne Division, maybe between 20,000 and 30,000 men stood before 40,000 German troops and against much larger forces behind them.

And they had offered the Americans the privilege of accepting a surrender to end the further loss of life. And Brigadier General Anthony McAuliffe said "Nuts!" That was his response, the one response that he sent back. And it galvanized the spirit of the American troops, reversed the pattern that was developing. And ultimately the Battle of the Bulge became part of the history of probably the demise of Europe as a major factor in military adventure.

I know at the time I was out in the Pacific, and we were besieging Okinawa, and we had the heaviest loss of life ever. But the Japanese at that time were bargaining and attempting to get and obtain a cessation of activity. But we insisted they had to

surrender first. But it would not have come about.

We don't know what would have happened if McAuliffe had not prevailed, along with the brave troops of that period. And it's very important that we recognize this, not only for memorializing and saying this day is important -- and I believe they mention December 16 as Bastogne Day -- but also in our history books and in our knowledge of what happened and how this was so significant in the ultimate collapse of the forces that faced Europe and the United States.

And that was the tripping stone. When that happened, it was a very serious blow to them, and it ultimately resulted in our prevailing.

I know that my good friend the Senator is going to speak on it somewhere along the line, because he has a very lively apprehension and realization of the historic event of this.

But the bill was -- it did survive the Assembly, and it's here now, and I believe that we would be well-served in advancing

this, but being fully aware of what was involved and the significance it had in the end of World War II and the hope it engendered that we would know a period of peace from that day on.

So there will be others, I assume, that may want to speak to this. I know Senator Dollinger, we had a very exciting discussion of the event.

And when you realize what happened and what the effect has been, it explains a great deal about our circumstances today. Of course we had the atomic bomb, we had a lot of things happen. But at that time it was tenuous. We didn't have that assurance, and it could have gone either way. It came just within a gnat's eyelash of the defeat and the slicing in half of the Allied forces in Europe, the European continent, cutting across the fuel lines and other areas of supply in Europe from north to south.

So this was a very historic battle, and not one that we should just adopt with a casual yes, but with the hope and realization that we will be sensitized to the importance

of the event.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President. I rise -- I'll be very brief. I appreciate Senator Marchi's eloquence in support of this resolution or this bill to commemorate Bastogne Day.

And Senator Marchi couldn't be clearer in his subscribing the importance, the military importance and frankly the historical importance of the Battle of the Bulge and the great confrontation at Bastogne.

Because, Senator Marchi, I think that this battle will be known as the last of a number of critical military events that occurred through eastern Europe -- or, excuse me, western Europe. It's really the final battle of the Holy Roman Empire, the final collision between the Gauls and the Franks, with the Picts and the Scots and the Angles in England and all of those forces coming together, as they had on the plains of northern Europe for centuries, from the attempt by Charlemagne to unify the Empire,

the Holy Roman Empire, to the collapse of that empire, the battles at Agincourt and Arques, certainly carrying into World War I. The entire range of military history, the clash of the world's major powers occurred within a 200-mile radius of Bastogne.

This is their final battle. It's the final battle in which weather is an amazing, a supreme factor -- the weather at Bastogne on those December days, of course, grounding the American air force. And the last great battle in which infantry will fight the major portion of the battle. Now, with modern technology, of course, air support and naval support has really assumed preeminence in the military history.

It's also the end of military domination in the technology. It's the last great battle fought with European technology, the tank and the airplane. Of course, the focus of military technology shifts after this battle in the United States with the development of intercontinental ballistic missiles, Trident submarines, and other forms of delivering the devastating weapons that we

now use in warfare.

The Battle of the Bulge and Bastogne is also a tremendous testament to America's organizational strength. I'm always reminded, Senator Marchi, that between June 6, 1944, a day in which there was no Allied troop in Europe, six months later, on December 16, when the counteroffensive occurred, there were 1.9 million American and Allied troops in Europe. 10,000 men a day came from England or from the United States to Europe to fight. Think of the organizational effort that that required -- from lawyers, from doctors, from nurses, the whole gamut of Americans that participated in this great battle.

The last point I would just make, Senator Marchi, is in why this should be commemorated. It's really the end of the era of the great land battles. Now we fight battles in terms of strategic supremacy around the globe. The weapons that we fight with are no longer pointed at people across a trench, they're now pointed at nations across oceans because of the advance of our technology.

And I would just conclude my

remarks on this battle by saying there are two American cemeteries in Belgium that honor the 9,000 men and women who died in the Battle of the Bulge. They are part of America's soil a long ways away. And I would just suggest that by commemorating this, we recognize that there are New Yorkers who gave their lives in this last great battle for European supremacy.

Now, as the supreme power in this world, we carry the responsibility to make sure that those battles and the terrible cost that they extracted do not occur again. It means that we must be strong, we must be decisive. All those characteristics that American troops exhibited at Bastogne, we have to be as a nation.

And I would just strongly suggest this is a tremendous testament to New Yorkers, a tremendous testament to what I hope will be the last great battle in which carnage of that nature carries on. It is now our responsibility to avoid the next Bastogne.

And by making it a day of commemoration, we maybe consign forever the notion that men will kill each other in an

attempt to gain political advantage and instead will talk about those issues and try to resolve and maybe even bring Europe together through discussion rather than by gunpoint.

I'll vote in favor, Mr. President.

ACTING PRESIDENT MEIER: Does any other member wish to be heard on the 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.

The Secretary will continue to read in regular order.

THE SECRETARY: Calendar Number 492, by Senator Stafford, Senate Print 3760, an act to amend -

ACTING PRESIDENT MEIER: Senator Alesi.

SENATOR ALESI: Mr. President, will you lay this bill aside for the day.

ACTING PRESIDENT MEIER: Lay the bill aside for the day.

SENATOR ALESI: Mr. President, would you go to Calendar 400 and lay that bill aside for the day as well.

ACTING PRESIDENT MEIER: Calendar Number 400 will be laid aside for the day.

SENATOR ALESI: And then proceed to Calendar 516.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 516.

THE SECRETARY: Calendar Number 516, by Senator Marcellino, Senate Print 2836A, an act to amend the Vehicle and Traffic Law, in relation to increasing penalties.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT MEIER: Senator Marcellino, an explanation has been requested of Calendar 516 by Senator Stachowski.

SENATOR MARCELLINO: Thank you, Mr. President.

This bill increases penalties for the first and subsequent convictions for

leaving the scene of an accident resulting in personal injury or resulting in serious personal injury or death.

Leaving the scene of an accident resulting in personal injury or serious personal injury is, as we all know, a grave crime. During this time when such an accident goes unreported, the people injured at the scene could become more seriously injured or even die as a result of the lack of reporting.

This bill will bring the penalties for leaving the scene of an accident more in parity with those of vehicular assault or vehicular manslaughter. Under the current law, for example, an intoxicated driver causing an accident faces a more severe charge -- second degree manslaughter, a Class D felony -- than if the person left the scene and sobered up, which would only be a Class E felony.

This bill obviates the problems with the current law, which in essence reward an intoxicated driver for fleeing the scene. In fact, they actually encourage him to do so.

ACTING PRESIDENT MEIER: Senator

Stachowski.

SENATOR STACHOWSKI: Mr. President, if Senator Marcellino would yield for a few questions.

ACTING PRESIDENT MEIER: Senator, do you yield?

SENATOR MARCELLINO: Surely.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR STACHOWSKI: Thank you.

Through you, Mr. President. Senator, I know you said this will bring this in line with current law for vehicular manslaughter and vehicular assault. What is the difference in the penalties? I'm just curious.

SENATOR MARCELLINO: Well, for example, in this particular case the -- let me just check and make sure I got it all correct.

We would be raising -- for a serious personal injury, we would be raising it from an E to a D felony. And for physical injury, from a Class B to a Class A misdemeanor. And in the case of the misdemeanor section, where it's physical

injury, if you did it a second time, it would come up to a Class E felony.

So we're basically upping the penalties on all levels.

ACTING PRESIDENT MEIER: Senator Stachowski.

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

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

SENATOR MARCELLINO: Surely.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR STACHOWSKI: This bill has been introduced every year since '93-'94, and it passes the Senate every year and dies in the Assembly. Is there any way that we can make this bill more acceptable so that it will pass the Assembly, or is it just a matter of because you're increasing the penalties that the Assembly just doesn't seem to want to deal with it?

SENATOR MARCELLINO: I thank the Senator for the softball, but I'm going to try

not to hit it too hard.

The bill is carried in the other house by Assemblyman Harvey Weisenberg. Harvey is an Assemblyman of long standing and seniority and is well-respected. He's carried this bill each and every year. He can't get it out of committee in the other house.

I've asked many times is there any way we could talk about it, discuss it. There is no discussion coming from the other side. We can't seem to bring them to the table, we can't seem to get a response, the answer is simply no.

SENATOR STACHOWSKI: On the bill.

ACTING PRESIDENT MEIER: Senator Stachowski, on the bill.

SENATOR STACHOWSKI: Mr. President, I've voted for this bill every year that it's been brought up. I'm going to vote for it again.

And I hope that somehow Assemblyman Weisenberg finds a way to jar it loose, so to speak, from the committee that it finds itself stuck in, and maybe this year we can do something about increasing the penalties for

somebody that leaves the scene of the accident with injuries in particular, because it leaves the injured party at a terrible predicament and sometimes causes death.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Rath.

SENATOR RATH: Thank you, Mr. President.

Not to belabor the point, there was a circumstance in my district that was exactly what this bill is speaking to. We call the bill hit, run, and hide, because that's exactly what happened.

The perpetrator, the man who was driving the vehicle that killed the man in the road, went home and did not announce until three days later that it was indeed him who had hit the gentleman who had died at the side of the road.

And so to increase the penalties for this kind of a circumstance and to foreclose the possibility of the loopholes is one of the most appropriate things that we can do. Because to hit, run, and hide is not

something that this state can countenance.

And I applaud Senator Marcellino for his leadership on the bill and am happy to be a cosponsor.

ACTING PRESIDENT MEIER: Senator Stachowski.

SENATOR STACHOWSKI: Mr. President, would Senator Rath yield for a question?

ACTING PRESIDENT MEIER: Senator Rath, do you yield?

SENATOR RATH: Surely.

ACTING PRESIDENT MEIER: Senator Rath yields.

SENATOR STACHOWSKI: Senator Rath, I seem to recall that incident and the story. But can you correct me if I'm wrong? Wasn't that individual an attorney, a lawyer? The driver, I mean.

SENATOR RATH: Yes, he was. The driver was an attorney, which makes it even more of a frightening circumstance, because someone who is sworn to uphold the law, to manipulate the law that way was just without its double in my recollection of seriously

deviant behavior, let's call it.

SENATOR STACHOWSKI: If the Senator would yield for one more question.

ACTING PRESIDENT MEIER: Senator Rath, do you continue to yield.

SENATOR RATH: My colleague from Erie County, how could I not yield to my old friend Billy Stack.

ACTING PRESIDENT MEIER: Well, you could. But I'm willing to bet that you won't.

(Laughter.)

ACTING PRESIDENT MEIER: So Senator Rath yields.

SENATOR RATH: You'll have to forgive me, Mr. President.

SENATOR STACHOWSKI: Senator, I think that -- and I don't want to put words in the President's mouth or ideas in his head. I think just the lawyers are getting a little edgy on this conversation.

But, Mr. President, through you, isn't that particular lawyer also now trying to get his license to practice back at this current time, or something of that nature, if

I'm not mistaken?

SENATOR RATH: You're correct, he was attempting to. I believe it has been denied. And I think that that's a perfectly appropriate action to happen to someone who is manipulating what should be a sworn-to circumstance of his life, to uphold the law.

SENATOR STACHOWSKI: Thank you, Senator. Thank you, Mr. President.

ACTING PRESIDENT MEIER: Does any other member 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.

THE SECRETARY: Calendar Number 519, by Senator Skelos, Senate Print 3357, an act to amend the Public Authorities Law, in relation to authorizing.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Skelos, an explanation has been requested by Senator Paterson.

SENATOR SKELOS: Thank you very much, Mr. President. The sole purpose of this legislation is to allow the Atlantic Beach Fire District to lease for up to a 30-year period a vacant parcel of property owned by the Nassau County Bridge Authority, located on the southeast side of the Atlantic Beach Bridge, for the express purpose of constructing a building to be used by its rescue squad.

This legislation merely changes the lease period from 20 to 30 years. It's supported by the Atlantic Beach Fire District, the Nassau County Bridge Authority, the Village of Atlantic Beach. And we have a home rule message by the Nassau County Legislature.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. If the Senator will yield.

ACTING PRESIDENT MEIER: Senator Skelos, do you yield?

SENATOR SKELOS: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HASSELL-THOMPSON: Thank you, Senator.

Through you, Mr. President, just a couple of questions. The sponsor's memorandum refers to the fact that the Nassau County Bridge Authority needs this lease extender for the purpose of constructing this facility to be used by the Atlantic Beach squad, but there's no reference to that in the bill.

My question is, what other projects will qualify under this bill?

SENATOR SKELOS: Well, it would be any other -- first of all, this is the only intended project at this time. They have not requested any other project.

If they did come up with any other project, it would have to be approved by the Nassau County Legislature.

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

would continue to yield.

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

SENATOR SKELOS: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HASSELL-THOMPSON: So that each project, then, that could possibly qualify would have to come back before the Legislature for approval.

SENATOR SKELOS: Yes.

SENATOR HASSELL-THOMPSON: If the Senator would continue to yield.

ACTING PRESIDENT MEIER: Senator Skelos, do you yield?

SENATOR SKELOS: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HASSELL-THOMPSON: Thank you, Senator.

Is there anyone in the Nassau County Legislature that has any objection to the construction of this facility?

SENATOR SKELOS: Is there any -

SENATOR HASSELL-THOMPSON: Any

objection or opposition.

SENATOR SKELOS: Not that I know of. I mean, it's -- we have letters in support from the Village of Atlantic Beach, the Nassau County Bridge Authority, the Atlantic Beach Fire District. And the Nassau County Legislature has sent us a home rule message that was adopted unanimously.

SENATOR HASSELL-THOMPSON: If the Senator will continue to yield, just two more quick questions.

ACTING PRESIDENT MEIER: Senator Skelos, do you yield?

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HASSELL-THOMPSON: Thank you, Senator.

I have read your sponsor's memorandum and I have a sense, but I would appreciate if you would just give me a little bit more information as to what in fact the Atlantic Beach Rescue Squad is going to do with this project that's going to be on this

facility.

SENATOR SKELOS: Well, really what they're doing is they're going to build a new facility in order to rescue people that are drowning.

SENATOR HASSELL-THOMPSON: Is this a "Baywatch" kind of thing?

SENATOR SKELOS: Well, not exactly "Baywatch." We could work on that.

(Laughter.)

SENATOR SKELOS: But the men and women of the Atlantic Beach Rescue Squad do a wonderful job in patrolling not only the area that leads out into the Rockaways through the Rockaway Inlet, but also the ocean area. And many times you have vessels or boats that are disabled, people that perhaps are caught in a drift and pulled out to either the ocean or towards the ocean.

And they are situated in such a spot, by the Atlantic Beach Bridge, where they are available to rescue these individuals. And I believe they have roughly 150 of these rescue calls a year.

SENATOR HASSELL-THOMPSON: Okay.

Then you just answered my last question, what was the rationale for this extension.

Thank you, Senator. Thank you, Mr. President.

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

Hearing none, debate is closed.

Read the last section.

THE SECRETARY: Section 5. 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.

THE SECRETARY: Calendar Number 520, by Senator Kuhl, Senate Print 4388, an act to amend the Vehicle and Traffic Law, in relation to exempting.

SENATOR PATERSON: Explanation.

SENATOR LACHMAN: Explanation, please.

ACTING PRESIDENT MEIER: Senator Kuhl, an explanation has been requested of

Calendar 520 by Senator Paterson.

SENATOR KUHL: Thank you, Mr. President.

This bill has a very isolated application. Several years ago, in the wisdom this Legislature, the wisdom of then the Governor of the State of New York, we mandated that all children who ride bicycles under the age of 14 wear helmets.

At that time we put into conflict some children whose religious tenets require them to wear headdress. And so this bill would just simply allow these people who in fact are required and expected to wear some head cover, as a continuance and following of their religious beliefs, in a position where they do not and are not required to wear helmets.

ACTING PRESIDENT MEIER: Senator Lachman.

SENATOR LACHMAN: Yes. Through you, Mr. President, will the sponsor of the legislation yield for a question or two?

ACTING PRESIDENT MEIER: Senator Kuhl, do you yield to a question from Senator

Lachman?

SENATOR KUHL: Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LACHMAN: Senator Kuhl, this impacts upon, I believe, a few hundred or thousand members of the Old Mennonite faith in your community?

SENATOR KUHL: The number I'm not certain about at this point because the community seems to be growing because of a variety of different reasons. And predominantly located in Yates County, which is part of my Senate district. But that's correct.

SENATOR LACHMAN: Mr. President, will the Senator continue to yield?

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

SENATOR KUHL: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LACHMAN: Senator Kuhl, the wearing of black hats to the Mennonites is similar to the wearing of black hats of the

Amish or of the Hasidim in New York City; is that correct? It's part of their religious tenets?

SENATOR KUHL: I believe that's correct.

SENATOR LACHMAN: Thank you, Senator Kuhl.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Lachman, on the bill.

SENATOR LACHMAN: This bill is a very intriguing and very interesting bill, and it does have two sides to it. It involves the issue of safety and security, which we all want to have for our children, but it involves in my mind an even greater issue, which is the separation of church and state.

Now, America's greatest contribution to world religion, in my opinion, has been the separation of church and state. America has been a veritable greenhouse for the birth and growth of religions, from the Disciples of Christ to the Mormons to the Christian Scientists, and our two largest Protestant denominations -- which, though born

in Britain, really grew in America -- and those are the Baptists and the Methodists.

Here we have a small religious group. They're in a sense related to -- you can say religiously they're cousins of the Amish. The difference is the Amish cannot use electrical or mechanical facilities the way the Old Mennonites can. But in other ways, they're very similar.

In 1972 there was a U.S. Supreme Court decision called Yoder versus Wisconsin. And in this decision there was an important group of people coming together. It was a nonpartisan decision. It involved then Chief Justice Burger, who was a moderate conservative, and the flaming liberal of the U.S. Supreme Court, Justice Brennan.

And they held, in the case involving the Amish where the Amish refused to obey the law of the State of Wisconsin that insisted that their children after the eighth grade attend public school, the U.S. Supreme Court, in a near unanimous decision, ruled that because of the First Amendment, they will permit in this nation that the Amish community

not attend public school beyond the eighth grade because it would be an infringement upon their religious rights.

Now, some of us don't realize - most of us do, especially in this chamber - that the First Amendment involves two major provisions. One is Congress shall make no law in regard to an establishment of religion. And the second is that Congress nor this nation shall prohibit the free exercise thereof.

As in the case with the Amish, if they were forced to send their children to a public high school, it would be in violation of their free exercise thereof of the First Amendment. Similarly, in this situation, which is not education, but vehicular traffic -- and safety, I admit -- I say that if one prohibits the small Mennonite community in Senator Kuhl's district from wearing their black hats, it's an infringement on their religious rights.

And all of us in this chamber are members of religious minorities. And we have to sensitize ourselves to the needs of other

minorities, even in western/northern New York State, where Senator Kuhl comes from, and even if it only involves a few hundred members of the Old Mennonites.

So if I have to choose between the safety issue and the freedom of religions issue and the First Amendment issue, I strongly support Senator Kuhl's legislation on the basis of the First Amendment.

Thank you.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I rise to oppose this legislation.

And I do that because while I certainly agree with my colleague's strong opinion as it relates to freedom of religion, I think that we have an obligation to protect every single child in our state. And I just do not accept that the religious issue should lead us to eliminate certain protections that we know are important for children who are in fact too young to make that decision for themselves.

So while I absolutely respect a

person's right to their own religious belief, I think that I am equally concerned that every single child in our state should be protected. And therefore, I am going to vote against this bill -- not because I'm against anyone's religion, including my own, but I am absolutely opposed to removing protections from children because of religious principles.

I vote no.

ACTING PRESIDENT MEIER: Senator Hevesi.

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

ACTING PRESIDENT MEIER: Senator Kuhl, do you yield for a question from Senator Hevesi?

SENATOR KUHL: Be happy to.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you.

I have a practical question, because I'm concerned, as Senator Montgomery is, and I may wind up voting no on this bill, though I voted yes for it last year.

It is not possible in the Mennonite

community to either wear a helmet under the hat or wear a helmet over the hat? Is that - why is that a practical impossibility?

SENATOR KUHL: Well, Senator, if you were to see the garments that the Mennonites use, whether they're bonnets or hats, they're very wide-brimmed. And to properly cover that, you'd have to have a helmet that was probably two feet across, which would make it totally impossible. Certainly a person would be totally top-heavy. But there is no way -- and they're very high hats.

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

ACTING PRESIDENT MEIER: Thank you for noticing. And -

SENATOR HEVESI: With all due respect.

ACTING PRESIDENT MEIER: Senator Kuhl, do you yield for another question from Senator Hevesi?

SENATOR KUHL: I'd be happy to.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR HEVESI: Thank you.

In the Jewish religion, for example, on Yom Kippur, the holiest day on the Jewish calendar, where observant Jews are supposed to fast, if that observant Jew is sick or elderly or would otherwise have their health in some way compromised, they are entitled to eat.

Is there nothing in the Mennonite religion that would provide an exemption for the requirement that they wear the headdress if wearing the headdress would compromise their safety?

SENATOR KUHL: Not that I'm aware of, Senator.

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

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

SENATOR KUHL: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: If someone in the Mennonite community came to us and

suggested that they should also be exempt from the requirement of wearing a helmet while riding a motorcycle, would you support that?

SENATOR KUHL: No -- well, actually, I probably would, Senator, because I don't happen to believe currently that people should be required to wear motorcycle helmets. I support the ABATE group in removal of those. I think that's another abuse. But that has nothing to do with this situation.

As you may know, the Mennonites and the Amish, depending on what order you are, really don't -- are not inclined to use mechanized vehicles. About the only vehicle I ever see them utilize is a tractor, which they're not allowed to have rubber tires on. They don't go on the normal roads. So I don't think that you would ever see anybody who was practicing the faith, as these people are, requiring them to wear actually hats and bonnets, to actually ever purchase or much less ride a motorcycle.

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

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

SENATOR KUHL: I take it that this is a follow-up to the final question?

I'd be happy to yield.

ACTING PRESIDENT MEIER: This is the penultimate.

SENATOR HEVESI: I'm having difficulty with the concept of finality. This will be the last question.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you.

Is it currently legal in New York State, if an individual has as one of his or her religious beliefs that they cannot have their blood transfused, if that individual is in need of a blood transfusion, for a doctor to fail to perform the transfusion on that individual, thereby respecting his religious belief? Is that legal in New York State?

SENATOR KUHL: I can't speak to that, Senator. I don't know the answer to that question.

SENATOR HEVESI: Thank you.

On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Hevesi, on the bill.

SENATOR HEVESI: I voted for this bill last year, but I don't remember that there was a big discussion about it last year.

I'm going to vote against it today. Because though I do believe that we have to respect religion in many, many different ways, when it comes to the safety of an individual, particularly somebody who can't render decisions for themselves, I believe that that's where the line gets drawn in our country.

And in this particular instance, I can almost guarantee that some child will be riding a bicycle without a helmet in the Mennonite community and be more severely injured than he would have been were he wearing a helmet.

And for that reason and that reason alone, I believe that the safety of a child - or any person, for that matter -- comes ahead of respecting an individual's religious beliefs. Just in the same way that we decided

in New York State that individuals don't have a right to hurt themselves by failing to wear a seat belt and we require that of all of our citizens, and it is illegal to commit suicide, government has to draw a line somewhere. And where children are concerned, that's of more paramount concern, in my view, than is their religious beliefs.

And I would respectfully request that somebody approach the Mennonite community and ask them, in a very similar way to the exemptions that are often made in other religions, such as the one that I articulated, whether an exemption could be made in this case that respects the health and safety and protects the child -- that that wouldn't, in the eyes of the religion, do something counter to the religious beliefs of that community.

I think that that should be explored by the leaders in that community, assuming that there is not a strict fundamentalist interpretation of some text which would absolutely preclude that. In the absence of that, I can't vote in good conscience, because I know some kid is going

to get badly hurt not wearing a helmet.

I vote no.

ACTING PRESIDENT MEIER: Senator Kuhl.

SENATOR KUHL: Thank you, Mr. President. Just briefly on the bill.

Senator Hevesi, I'm disappointed you decided to take that position, because I think that you're not thinking about the other side of the argument. And you weren't here when the law was passed that required young people who were under 14 to wear helmets.

You should know that if you were to drive throughout the Mennonite community, you would not see any helmets on these children. Their parents and themselves have made the decision not to wear them. So in essence, what the Legislature did was, 14 or 10 years ago, whenever that was done, was it made criminals of them.

Now, I have not seen any statements and have not heard of one bicycle accident in which any Mennonite child has been killed as a result of not wearing a helmet. As a matter of fact, we don't read about accidents because

they don't have them. They're their means, their mechanism for transportation back and forth from their church to their home. They don't ride around needlessly, aimlessly at night or whatever. They're very well protected by their parents, by their family.

And so what you are doing by continuing to vote no is you're saying to these kids, we know better than you, number one; you should discard your religion, number two; and, number three, you're entitled to be a criminal simply because you do not wear a helmet.

I think that's wrong, and that's why we've asked for the exemption.

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

Marcellino, to explain his vote.

SENATOR MARCELLINO: Yes, Mr. President. I'm going to vote yes on this bill, because I believe, like what Senator Lachman stated before very eloquently, there is a separation between church and state.

And we have no right to judge another person's religion or faith. We have absolutely no right to do that. That's the slippery slope to making a religion subject to all kinds of laws; therefore, you have no religion. Any religious belief we do not approve of in Albany is automatically struck down for whatever very good reason we can come up with.

Mr. President, that's a bad, bad precedent to set. I vote aye.

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

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 520 are Senators Hevesi, Libous, Montgomery, and

Stachowski. Ayes, 54. Nays, 4.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 532, by Senator Rath, Senate Print 1453, an act to amend the Public Authorities Law and Chapter 579 of the Laws of 1999.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Rath, an explanation has been requested of Calendar 532 by Senator Paterson.

SENATOR RATH: Yes, Mr. President. This bill is a very simple bill. It's just expanding the authority of the Monroe County Water Authority to take title to lands in Genesee County, in furtherance of the agreements that the Monroe County Water Authority has had for the last year or two with Genesee County to develop the countywide water system in Genesee County.

SENATOR PATERSON: Thank you.

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

Hearing none, debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 1. Senator Padavan recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Alesi.

SENATOR ALESI: Mr. President, is there any housekeeping at the desk?

ACTING PRESIDENT MEIER: We have one motion, I believe, Senator.

Senator Libous.

SENATOR LIBOUS: Mr. President, on behalf of Senator Leibell, on page 40 I offer the following amendments to Calendar Number 436, Senate Print Number 3297, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MEIER: The amendments are received and adopted, and the bill will retain its place on the Third Reading Calendar.

Senator Alesi.

SENATOR ALESI: Mr. President, would you recognize Senator Dollinger, please.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Senator Alesi.

I hereby give written notice, Mr. President, pursuant to Rule XI, that I will move the Senate for an amendment to the Rules to create ethical standards for the members, officers, and employees of the New York State Senate. I ask that that be recorded in the Journal, Mr. President.

ACTING PRESIDENT MEIER: That is at the desk and it will be recorded in the Journal.

Senator Alesi.

SENATOR ALESI: Mr. President, there being no further business, I move we adjourn until Tuesday, May 8th, at 3 o'clock p.m.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Tuesday, May 8th, at 3:00 p.m.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Can we delay the proceedings just a moment for me to announce a conference of the Minority to be tomorrow afternoon at 2 o'clock Eastern Daylight Time, in Room 314, the Minority Conference Room.

ACTING PRESIDENT MEIER: Conference of the Minority, tomorrow at 2:00 p.m. in the Minority Conference Room.

The Senate stands adjourned until Tuesday, May 8th, at 3:00 p.m.

(Whereupon, at 5:28 p.m., the Senate adjourned.)