NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 16, 2001

11:21 a.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, May 15, the Senate met pursuant to adjournment. The Journal of Monday, May 14, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could take up Resolution Number 1756, by Senator Libous, have it read in its entirety, and move for its immediate adoption.

THE PRESIDENT: The Secretary will read Resolution Number 1756 in its entirety.

THE SECRETARY: By Senator Libous, Legislative Resolution Number 1756, memorializing Governor George E. Pataki to proclaim Wednesday, May 16, 2001, as Legislative Disability Awareness Day in the New York State.

"WHEREAS, The New York State Senate Select Committee on the Disabled, in conjunction with the New York State Assembly Legislative Task Force on People with Disabilities, is sponsoring the 21st Annual

Legislative Disability Awareness Day in Albany, New York; and

"WHEREAS, Television actress Ashley Wolfe will be the special guest at the 21st Annual Legislative Disability Awareness Day. Recently starring in the CBS made-for-TV movie 'Jewel,' Ashley will join in the celebration in hopes of inspiring other people with disabilities to pursue their dreams; and

"WHEREAS, In addition, a technology fair will be held with exhibitors from across the state displaying their programs; and

"WHEREAS, It is the sense of this Legislative Body that persons with disabilities merit our recognition as they realize the goals of inclusion and equality in our communities and society at large; and

"WHEREAS, It is the intent of this Legislative Body to recognize persons with disabilities, accentuating, in turn, the benefit to New York State of their contributions to our economic, educational and social growth; and

"WHEREAS, Legislative Disability Awareness Day so clearly labors for the

positive and salutary definition of the communities of the State of New York; and

"WHEREAS, Legislative Disability Awareness Day will conclude with this Legislative Body considering legislation significant to persons with disabilities; and

"WHEREAS, Legislative Disability Awareness Day provides individuals with an opportunity to acknowledge and understand the legislative process; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to memorialize Governor George E. Pataki to proclaim Wednesday, May 16, 2001, as Legislative Disability Awareness Day in the State of New York, fully confident that such procedure mirrors our shared commitment to the efflorescence of human dignity; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the Honorable George E. Pataki, Governor of the State of New York, and selected representatives of persons with disabilities."

THE PRESIDENT: The question is

on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could take up Resolution 1755, by Senator Libous, have it read in its entirety, and move for its immediate adoption.

THE PRESIDENT: The Secretary will read in its entirety Resolution Number 1755.

THE SECRETARY: By Senator Libous, Legislative Resolution Number 1755, honoring Ashley Wolfe upon the occasion of her designation as Guest of Honor at the 21st Annual Legislative Disability Awareness Day, May 16, 2001.

"WHEREAS, It is the intent of this Legislative Body to recognize and pay just tribute to those citizens who embody the true American spirit, demonstrating personal

courage and conviction in pursuit of acting achievement without regard to physical limitation; and

"WHEREAS, The 21st Annual Legislative Disability Awareness Day provides individuals with an opportunity to acknowledge and understand the needs and abilities of people with disabilities throughout New York State; and

"WHEREAS, This Legislative Body is justly proud to honor 22-year-old Ashley Wolfe upon the occasion of her designation as Guest of Honor at the 21st Annual Legislative Disability Awareness Day, to be held on Wednesday, May 16, 2001, in Albany, New York; and

"WHEREAS, A native of Simsbury, Connecticut, Ashley Wolfe's aspiration has always been to work in the performing arts; and

"WHEREAS, Today, Ashley Wolfe, who is afflicted with Down Syndrome, is an actress, an inspirational public speaker, a former gold medalist swimmer in the Special Olympics, and a dancer; and

"WHEREAS, Ashley Wolfe is also a 2000 graduate of Lesley College in Boston, Massachusetts, with a major in business. She is a library assistant in the Somerville Public Library, and a volunteer at the Massachusetts General Eye and Ear Hospital in Boston; and

"WHEREAS, Ashley Wolfe is the loving daughter of Dr. Stanton and Nancy Wolfe. Her father is an oral surgeon with the Connecticut Department of Public Health, and her mother is the managing director of the Center for Creative Youth at Wesleyan University, as well as Ashley's acting coach. She also has an older sister, Rebecca; and

"WHEREAS, Ashley Wolfe recently starred in the CBS made-for-TV movie 'Jewel.' She has also appeared in NBC's 'Third Watch'; and

"WHEREAS, Unwilling to accept the limitations that society would have put on her, Ashley Wolfe is a compelling and provocative speaker who forces audiences to question and confront their own assumptions and prejudices; and

"WHEREAS, It is the sense of this Legislative Body to recognize and applaud the achievements of its citizens who would elect to challenge life with an uncommon valor and determination, demonstrating by example and purposeful action that commitment to personal goals is the wellspring of self-fulfillment and achievement; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to honor Ashley Wolfe upon the occasion of her designation as Guest of Honor at the 21st Annual Legislative Disability Awareness Day, May 16, 2001, and be it further

"RESOLVED, That a copy of this Resolution, suitably engrossed, be transmitted to Ashley Wolfe."

THE PRESIDENT: Senator Libous.

SENATOR LIBOUS: Thank you, Madam President.

As read in both resolutions, today is the 21st Annual Legislative Disability Awareness Day. And I'd like to thank all of my colleagues here in this chamber who have participated and will participate throughout

the day.

And we will have a number of exhibitors -- there are well over 40 exhibitors that are down in the well. These exhibitors have grown over the years. We started out, I think, a number of years ago with only five. They are basically showing and helping, through technology, people with disabilities.

And I would like to, Madam President, say thank you to Senator DeFrancisco, who has seven exhibitors here that are teaching people with disabilities with new technology through the Internet and a number of electronic devices. So, Senator, thank you for your participation in making it a success.

And I would ask that my colleagues, during or after session, please go downstairs and visit the various booths.

Madam President, over past years we have been very blessed and honored to have some outstanding citizens from our state and from outside of our state who are advocates for people with disabilities. This year is no

different. Serving as the chairman for ten years on the Select Committee for the Disabled, it is an honor for me to stand here today with our guest and honoree, Ashley Wolfe.

Ashley Wolfe gave a very inspiring speech this morning in the Well to a number of people that were there. She talked about her life, she talked about the difficulties that she has gone through. But yet, going through all of those difficulties, she would come up, as she gave her speech, with a smile. And that smile means that she broke every one of those barriers, those barriers that tend to be put on people who are disabled. Ashley has not let that stop her.

In the resolution, we read that she is an actress. And indeed, Madam President, she an actress, and she performed with stars like Farrah Fawcett and Cicely Tyson in the movie "Jewel."

And if my colleagues have not had the opportunity to see that movie, I would ask that you take some time out this weekend and rent it. Not only did Ashley do an

outstanding job, but it tells a little bit more about why this chamber needs to continue to do for more people with disabilities.

She not only is an actress, as mentioned, she is an inspirational speaker. She gave a great speech this morning. And she's a gold medal winner in the Special Olympics, for swimming.

She also works at Harvard. She works at Harvard in the employment office. And she told me this morning that she has found that to be extremely rewarding, that she can continue to help people there at the university.

And, Ashley, from what short time I've had with you today, I am sure that you have been able to spread some great cheer and knowledge and hope and inspiration to people that you work with there.

Despite all that she has gone through in her own personal life, she continues to be an advocate. Born with Down Syndrome, Ashley has broken every barrier, every stereotype that could have set her back. She is indeed an inspiration to every one of

us here in this chamber, she's an inspiration to every New Yorker.

And I am just pleased and honored that she could share some of her day with us as we continue in this legislative body to move forward in New York State as it pertains to people with both mental and physical disabilities.

Ashley, later today we will be passing a number of pieces of legislation that will assist you when you go out and speak to various groups, that will assist people with disabilities as we continue to follow your lead in breaking down those barriers.

Madam President, Ashley is joined today by her family. And I too would like to recognize in the gallery her mom and dad, her grandmother and grandfather, her cousin and her aunt. And they are indeed a family that is very, very inspirational. I have enjoyed my time with them this morning.

I only wish that this busy place would allow us to spend more time. But when we conclude today, Ashley will then be honored by our colleagues in the Assembly.

So, Ashley, thank you for joining us today. Thank you for what you have done for people with disabilities. And thank you for the inspiration that you give us as legislators so that we can continue to fight on everyone's behalf. Thank you.

(Applause.)

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

And as president of the Senate, on behalf of the Senate, Ashley, I want to congratulate you and state that you are an example and an education to each of us of the inspiration of the individual. And what you have accomplished in your short life is definitely a model for each and every one of us in our daily lives.

Congratulations and best wishes for continued success.

(Applause.)

THE PRESIDENT: Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution Number 1876, honoring the students of Ms. Lutwin's First Grade Class at Lemoyne Elementary School, in Syracuse, for their participation in the "Good News! Good Kids!" Youth Responsibility Program.

SENATOR DeFRANCISCO: Thank you, Madam President.

THE PRESIDENT: Senator DeFrancisco, you're welcome.

SENATOR DeFRANCISCO: I'm very honored today to have a class of students from Lemoyne Elementary School who are being honored as part of our "Good News! Good Kids!" program. And basically what that does is recognize good kids who are doing good things

in our communities, unlike those that normally get reported in the papers, the bad things.

And these students, there's 21 elementary students. Ms. Sally Ann Lutwin is the person that's responsible for monitoring this program. And basically, what they did in their school was obtain used eyeglasses - now, these are 6- and 7-year-old children. They got letters to the newspaper, they went to the other classes in their school to obtain used glasses so they could be used by those who did not have glasses and those that had seeing and eyesight problems, which is kind of appropriate today, on Disability Awareness Day.

So I want to let the world know that in my district and all of your districts there are good kids out there doing good things. I'm happy to honor them today.

And, coincidentally, today we have another class from Roberts School, a group of kids from another elementary school here today visiting. And I'm sure they will be participating in that program next year.

So congratulations.

(Applause.)

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Nozzolio, Legislative Resolution Number 1877, honoring Arvo Efraimson upon the occasion of his designation by the Seneca County Office for the Aging as the recipient of the Senior Citizen of the Year Award on May 18, 2001.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Saland, Legislative Resolution Number 1892, honoring Reverend Monsignor Dominick J. Lagonegro, Pastor, St. Columba Catholic Church, upon the occasion of his designation for special recognition on May 22, 2001.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is

adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could go to the calendar. And we'll just start controversial, with Calendar Number 309, by Senator Libous.

THE PRESIDENT: The Secretary will read the controversial calendar.

THE SECRETARY: Calendar Number 309, by Senator Libous, Senate Print 3577, an act to amend the Mental Hygiene Law, in relation to directing the State Commission on Quality of Care.

SENATOR PATERSON: Explanation.

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

SENATOR LIBOUS: Can we lay that aside temporarily.

SENATOR SKELOS: Madam President, please lay that aside temporarily.

THE PRESIDENT: The bill is laid aside temporarily.

SENATOR SKELOS: Madam President, if we could take up Calendar Number 477, by Senator LaValle.

THE PRESIDENT: The Secretary will read Calendar Number 477.

THE SECRETARY: Calendar Number 477, by Senator LaValle, Senate Print 2761, an act to amend the Education Law, in relation to the return transportation of students.

SENATOR PATERSON: Explanation.

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

SENATOR LAVALLE: Thank you, Madam President.

Senator Paterson, I'd first like to start by thanking Senator Kuhl, as chairman of our Education Committee, and the members of the Education Committee for their affirmative votes to move this bill to the floor.

I would also like to thank Senator Johnson and Senator Skelos, Senator Velella and Senator Volker for their help in ensuring that this bill is before us.

And also, Madam President, I would like to thank Robert and Karen Pace, who are here today in the gallery. Without their help and their support, the provisions as they are drafted would not be before us.

Imagine finding out that your only son's death could have been prevented. Then imagine finding out that the people to whom you entrusted your child abandoned him in his most desperate hour of need. Then imagine that those people were your child's teachers and school officials. As unbelievable as this sounds, this situation has happened and resulted in the death of a child.

Although common sense dictates that school officials should never leave a child behind on a school-sponsored field trip, there is no statute or regulation addressing this issue.

Situations where a student must be left behind on a field trip typically involve cases where a student has been arrested or needs medical attention. While school district officials cannot act in the place of a parent in terms of asserting or waiving a student's legal rights or even to make health-care decisions for the student, students should not be left alone in stressful circumstances. Often the stress of these situations can cause a student to act

impulsively and cause additional harm to themselves.

The bill that we have before us would prevent students from being left behind on a field trip without appropriate supervision and will ensure that they are never left alone in a moment of need.

The genesis of this bill is found in the most tragic story of Robert Pace, Jr., a high school senior in the Riverhead school district. Robert Pace was a college-bound honor student and a varsity athlete who went on a class trip to Great Adventure Amusement Park in New Jersey with 81 other Riverhead students on April 14th in the year 2000. Great Adventure has a zero-tolerance policy about drugs. Consequently, when park security searched Robert's backpack, they found small amounts of various controlled substances. He was first detained by park security and then arrested by the local police.

No school official accompanied Robert to the police station, and the incident was not reported to school officials in Riverhead until later that afternoon. I

believe several hours intervened from the time he left the Great Adventure park until the school district's involvement.

At 18, Robert was legally an adult, not being legally required to contact his parents.

The local authorities processed him and released him on his own recognizance in lieu of bail. The police even expedited the process so Robert could return home with his classmates on the bus. School officials, however, phoned the police from Riverhead and told them that they did not want Robert going back on the bus with the other students.

By the time school officials had reached Robert's parents, Robert had already set off on his own, apparently contemplating the consequences of his arrest.

No one really knows how he got to Manhattan. Police think he probably rode a New Jersey Transit bus. At Penn Station, he boarded a Long Island Railroad train to Ronkonkoma. He made it all the way to Bethpage before deciding he could go no further.

"Please tell anyone who ever knew me that I am sorry for letting them down," read the note that he left behind on his seat. Then he jumped between the two cars to his death.

This tragedy could have been avoided if Robert was not left alone in a situation he was not equipped to handle.

As part of our due diligence that we did after drafting the bill, we contacted the Department of Education and asked whether there is a need for the department to put forth regulations instructing school districts as to their responsibilities. Alternatively, the department was asked if there already were regulations in place and is there a need for said regulations to be reviewed and perhaps tightened.

The Commissioner of the Department of Education, Commissioner Mills, had the Office of Facilities Management and Information Services review the current regulations surrounding transportation as well as the bill. And based upon that review, the commissioner recommended that the most

effective way to put these requirements in place would be through legislative changes that are recommended in this bill. There were no recommendations for any change to the legislation before us.

I have some 3,000 signatures on the part of the residents who live in the Riverhead school district. And the only memorandum in opposition is from the New York State School Boards Association. In that legislative memorandum, just to take a piece, it says: "School districts have a duty and an obligation to exercise care of all students on a field trip, as any prudent parent would. However, this legislation addresses a rare occurrence and could compromise the interests of the majority of students on a trip by depriving them of a chaperone."

Colleagues, I would say to you that I began my professional career as a teacher and a school administrator. While being a school administrator, I had that dreadful call that you receive when a group goes off on a field trip, that there was a student left behind at the Museum of Natural History.

The first thing that -- without checking the school bylaws or regulations, first thing, call the parent. There was a chaperone with the student. How should we proceed? The parent then directed us on how to proceed so that the child would be returned safely. Albeit that was a case of an elementary school student and not a high school student.

As many of you know, it's well-rooted in Education Law that school officials step into the shoes of the parent. And so it is an awesome responsibility every day that teachers and school administrators take upon themselves to ensure that the most precious thing that a parent has, their children, once they set off to school, are returned safely.

It's a basic principle. And when a parent signs a permission slip, it is assumed that that student will be returned back to the school or back to the parent safely.

This legislation amends several sections of law as you look through the bill. And it amends, beginning with the first

section, the common school district section, then the union free school district section of law, central school district, central high school district, BOCES, city school district, and New York City school district boards, community school district boards.

And what we say, as is drafted here in the legislation, is that where a school provides transportation to students who attend a field trip or extracurricular activity or any other similar event, it shall provide transportation back to either the point of departure or to the appropriate school in the district, unless -- and this is the part that involves the Pace case -- unless intervening circumstances makes such transportation impractical.

In cases where intervening circumstances make transportation of a student back to the point of departure or to the appropriate school in the district impractical, a representative of the school district shall remain with the student until such student's parent or legal guardian has been contacted and informed of that

intervening circumstance which makes the transportation impractical and then such student has been delivered to his or her parent or legal guardian.

As I said, this is a commonsense and basic approach. There's nothing fancy about this legislation. It is very direct. And it addresses situations that happen not on occasion, but I would say, if I took a guess and looked into my crystal ball, it happens half a dozen to a dozen times every year in our more than 700 school districts where there's some intervening situation, a student is left behind, there's a medical emergency, or even a student is detained by the authorities.

And so, again, I thank the Education Committee for reporting this bill for our consideration, and I would hope that it is legislation, colleagues, that we could support.

THE PRESIDENT: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President. I won't ask the Senator

to yield, because I think that he has done an excellent job.

THE PRESIDENT: Senator, will you yield?

SENATOR HASSELL-THOMPSON: No, he has done an excellent job in answering my questions. I'd like to speak on the bill.

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

SENATOR HASSELL-THOMPSON: Thank you, Madam President.

It is just unfortunate to the parents, particularly Robert and Karen Pace, that it has taken common sense, Senator, for us to have to legislate common behavior. But I am finding that sense is not as common as we think it to be.

I think the language of your bill expresses the concerns that I would have, and certainly of any parent. We have an obligation, when our schools take our children on trips, to ensure to us their safe return. I commend you and the work of the Education Committee and the bravery of these parents in coming forward and trying to ensure that this

kind of situation does not happen to any of our other children.

Thank you, Madam President.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. Will the sponsor yield just to one question?

THE PRESIDENT: Senator, will you yield?

SENATOR LAVALLE: Yes.

THE PRESIDENT: You may proceed.

SENATOR DOLLINGER: Senator LaValle, what impact does this bill have on the following situation? That my son, actually, who is 17 years old, he is a member of a lacrosse team. He goes to school, he then drives himself to the away game, and he drives himself home.

Does the school district have any responsibility to provide a mandatory transport with the team kind of policy, or does it eliminate that option of driving yourself when you reach that age where you can drive your own car back and forth?

Is it your intention to require school districts, for an extracurricular event like a lacrosse game, where they drive to an away site, that they have an obligation to drive them there and to deliver the whole team back?

SENATOR LAVALLE: Senator, the key here is that you as the parent are in control of what methodology and by what means your son will be returned back to the place that he departed from. So if that is by automobile, and you have given permission, then that is the appropriate methodology of transportation back to the school.

We don't -- as you can see from the bill, Senator, we talk about transportation. It's not defined. It doesn't say a bus, it doesn't say a train, it doesn't say a car. We leave that open to how that student is brought back. Because a student may leave on a school bus but would have to come home by maybe a car, a train.

But the key is that the parent is in control of how that happens, as it should be.

SENATOR DOLLINGER: Through you, Madam President, if Senator LaValle would just yield to one other question.

SENATOR LAVALLE: Yes.

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

SENATOR DOLLINGER: So just for purposes of the record, Senator LaValle, if a school district faces this issue, we're not saying to the school districts of this state that you must transport everybody there and must transport everybody home.

This is not a mandate that they actually do the transportation, it's a mandate that they have the transportation available to the child or the young adult; is that correct?

SENATOR LAVALLE: In the first part of the bill, we talk about the transportation back.

The second part of the bill, Senator, there has to be some sort of intervening circumstance. It is at that point that the school district must inform the parent, must make a telephone call. There must be some sort of dialogue between the

parent.

And at that point the parent may say, Yeah, you can escort him back on the train, you can escort him back in your car, you can escort him back by local bus.

So as you read this, Senator, you can see that we didn't want to tie the hands of the local school district.

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

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

SENATOR DOLLINGER: I'm going to vote in favor of this bill, Madam President, and I would urge its adoption by the house.

I think that the terrible tragedy that Senator LaValle has described should not be repeated anywhere in this state or, for that matter, anywhere in this country. And I'm not opposed to the notion of putting a mandate on the school district that says when a child leaves your facility in your custody, you have an obligation to bring that child back.

However, I would suggest to Senator

LaValle, if this does end up in discussion between the two houses, you might think of an amendment to this bill that clarifies that in instances in which the parents have made alternative proposals for transportation for the child, that the school district's obligation under this portion of the statute may not be suspended, but it is nonetheless modified.

And that what the school district should do is have a policy in place that says we will provide transportation to and from off-site extracurriculars, and we are going to assume that your child, when he gets on the bus, is coming home on the bus. And we will only make a departure from that requirement in the event that the parent gives express direction to the school district, either through the school district contacting them affirmatively or through a permission note - which Lord knows I've signed hundreds of -- a permission note that says my child is permitted to drive home from the event in my family's car or in someone else's car.

I agree with the intention of this

bill. And I'm only afraid, Senator LaValle, that it may be broadly interpreted by the school districts to eliminate that other option of people taking -- especially as they do in my son's case, who is 17 years old and has an automobile and he drives himself back and forth.

And with that caveat, I would just refer it, if it does end up in discussions between the two houses, to put some provision or perhaps allow the commissioner to devise a regulation to implement it along that line, which is the other alternative.

But the concept is the right one. When we say to our school districts, as every parent does, this is my child, I'm putting that child in your custody, we can assume, we should be able to assume, we should be able to rely on the fact that our child will not be left behind.

And my strong voice of sympathy goes out to this family, as the father of a 17-year-old son, that this tragedy should not be repeated ever again.

THE PRESIDENT: Senator

Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. Would the sponsor, Senator LaValle, yield for one question?

SENATOR LAVALLE: Yes.

SENATOR MONTGOMERY: Yes, Senator LaValle, in the legislation you say that the -- a school district personnel. And I'm just wondering if that also includes the possibility of a person who is accompanying the group other than a school district representative.

SENATOR LAVALLE: The answer is yes, Senator. That would be a chaperone who is part of the trip or a teacher or school administrator. But it would definitely include the chaperones that volunteer to accompany a trip.

SENATOR MONTGOMERY: Okay. Thank you.

Madam President, I would just like to speak on the bill.

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

SENATOR MONTGOMERY: Yes, I think

this is a very good bill. It's common sense, Senator Hassell-Thompson has said. And it truly represents, I think, Senator LaValle's interest in protecting young people. So I'm happy to support it.

I do, however -- I'm moved by the story that Senator LaValle has told. This young man, who apparently is bright, he is very capable, he was able to get himself from a strange place in New Jersey all the way back to Long Island.

But unfortunately, because the society that we have is so unforgiving of indiscretions that are typical for young people, because he felt this pressure that he could not live with the sanctions that he would have to face as a young person who had made a mistake -- there was nothing in your story to indicate that this young man was a criminal. He made a mistake.

And he couldn't live with the possibility that he would be viewed as perhaps having let his parents down, having embarrassed his school, having done something so terrible that he had to commit suicide. It

is very, very tragic.

So, Senator LaValle, I fully support this legislation. It's good. But I also remind my colleagues that the young man who committed suicide, apparently because of this incident, I think is a very, very important incident for us to consider when we talk about what to do with young people and when we understand the destruction that is imposed on our young people because of the way we deal with them, especially as it relates to this horrible thing called drugs.

So, Senator LaValle, I support the legislation and I hope that we can also address the other end of this story, which is what happens to young people when they make a mistake in society.

Thank you, Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, on the bill. I was going to ask -

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

SENATOR PATERSON: Thank you.

THE PRESIDENT: You're welcome.

SENATOR PATERSON: I was going to ask the same question that Senator Montgomery did relating to other personnel who accompany the classes, particularly in the primary and elementary schools, whether they could represent the school by staying with the student in a health-care emergency or some kind of law enforcement intervention. And that answer was substantially responded to and satisfied by Senator LaValle's answer.

But I was very touched by the things that Senator Montgomery said. It's frustrating as a lawmaker sometimes when you wish you had put this law on the books before, before this terrible incident had happened. But I guess nobody thought of it, no one really would have ever surmised that the type of lack of judgment that was taken in this case was something that we'd have to mandate.

Or just think that we understand, as I think it was Senator Fuschillo said yesterday, that the school bus really connotes the beginning of school, that when students get on the school bus we have to see them as in the dominion and control of school

authorities at that point, even before they get to the schoolhouse.

And of course from the very inception of our educational system in this country, the real primary purpose of education in those days, or of schools, was custodial, that the hands of school authorities are the custodial hands, they take the place in loco parentis at that particular time. And we would think that they would think as parents rather than as public officials or whatever it is that they thought they were in this particular case.

And so when we look at this piece of legislation, excellently crafted by Senator LaValle, we hope that it will spare someone from this type of a tragedy. And it reminds us that school officials should take that jurisdiction over students even when they've reached the age of majority. They still came to school, they were legally in the control of the school, and the school should have acted that way.

And just to close, I think Senator Montgomery reminds us that the times when

things are difficult for students, those moments when a student or a young person is in need of some kind of advice or counseling, or for someone to have just said one or two words that would have distracted them from feeling that the world came to an end because of an incident that could have been forgiven and forgotten long ago, that somebody should have been there.

And I just want to thank Senator LaValle, because maybe his efforts and those who supported him will have someone there for the next young person who feels that pain and that anguish and has someone there to tell them that everything in the end will be all right.

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 9. 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.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could go back to Calendar Number 309, by Senator Libous.

THE PRESIDENT: The Secretary will read Calendar Number 309.

Senator Skelos.

SENATOR SKELOS: Madam President, before we start, there will be an immediate meeting of the Higher Education Committee in the Majority Conference Room.

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

The Secretary will read.

THE SECRETARY: Calendar Number 309, by Senator Libous, Senate Print 3577, an act to amend the Mental Hygiene Law, in relation to directing the State Commission on Quality of Care.

SENATOR PATERSON: Explanation, please.

SENATOR SCHNEIDERMAN:

Explanation.

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

SENATOR LIBOUS: Thank you, Madam President.

This bill would take the Commission on the Blind and the Visually Handicapped and put them under the supervision of the Commission on Quality of Care. Right now, under current statute, they fall under the Office of Children and Family Services.

And if you look at the structure of what the Commission on Quality of Care does, or CQC, and how the Commission on the Blind and Visually Handicapped really doesn't fit being supervised or reviewed by the Office of Children and Family Services. So this would move it to CQC.

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

Senator Paterson.

SENATOR PATERSON: Senator, would you be willing to tell us a little more specifically why the commission doesn't fit with the Office of Children and Family

Services? I would assume because many of the people served by the commission are actually adults.

SENATOR LIBOUS: Yes, Madam President, I'd be happy to talk about that.

And I misspoke on one item. They would still be within the Department of Children and Family Services, but they would be reviewed by the Commission on Quality of Care. So I apologize, Madam President, and to Senator Paterson.

And if, Madam President, Senator Paterson could ask that question one more time, I'd be happy to try to address it.

THE PRESIDENT: That means that you will yield to a question, correct, Senator?

SENATOR LIBOUS: Yes, I will.

THE PRESIDENT: Then Senator Paterson may proceed with a question.

SENATOR PATERSON: Thank you, Madam President.

Forty years ago, of those people who were either totally blind or legally blind or suffering from visual disabilities,

92 percent of them were -- their overall disability was specific to that cause.

Now, interestingly enough, most people who have issues that require intervention in the blindness field also have other disabilities. And really, it's about fifty-fifty, if not less than 50 percent of those people who have visual disabilities are accompanied by other illnesses and challenges in their lives.

And I wanted to ask Senator Libous if that would also be one of the reasons that the Commission on Quality of Care would be the most apt supervisor, as opposed to just supervision from the Department of Children and Family Services.

SENATOR LIBOUS: Madam President, to Senator Paterson, without being too simple, the answer to your question is yes.

And one of the concerns that we have had, Madam President, is that we believe that review by the Commission on Quality of Care will give this 30-plus-billion-dollar agency the type of expansion that it needs as it serves people who are blind and people with

disabilities.

While we recognize that Children and Family Services do an outstanding job in what they do, we believe that by having review by an agency who cares about the care of people with disabilities, that that fits better under that umbrella. And that by no means are we looking to temper services or to run how the agency runs.

We're just looking to make sure that the quality of care, if you will, Madam President, continues to grow and get better.

SENATOR PATERSON: Madam President, on the bill.

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

SENATOR PATERSON: I think we were remiss before. I think I speak for everybody on this side of the aisle when we compliment Senator Libous for his efforts in the disability field, for his continuance of this Disability Day since he came here in 1987, and his work in the field which has caused him to become renowned on the subject pretty much statewide.

And to let him know that particularly his efforts on behalf of the Commission for the Blind are appreciated. And as someone who was a client of the commission, in spite of that, I think that he has been helpful to those who have passed through the system.

And even if he knew that they were the ones who taught me to be assertive in my life and to ask a lot of questions, that he would still be willing to allow the Commission on Quality of Care to have a supervisory role, which I think will enhance the ability and the effectiveness of the commission.

Thank you.

THE PRESIDENT: Senator Schneiderman.

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

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

SENATOR LIBOUS: Yes, I will, Madam President.

THE PRESIDENT: You may proceed,

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you.

I must confess I'm not as familiar as Senator Paterson with the Commission on Quality of Care for the Mentally Disabled. My question is, does this only cover, at present, mental disabilities? Are people with other physical disabilities covered by other agencies?

SENATOR LIBOUS: Actually, the commission -- Madam President, through you, the Commission on Quality of Care I believe does oversight for both OMRDD, OMH, OASAS, and other agencies. So this would just be another agency that they would have review over.

We feel that, again, if you look at the commission's work in the past and if you go back -- and, you know, we even cite situations that happened like Willowbrook and others -- that is the function here. The function is to make sure that the Commission on the Blind and the Visually Handicapped are able to do better than they are through this review process.

We're not looking to restructure,

we're not looking to ask Family and Children to -- we're just asking for the review process -

THE PRESIDENT: Could the members please take their conversations outside the chambers.

Go ahead, Senator Libous.

SENATOR LIBOUS: We're just asking for that review process to take place where we believe it would be very helpful.

SENATOR SCHNEIDERMAN: Through you, Madam President, so will all of the services for all the disabled in New York State then be consolidated under this review if this legislation passes?

SENATOR LIBOUS: No, Madam President, we believe that VESID is still going -- VESID will still be under the State Education Department.

SENATOR SCHNEIDERMAN: Through you, Madam President, are there -

SENATOR LIBOUS: Madam President, if I may, my learned counsel tells me that that may be the case because of federal law.

THE PRESIDENT: Senator, will you

yield for another question?

SENATOR LIBOUS: Sure.

THE PRESIDENT: You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: And is there any additional funding being provided to the commission for undertaking these additional responsibilities?

SENATOR LIBOUS: No.

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

On the bill.

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

SENATOR SCHNEIDERMAN: This is an area where because, and the sponsor alluded to the federal requirements, there are a great many federal programs and a lot of federal dollars that we have to access in New York State.

And I do think that this does sound like it's a move towards us coordinating and consolidating our efforts as a state to make sure that we provide good services and get all

possible federal funds.

I do think that this probably is going to require some additional funding for the commission. I'm not sure if that could just be transferred over from the offices that were providing the supervision before. But it does sound like a good idea to consolidate this. And I hope that we will be able to continue to improve our services for the handicapped and all the disabled in New York State.

Thank you, Madam President.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. Would Senator Libous yield for a question?

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

SENATOR LIBOUS: I'll be happy to yield, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR MONTGOMERY: Yes, Senator Libous, I join my colleagues in complimenting

you in your excellence in representing the people who have disabilities in this state.

I just want to ask, your legislation would transfer the functions from the Office of Children and Family Services over to the Commission on Quality of Care. And I'm just wondering, the legislation -- the memo that accompanies the legislation indicates under the fiscal implications that "CQC will require a small plus up to cover the cost of the additional responsibility."

And I'm just wondering if you anticipate that we're going to transfer a sufficient amount of resources so that we don't lose any capacity based on new, additional responsibilities for CQC.

SENATOR LIBOUS: Madam President, Senator Montgomery asks a very, very good question. And let me try to explain it so that we can clarify the point that you make.

We are not transferring, Senator - first of all, Senator Montgomery -- and through you, Madam President -- let me say that my intent here is, like the intent of any piece of legislation that I move forward in

helping people with disabilities, is to try to help more people and try to enhance the programs that we do here in New York State. And certainly you have been very helpful and supportive, both as a member of the committee in the past and here on the floor.

This will not physically transfer the agency out of Children and Family. They will still be under Children and Family. The review process where they will be reviewed, just like OMRDD and OMH and OASAS is reviewed, will fall under the Commission on Quality of Care.

Right now, CBVH really is not reviewed by anyone. Certainly they fall under Children and Families, which is fine, and they will stay there. The agency will stay there. But there is no oversight.

Our concern is, as we have found with OASAS and OMH and OMRDD, that unfortunately, from time to time when caring for people with disabilities, there have been some problems that needed to be addressed, and those problems came up through the oversight process.

So as the bill states, Madam President, and Senator Montgomery, it says "review." And that's the key word. We are not physically moving it, we are not physically saying that the Children and Family is no longer going to house the commission. They will.

And certainly to answer the fiscal thing -- and I know that I said earlier that there wouldn't be -- there is not a fiscal note attached to this. Certainly some may assume that the commission might come back and say, Gee, we need a half a body to do this or whatever. But again, I think that's something that they can maintain within their budgetary function in-house.

SENATOR MONTGOMERY: All right. Madam President, if I may continue my questioning -

THE PRESIDENT: Senator Libous, will you yield?

SENATOR LIBOUS: Absolutely.

THE PRESIDENT: You may proceed, Senator.

SENATOR MONTGOMERY: -- for

clarification.

Madam President, through you, Senator Libous, the people who are blind and visually handicapped, to a lesser or more extent, seem to have a different set of circumstances very often; i.e., they're more independent, more spread out. And the excellent work of the CQC seems to be more focused on congregate situations.

So I'm just -- I am -- again, I ask if we are -- if there's an assurance that the CQC can in fact do a thorough review, as they certainly do now, given the different nature of the way that blind and visually handicapped people tend to be living.

SENATOR LIBOUS: Madam President, again, Senator Montgomery asks a very good question.

And, Senator, at the present time, CQC has oversight through the mental health system and the system of OMRDD, which has programs that are sprawling throughout all of our Senate districts and communities throughout the state. So I would see this as an easy function for the commission, that they

could handle that.

And one of our concerns has always been that CBVH, one of their key goals in working with people who are blind and have visual disabilities is to find employment for them. And many of them, as a matter of fact, here in the Capitol, the newsstand downstairs. I know in my state office building they run, in Binghamton, programs there.

And one of the problems, we actually had a problem with the arrangement in the Binghamton state office building, that had there been some oversight that we could have probably detected a program where people who were blind were not treated properly, were not given the opportunity for the type of full employment that they deserved.

And had we had an oversight or CQC doing evaluations, this would have been detected years in advance. And unfortunately, you know, it came to the conclusion where we found a program in our own building that was not properly run or maintained.

So again, Madam President, through you, we believe that this change, this review

process by CQC throughout a sprawling state, as it does now, will be very beneficial to those who have a disability, a sight disability.

SENATOR MONTGOMERY: All right. Thank you, Senator Libous.

And, Madam President, on the bill.

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

SENATOR MONTGOMERY: I think this is certainly a good -- and I admire Senator Libous's attempt to create a tighter sense of review over the agencies as well as the programs that serve the visually handicapped.

And it gives me a little bit more comfort and security in knowing that the CQC has been really very responsive, very thorough, and they really are good in what they do. They protect the interests of people who are unable to speak for themselves, they are experts in holding agencies and programs accountable, and I think they certainly are equipped to do a more thorough job in holding people accountable who serve the blind and visually handicapped.

I do have one caveat, and that is we must make sure that they have additional resources in order to do this job. Because I would not want to have us give them a mandate to do more work without the proper resources, which might water down their capacity to serve all of the areas that they serve.

So with that, I certainly support this legislation, Senator.

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

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 335, by Senator Hoffmann, Senate Print 3665, an act to amend the Agriculture and Markets Law and the Tax Law.

SENATOR DUANE: Explanation,

please.

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

SENATOR HOFFMANN: Thank you, Madam President. I'm happy to speak to this law, this bill.

We right now have a fairly limited definition of service dogs. It deals largely with physical disabilities. And the need for service dogs for people with neurological and other types of disabilities has become apparent, and we would like to expand that.

In the Executive Law, we already have an expanded definition. But this proposed bill would amend the Ag and Markets and the Tax Law to incorporate, by reference, a broader term of "disability."

This would define disability as a condition regarded by others as such an impairment, would include in the category of persons with disability of all those who have a disability within the meaning of the Executive Law, and not only those who are mobility-, vision-, or hearing-impaired under the existing law.

And there is also a minor change in this particular bill that would allow municipalities to transmit the licensing data to the Department of Agriculture and Markets by the fifth day of the month following license issuances.

THE PRESIDENT: Senator Duane.

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

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

SENATOR HOFFMANN: Yes, I will.

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

SENATOR DUANE: Thank you, Madam President.

Have there been cases that clarifications to the current definitions "service dog" and "persons with disability" have been necessary?

SENATOR HOFFMANN: Yes. Madam President, the answer would be yes.

SENATOR DUANE: And through you, Madam President -

THE PRESIDENT: You may proceed

with a question, Senator.

SENATOR DUANE: Thank you, Madam President.

Could the sponsor just give me just a couple of the cases where this has been necessary, just a couple of examples?

SENATOR HOFFMANN: Madam President, no, I don't have examples readily available.

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

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

SENATOR HOFFMANN: Yes, I will.

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

SENATOR DUANE: I certainly know of the important service that service dogs provide. But I'm wondering how many of these types of dogs are licensed within the state currently.

SENATOR HOFFMANN: Madam President, I would have to indicate that that information would be available at the

Department of Agriculture and Markets.

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

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

SENATOR HOFFMANN: Yes, I will.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Is there a need for more service dogs in the State of New York?

SENATOR HOFFMANN: Madam President, the answer to that would be yes.

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

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

SENATOR HOFFMANN: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: How long is the service training period for service dogs?

SENATOR HOFFMANN: Madam President, the answer to that is the service training varies depending upon the type of service the dog would be going into.

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

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

SENATOR HOFFMANN: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Is there a minimum training period time for service dogs?

SENATOR HOFFMANN: Madam President, no, there is no minimum training.

SENATOR DUANE: Hmm. Interesting.

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

THE PRESIDENT: Senator Hoffmann, will you yield?

SENATOR HOFFMANN: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Are service dog purveyors presently licensed by the state?

SENATOR HOFFMANN: No.

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

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

SENATOR HOFFMANN: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: The areas of mental illness, panic disorders, disabilities such as those, are they covered now under the law, or would they be covered with your law?

SENATOR HOFFMANN: That was two questions, Madam President. Which question would the Senator from Manhattan like a response to first?

THE PRESIDENT: Senator Bonacic.

SENATOR BONACIC: Thank you, Madam President. My apologies for

interrupting, but I'd like to call an immediate meeting of the Senate Finance Committee in the Majority Conference Room.

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

Senator Duane.

SENATOR DUANE: Thank you, Madam President. I realize that that was an awful lot in one question, hard to grasp all of it.

Are panic disorders and other kinds of mental illnesses covered within the definition of a person with a disability?

SENATOR HOFFMANN: Madam President, the change in the law would read that a physical, mental or medical impairment resulting from anatomical, physiological, genetic, or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques would be in fact be covered.

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

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

SENATOR HOFFMANN: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR DUANE: And is it the Department of Agriculture that decides whether or not a person falls within those categories?

SENATOR HOFFMANN: It would be a medical determination made in conjunction with the Department of Agriculture regulations.

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

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

SENATOR HOFFMANN: Yes, I will.

THE PRESIDENT: You may proceed, Senator.

SENATOR DUANE: Does that mean that the person with a disability has to present paperwork to Department of Agriculture personnel so that they can then say -- they're the ones that sort of stamp it and say this -

now you can have a service dog?

SENATOR HOFFMANN: No.

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

THE PRESIDENT: Senator Hoffmann, will you yield?

SENATOR HOFFMANN: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR DUANE: If the sponsor could explain to me, because I honestly don't know what that system is.

SENATOR HOFFMANN: I'd have to get that information, Madam President, from the Department of Agriculture and Markets and the Department of Health. I don't have that readily available.

I don't think it's germane to the issue of changing the statute, how it would be, how the processing and paperwork responsibilities would be implemented. Our discussion really should be limited to the actual specifics of the law that we attempt to amend today.

SENATOR DUANE: Well, through you, Madam President, to try to get an idea of whether this would be an increased cost to the state or decreased, would there be a need for more service dogs? Or should I say, will there be more or less service dogs in the state as a result of this?

SENATOR HOFFMANN: Madam President, there would probably be more service dogs recognized as service dogs in the State of New York. There would be no fiscal impact on the State of New York.

SENATOR DUANE: Thank you, Madam President.

On the bill.

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

SENATOR DUANE: Thank you.

I'm assuming, though I neglected to ask the question, but I'm assuming that there wasn't a public hearing on this bill which - I mean, I would have preferred to have gotten information through the public hearing, although, sadly, it seems as if even the sponsor doesn't know some of the information

of the questions I was asking.

And had someone from Agriculture, the Department of Agriculture been at the public hearing, I could have asked them these questions. But I guess that's not what's happened.

You know, I should say I'm surprised, but I'm not surprised that there was no hearing on this and an opportunity to ask questions on the issues that I raised.

I am a little bit surprised that there's no licensing for service dogs. And if we're expanding the definition of service dogs, I think that there may very well be room for fraud and, you know, perhaps even mistreatment of dogs as a result of that. So I am concerned about that.

I'm also concerned that we don't know whether this will mean that there will be more or less service dogs now in the state of New York. At first glance I would have thought that there would be more, but maybe this means that there are going to be less. So I am very, very surprised about that.

Anyway, I do think that service

dogs do provide a valuable service to the citizens of the state of New York. And I'm pleased that the definition of disability has been expanded. But I am sad that there was no hearing and a really unfortunate lack of knowledge on the part of really, as I understand it, those who wanted to implement these kinds of reforms in this house in the past. I would have hoped that members would be prepared to answer questions, and I'm saddened that that's not the case.

So with the hope that we'll have further hearings on legislation dealing with service dogs and their working with persons with disability, I'm going to vote yes on it. And I guess I'll have to resign myself to investigating this information on my own, which is really not the way I think it should be. I think that this information should be made available in a public forum to everyone in this house and any members of the public who wish to attend such hearings.

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 5. This act shall take effect on the 30th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 483, by Senator Kuhl, Senate Print 4178, an act to amend the Education Law, in relation to ensuring.

SENATOR PATERSON: Explanation.

SENATOR OPPENHEIMER: Explanation.

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

SENATOR KUHL: Thank you, Madam President.

This is a departmental bill that we actually presented to this body last year that was adopted unanimously. And after we had adopted it, we found that there were some suggested recommendations. And we had an

agreement between both houses to actually do a chapter amendment, but the Governor wanted to apparently see the bill in full print and full context before he would sign it. So the bill was vetoed last year.

And so we have subsequently made a couple of amendments, and the bill now comes back to us.

The bill, very simply, is focused on one purpose, and that is that we do have, we recognize that we have handicapped students in our school systems. They're being mainstreamed under some mandates coming from the federal government, for which there's provided funding. And as a result of that, we're seeing students who have a variety of different disabilities, whatever it's vision-impaired, hearing-impaired, whatever it happens to be.

And what this bill essentially does is it says that in fact the materials that are usually presented to the mainstream students with no disabilities will be given in a format that's acceptable to the handicapped students at the same time that the information is

initially given to those students who have no handicaps.

So it's a bill that is actually a requirement on the school districts to set out a plan as to how to do that with regard to procurement, what types of disabled students are going to be into the system, and then provide the appropriate educational materials at the same time as is provided to the nonhandicapped students within that educational calendar year.

SENATOR OPPENHEIMER: Madam President, if the sponsor would yield.

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

SENATOR KUHL: I'd be happy to.

THE PRESIDENT: You may proceed, Senator Oppenheimer.

SENATOR OPPENHEIMER: I want to start by saying I think this is terrific. But I have a couple of questions.

What are the amendments that were made from last year to this year?

SENATOR KUHL: Senator, it's very simple. If you look at the bill, first page,

down on line 12 -- you have the bill there in front of you?

SENATOR OPPENHEIMER: Oh, I don't have the whole bill -- okay, yes.

SENATOR KUHL: You've got the bill?

SENATOR OPPENHEIMER: Mm-hmm.

SENATOR KUHL: Line 12, you see over -- the third word from the right, it talks about "preference."

SENATOR OPPENHEIMER: Uh-huh.

SENATOR KUHL: That was an addition. Before, schools were required to make a purchase from a provider. Now we've simply required that they give a provider a preference.

And then down on line 19 and over into line 20, we use the words "or an electronic file in approved format" rather than the language that we used last year. That's really the only change.

Now, I should note, Senator, for your information, last year there were two memos in opposition to this bill, one from the, as we might expect, New York State School

Boards Association. It seems they object to everything.

SENATOR OPPENHEIMER: That's going to cost money.

SENATOR KUHL: Or close to that.

And the other one was from the Association of American Publishers.

Now, this year, with those amendments, the New York State School Boards Association is not filing an objection or a support memo. They've filed no objections, so they're not taking a position in opposition to this bill.

And we do have a memo in support from the Association of American Publishers, because those amendments were really worked out with them and with the other house, and they accomplish the goals that they sought to have accomplished in the initial bill.

SENATOR OPPENHEIMER: Okay. If Senator Kuhl will yield again, please.

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

SENATOR KUHL: Yes.

THE PRESIDENT: You may proceed.

SENATOR OPPENHEIMER: Actually, two questions arise. One is the school books -- wait, what was that? The second one, the book publishers.

SENATOR KUHL: Yes, the Association of American Publishers. AAP, they call themselves.

SENATOR OPPENHEIMER: All right. Then the first question would be, is that because these subsequent materials would be not in book form but would be in alternative forms that aren't textbook?

I guess I'll ask one question at a time.

SENATOR KUHL: Well, let me just read from the memo. That's probably the best way to explain their support.

They say: "The Association supports the bill and recommends its passage and enactment into law. The bill will provide assurances that textbooks are available in alternative formats for children, including students with disabilities whose learning needs dictate their use of such formats. We understand that it is very important that

these texts be in the hands of these students on a timely basis and are eager to cooperate with local school districts to attain this objective."

That's the basis of their support.

SENATOR OPPENHEIMER: Okay. Thank you, Senator.

The other question I have, if you would yield again -

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

SENATOR OPPENHEIMER: -- is when it says a preference in the bill, are we still obliged by the lowest responsible bidder in the preference area? The lowest responsible bidder.

SENATOR KUHL: Yes. The answer is yes, Senator.

If you read the language, it says will give a preference in the purchase of instructional materials to vendors who agree to provide materials in alternative formats. Okay? It doesn't talk about the lowest responsible bidder. That's still in the law and is currently in the law.

Last year what we did was, regardless of the lowest responsible bidder, we said we had to purchase these materials from people who had the alternative formats, regardless of the cost. That was the problem -- one of the problems that the Governor had and outlines in his veto message.

SENATOR OPPENHEIMER: That sounds good.

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

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

SENATOR KUHL: Yes, Mr. President.

SENATOR OPPENHEIMER: I only have a couple more.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR OPPENHEIMER: You mentioned, Senator Kuhl, the federal funding. How much coming in is federal funding and how much is our funding, state funding?

SENATOR KUHL: Well, Senator, that really doesn't have anything to do with

this bill.

What I was just mentioning is in the line at -- you may remember that several years ago, under I think it was what's called "idea legislation," the federal government said to the states that you will mainstream students, and for that we will provide funding. They promised to provide 40 percent of the overall cost, and yet they have never provided 40 percent of the overall cost. That's a loss of billions of dollars to the State of New York and to other states across the country.

My simple point in mentioning that is as an incentive to mainstream children who have handicapped situations into the mainstream of education, and now that is creating a need for alternative formats for these people as they are in fact mainstreamed into the normal education arena.

SENATOR OPPENHEIMER: That raises another question -- oh, you're not Madam President. Mr. President. If I could ask another question.

ACTING PRESIDENT FUSCHILLO:

Senator Kuhl, do you yield for another question?

SENATOR KUHL: Yes.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR OPPENHEIMER: Could you describe what are some of these alternatives that we're talking about?

SENATOR KUHL: You mean the alternative formats?

SENATOR OPPENHEIMER: Yeah.

SENATOR KUHL: It's things like Braille, large print, open and closed caption, audio, and the electronic files, what's called electronic files.

SENATOR OPPENHEIMER: Audio, that's important.

SENATOR KUHL: Yes. So it's meant to put the educational materials in a proper format or text -- not text literally, but text that in fact a person with a handicap can access and understand just like those people who don't have handicaps.

So if you're visually impaired to the point that you cannot read, then the

format may be Braille. Or if you have some other handicap, it may be some other format. But it's meant to cover all the various formats for all the handicapped kids in each school system.

This is why part of the bill requires each school district to develop a plan. Because each school district will have different types of handicapped students in their system, so each program or each plan may be a little different as to how to accommodate. Some people may have some hearing-impaired, some visually impaired, and vice versa. So their approach to providing the formats may be different.

But they're also supposed to, as part of that plan, provide a purchasing mechanism in anticipation of those students who are going to be there next year when the materials are distributed, that they're ready for the distribution of those materials to those handicapped students so they're not left behind.

SENATOR OPPENHEIMER: You sound like the Children's Defense Fund. Do not

leave a child behind.

If I could ask another question, please, through you, Mr. President.

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

SENATOR KUHL: Yes.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR OPPENHEIMER: I think - and check me if I'm wrong, I think we have always understood Braille and we've always understood hearing problems, hard of hearing, deaf. But I think what this bill does is it takes into account a whole variety of learning disabilities that maybe we hadn't taken account of before.

Like some children not being able to read because of some learning -- severe learning disability, so that instruction had to be through audio rather than through visual.

Is that not the direction that this is taking?

SENATOR KUHL: I would say that's

the partial direction of this proposal, Senator.

The other piece that you don't want to leave behind is that it requires school districts to anticipate before the circumstances actually meet or show up at their doorsteps. That being that there are students with handicapped situations in, say, a class, materials are being handed out, but yet the materials for that handicapped situation are not there.

So the reason for the plan is, number one, there are new types of handicapped circumstances in school districts that need to be attended to, but also you need to look ahead as to what the demands are going to be for providing these alternative formats so that you can make the proper purchases at the proper time. So that when they are distributed, whether it's the first day of school in September or someplace along the line, that the handicapped students get the same kind of opportunity and availability to materials that they will understand and be able to utilize.

SENATOR OPPENHEIMER: Oh, I was just going to ask one more question, but now I have two more. If the Senator would yield.

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

SENATOR KUHL: Yes.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR OPPENHEIMER: What you just said sparked me to think of something else.

I don't know if we ever talked about this, but a goodly percentage of my family is deaf, and they have had a person assigned to them through their school years that signed for them. Is this in any way going to remove that person and say now it has to be mechanical or it has to be, you know, in this alternative form?

That wouldn't take away the person, would it?

SENATOR KUHL: No.

SENATOR OPPENHEIMER: Okay. My last question is now that we've made -

SENATOR KUHL: I'll be happy to

yield.

SENATOR OPPENHEIMER: Now that we've made these changes, are we sure that the Governor is going to approve it now?

SENATOR KUHL: We have every indication that the Governor will sign this, because we have met the objections that he raised in his veto message.

And we have had some communications with him, and we're almost at the point where we were able to sign the original bill, because we had an agreement with the chapter amendment, but for whatever reasons, it fell apart at the last minute. And even though the AAP was on board and the School Boards had withdrawn their objection at that point, for whatever reason it was, it just didn't make it.

So we expect the Governor to sign it.

SENATOR OPPENHEIMER: Thank you. I want to thank Senator Kuhl for being so forthright and so detailed.

And as I said at the very beginning, this is a terrific bill. And I

hope everybody will appreciate how terrific it is.

ACTING PRESIDENT FUSCHILLO: Does any other member wish to be heard?

The debate is closed.

Read the last section.

THE SECRETARY: Section 7. This act shall take effect on the 180th day.

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

THE SECRETARY: Calendar Number 490, by Senator Libous, Senate Print 2889, an act to amend the Mental Hygiene Law and the Executive Law, in relation to requiring.

SENATOR DUANE: Explanation, please.

ACTING PRESIDENT FUSCHILLO: Senator Libous, an explanation has been requested on Calendar 490.

SENATOR LIBOUS: Thank you, Mr. President. Calendar Number 490. That's

4-9-0.

The bill would require service providers for persons who are mentally retarded or developmentally disabled to check the employees for criminal backgrounds through the use of fingerprints and background checks by DCJS.

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

SENATOR DUANE: If the sponsor would yield, please.

ACTING PRESIDENT FUSCHILLO: Senator Libous, will you yield for a question?

SENATOR LIBOUS: Sure, Mr. President.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DUANE: Thank you, Mr. President. Could the sponsor tell me the genesis of this legislation?

SENATOR LIBOUS: Mr. President, this bill has been around this chamber for a couple of years. And it is our intent that - our concern was that people who deal with people with disabilities sometimes are not

thoughtful and caring people.

And we felt that it was important, after working with all the providers, talking with the ARCs, talking with the different direct care workers and different people and, quite frankly, talking with the unions, that we wanted to make sure that anyone who is unsupervised, anyone who has direct access to an individual through direct care needs to have a background check, so that there is not any -- a problem of history.

Mr. President, many of the groups and organizations like ARC asked for the bill. So its genesis came from the groups who provide the service to the mentally ill and mentally disabled.

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

ACTING PRESIDENT FUSCHILLO: Senator Libous, do you continue to yield?

SENATOR LIBOUS: Sure.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DUANE: Did they cite any

specific examples of abuse?

SENATOR LIBOUS: Mr. President, is that a question?

SENATOR DUANE: Yes, Mr. President, I was -

ACTING PRESIDENT FUSCHILLO: Senator Duane, will you just reask the question, please.

SENATOR DUANE: Did they supply any specific examples of abuse that had occurred?

SENATOR LIBOUS: Mr. President, through you, and to Senator Duane, yes, Senator Duane, they did.

I'd be happy to cite a couple, if I could, because these are pretty serious. Although I don't like to read, I think I need to read directly. These came from several agencies.

A situation where a direct care worker was hired by an agency which then had to terminate him after finding through the newspaper that the employee had been convicted five times, including convictions for violent felonies. That's one example.

Another example where an employee was hired to drive clients to their programs. The employer subsequently saw the employee on "America's Most Wanted" television show. That's another example.

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

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

SENATOR LIBOUS: Yes, Mr. President.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DUANE: Now, unless I'm mistaken, the legislation doesn't call for sharing of the information with any federal law enforcement agencies. I know it was cited yesterday that the FBI is probably not the one that should be cited, but it's the only one that comes to mind immediately.

And so if the -- in the case cited, for instance, of "America's Most Wanted," if his or her crimes had happened in another

state, this legislation still wouldn't capture that they were a risk.

SENATOR LIBOUS: Mr. President, we reviewed this. It's a very good question. And I believe Senator Saland had a bill previously. One of the concerns was that it takes forever to do an FBI check.

And it was in this case the sponsor's decision -- moi -- decided that working along with these agencies that we would be best to keep it within New York State, that we did not want to go through that rigorous effort that one must have to go through when dealing with the FBI.

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

THE PRESIDENT: Thank you.

SENATOR DUANE: If the sponsor would continue to yield.

THE PRESIDENT: Will you yield for a question?

SENATOR LIBOUS: I'm on my feet, Madam President. I'd be more than happy to.

THE PRESIDENT: Senator Duane,

you may proceed with a question.

SENATOR DUANE: Do any other states require this kind of background check for people working with mentally retarded and developmentally disabled people?

SENATOR LIBOUS: Madam President, I don't know the answer to that question, and I don't really care. Because I serve in New York State, and that's what I care about, is whether New York State does this or not.

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

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

SENATOR LIBOUS: Sure.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Even if we don't look at what's happening in other states that may or may not have data on the effectiveness of this kind of legislation, there are other groups in New York State who are already being fingerprinted.

And I'm wondering if any of them -

any of the commissioners of those agencies or any of the groups whose employees or prospective employees are fingerprinted and given background checks, if there have been any data to see if this has reduced abuse or crime within those areas where this kind of background check is required.

SENATOR LIBOUS: Senator Duane, through you, Madam President, my goal here, as chairman of the Committee on the Disabled, and working with the providers who care very deeply about some of the serious, serious situations that have taken place with direct care workers and people with disabilities, it is my goal to not worry about other agencies or other commissioners, it is my goal as the chairman of that committee to do what I feel is right in my heart and to do what I feel is right in working with them to solve the nasty, ugly problems of abuse, molestation, or any type of situation that could occur.

And when the people who provide services to the thousands of people of New York State who are physically or mentally disabled come to me and ask me for a piece of

legislation that would bring protection to those individuals, then it is my responsibility, Madam President, to just move forward on that legislation and try to do what I believe is right. And I believe this is right.

And I have had no discussions with other agencies. I don't feel that that's necessary.

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

THE PRESIDENT: Senator Libous, will you yield?

SENATOR LIBOUS: Sure.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Thank you, Madam President.

I note that this bill is limited to persons working with those who are mentally retarded or developmentally disabled. But I'm wondering why other mental health workers are not included, since their clients are as vulnerable as the ones who are covered in the

bill.

SENATOR LIBOUS: Madam President, again, when the providers came to us, these are the workers that they were directly concerned about. And these are the workers that we are attending to in the bill.

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

THE PRESIDENT: Senator Libous, will you yield?

SENATOR LIBOUS: Yes. Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: But there are some different providers who do adult mental health than those who provide services for mentally retarded and developmentally disabled people; is that correct?

SENATOR LIBOUS: Madam President, in our state, which is an extremely complex state that services probably more people with disabilities than any other state, we have a variety of providers and agencies that oversee

different types of programs.

As we discussed earlier, the Commission on the Visually Blind and Disabled are under Family and Children, and we wanted to put their review process in CQC. Senator Kuhl articulated a bill recently, just a few moments ago, about dealing with kids with disabilities as it pertains to the State Education Department and the department of VESID, which under his committee he has responsibility for.

So we could probably take almost every agency in the State of New York and look to which agencies overlap as they pertain to dealing with people with disabilities.

So in this particular piece of legislation, Madam President, I felt that the guidelines that deal with these specific workers for these specific agencies and providers is most appropriate to address at this time.

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

THE PRESIDENT: Senator Libous,

will you yield for a question?

SENATOR LIBOUS: Yes, I will.

THE PRESIDENT: You may proceed, Senator.

SENATOR DUANE: Just to clarify, was it that the mental health providers requested that they not be part of the bill? Or was that the sponsor's decision?

SENATOR LIBOUS: Madam President, to you, Senator Duane, this came to me directly from those providers under the umbrella of OMRDD. So they did not come to us, the mental health providers, on this particular issue.

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

THE PRESIDENT: Senator Libous, will you yield?

SENATOR LIBOUS: Absolutely.

THE PRESIDENT: You may proceed, Senator.

SENATOR DUANE: I'm wondering if the sponsor has an idea or a ballpark figure or a range about how many people will need to

be fingerprinted.

SENATOR LIBOUS: Well, the sponsor does like to play ball, so let's see if he can come up with a number.

Madam President, we estimate 53,000 in year one and about 8,000 in subsequent years thereafter.

SENATOR DUANE: Just for clarification, Madam President, if I may, through you.

THE PRESIDENT: Senator Libous, will you yield?

SENATOR LIBOUS: Yes.

SENATOR DUANE: That's 53,000 in the first year and then 8,000 each year afterwards, or over time 8,000 more?

SENATOR LIBOUS: Yeah, we believe over time.

SENATOR DUANE: Over time.

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

THE PRESIDENT: Senator Libous, will you yield?

SENATOR LIBOUS: Yes.

THE PRESIDENT: You may proceed,

Senator.

SENATOR DUANE: Who's paying the freight for this background check?

SENATOR LIBOUS: The provider, Madam President, will pay $50 per request. Up to a cap of $5,000 per year, depending on how many people are being subject to the legislation.

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

SENATOR LIBOUS: Yes.

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

SENATOR DUANE: Does that mean that after -- if a provider has more than a hundred employees, that that would bring it to the cap of 5,000. What happens after that? Who pays?

SENATOR LIBOUS: We believe that at that point, Madam President, the state would absorb anything over that. But for the most part, we would take care of the lion's share.

In looking at all of the providers,

the number of employees, we think that it would pretty much wash out.

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

THE PRESIDENT: Senator Libous, will you yield?

SENATOR LIBOUS: I would be happy to, Madam President.

THE PRESIDENT: You may proceed.

SENATOR DUANE: Was DJCS or -

SENATOR LIBOUS: DCJS.

SENATOR DUANE: DCJS. I have problems with that. I have a lot of problems. That's a minor problem. But anyway, you don't want to hear about those.

But was DCJS consulted about the workload?

SENATOR LIBOUS: Madam President, absolutely. As a matter of fact, we worked with DCJS on putting this information together.

Those figures that I just shared with you, Senator Duane -- through you, Madam President -- was part of the analysis that

DCJS did. We looked at a number of different things. But we worked very closely with them.

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

SENATOR LIBOUS: Yes, I will.

THE PRESIDENT: Senator Libous does yield.

You may proceed, Senator.

SENATOR DUANE: At what point in the application process would the providers be required to do the fingerprinting and background check?

I mean, suppose two people are applying for the same job. Do they both have to have a background check, or is it - because it's prospective and those that have been hired. So I'm wondering, is this one of the things that's required before you actually hire someone?

SENATOR LIBOUS: Madam President, Senator Duane, that is an excellent question. It would be after they were hired.

SENATOR DUANE: After they're hired.

SENATOR LIBOUS: Yes.

SENATOR DUANE: And, Madam President, if the sponsor would continue to yield.

SENATOR LIBOUS: Yes, I will.

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

SENATOR DUANE: I'm wondering who is going to be responsible for the startup for those employees who are already working. Is it the providers who have to give notice, or will it be the state that gives notice that this check has to happen?

SENATOR LIBOUS: Madam President, the provider does.

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

SENATOR LIBOUS: Yes.

THE PRESIDENT: Senator Libous yields.

You may proceed, Senator.

SENATOR DUANE: Is there a recommended or standardized form that each of the providers will have to develop, or do they

get to develop their own? Or how will that be coordinated?

SENATOR LIBOUS: Standardized form, Madam President.

SENATOR DUANE: And through you, Madam President, I'm assuming that the agency will provide that for them to -- or will it be DCJS that will provide that?

SENATOR LIBOUS: That's correct, Senator.

SENATOR DUANE: Thank you.

SENATOR LIBOUS: Actually, this is what it looks like. It's a fingerprint card.

SENATOR DUANE: Oh, we're already there. Great.

Actually, Madam President -- thank you. Thank you. But if I may speak on the bill.

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

SENATOR DUANE: It's no secret that I'm disinclined to require fingerprinting.

And I am a little concerned also

that other mental health providers are not being required to do this. I mean, not that I would want them to, but I don't really understand why some would be included and why other workers wouldn't be excluded. And in some cases, they would be workers for the same agency and some would require background checks and others would not require a background check.

There probably would be no perfect way to craft this legislation to satisfy me. But I do think it would be helpful to see what the experience is in other states, if other states actually do have this requirement, or just to see what the experiences are of other state agencies. It occurs to me there's a real -- you know, a tremendous amount of data out there that could be looked at so that we really know what we're doing when we require these background checks.

I mean, on the face of it, it seems like who would object to background checks. But I'm not convinced that this is really a way to halt abuse in state agencies or with providers. I mean, for instance, if someone

moves to New York States from another state, the New York State DCJS would not find out any problems that had happened before. Only by sharing that information.

And even if it takes a long time to get that information from the FBI, getting it, in sort of the philosophy of what this bill is, would probably, you know, go a long way towards achieving what it's supposed to achieve.

The issue of background checks and fingerprinting is really a very, very compelling and interesting area and one which the state government, of course, has to take a lead on, because we're the ones that have to weigh the civil liberties of workers versus, you know, protecting the public. I didn't ask the question about whether or not there had been a hearing on this, because I'm actually assuming -- and I think probably from now on I'll just assume that there wasn't a hearing unless, you know, it's been otherwise shown.

But I think that in the years fingerprinting has been used in various professions around the state, and indeed

throughout the country, that before we continue to legislate and burden our state agencies and providers with both the administrative and cost issues of background checks and fingerprinting, that we should really look at what the success has been in our state and around the rest of the nation.

So in the absence of having that kind of a public debate and dialogue, I'm going to be voting in the negative.

Thank you, Madam President.

THE PRESIDENT: Senator Schneiderman.

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

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

SENATOR LIBOUS: Yes, I will, Madam President.

THE PRESIDENT: You may proceed.

SENATOR SCHNEIDERMAN: Thank you.

I wonder if we have any information about the size of the providers that would be covered by this legislation. My concern is

that I think it might be very burdensome on some smaller providers. And certainly in my part of the world there are some extremely small agencies that provide such services.

Has anyone taken a look at that issue?

SENATOR LIBOUS: Madam President, that too is a good question. We have taken a look at that issue. There is no restriction on size.

And certainly, again, when the associations came to us, I had to make the assumption that they were speaking on behalf of all their providers, no matter what the size is.

So no, there is not any particular provision that's required by all.

SENATOR SCHNEIDERMAN: As I understand this, is there any provision to allow an employee to actually review the records that are provided to the employer by DCJS, that the employee may review them?

SENATOR LIBOUS: Madam President, DCJS regulations will already apply to this particular situation, as they do with others.

So to answer your question, those regulations are in place by DCJS.

SENATOR SCHNEIDERMAN: So then the employee or prospective employee would have the right to see their criminal records and ask questions or say, Hey, that's not me, that's another Tom Libous who got arrested somewhere, or something?

SENATOR LIBOUS: Yes, Madam President. If that is what the regulations state now, then that is what they will be able to do.

SENATOR SCHNEIDERMAN: Thank you.

The final area that concerns me - and this relates, again, partly to my concern about small agencies and the difficulty of handling this sort of a process and of providing the appropriate treatment of such sensitive data. Why do we have a provision here granting immunity from suit for these agencies if there is negligence in the handling of this information that causes harm to someone?

I mean, we already have a standard of care rule in New York State. And I must

say that I don't understand that provision at all.

SENATOR LIBOUS: Madam President, my counsel tells me that they're immune except in cases of recklessness or gross negligence.

SENATOR SCHNEIDERMAN: And my question, through you, Madam President, is why are we giving them an immunity from negligence?

SENATOR LIBOUS: Counsel advises -- and I happen to agree, because I'm the author -- that, you know, if some small clerical error comes up, we don't need to have all kinds of harassing lawsuits taking place.

That might not make everyone in this chamber happy, but that's the way it is.

SENATOR SCHNEIDERMAN: And through you, Madam President, one final question.

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

SENATOR LIBOUS: Absolutely.

THE PRESIDENT: You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: So if

under this legislation, through negligence, the confidential records of someone's criminal conduct are, you know, revealed in a way that causes harm to that individual, and it's not gross recklessness, that individual will no longer have the right to bring an action; is that correct?

SENATOR LIBOUS: Madam President, there is an exception if someone violates confidentiality.

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

On the bill.

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

SENATOR SCHNEIDERMAN: I think this is an effort to deal with a very difficult issue. And I also have problems with the bill, although I differ somewhat from Senator Duane's concerns.

I think that this is -- the structure that this bill will create I think is going to be quite unwieldy. I think it's very difficult -- and I'm thinking of the areas that I'm familiar with, where we have

lots of different service providers that would fall into this category. A lot of them really operate almost on a shoestring. They don't have great recordkeeping facilities. They don't have the ability to ensure that confidential records are treated properly.

And I'm just very concerned that this system really won't have the intended effect. It will put a particular burden on small agencies for them to have to pay the fee. I think there will be an incentive for providers to avoid using this system.

And then those that do use the system, I don't see any guarantee that the confidentiality of the records will be preserved. And I must say that is heightened by the fact that instead of trying to take extra steps to ensure the confidentiality will be preserved, we provide an exemption from liability for negligence in the treatment of those records.

Right now in the State of New York we have a common-law standard of care that applies to all of us in all of our activities, and it just requires that you act reasonably

so as to avoid exposing someone to harm - foreseeable harm, not just any harm. And I don't see any reason to change that.

And I'm afraid what we're going to end up with are a lot of records sloshing around into places where they don't belong and no recourse to the courts. I appreciate the exception having to do with confidentiality, but it's not clear to me how that would operate in this context.

So while I commend the sponsor for his efforts to address a very important issue, I'm afraid that I will once again have to vote against this particular bill.

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 3. This act shall take effect in 90 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 490 are

Senators Duane, Hassell-Thompson, Montgomery, and Schneiderman. Ayes, 54. Nays, 4.

THE PRESIDENT: The bill is passed.

SENATOR BALBONI: Madam President.

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: Could we please return to reports of standing committees. I believe there is a report from the Finance Committee at the desk.

THE PRESIDENT: Reports of standing committees.

The Secretary will read the Finance Committee report.

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

As a member of the Battery Park City Authority, David B. Cornstein, of New York City.

As members of the Empire State Plaza Art Commission, James R. Breese, of Rochester, and Rosemary E. Burgher, of Selkirk.

SENATOR BALBONI: Madam President, could we please have a vote on the first nomination.

THE PRESIDENT: Yes, Senator Balboni.

SENATOR BALBONI: Thank you very much.

THE PRESIDENT: The question is on the nomination of David B. Cornstein, of New York City, as a member of the Battery Park City Authority, for a term to expire December 31st in the year 2004. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, we have a member that wants to vote on this nomination. Can we just hold that for just a second. We're trying to get them in here.

THE PRESIDENT: Senator Balboni, do you have any objection if we wait a moment or two?

SENATOR BALBONI: Madam President, if we could just lay this aside and

go to the next nomination, please.

THE PRESIDENT: The confirmation is laid aside.

The Secretary will read.

THE SECRETARY: As members of the Empire State Plaza Art Commission, James R. Breese, of Rochester, and Rosemary E. Burgher, of Selkirk.

As members of the Republic Airport Commission, Stella M. Barbera, of Lindenhurst, and Frank A. Nocerino, of North Massapequa.

As a member of the Stewart Airport Commission, James M. Fedorchak, Esquire, of Poughkeepsie.

As a member of the State Commission on Quality of Care for the Mentally Disabled, Angelo T. Muccigrosso, of Schenectady.

As members of the Advisory Council to the Commission on the Quality of Care for the Mentally Disabled, Mary H. Derby, of Geneseo, and Jeffrey Luria, of Central Bridge.

As members of the State Hospital Review and Planning Council, Sister Joseph Mary Brecanier, of Albany, and Alan Kopman, of Oceanside.

And as a member of the Board of Visitors of the Western New York Developmental Disabilities Services Office, Therese Mudd, of Lewiston.

THE PRESIDENT: Senator Balboni, to move the nominations.

SENATOR BALBONI: Yes, Madam President, I move the nominations.

THE PRESIDENT: Thank you, Senator Balboni.

The question is on the confirmations as read by the Secretary. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(Response of "Nay.")

THE PRESIDENT: Senator Dollinger.

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

James Breese, who is up for the appointment to the -- I think it's the Empire State Plaza Art Commission, is a supervisor in the town of Henrietta, represented by Senator Alesi. But I've known Jim for a long time.

He is kind of a quiet art afficionado, and I think he'll be a good addition to the State Plaza Art Commission.

So I just enthusiastically support Supervisor Breese and wish him well in his new position.

THE PRESIDENT: The record will so reflect your remarks, Senator Dollinger.

The nominees as read by the Secretary are hereby confirmed.

Senator Balboni.

SENATOR BALBONI: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR BALBONI: Could we please return to the reports of standing committees and the nomination that was previously laid aside.

THE PRESIDENT: The Secretary will read the previously laid aside nomination.

THE SECRETARY: As a member of the Battery Park City Authority, David B. Cornstein, of New York City.

THE PRESIDENT: Senator Balboni,

to move the nomination.

SENATOR BALBONI: Yes, I move the nomination, Madam President.

And please recognize Senator Paterson.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, am I speaking on the nomination or explaining my vote? It doesn't matter; I just wanted to know.

SENATOR BALBONI: Madam President, could we please move the nomination. And Senator Paterson will have the opportunity to explain his vote.

THE PRESIDENT: All in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(Response of "Nay.")

SENATOR DOLLINGER: Are we voting on the nomination, Madam President? Point of order.

THE PRESIDENT: We are voting on the nomination of David B. Cornstein.

Senator Paterson, do you wish to

explain your vote?

SENATOR PATERSON: Yes.

THE PRESIDENT: You may be heard.

SENATOR PATERSON: Thank you, Madam President.

I'm not familiar with Mr. Cornstein. However, Senator Smith, who is outside the chamber on other business, is. The Senator wanted to voice some concerns with respect to this nominee.

I believe that the Senator asked for an appearance by the nominee, upon information and belief in the committee, and the nominee did not appear. There were certainly some outstanding issues that Senator Smith felt were not resolved. In the substantive committee, not in Finance, she asked for the appearance.

And just for me to even speak too much about this at any length is unfair to the nominee, and also to Senator Smith, because I don't really know the situation. But I did feel it necessary to put that on the record and to use this time to explain my vote in that fashion.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, I rise to explain my vote as well.

I'm going to vote no for Mr. Cornstein for the following reason. This committee process, through the Finance Committee and through the substantive committee process, is designed to give the members an opportunity to ask questions of a particular nominee.

Late yesterday and during the last 24 hours I've become aware of disturbing allegations against a corporation in which Mr. Cornstein is not just a shareholder, he's the chairman of the board. The company is called Telehub Link. It's a company that engages in consumer marketing, direct to consumer marketing. And they are the subject of a court action brought by the Attorney General of the State of New York to enjoin their activities in this state because of widespread fraud against consumers.

Now, most of the discussion that came up in the Finance Committee is that that

isn't necessarily evidence that Mr. Cornstein is involved. I acknowledge that. But it certainly raises a cloud on his ability to serve and whether the Senate should grant the imprimatur of its approval to someone whose company is involved in defrauding our seniors.

I would strongly recommend, Madam President, that this go back to the Finance Committee, that the Majority show its willingness to allow this man to have the opportunity to answer questions and remove the cloud that hangs over him because of his involvement in this company.

And until that cloud is removed and until the Senate commits itself to remove that cloud, give him the opportunity to remove the cloud, I'm going to vote no, and I would urge all my colleagues to do so.

The allegations in this complaint are enormously troubling because they claim that this company has broken laws passed by this Senate, signed by governors, to protect our seniors from telemarketing fraud.

I would strongly encourage the Senate, hold this nomination, give this man an

opportunity to explain himself, and then we can make a proper determination of whether to vote yes or no. Now we're only lost in the cloud that surrounds his reputation, and we don't know what to do.

Under those circumstances, I'm voting no.

THE PRESIDENT: Senator Paterson and Senator Dollinger, the record will reflect your remarks.

Senator Montgomery was next, I believe.

SENATOR MONTGOMERY: Yes, thank you, Madam President.

I too am going to be voting no on this candidate. I do not know him. I have not been able to have an opportunity to ask questions. And certainly the information that I've received is that he is chairman of the board of this telemarketing organization.

And I know that many people in my district have lost their homes, they have gotten tremendously involved in debt problems. This telemarketing is a major deterrent to the economic well-being of people in this state,

especially people like those in my district who are seniors and poor people who have bad credit and they're invited to sign over their homes, just to fold all of their bills into a credit card. It's just a major problem for us.

And so if there is any company - if there's an appointment of any person who is associated with a company that does this telemarketing, I want to be sure that there has never been an incident where they have come into my district and marketed fraudulently to people so that their financial status is jeopardized based on that kind of activity.

So I'm going to vote no, Madam President, until I have an opportunity to have my questions answered by Mr. Cornstein.

THE PRESIDENT: The record will reflect your remarks, Senator Montgomery.

Senator Stachowski.

SENATOR STACHOWSKI: Madam President, I rise to explain my vote briefly.

It wasn't until this morning that I found out some of the problems that some of my

colleagues have with this particular appointee, that in fact the Attorney General is gathering quite an extensive file on complaints against this corporation, not necessarily against this individual.

Because of that, we had some questions that we may not have had yesterday when the list first came out, at least myself personally. So that I didn't see any problem with maybe holding this one until next week so that this individual could come in and say whatever it was, they're addressing it, or whatever it was, it's this or that.

It seems to me that in the past we've had confirmations of people that gathered a lot of no votes for what turned out to be not necessary reasons. That maybe there was something in their past that people had questions on, didn't have a chance to speak to the individual and so voted no, and the person got a lot of no votes that if they in fact had taken a little more time, come and spoke to the individuals that voted no before they had the opportunity to vote, they could have cleared that situation up, as this situation

may have easily been cleared up. But it wasn't done, so the no votes came.

And that's basically a brief synopsis and the reason why I'm voting no also.

THE PRESIDENT: The record will reflect your remarks, Senator Stachowski.

Senator Malcolm Smith.

SENATOR MALCOLM SMITH: Thank you very much, Madam President.

I too have to rise with some discomfort and echo my colleagues' concerns about voting against the nominee. Again, it has nothing to do personally with the nominee. But clearly there are some allegations that have been raised with regards to his ability to perform in an ethical manner as relates to the telemarketing company that he is involved with.

Unfortunately, as a body, we are a body of individuals who passes laws, and we expect individuals that come before us to be confirmed to be an adjunct to this body, in some form or fashion, to respect and honor those laws as well.

Unfortunately, Mr. Cornstein's corporation, while this may seem as though it's piercing the corporate veil in some way or another, is tied to an operation or alleged operation that is not doing right by our seniors.

And I believe, given the fact that he was asked to come before the committee, just as a matter of respect to everyone in the entire body here, we could at least hold this particular nomination until such time that he has come forward and resolved any clouds or concerns as relates to his company and the performance thereof.

So because of those reasons, I will have to be voting no on this nomination.

THE PRESIDENT: The record will reflect your remarks, Senator Smith.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes, Madam President, briefly to explain my vote.

When this nominee was passed on from the substantive committee, the Committee on Corporations and Authorities, our extraordinarily distinguished chair, Senator

Marchi, said that it was being passed on to Finance because Finance was equipped to handle an investigation into these matters and put the matters to rest.

It appears that that has not happened. I don't know why. This is not an appointment that I think a delay of a week or two would seriously impede the operation of any agency of state government.

And I think what we are doing here is leaving the air uncleared. And I think that it is a disservice to this house, it's a disservice to all of the nominees here for us to proceed in this manner. There's no reason not to have an investigation and clear this up.

And accordingly, I will be voting no.

THE PRESIDENT: The record will reflect your remarks, Senator Schneiderman.

Senator Stavisky.

SENATOR STAVISKY: To explain my vote, Madam President.

I too rise troubled by this nomination. It seems to me it's as though we

were going into a store to make a purchase and the purchase is all wrapped up and we don't know what's inside. I think this is the situation with Mr. Cornstein.

We don't know whether these allegations are true or false, and he certainly has to be given the opportunity to explain and to address our concerns. He has not done so.

And for that reason, Madam President, I vote no.

THE PRESIDENT: The record will reflect your remarks, Senator Stavisky.

Senator Duane, to explain your vote, I assume.

SENATOR DUANE: Yes, thank you, Madam President.

I don't know Mr. Cornstein. And my position has generally been that for positions of this kind of caliber, even if it's an unpaid position, that the person should appear.

It becomes even more urgent in a case like this when members of the committees that Mr. Cornstein is passing through have not

had an opportunity to ask him about allegations. And they're merely allegations.

But on a matter as important as this, I think that the prudent thing to do would be to delay this confirmation until such time as Mr. Cornstein is able to appear at his convenience and respond to questions that committee members may have.

And without any personal knowledge of Mr. Cornstein in this situation, and really with optimism that he will eventually be approved for the board -- which I actually represent Battery Park City -- I'm going to at this time be casting my vote in the negative.

Thank you, Madam President.

THE PRESIDENT: The record will reflect your remarks, Senator Duane.

The nominee is hereby confirmed.

Senator Balboni.

SENATOR BALBONI: Thank you, Madam President. Can we please return to the calendar and could we go to -- one minute, please.

ACTING PRESIDENT McGEE: Senator Bruno.

SENATOR BRUNO: Madam President, could we at this time take up Calendar Number 944.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 944, by Senator Bruno, Senate Print 2B, an act to amend the Tax Law and the State Finance Law, in relation to establishing.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Explanation, please, Madam President.

ACTING PRESIDENT McGEE: Senator Bruno, an explanation has been requested.

SENATOR BRUNO: Thank you, Madam President.

This is part of the Senate tax cut proposal, part of our budget proposal. And it relates to about $2.2 billion in tax cuts for the people of this state. And one of the big parts of this is that it would ease the burden on the consuming public by reducing the taxes on gasoline, residential utility bills, commercial heating fuels, will assist

low-income New Yorkers with their heating bills through a personal income tax credit, and promote energy efficiency through a sales tax exemption.

We all know that the price of gasoline is escalating. It is the highest in New York than anywhere in the Northeast, fourth highest in the country, average price per gallon of gas. People are paying about $400 million in state taxes. This would eliminate that state tax, saving the people of this state $400 million annualized.

Currently, the gross receipts tax on utilities, which is passed through to residential customers, is 2.5 percent. This bill eliminates the tax, saving residential consumers $175 million.

Families having problems with the increasing cost of heating their homes through the Home Energy Assistance tax, HEAP, this is a credit to assist families with the dramatic rise in home heating costs. And the HEAP program, the Home Energy Assistance tax credit, would provide 1.1 million eligible families with a tax credit equal to 25 percent

of their state earned income tax credit, the EITC. That's over 400,000 of these families are located in the upstate areas that have the highest heating consumption and costs.

Under this bill, an eligible family with two children getting an EITC of about $875 would receive an additional $220 to reimburse them for a portion of the increase in the home heating costs.

Fuel oil used for residential heating is exempt, as we all know, from the petroleum business tax. That for commercial purposes is not. This removes the PBT on commercial heating fuel, saving businesses 10 million annually.

This bill would also exempt from the sales tax materials that promote energy efficiency, saving consumers about $200 million annually. Some of the products that would qualify would include furnaces, windows, appliances, all approved under the Energy Star Program, alternative energy systems such as solar heating fuel cells, insulation, weather stripping, caulking, anything that would conserve energy.

And localities that may lose revenue that they would normally raise would be reimbursed by the state for any losses that they incur.

This is something that should happen on behalf of the consumers in New York State. We feel that tax cuts are a stimulation to the economy. Given what's happening out there with the potential stagnation, recession, that this would really be a stimulus to everything that happens here in the economy, with job creation as well as making life more comfortable, more tenable for the people here who pay the taxes.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Madam President, is there an amendment at the desk?

ACTING PRESIDENT McGEE: Yes, there is.

SENATOR DOLLINGER: Madam President, I would ask that the reading of the amendment be waived and that I offer the amendment before the house and ask to be heard

on it.

ACTING PRESIDENT McGEE: Senator Dollinger, the reading is waived.

SENATOR DOLLINGER: Thank you, Madam President.

Senator Bruno, there's a lot in this tax bill that deals with energy that's good. I would suggest, however, I do disagree or I'm going to at least raise a disagreement with you about one fact, Senator Bruno, the notion that there's a stagnancy or a recession out there in the state of New York.

I'm not sure that we completely agree on that issue. Although I will acknowledge that given events that are happening, certainly the economy in New York is back at the top of our concern about the future of this state. We certainly need more job development upstate. We certainly need greater job development in our urban communities, like the one I represent.

And I think that it's time to take this focus on energy and add another dimension to it. And that is to take -- Senator Bruno talked about the importance of solar power.

This amendment, Madam President, would allow the creation of a tax credit for wind energy generators. It would also provide for the net metering of solar photovoltaic systems. These are systems that allow the use of the sun and wind to generate energy. They can be extremely important.

This system, if it were enacted, would really pattern -- is patterned after legislation that we put in effect in 1997 which provided tax credits. This increases those tax credits. Thirty states have some form of net metering of these devices. New York is one of only two states that does not allow net metering for small wind energy generators.

We all know that wind energy is abundant, largely in Western New York. The central portion of the state also has ample resources in the movement of the winds. Small wind turbines, those that produce 5 to 100 kilowatts of electricity, have been developed for residential and farm applications, and they can provide a variety of public and private benefits.

We all know that wind is probably the most efficient and clean source of energy. The movement of propellers in the generation of energy, which is all a part of our American past, through the windmill, the use of larger windmills to generate wind power is clearly the most fuel-efficient method of generating energy, and it's one that would do us all credit.

So, Senator Bruno, while we talk about energy in this state -- and I for one have been disappointed that we don't seem to have much of an energy policy in this state in the course of the last six years after we eliminated the Energy Department -- we haven't had a focus on energy until the price of gasoline jumps near $2 a gallon. And then all of a sudden it seems to become critically important.

I would suggest that both this house and the Governor would be well-advised to use the wind resources in New York State, to use them to their fullest by adopting this amendment, by creating an income tax credit of up to $7,500 to encourage the purchase and

operation of small wind turbines.

We can do that as part of our energy system in this state. We can use private enterprise to do it. People can erect these small wind turbines on their own property, they can obtain the necessary zoning and other approvals. It's a great way to add to our energy base in this state without running the risk of further pollution and further damage to our environment.

Under those circumstances, Madam President, I commend this amendment to the house. And I think we can take what Senator Bruno has started with, a reasonably good energy package to try to deal with energy, and we can even make it better by adding this amendment to it.

I recommend a yes vote on the amendment.

ACTING PRESIDENT McGEE: Those Senators in agreement with the amendment please signify by raising your hand.

Senator Dollinger.

SENATOR DOLLINGER: I rise for a point of order, Madam President.

ACTING PRESIDENT McGEE: Point of order.

SENATOR DOLLINGER: Is this a vote on the amendment, Madam President?

ACTING PRESIDENT McGEE: This is a canvass of agreement on the amendment.

SENATOR DOLLINGER: Oh.

Senator Bruno properly points out that canvas is like sails. In fact, Senator Bruno, they put canvases in windmills, which is part of what they use to generate power. So it's -- how appropriate that we could use canvas from the canvass of agreement to propel our windmills.

ACTING PRESIDENT McGEE: Thank you, Senator Dollinger.

The Secretary will announce the results.

THE SECRETARY: Those recorded in agreement are Senators Breslin, Connor, Dollinger, Gentile, Hassell-Thompson, Markowitz, Montgomery, Oppenheimer, Paterson, Sampson, Schneiderman, M. Smith, Stachowski, and Stavisky.

ACTING PRESIDENT McGEE: The

amendment is defeated.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. I believe there's another amendment at the desk. I would request that its reading be waived and that I be heard on the amendment.

ACTING PRESIDENT McGEE: The reading is waived and you may speak on the amendment at this time, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you very much.

The tax relief that's provided for in this bill is not really going to be able to address the serious problems that have been created by essentially our botched deregulation of the energy industry in the state of New York. We have to do a lot more to encourage the reduction in consumption of energy if we're going to be able to survive without building many more power plants, increasing pollution, and overburdening communities that already have too many facilities in them.

I suggest that with this amendment,

which would create a clean energy fund, we will accomplish four things. We will provide funds for promotion of energy efficiency, for energy-demand reduction, for research, and for energy affordability for low-income New Yorkers.

Tragically, and to me incomprehensibly, Governor Pataki has slashed funds for clean energy programs since he was in office. We now are providing less money - significantly less money, about half -- for clean energy programs than we were providing in 1993. We provide significantly less money for clean energy programs than all the states surrounding us. And I don't think it's really in dispute that energy-efficiency programs, conservation programs are critical to our economic health.

The New York State Energy Research and Development Authority has estimated that over a ten-year period every $1 million invested in energy efficiency saves $3 million in energy costs, avoids 100 tons of sulfur dioxide emissions, 70 tons of nitrogen oxide emissions, and 45,000 tons of carbon dioxide

emissions. So it's good financially and it's good environmentally.

This amendment would create a clean energy fund that would provide additional cost saving and also incentives for those of us who wish to expand residential energy programs and purchase the energy-efficient appliances.

This amendment is based on a bill that was sponsored by -- that I sponsored but also there was an almost identical bill Senator Marcellino introduced last year. And I think this is something that should have bipartisan support. And if, somehow or other, this amendment does not pass today, I would urge that this bill be revived.

The time is now to act on the issue of energy prices. This is what we would call in the business world a no-brainer. This will save us money, this will help clean up our air.

I urge a yes vote on this amendment.

ACTING PRESIDENT McGEE: Those Senators in agreement with the amendment please signify by raising your hand.

THE SECRETARY: Those recorded in agreement are Senators Breslin, Brown, Connor, Dollinger, Duane, Gentile, Hassell-Thompson, Markowitz, Montgomery, Oppenheimer, Paterson, Sampson, Schneiderman, M. Smith, Stachowski, and Stavisky.

ACTING PRESIDENT McGEE: The amendment is failed.

Senator Gentile.

SENATOR GENTILE: Yes, Madam President. I believe there's an amendment at the desk.

ACTING PRESIDENT McGEE: The reading of the amendment is waived -

SENATOR GENTILE: And I'd ask that you waive the reading and allow me to explain.

ACTING PRESIDENT McGEE: Thank you. The reading is waived, and you may speak on the amendment, Senator.

SENATOR GENTILE: Thank you, Madam President.

Madam President, my community in Staten Island is one of those communities that has been imposed upon with a generating plant

that we were told is absolutely necessary for New York City to avoid brownouts and blackouts this summer.

It is something that the community has opposed and will continue to oppose. Because we're told that there is enough energy in New York State, the problem is we can't transmit that energy to New York City. It's a transmission problem, not an energy problem in New York City.

And so my amendment, Madam President, would require an amendment to Chapter 451 of the Laws of 2000, and it would require New York City or cities of a million or more to purchase appliances that meet minimum energy-efficiency standards that have been preset.

Now, this is a state law that applies to state agencies. My amendment would now apply to cities of a million or more - i.e., New York City.

This proposal, by directing that the city purchase only those appliances which exceed the minimum energy-efficiency standards will dramatically, dramatically help to reduce

the city's energy needs.

Right now, the City of New York's government agencies consume 800 megawatts of power each year, at a cost of $328 million a year. If this amendment were to be adopted, we could realize in the City of New York a savings of $6.6 million a year.

Indeed, the potential is great here. If the entire City of New York, under this amendment, were to retrofit their red, green, and yellow traffic lights to low-emitting diodes -- which have been done in parts of Queens, and will soon be done in parts of Staten Island. But if the entire City of New York were to do that, it would reduce the capacity needs of energy by more than 10 megawatts and save more than $8.5 million to the city in maintenance costs.

So the potential here, Madam President, is great. Indeed, the refrigeration industry has made great strides in meeting energy-efficiency standards. There's a new generation of energy-efficient refrigerators that has reduced their electricity consumption by 75 percent, or

saving 60,000 megawatts of electricity.

If we were to require New York City to use those more energy-efficient refrigerators in their agency buildings, we would be saving more than $50 billion over the course of the life of those appliances.

So, Madam President, it is a question here that we have been presented with in the City of New York that the transmission of the energy throughout the state is not available to the City of New York. So one of the ways to address that problem is to incorporate this amendment, which would require the city to reduce its energy usage by using these types of appliances. Because the bottom line is that every kilowatt-hour that is saved is one less kilowatt-hour that needs to be found.

So I commend this amendment to my colleagues, not only in the City of New York but in the entire house.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, just a point of order.

If I'm correct, the rules of the Senate do not permit for there to be any kind of party action on a canvass. In other words, you can't have a party vote in the affirmative on a canvass. That is correct, isn't it?

ACTING PRESIDENT McGEE: That is correct. That's why we're asking for hand signalings.

SENATOR PATERSON: Okay. Then that being the case, Madam President, is it permissible, being that the only way a member can be recorded would be to physically be in the chamber, that when we have these such amendments that we ring the bells? Because there's no way for members to necessarily know that we're on an amendment, and therefore no way for a member to be recorded.

ACTING PRESIDENT McGEE: One moment.

Senator Bruno.

SENATOR BRUNO: Madam President, can we have the ringing of the bills to alert the members who are not in the chamber where they belong that this is where they ought to be.

We are doing very important work on behalf of our constituency throughout this state, and members belong in the chamber. We'd like to be able to progress with our proceedings.

But I would ask to have the bell rung while we are debating and proceeding.

ACTING PRESIDENT McGEE: Thank you, Senator Bruno.

SENATOR BRUNO: Thank you, Madam President.

ACTING PRESIDENT McGEE: The Secretary will ring the bells.

Senator Paterson.

SENATOR PATERSON: I just wanted to thank the Majority Leader for acceding to that request, because it will make it easier for the members to be recorded.

But I think it only fair that I reiterate that this was an important bill, we're going to have a final vote on this bill very soon, and that everybody should be in this chamber.

ACTING PRESIDENT McGEE: Thank you, Senator Paterson.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. I just wanted to rise very briefly to speak in support of this amendment.

And again, I urge my colleagues on the other side of the aisle -- oh, I'm sorry, I don't want to interrupt an outbreak of bipartisan sentiment.

In fact, I'm talking more about bipartisan sentiment. This is a bill that expands Senator Morahan's bill, just as the bill that I proposed, the amendment that I proposed follows Senator Marcellino's bill.

These are very important ways to reduce energy consumption in the state of New York. These are very important ways to reduce the price of energy in the state of New York. These are critical ways to ensuring we do not have blackouts, we don't have to put power plants in communities where they don't belong.

And I would urge that if this amendment is also defeated, which I hope is not going to be the case, that this bill will resurface once again. And I'm sure it will

have tremendous support from our side of the aisle.

Thank you. I urge a yes vote, Madam President.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. On the amendment.

Senator Schneiderman is absolutely correct. All three of these amendments, the first two and this one, find their origin in bills that come to us from the Majority. I think this bill follows a bill from Senator Morahan. Senator Schneiderman explained how his bill follows. And the original bill that we did for solar power tax credits comes from a bill that Senator Hoffmann did.

So it seems to me that bipartisanship, which Senator Schneiderman described as an outbreak, I think this is a celebration of bipartisanship. We're taking good ideas that exist and that come to us from the other side. We've taken a look at those ideas, we think they're worthy of inclusion in a massive tax bill that deals with energy.

So, Madam President, I think this is a true demonstration or a celebration of bipartisanship that these amendments are on the floor.

With respect to this specific amendment, this is an amendment -- and Senator Gentile is absolutely correct, it does exactly what we should be doing. It's telling major purchasers to buy fuel-efficient utilities, fuel-efficient equipment -- refrigerators, washers, all those things that a big city would buy, there are ways to buy them that will save us energy.

If we did that as a state, if we took that responsibility seriously, we could substantially reduce our need for power and all the problems that come with it, whether it's the difficulties represented by nuclear generation or the emissions that deal with coal- and gas-fired plants and oil-fired plants.

This is a bill that does exactly what everyone in the state should be doing, buy fuel-efficient equipment. The City of New York, one of the largest purchasers in the

country of this types of equipment, if we tell them to do this, we're going to reduce the need for energy.

We may reduce, Senator Gentile, the chance that a blackout will come rolling through Staten Island and Brooklyn this summer when they don't have enough power.

This is all about preserving what we've got and optimizing the energy we have and not requiring us to use more. It's absolutely the right thing to do. It's an idea whose time has come.

It came out of your side of the aisle. It's a good idea in Republican hands, it's a good idea in Democratic hands, it's a good idea for the Senate to send to the Assembly. And it will be a good idea when the Governor signs it into law, Madam President.

ACTING PRESIDENT McGEE: Those Senators in agreement with the amendment please signify by raising your hand.

The Secretary will announce the results.

THE SECRETARY: Those recorded in agreement are Senators Breslin, Brown, Connor,

Dollinger, Duane, Gentile, Hassell-Thompson, Markowitz, Montgomery, Oppenheimer, Paterson, Sampson, Schneiderman, M. Smith, Stachowski, and Stavisky.

ACTING PRESIDENT McGEE: The amendment is failed.

Senator Wright.

SENATOR WRIGHT: Thank you, Madam President.

It's appropriate, as President Bush is preparing to unveil his national energy agenda, that we're standing here this afternoon discussing the energy agenda in New York State. Because, in fact, New York State, unlike the nation, has an energy agenda. It has been the federal administration that has been absent an energy agenda for the past eight years.

There are but three ways to reduce the energy bills for individuals across this state. Number one is to reduce consumption, energy efficiency. We've talked about that this afternoon. It is embodied in the Senate proposal.

Increasing supply. It is in

concert with the administration that the Senate led the siting bill legislation, Article 10.

And to reduce taxes. Those are the three ways you reduce the cost of energy.

And under the leadership of Senator Bruno, Senator Stafford, in cooperation with the administration, this house has led the way in the nation in reducing energy taxes, going straight to the bottom line of every individual bill, be it an individual resident, a commercial or industrial user.

So in fact, the state does have an energy agenda. The Senate has demonstrated that leadership. For years, under the leadership of Senator Bruno, we debated and advanced the elimination of the gross receipts tax, finally having achieved success.

Last year we initiated and passed one of the first green building tax credits in the nation, sponsored by Senator Goodman on this side of the house.

We have advanced the Article 10 bill to facilitate siting, thereby increasing supply.

All of those elements are part of an agenda for energy in New York State. They are being mirrored on the national level in terms of what is being done.

Now, today, you see us again advancing the proposals, the first being the elimination of the gas sales tax, for obvious reasons. The quickest reduction at the pump will occur through the elimination of taxes.

We continue to advance the elimination of residential GRT. Having started that process last year, we now advance its complete phaseout. And of course, third, you see the proposals in terms of sales tax exemptions on energy-efficiency investments. And, unlike the proposed amendment we just heard, where we mandate a cost on a local government, in fact our bill covers the cost of local governments in terms of their loss of sales tax. That is very intentional, to facilitate energy efficiency and savings.

And while it's not in this particular bill, I would suggest if Senator Dollinger has the opportunity to review Senate 4A, he will in fact find the wind tax

credit reflected in that bill as an amendment to the previously adopted solar credits.

That was initiated, very simply, because of discussions we commenced this past summer in August with the Wind Association nationally, not just in New York State. But the national association was here in New York State, representatives of the Senate and the Power Authority met with them, discussed this concept.

We've not only introduced a bill - as Senator Hoffmann has, as Senator Rath has, as a number of our members have introduced bills on those tax credits -- we have embodied it in the budget bill.

So I think you will find that not only do we have a very clear agenda to move ahead on the issues of efficiency, to reduce consumption, to provide those necessary incentives; at the same time, they are incorporated in very good tax legislation that is critical to providing the necessary reductions to our individual consumers and to protect their interests.

So, Madam President, I would urge

my colleagues to support 2B that's before us now, as well as 4A, and to move ahead on what clearly is making New York State a leader in addressing the energy crisis.

Thank you.

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

Read the last section.

THE SECRETARY: Section 22. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time take up Calendar Number 945.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 945, by Senator Bruno, Senate Print 4A, an act to amend the Tax Law, in relation to elder

care credits.

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

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Madam President, can we now call up Calendar 953, please.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 953, by Senator Bruno, Senate Print 5255, an act to amend the Tax Law, in relation to a sales tax exemption for gas.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT McGEE: Senator Bruno, an explanation has been requested.

SENATOR BRUNO: Madam President, we have talked, we have read, we have heard from our constituency that the price of gas is going up every day, every week. People are having trouble driving to work, driving to school, taking children where they have to take them.

This bill would rescind the sales tax on gasoline. It saves the consumers of this state $400 million. As the price of gas goes up, so does the sales tax. There's something wrong with that.

As I mentioned earlier, New York is presently paying the highest average price per gallon in the Northeast, and I think we are fourth highest in the country, on the average.

So we think this is an appropriate thing to do, keep that $400 million in the hands of the consumers, the driving public.

ACTING PRESIDENT McGEE: Does any Senator wish to speak on the bill?

Read the last section.

THE SECRETARY: Section 10. This act shall take effect July 1.

ACTING PRESIDENT McGEE: Call the

roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

While I join in the sentiment behind this bill, I really don't think that it provides an adequate solution to the problem of high gasoline prices. If gas hits $2 or even $3, the sales tax repeal will seem inconsequential.

And there's no guarantee in this bill that this be passed along to the consumer. We've seen in the past situations arise where taxes are cut but the price doesn't come down for the consumers.

And absent something like that, I'm constrained to vote no.

ACTING PRESIDENT McGEE: Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you.

I'm going to vote yes. But I feel very strongly that we are not doing near enough to control some of the vehicles on our

roads that consume an incredible amount of gasoline per mile. And I think that we have to put some emphasis on controlling -- in one way, I think price is one way to control. And so in a way, I think if we had a very high price on gas, it might be good. We might all think about getting rid of our SUVs.

I think it's important during the holiday season, certainly during the summer season that we permit our families to travel. But I just have to raise my objection to these gas-guzzling automobiles and vehicles that are on our roads now. And I would like the people to think twice about what they're doing when they purchase these vehicles.

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

Senator Duane.

SENATOR DUANE: Thank you, Madam President.

You know, the issue of tax reductions is one which is very, very important. And, first of all, I don't think it's appropriate just to use this as the forum to look at things like tax reductions and what

we're doing with eliminating sales taxes on gasoline. You know, it's not appropriate to do here to begin with, but then after, you know, criticism that people aren't here, there's no -- people still aren't here. People have left.

I think this legislation is really more appropriately part of the budget. And that we're doing these pieces of legislation separate and apart from the budget is just wrong. Instead of spending our time on these one-house budget bills, we would be better off working with our colleagues on both sides of the aisle, and with the Governor, to get a real budget for the people of the State of New York.

I really feel like I've wasted my time by coming in here to even do this. And obviously I have, since people who are critical of people not being in the chamber aren't even here to hear that.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you.

Any other Senator wishing to speak

on the bill?

Announce the results.

THE SECRETARY: Ayes, 57. Nays, 2. Senator Senators Duane and Schneiderman recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, would you lay aside Calendar Number 867 for the day.

ACTING PRESIDENT McGEE: The bill is laid aside for the day.

SENATOR SKELOS: And would you take up Calendar Number 930, by Senator Libous.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 930, by Senator Libous, Senate Print 3667, an act to amend the Mental Hygiene Law, in relation to providing.

SENATOR PATERSON: Explanation.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT McGEE: Senator Libous, an explanation has been requested.

SENATOR LIBOUS: Thank you, Madam President.

The bill would actually require that OMRDD providers submit certain reports to OMRDD via the Internet.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, would Senator Libous yield for a question?

ACTING PRESIDENT McGEE: Senator, will you yield?

SENATOR LIBOUS: I will.

SENATOR PATERSON: Senator, I'm concerned about the allocation. What is going to be the cost of instituting this?

SENATOR LIBOUS: Actually, Senator, through you, Madam President, we believe there will be a savings, because right now there are thousands of reports that are submitted in writing to OMRDD. This will allow the reports to be submitted via the Internet, which is going to make it much

simpler. They can just be downloaded.

At the present time, these reports come in in humongous volumes, and they have to put people at keyboards and they have to data-enter all of this information. It's just -- yes, it's going to save money.

ACTING PRESIDENT McGEE: Senator Paterson.

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

ACTING PRESIDENT McGEE: Senator Libous, will you continue to yield?

SENATOR LIBOUS: Absolutely, Madam President.

ACTING PRESIDENT McGEE: The gentleman yields.

SENATOR PATERSON: Senator, are we going to need new telephone lines to accommodate the greater load that we're going to have when we bring all these agencies on line?

SENATOR LIBOUS: Senator, speaking of telephone lines, someone should take theirs out of the chamber that's ringing

right now.

SENATOR PATERSON: That's an excellent idea, Madam President. I hope you'll -

SENATOR LIBOUS: Madam President, through you, the answer is no.

ACTING PRESIDENT McGEE: The answer is no.

SENATOR PATERSON: No.

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

ACTING PRESIDENT McGEE: Senator Libous, will you continue to yield?

SENATOR LIBOUS: I'm happy to continue to yield to Senator Paterson.

SENATOR PATERSON: The legislation calls for a date of an enactment that I think is somewhat optimistic. Are we planning to have all these agencies online by that date, Senator, or is that just the date that it becomes law and we'll hope that -

SENATOR LIBOUS: That's the date that it becomes law.

Actually, many of these agencies are now providing reports via the Internet.

Keep in mind that we feel that this will save money, be more effective, more efficient.

And also, Madam President, through you to Senator Paterson, there is a disclaimer in there. We recognize there may be one or two smaller agencies who are not able to send it via the Internet. And certainly the commissioner can permit them with a waiver that would allow that to happen.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President. I have a final question if Senator Libous, who has been patient, will suffer one more.

ACTING PRESIDENT McGEE: Senator Libous, will you be patient and suffer one more?

SENATOR LIBOUS: Madam President, I don't consider this suffering whenever Senator Paterson asks me a question.

ACTING PRESIDENT McGEE: He suffers for you.

SENATOR PATERSON: Senator, who will bear the cost of upgrading the computers

or the additional hardware that it might take to accommodate this transition?

SENATOR LIBOUS: Madam President, that is an excellent question.

Let me reference that this is a departmental bill that was sent to us, and that the department has informed us that the infrastructure is already in place to be able to handle this.

SENATOR PATERSON: Thank you, Madam President. And thanks, Senator Libous.

ACTING PRESIDENT McGEE: Senator Hassell-Thompson.

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

ACTING PRESIDENT McGEE: Senator Libous, will you yield to some questions?

SENATOR LIBOUS: Like Senator Paterson, I would be honored to yield to Senator Hassell-Thompson.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR HASSELL-THOMPSON: Thank you, Senator. I just wanted to go over a

couple of questions. I think one of them Senator Paterson asked. But I'd like you, if you will, just to give me a broader explanation.

Would you please describe the training that agencies would receive in order to be sure that they transmit these reports over the Internet appropriately?

SENATOR LIBOUS: That's a good question, Madam President.

I believe that OMRDD feels that they have a pretty good relationship with their providers and that the reports are now typed up -- actually, Madam President, and to you, Senator, there are some 800 reports that are provided on an annual basis to OMRDD. These report range in length from 15 pages to some 1500 pages.

So we would believe that any training involved would be very, very minimal, if anything at all. The agency has already reached out to its providers and asked them that this would be an appropriate way to send documents.

Right now, as I said earlier, Madam

President, these documents are all mailed and shipped and delivered by hand and actually sit in piles, like some of these documents before us.

So I think the training would be minimal.

ACTING PRESIDENT McGEE: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you. If the Senator will continue to yield.

ACTING PRESIDENT McGEE: Will you continue to yield?

SENATOR LIBOUS: Be happy to.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR HASSELL-THOMPSON: You talked about the costs and the funding, but the only question that I have about the financing is who will pay for or will the budget reflect any upgrade on an annual basis that may be required as computer data changes and as software changes?

SENATOR LIBOUS: I'm informed, Madam President, that the infrastructure is already in place. But I believe that there is

a statewide upgrade that is bigger than just this department that is going to take place in 2002 that will be part of this.

ACTING PRESIDENT McGEE: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: And if the Senator will yield.

ACTING PRESIDENT McGEE: Do you continue to yield, sir?

SENATOR LIBOUS: Yes.

SENATOR HASSELL-THOMPSON: Are you then saying that the cost of this upgrade is already or automatically a part of what this bill will do?

SENATOR LIBOUS: Madam President, the Senator's question is a good one.

We have no fiscal note attached to this bill.

And as I said earlier, when I was asked by one of your colleagues, that this is a departmental bill. And it is our belief that those costs have already been absorbed and they will not need to be added to any future fiscal note that this body will have to deal with.

SENATOR HASSELL-THOMPSON: Okay. Thank you. No, I have no other questions.

Thank you, Madam President. Thank you, Senator.

ACTING PRESIDENT McGEE: Does any other Senator wish to speak on the bill?

Read the last section.

THE SECRETARY: Section 2. This act shall take effect January 1, 2002.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, would you please call up Calendar Number 775, by Senator Bonacic.

SENATOR BRESLIN: Explanation.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number

775, by Senator Bonacic, Senate Print 4349A, an act in relation to creating the Hurley Library District.

ACTING PRESIDENT McGEE: Senator Bonacic, an explanation has been requested.

SENATOR BONACIC: Thank you, Madam President.

This is a bill that will create the Hurley Library District in the town of Hurley in Ulster County. The existing library board requested the legislation, and the Hurley town board is in support of it.

Presently -- well, let me go back a minute. This legislation will not take effect and this library will not be created unless there is a public referendum for the creation of the district and approval of a proposed budget and the election of nine library district trustees.

ACTING PRESIDENT McGEE: Senator Breslin.

SENATOR BRESLIN: Yes, Madam President. Would the sponsor yield to a question?

ACTING PRESIDENT McGEE: Senator

Bonacic, do you yield?

SENATOR BONACIC: I do.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR BRESLIN: Through you, Madam President, the legislation refers to a current Hurley library. Is there a current one in existence?

SENATOR BONACIC: Yes. Let me explain that for you, if I may.

Presently, there is a library in Hurley. It's called the Hurley Library. And it's chartered by the Board of Regents as an association library.

Now, the problem is in funding to keep it going. They get money, some money from the County of Ulster; they get some money by the Hudson Valley Library District. And they have to raise about $10,000 a year through philanthropy, fundraising, membership fees, in order to maintain a budget. And it's a very lean budget.

So what they want to do now is create a better library system, have it as part of a property tax levy, assuming that the

voters approve within that district.

SENATOR BRESLIN: Through you, Madam President.

ACTING PRESIDENT McGEE: Senator Breslin.

SENATOR BRESLIN: Can I assume, then, from your answer to the prior question that this would be an increase in taxes for the residents of the proposed district?

SENATOR BONACIC: The answer is yes. Right now they expect a tentative budget to be around $76,000. About $55,000 of that will have to be raised through a property tax levy. About a little less than 2 percent on a home of 100,000 assessed value. Roughly about 40 bucks a year.

ACTING PRESIDENT McGEE: Senator Breslin.

SENATOR BRESLIN: One final question.

ACTING PRESIDENT McGEE: One final question, Senator Bonacic?

SENATOR BRESLIN: Will there be any capital expenses, new construction involved with -

SENATOR BONACIC: At the present time, we don't know the answer to that. But if you need to do a capital project, the town board has the authority to float that bond for a library building or an expansion, if the voters are so inclined.

SENATOR BRESLIN: And one final question, if the sponsor would yield.

ACTING PRESIDENT McGEE: One more, Senator Bonacic.

SENATOR BRESLIN: Was there any consideration given to a combined library that would include both West Hurley and Hurley together, economies of volume?

SENATOR BONACIC: Include Hurley and who?

SENATOR BRESLIN: West Hurley.

SENATOR BONACIC: And West Hurley.

SENATOR BRESLIN: Correct.

SENATOR BONACIC: Have you been there?

SENATOR BRESLIN: Yes, I have.

SENATOR BONACIC: There's a good tavern in West Hurley.

SENATOR BRESLIN: That's where I was. Through you, Madam President.

(Laughter.)

SENATOR BONACIC: This particular library district, if it's formed by the voters, is specifically for the Town of Hurley. But it specifically excepts, does not include, West Hurley Library District.

And it certainly will be a consideration of the voters, when they have to approve this library, in the form that they want to create the legislation for it.

SENATOR BRESLIN: Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you.

Any other Senator wishing to speak on the bill?

Read the last section.

THE SECRETARY: Section 8. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce

the results.

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, would you please call up Calendar Number 582, by Senator Hoffmann.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 582, Senator Hoffmann moves to discharge, from the Committee on Rules, Assembly Bill Number 4910 and substitute it for the identical Senate Bill Number 2562, Third Reading Calendar 582.

ACTING PRESIDENT McGEE: The substitution is ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 582, by Member of the Assembly Magee, Assembly Print Number 4910, an act to amend the Agriculture and Markets Law, in relation to including.

SENATOR SCHNEIDERMAN:

Explanation.

ACTING PRESIDENT McGEE: Senator Hoffmann, an explanation has been requested.

SENATOR HOFFMANN: Thank you, Madam President.

I am delighted to explain this bill, and I am so pleased that my colleagues on the other side of the aisle are interested in the issue of manure management on New York State farms. And I've been looking forward to the opportunity when I could explain in a little bit more detail why this is an integral part of New York State agriculture, and I guess today is my lucky day.

We presently have in our definitions of farm practices all of the expected activities that deal with raising crops and animals. But one of the activities that takes place on every farm inevitably involves manure management. And in some cases, it is a very substantial part of a farm operation.

Manure management has moved into an entirely new era previously unanticipated by the people who drafted these laws many, many

years ago. We now have anaerobic digesters, methane processors, many composting activities, all of which apply very high-tech scientific practices in contemporary farm activities. And yet the laws that govern our agricultural activities in New York State do not define these manure management practices as a farm operation.

And this bill that we are about to vote on today, my friends, will correct that inadequacy. And I'm very proud that we have the opportunity to do that today. And I know, on behalf of many farmers in this state, it is greatly appreciated, not only that we are doing it but that there is sufficient interest that we are discussing it today here while we are involved with so many of our budget negotiations and other activities, that manure management on New York State farms ranks up there with the rest of our pursuits.

ACTING PRESIDENT McGEE: Senator Schneiderman, you wish to speak upon this subject?

SENATOR SCHNEIDERMAN: Yes, Madam President. If the sponsor would yield for a

few questions regarding the heralding of the new era of manure management in the state of New York.

ACTING PRESIDENT McGEE: Senator Hoffmann, will you yield?

SENATOR HOFFMANN: With pleasure, Madam President.

ACTING PRESIDENT McGEE: The Senator yields with pleasure.

SENATOR SCHNEIDERMAN: Thank you.

Through you, Madam President, I'm not completely clear from the language of the statute what the consequence of being designated as a farm operation is. What does that mean, that manure processing and handling facilities are now designated as a farm operation?

SENATOR HOFFMANN: Madam President, this particular change in definition would simply mean that for any farm activities that are classified for tax purposes, any kind of farm assistance programs and environmental protection programs, manure management would now be a conforming activity.

SENATOR SCHNEIDERMAN: Thank you.

Through you, Madam President.

ACTING PRESIDENT McGEE: Senator Hoffmann, will you yield for Senator Schneiderman?

SENATOR HOFFMANN: Yes, I continue to yield.

SENATOR SCHNEIDERMAN: My reading of the proposed bill would include, within the definition of "farm operation," a manure processing and handling facility that was not on a farm.

Say, you know, the great technology that you have cited, the anaerobic digesters, say some entrepreneur in the South Bronx, presumably connected to Senator Gonzalez, decided to set up a manure processing facility. That would then fall within the definition provided in the statute, would it not?

SENATOR HOFFMANN: Madam President, I would not know offhand whether a South Bronx manure processing facility would be classified as an agricultural activity, but I suppose it's within the realm of possibility that might happen. And I say good for the

people of the South Bronx if they want to move in that direction.

ACTING PRESIDENT McGEE: Senator Schneiderman, do you -

SENATOR SCHNEIDERMAN: Through you, Madam President, then would that mean that if someone sets up -

ACTING PRESIDENT McGEE: Do you wish the Senator to yield?

SENATOR SCHNEIDERMAN: Oh, yes, I do wish the Senator to continue to yield.

ACTING PRESIDENT McGEE: Thank you.

Senator, will you continue to yield?

SENATOR HOFFMANN: Yes, I will.

SENATOR SCHNEIDERMAN: So that we can continue to aerate this important issue.

I gather, though, that that would mean that if someone sets up a manure processing and handling facility that is not connected in any other way to an agricultural operation, it would be designated as a farm operation. You'd end up with what is essentially a commercial facility for creating

energy or whatever other good things can be created out of manure with the fine technology you've cited, would be classified as a farm operation.

And I don't really see why that should be the case. Is this perhaps an omission in the careful drafting of this manure management statute?

SENATOR HOFFMANN: Madam President, with respect to the change in the statute, since the change in the statute is taking place in the Agricultural Districts Law, it's unlikely, sadly, that the Bronx model defined by Senator Schneiderman before would actually be considered an agricultural activity. It would require considerably more than manure alone to make it a farm activity.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes, thank you. Through you, Madam President, one final question, if the sponsor would yield.

ACTING PRESIDENT McGEE: One final question, Senator Hoffmann?

SENATOR HOFFMANN: Yes, I

continue to yield.

ACTING PRESIDENT McGEE: One final question, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Would the ability of a local planning authority to regulate, through local laws, farm operations be limited with respect to a freestanding manure processing facility by the operation of this statute if it was passed?

SENATOR HOFFMANN: Madam President, I'm not sure I understood the question posed by Senator Schneiderman.

ACTING PRESIDENT McGEE: Senator Schneiderman, would you care to rephrase that?

SENATOR SCHNEIDERMAN: Yes, I'd be glad to rephrase that. Thank you. I think that in this area there frequently is a need to clarify.

The concern I have is that my understanding of the law is that if you designate something as a farm operation, local municipal governments' efforts to regulate or zone the type of facility are limited.

So would this not mean, if this bill were passed, that a freestanding manure

processing and handling facility would be beyond the reach of the local municipalities' efforts to regulate or zone?

SENATOR HOFFMANN: Madam President, the existing laws about agricultural practices as they presently exist in New York State are very clear about what constitutes an agricultural practice. And they are integrated.

Obviously, the manure aspect of farming is an output of other animal husbandry activities. Local zoning is affected by state laws. This would simply bring into compliance the definition of manure, along with the other animal husbandry activities that take place on a farm. There would be no change in the way local zoning handles activities relative to farms.

SENATOR SCHNEIDERMAN: Thank you.

Through you, Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I appreciate Senator Hoffmann's energetic

support for this measure and promotion of this issue, and I certainly know that she is without peer and certainly will be known as the first lady of manure management in the State of New York should this statute pass.

My concern, with all kidding aside, is that as I read this statute, if there is - and again, I think these facilities are great to the extent we're able to generate energy or any other usable product out of managing manure -- is that a freestanding manure management facility would now be called a farm operation and would not subject -- would be subject to the same restrictions on local governments that apply to farms.

With that caveat, I am going to support the bill. I hope we will take a look at that. I don't think we have a great danger to the state at this point in time for being overrun with freestanding manure management facilities. But as technology develops, that perhaps could become an issue.

And in some areas in downstate New York, we have serious problems with, not that, but certainly relating to the placement

of human waste facilities. And I hope that we will not see the day that next to the Hudson River sewage treatment plant we have the municipal manure processing facility creating some of the same issues.

So I will support the bill. And again, I do commend Senator Hoffmann for her energetic promotion of this issue.

ACTING PRESIDENT McGEE: Any other Senator wishing to speak on -

Senator Dollinger.

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

ACTING PRESIDENT McGEE: Senator Hoffmann, will you yield to a question, please?

SENATOR HOFFMANN: Yes, Madam President, I will.

ACTING PRESIDENT McGEE: Thank you.

SENATOR DOLLINGER: And I apologize in advance, Senator Hoffmann, if Senator Schneiderman has drawn attention to this issue.

Does this bill apply to manure processing and handling faciles that are generated -- that are receiving manure that is generated on the farm, solely on the farm? In other words, the production of manure as part of a dairy herd from this farm? Or would this apply to manure processing facilities that take the product from many farms?

SENATOR HOFFMANN: The bill on which we are engaged in such animated discussion right now does not distinguish whether it would allow manure from a different farm to be processed on one farm. But I can see where that could in fact be a possibility.

SENATOR DOLLINGER: Through you, Madam President, on the bill. And again, I thank -

ACTING PRESIDENT McGEE: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I thank Senator Hoffmann for her observation about the bill, because that's the way I read it.

ACTING PRESIDENT McGEE: Please proceed, Senator Dollinger.

SENATOR DOLLINGER: Thank you,

Madam President.

I agree with Senator Hoffmann, that's the way I read the bill. And I'm going to vote against it on that basis. It seems to me that this portion of the statute which says "farm operation" includes the land and unfarm, on-farm buildings. It's site-specific.

It says "the equipment." Then, under the current statute, without the amendment, it says "and practices which contribute to the production, preparation, marketing of crops, livestock, and livestock products as a commercial enterprise."

That would mean to me that "farm operation" simply includes the incidence of the farm operation as produced from the locale where the farm is located.

This farm-operation exception was designed to say if you have a farm, you should be able to do everything that a farmer does without local regulation and control in agricultural districts. Which I appreciate and understand.

But I think Senator Hoffmann is correct when she says when you add this

phrase -- that is, "manure processing and handling facilities" -- it could be a facility which is a completely commercial enterprise which takes manure from many farms and processes it on a specific site.

That may be the economical thing to do, Senator Hoffmann. It may be the right thing to do to establish the volume to have a true manure processing facility. But then at that point it's not a farm operation, it's a commercial enterprise using farm by-products, and it's not part of what you would think of as the normal operation of a family farm.

That's why, Senator Hoffmann, I'm going to vote against this bill, because I think it goes too far. If it said manure processing and handling facilities for the manure and other by-products produced on the farm, on that farm, then I think it would be properly included in the definition of farm operation.

But given the fact that it's going to introduce processing facilities into our farm districts without the ability of local communities to control them, and agricultural

districts, I think it goes well beyond what we originally intended when we intended to describe what is a normal farm operation.

What is produced on-site could qualify. What's produced off-site and becomes a major manure processing facility is something completely different from the operation of the family farm.

I'll vote no, Madam President.

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

Senator Hoffmann.

SENATOR HOFFMANN: Yes, Madam President, I was under the impression I was yielding for a question from Senator Dollinger. And I tried to hear what he was saying and I don't think I heard a question in there. Did I miss something?

ACTING PRESIDENT McGEE: There was not a question, Senator, he was speaking on the bill.

SENATOR HOFFMANN: Thank you.

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

Senator Hoffmann.

SENATOR HOFFMANN: Just to close debate on this subject, I want to indicate that the Farm Bureau of New York has sent a support memo. I value their opinion greatly. I understand how difficult it is for people in production agriculture today. I know what it's like to manage manure. I have a manure pit on my own farm.

And it can be trivialized in a discussion here, but it is a real-life issue for the many people in New York State who practice agriculture for a living. They are faced with increasing environmental regulations that sometimes make it very hard for them to manage their activities. And very often the people who imposed the regulations on them have little or no concept of what it means and take only the most trivial view of what the manure management aspect of agriculture entails.

It's highly unlikely, to use Senator Dollinger's scenario, that somebody wants to go into commercial manure management, although it would be wonderful if the time comes where the market increases to that

level. And possibly for those parts of the state that have difficulty growing the beautiful gardens that we can grow in upstate New York, we can ship some more of the manure process in upstate New York into those areas.

I will say that, in reviewing this particular piece of legislation, Senator Schneiderman's series of questions showed a remarkable level of interest from an urban-based legislator. And flattered as I am that he would call me the queen of manure management -- first lady, thank you. I don't know which one I prefer.

But flattered as I am at that, I believe that this particular law would be better suited to reflect some of the comments that Senator Schneiderman himself has made. And some of my colleagues -- notably, the very capable Senator Skelos and Senator Alesi - have suggested, and I have concurred that we could consider renaming this the Effluent Regulation In Composting Act, better known as Eric's Law.

(Laughter.)

ACTING PRESIDENT McGEE: Senator

Schneiderman, why do you rise?

SENATOR SCHNEIDERMAN: Thank you, Madam President. I am really awed by this honor. And it really is a tribute to Senator Hoffmann and many of my other colleagues that a boy from New York City has come here and, through my experience in this chamber, learned an awful lot about manure.

(Laughter.)

SENATOR SCHNEIDERMAN: And I am not in any way opposed to having this referred to as Eric's Law. I think that would be quite an honor.

I think it may be a little bit awkward because, having listened to the debate and listened to the questions, I'm afraid that I am constrained to join Senator Dollinger in voting against my own law.

So it was a great moment in the sun, but I do share his concern and the concern that I raised. And as I thought this through, I don't think that we should allow a freestanding manure processing and handling facility to be subject to the same exemptions as a farm operation.

I appreciate the tribute. And perhaps as we go through this process, at Senator Hoffmann's urging, to expand our regulation of manure processing and handling facilities, that we will have another chance to pass a bill that perhaps could bear my name in this area.

Thank you, Madam President.

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

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator Dollinger, to explain his vote.

SENATOR DOLLINGER: Just very briefly.

I appreciate Senator Hoffmann's suggestion that Senator Schneiderman's first name go on this bill. What I would suggest is the appropriate way to end this session is to put Senator Schneiderman's last name on a bill

that benefits his constituents, and that would be the right way to pay him homage. The first name oftentimes gets lost. The second name signifies that a bill may become a chapter, which would be a fitting way to someday conclude this session, Madam President.

I will be voting in the negative, however, for the reasons stated earlier.

ACTING PRESIDENT McGEE: Senator Dollinger in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 582 are Senators Dollinger, Duane, and Schneiderman. Ayes, 56. Nays, 3.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Does Senator Duane wish to be -

ACTING PRESIDENT McGEE: Senator Duane.

SENATOR DUANE: Thank you, Madam President.

Had I been present in the chamber,

I would have canvassed in the positive for the first canvassed amendment. I would like unanimous consent to have that stenographered.

ACTING PRESIDENT McGEE: The record will so indicate. Thank you, Senator Duane.

SENATOR DUANE: Thank you.

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Madam President, is there any housekeeping at the desk before we go on to the next bill?

ACTING PRESIDENT McGEE: Yes. Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

I offer amendments to the following Third Reading Calendar bills.

By Senator Trunzo, on page number 22, Calendar 420, Senate Print Number 2594.

By Senator Johnson, on page 28, Calendar Number 515, Senate Print Number 2221.

By Senator Seward, on page number 33, Calendar Number 570, Senate Print Number 2129B.

And by Senator Kuhl, on page 56, Calendar Number 805, Senate Print Number 2956.

Madam President, I now move that these bills retain their place on the order of Third Reading Calendar.

ACTING PRESIDENT McGEE: Senator, the amendments are received, adopted, and will retain their place on the Third Reading Calendar.

Senator Kuhl.

SENATOR KUHL: Thank you, Madam President.

I wish to call up my bill, Senate Print 4178, which is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 483, by Senator Kuhl, Senate Print 4178, an act to amend the Education Law.

SENATOR KUHL: Yes, Madam President, I now move to reconsider the vote by which the bill passed the house and ask that said bill be restored to the order of third reading.

ACTING PRESIDENT McGEE: The

Secretary will call the roll upon reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is recommitted.

SENATOR KUHL: I think we restored that to the Third Reading Calendar, Madam President.

And I now move to discharge, from the Committee on Rules, Assembly Print 7926 and substitute it for my identical bill.

ACTING PRESIDENT McGEE: Substitution ordered.

SENATOR KUHL: I now move that the substituted Assembly bill have its third reading at this time.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 483, by Member of the Assembly Weisenberg, Assembly Print Number 7926, an act to amend the Education Law.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 7. This act shall take effect on the 180th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could take up Calendar Number 756, by Senator Volker.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 756, by Member of the Assembly Eve, Assembly Print Number 2397, an act to amend the Local Finance Law.

SENATOR MALCOLM SMITH: Explanation.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT McGEE: An explanation has been requested, Senator Volker.

SENATOR VOLKER: Madam President,

this is a bill that came out of the fiscal crises in New York and Buffalo back in the '80s, I believe, and relates to the sale of municipal bonds by Erie County. And it allows for greater flexibility and a maximum return on bonds sold.

Back when the County of Erie had an extremely serious fiscal situation, we did this bill. And I believe at the same time, as I say, I think we did a bill very similar to this for the City of New York. And it allows the comptroller to sell private bonds, municipal obligations in the marketplace.

It's been repeated every year as a chapter. The present law runs out June 30, 2001. And all this bill does -- it's completely the same bill -- it extends it to June 30th of 2002.

And you might ask the question, why don't we make it permanent. And the answer is apparently we do this with New York City and with a number of other places. The concept was that just in case any kind of problem should occur or anything untoward, the decision is made that the authority, because

actually all it is the authority -- we do the same thing, by the way, with the City of Buffalo. Did I say Buffalo? This is for the County of Erie. We do one for the City of Buffalo also, and give them the authority to do private bonds.

In case there should be some sort of problem, that the authority expires in another year, so that we just don't have pass it. And I think the thought was that if something should come up with any of these, then what would happen is that we would just let them expire.

ACTING PRESIDENT McGEE: Senator Brown.

Senator Smith, I'm sorry. Senator Malcolm Smith.

SENATOR MALCOLM SMITH: I could say something, but I won't say it. I won't say it.

(Laughter.)

SENATOR MALCOLM SMITH: Madam President, would the sponsor yield for a question.

ACTING PRESIDENT McGEE: Senator

Volker, will you yield for a question?

SENATOR VOLKER: Why, certainly. I'm a little confused, but I will yield.

SENATOR MALCOLM SMITH: Thank you very much. Through you, Madam President.

Senator Volker, do you know specifically what the proceeds of these particular bonds that are being issued are going to be utilized for?

SENATOR VOLKER: Well, I believe that these bonds are going to the general - there is no specific place that the bond proceeds go to. It's -- this is the authority to sell bonds, and the proceeds then go into the general fund.

It's because of the market flexibility that this would allow you to generate some dollars. It would really be up to the county legislature and the county executive to decide where the proceeds would go.

Usually, I think, if my recollection is correct, there's usually some specific part of the budget that they will use these for. I know the comptroller told me

that last year she ran into a problem because we were very late in passing the authority, and she was already out in the marketplace trying to make sure that the bonds were sold, and she couldn't do it right away because it hadn't been signed into law.

So she asked this year if we could do it a little earlier than June 29th, which is somewhere in that area last year is I think when it actually was passed and signed into law.

SENATOR MALCOLM SMITH: Thank you. Through you, Madam President, if the sponsor will continue to yield.

ACTING PRESIDENT McGEE: Senator Volker, will you continue to yield?

SENATOR VOLKER: Certainly, yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR MALCOLM SMITH: Is this particular bond sale, are these -- through you, Madam President, is this competitive or negotiated bonds?

SENATOR VOLKER: These are negotiated bonds. And therefore, you're

looking for the best rate possible. And that's the prime reason for these, the private sale of these bonds.

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

ACTING PRESIDENT McGEE: Senator Volker, will you continue to yield?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR MALCOLM SMITH: Through you, Madam President, I also know that, in all deference to my colleague here, that Buffalo has been trying for quite some time to suggest to Erie that perhaps from some of the proceeds of these bond sales they'd be able to share these proceeds with Buffalo, who is clearly sort of strapped. And you yourself indicated that there is some flexibility with this particular bond issuance for Erie County. Is there some possibility they would yield to that kind of concern?

SENATOR VOLKER: They could. But I think what they're really looking for the

proceeds of is the sales tax.

The County of Erie, during their fiscal crisis, requested -- the county legislature and the county executive requested an additional 1 percent sales tax. And it was granted, and it's granted each year. The city has asked that the county allow a piece of that proceeds to go to the city. The county has not agreed do that.

We have pointed out that it's not up to the State Legislature to make those kind of decisions, because it's really up to the county to decide. We only allow the implementation of it.

As far as bond proceeds are concerned, the county, if they so chose, could certainly allow the city, I suppose, a piece of any bond proceeds.

They have their own ability, by the way, to -- yes. And another answer to that, from my learned counsel to my right, is that they are actually doing that this year, because the county is assisting the city with some of the construction bonds for the city schools, which this Legislature last

December -- whenever we passed it, I think it was last year -- passed. Art, myself, and the delegation passed during last year, frankly, a billion dollars' worth of bonds over the next five or six years to repair schools and build new schools in the city of Buffalo. And the county is assisting in that process.

SENATOR MALCOLM SMITH: Madam President, through you, one final question.

ACTING PRESIDENT McGEE: Senator Volker, will you yield for one final question?

SENATOR VOLKER: I certainly will.

SENATOR MALCOLM SMITH: Madam President, through you, I know the sponsor sort of preempted the strike and earlier answered why not permanent. But clearly, this has been going on since 1986 and further back.

I just don't seem to understand why there's no reason to make this permanent. Or is it a cost measure or a matter in which they feel that it's just -- the fiscal policy is better for them to do so?

SENATOR VOLKER: Senator, in reality, you will find as we go along that

there's a lot of these types of things. And we ask ourselves many times why do we continue to do this.

And the prime reason that they've been done has to do with control. Because we don't directly control. We give them the authority to issue bonds or do certain things. And the prime control is if something untoward should happen, that the way in which we can stop it quickly is to just let the authority expire.

So that the decision has been made in a number of these areas, and usually they're all joined together. That is, I'm pretty sure you're going to see some bills similar to this for the City of New York later on this year. Usually they come in around June 30th -- 28th, 29th, 30th, someplace in there, a whole raft of them comes in here, one- or two-year extenders.

And it's the same principle. And the principle is that you keep control over it, just in case something should occur that is beyond the ability of the Legislature, really, and the Governor to deal with, unless

we -- and by the way, the other side of that story is that either house then can decide to let the authority lapse. Because if one house doesn't pass it, it lapses.

ACTING PRESIDENT McGEE: Senator Smith.

SENATOR MALCOLM SMITH: Thank you, Madam President. On the bill.

ACTING PRESIDENT McGEE: On the bill.

SENATOR MALCOLM SMITH: I thank Senator Volker for the explanation as to why and how Erie County is handling this matter.

A concern that I would raise, and I have raised this a number of times at my Cities Committee meeting, you have a number of upstate cities -- Syracuse, Rochester, Buffalo, Albany -- they are all on a mission to establish their own authority to deal with some commercial and residential development within their respective areas.

And for some reason or another, it's just not getting to the floor, it's not getting through Cities. I believe this bill, such as the ones that they are pursuing, have

merit to it. When you find cities upstate who are having some difficulty as relates to the economics, economic development, authorities do offer a means by which they can do some social standing development on their own.

And I would just hope that as we are also here ratifying this bill today that we will consider the concerns of Mayor Jennings and Masiello and the other mayors who are in the cities upstate -- Buffalo, Rochester, and the like -- and assist them in establishing their own authorities to do such similar work.

Thank you.

ACTING PRESIDENT McGEE: Senator Dollinger.

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

ACTING PRESIDENT McGEE: Senator Volker, will you yield?

SENATOR VOLKER: Certainly.

SENATOR DOLLINGER: Through you, Madam President. I know, Senator Volker, you're well aware that when the whole concept

of negotiated bond sales came up, there were ethical issues raised, there were questions of conflicts of interests, because we were going to change from our normal practice of sending these out to bid. There were allegations about cozy sales and political contributions that would follow.

And given all that, and the fact that it's been in existence in Erie County for at least 14 years, are you aware of any report or information or a report from the comptroller that would suggest that all those fears that lots of people had about negotiated bond sales -- because these are large sums of money, and there are huge legal fees and placement fees and consultant fees attached to them.

But is there any report that you're aware of that suggests the purpose for which this was intended, to lower the cost of borrowing, has not been attained or that any of those chimeras, those dragons that we were all afraid of, have actually come to pass in the marketplace, either in the Erie County or in the City of New York?

SENATOR VOLKER: Not really that I'm aware of.

Although I would point out that in the ensuing years you've had initially Republican county executive, then a Democratic county executive, and now, after eight years, we have a Republican county executive again. And there have been times when the comptroller and the county executive have had differences of opinion.

But as far as actual allegations of impropriety or anything of that nature, I can't ever remember that. You might have a disagreement on how something is done, but I don't ever remember any allegations of impropriety of any kind.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. And I thank Senator Volker.

I know -

ACTING PRESIDENT McGEE: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I know Senator Volker has preempted perhaps Senator

Smith and myself by asking the question of why not make it permanent. And I understand the basis for his answer. But I would respectfully disagree with Senator Volker.

I understand that we want to keep some control over the way the governments work. And I would understand that given all those potential dangers that we talked about -- and they were very legitimate. I think they went to the core of what government is, and that whole notion of pay-for-play government, that these bond sales would occur and that both attorneys and bond placement counsels and securities firms would then, in essence, ante up to get into this business.

I know there have been allegations. And I know there have been lots of, most often in the hot fire of a campaign, allegations made about conflicts and other problems.

But seems to me that this whole notion of negotiated bond sales has withstood the test of time. I'm not aware of any report from the Comptroller of the State of New York that says it's not a good idea and that it hasn't produced the benefit of reduced bond

rates and actually reducing the cost of borrowing for communities, including Erie County.

So I would suggest to Senator Volker one of two things. Either next time around, let's make this bill permanent, or let's ask, through some rider attached to this bill, let's ask the Comptroller of the State of New York to do a report that evaluates the effectiveness of negotiated bond sales and whether we've achieved the goal of reducing the cost or whether we've complicated our democracy by creating another temptation for public officials and their contributors to become involved in the bond sales and we've created a pay-for-play environment.

I think the Comptroller of this state is eminently qualified to do that. And I would think -- although I agree with Senator Volker, there have been occasional glitches in this, occasional reports that suggest this is worthy of scrutiny -- I think if the conclusion is that we've achieved or goal and that negotiated bond sales produce less cost to borrowers, we ought to make all of them

permanent, not just here in Erie County but in New York City as well.

And I would suggest also to Senator Volker that one of the things we always have to be afraid of -- while I agree with him completely that by making an extender that either the Assembly or the Governor or the Senate could prevent reauthorization of the bill, I would suggest that that may be micromanaging Erie County and the City of New York and other communities that do these sales just a little too far.

I would suggest that if problems come up in the future, we ought to get a bipartisan consensus to change it at that point rather than allow, quite frankly, one of my colleagues from Erie County to stand up and say "I don't want this to happen," and suddenly it doesn't, it seems to me over the objection of his colleagues from the Senate who would have maybe a better long-term perspective or, given the size of the district, a more pervasive interest in the future of Erie County.

So I'm not so sure that making it

continual through continual extenders is the right way to manage this problem. My hope is that Senator Volker would go back and -- and I'm going to vote in favor of this, but that we should either look at this whole issue in detail, come up with a report, and if the case is that it's actually been successful, let's make it permanent everywhere and get out of the business of looking over local governments' shoulders when they make these decisions.

I'll vote aye today, but I hope we take this issue a couple of steps further.

ACTING PRESIDENT McGEE: Senator Brown.

SENATOR BROWN: Yes, on the bill, Madam President.

ACTING PRESIDENT McGEE: Senator Brown, on the bill.

SENATOR BROWN: Let me just take a moment to reflect my support for this measure and to thank Senator Volker for really being a champion of the needs of Erie County and the City of Buffalo in the Senate.

Just by way of some history,

Senator Volker mentioned the fiscal crisis that the County of Erie had which dates back to, I think, 1987, when the County of Erie was about $75 million in debt. And I think this was one of the measures that was instituted some years ago to assist the County of Erie in being able to get itself out of debt.

And as a former department head in the Erie County government, as a person that ran a department of the Erie County government, the county was able to right itself. It was able to come into a situation of fiscal stability from that period when it had $75 million worth of debt. And it's because of actions like this that were taken in this house that gave that government the ability to help heal itself.

So I certainly support this measure, because for the over 1.1 million people that reside in Erie County, giving the county government this kind of flexibility is important.

And Senator Dollinger and Senator Smith spoke to why not permanentize this. And certainly there can be arguments made for

permanentizing this ability of the county to have the flexibility to sell its own bonds. But as Senator Volker has indicated, in probably three administrations of county government, two Republican county executives and one Democratic county executive that served for a period of 12 years, there has never been an issue with how the county has handled the sale of its bonds. There has never been any question of impropriety in how those bonds have been handled.

We also in Erie County have a strong county comptroller who audits the business of county government, who presides over the bond sales in Erie County. So there is a check and balance to this measure.

Senator Volker and Senator Smith also touched upon -- and I know this is a tangential issue, but they also touched upon the sales tax in Erie County. And again, back in 1987, after the fiscal crisis that Erie County was experiencing, the local governments came to the state and asked to increase the sales tax by an additional 1 percent, increasing the sales tax in Erie County from

7 percent to 8 percent.

And at that time that sales tax was supposed to be a temporary measure to again assist the county in getting out of this major fiscal deficit. Well, it has been passed, you know, every year, and the county has come to rely on that sales tax. And it is true, as Senator Smith was alluding to, and as Senator Volker confirmed, the city has asked for a larger share of the sales tax. And I certainly would at some point like to see the County of Erie acquiesce to that request on the part of the City of Buffalo.

The city has gotten older in population, the income in the city has gone down, the population in the city has gone down. But still the city is the financial center, the hub of the County of Erie. And the health of the city I think is critical to the health of Erie County. So at some point I would like to see us be able to get a larger share of that sales tax.

But with respect to this measure, I think it is an important piece of legislation to pass; yet again, another piece of

legislation that Senator Volker has championed for our community. The only thing that I as a new Senator lament is not being able to show my support in the strongest of terms for this measure and be able to join Senator Volker as a cosponsor.

Hopefully, as we go forward in this legislative session, that will be able to be rectified and those members on this side of the aisle that wish to join members across the aisle in the sponsorship of measures to show our support in the strongest terms will be able to do that.

But on this measure, I'm certainly very proud to join Senator Volker and my other colleagues in support. I will vote aye.

ACTING PRESIDENT RATH: Is there any other Senator wishing to be heard?

Hearing none, debate is closed.

There is a home rule message at the desk.

Read the last section.

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

ACTING PRESIDENT RATH: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT RATH: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 646, by Senator Padavan, Senate Print 3543, an act to amend the Penal Law, in relation to illegal possession.

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT RATH: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 700, by Senator Farley, Senate Print 2840, an act to amend the Banking Law, in relation to increased penalty.

SENATOR BRESLIN: Explanation.

ACTING PRESIDENT RATH: Senator Farley, an explanation has been requested.

SENATOR FARLEY: Thank you, Madam President.

This bill would increase the maximum penalty that may be imposed for a

refusal by a bank to permit examination by the Banking Department. The current penalty was established in 1930. It is $200 a day. This would increase it to $5,000 a day, which is the general penalty for any kind of a violation of the Banking Law.

And examinations, as you can well imagine, are a crucial part of the regulatory process for the safety and soundness of our banks. It is important that these financial institutions cooperate with the Banking Department, and having an adequate penalty can serve to be an effective deterrent to a violation.

Let me just say this. In recent years, New York has not had problems with banks refusing an examination. But there have been a lot of them around the nation, by OCS. And consequently, by the time they got in there, all kinds of mischief had happened.

This is a deterrent. Now, why has this not been changed since 1930? Almost all of your penalties were raised to $5,000, and this one was one that was overlooked and just not done. And it more or less levels all the

penalties for violations. I think it is one that is reasonable. There's no known opposition to it.

ACTING PRESIDENT RATH: Senator Breslin.

SENATOR BRESLIN: Madam President, through you, if the sponsor would yield for a question.

SENATOR FARLEY: Yes, I will.

ACTING PRESIDENT RATH: Senator Farley yields.

SENATOR BRESLIN: Through you, Madam President, when an investigation of a bank is conducted, what actually takes place?

SENATOR FARLEY: Well, they examine all facets of the bank for safety and soundness and -- as far as all their books are concerned.

SENATOR BRESLIN: Again, through you, Madam President.

ACTING PRESIDENT RATH: Senator Farley, do you continue to yield?

SENATOR FARLEY: Yes, I will.

ACTING PRESIDENT RATH: Senator Farley yields.

SENATOR BRESLIN: How frequently do these examinations take place?

SENATOR FARLEY: Once a year.

SENATOR BRESLIN: And is there any sort of a reporting system to make sure that the Superintendent of Banking in fact investigates each bank on an annual basis?

ACTING PRESIDENT RATH: Senator Farley, do you continue to yield?

SENATOR FARLEY: Yes.

The report is made to the Banking Department every year. A report goes to the Superintendent Of banks.

SENATOR BRESLIN: And again through you, Madam President.

ACTING PRESIDENT RATH: Senator Farley.

SENATOR BRESLIN: Is the Banking Department efficient in making sure that all banks in New York are in fact reviewed on an annual basis?

SENATOR FARLEY: Yes, they are.

And incidentally, on that same subject, we have one of the finest banking departments as far as examining banks in the

nation. We set the standard.

As you recall, some of you that are old enough to remember when banks and S&Ls were failing all over the nation, this did not happen in New York State.

SENATOR BRESLIN: Right.

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

ACTING PRESIDENT RATH: Senator Farley, will you continue to yield?

SENATOR FARLEY: Yes, I will.

ACTING PRESIDENT RATH: He yields.

SENATOR BRESLIN: Do you have any sort of numbers available to you as to how many banks in New York State during the past twelve months have in fact refused an inspection?

SENATOR FARLEY: None. As far as we know, I think it's zero. And to be very frank with you, Senator Breslin, I think since 1930 there's been few or none.

SENATOR BRESLIN: And again through you, Madam President, if a bank -

ACTING PRESIDENT RATH: Senator Farley continues to yield.

SENATOR FARLEY: Yes, I will.

SENATOR BRESLIN: If a bank was found to be noncompliant by the superintendent, would the bank have any right to appeal that decision, that administrative determination?

SENATOR FARLEY: Well, of course you can always appeal an administrative determination. But this is a fine of $5,000 a day if you refuse to be inspected.

SENATOR BRESLIN: And again through you, Madam President -

ACTING PRESIDENT RATH: Senator Farley, do you continue to yield?

SENATOR FARLEY: Yes.

SENATOR BRESLIN: Does the annual inspection include affiliates or related corporations?

SENATOR FARLEY: Yes, it would include branches and affiliates, yes.

SENATOR BRESLIN: On the bill, Madam President.

ACTING PRESIDENT RATH: On the

bill, Senator Breslin.

SENATOR BRESLIN: I accept Senator Farley's explanation that in fact it's a kind of a cleanup bill and brings a higher penalty.

And particularly given the fact, as Senator Farley expressed, that throughout the country there seems to be more banks that are doing less kinds of "compliant" things, that it's probably a wonderful safety measure to do it now, to make sure that in fact if there is a bank -- and Senator Farley indicated that there are few or none that have been noncompliant since 1930.

I think that, based on those observations, I will be voting in the affirmative.

Thank you, Madam President.

ACTING PRESIDENT RATH: Senator Breslin.

Is there any other Senator wishing to be heard on the bill?

Hearing none, read the last section.

THE SECRETARY: Section 2. This

act shall take effect in 30 days.

ACTING PRESIDENT RATH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT RATH: The bill is passed.

SENATOR FARLEY: Just to explain my vote -

ACTING PRESIDENT RATH: Senator Farley, to explain his vote.

SENATOR FARLEY: -- because I didn't address this.

This also applies to mortgage brokers, check-cashers, money transmitters and all the other ancillary groups, which there is more chance for mischief, if you will, than there is with the banks.

So it goes across the board, and it is a significant piece of legislation. It's like the stitch in time saves nine.

ACTING PRESIDENT RATH: The clerk shall read.

THE SECRETARY: Calendar Number 725, by Senator Seward, Senate Print 4097, an

act to amend the Insurance Law, in relation to the licensing and continuing education.

SENATOR DOLLINGER: Explanation, please.

ACTING PRESIDENT RATH: An explanation has been requested.

SENATOR SEWARD: Yes, Madam President.

ACTING PRESIDENT RATH: Senator Seward.

SENATOR SEWARD: This bill would stagger the expiration dates of licenses with the State Insurance Department for the life and accident and health agents.

Currently, all of these licenses, which are valid for a two-year term, they all expire on the same day, June 30th of the odd numbered year. And this would, under this legislation, provide for commencing on July 1, 2001, the life, accident and health agents' licenses shall be for a two-year period, but they would expire on -- one-third of them on February 28th, one-third on June 30th, and one-third on October 31st of the odd year.

And this is done to help to

facilitate the processing of these license renewals, so that they can be done in an expeditious manner.

This is a departmental bill from the State Insurance Department. And I think it should be supported, because it helps to streamline operations for the benefit of not only the personnel at the department but, more importantly, for the license holders out there across our state, and there are approximately 105,000 of these individuals.

And this would mean that they will always have a license in effect without the hassle of this difficulty in getting the renewals done in a timely manner.

ACTING PRESIDENT RATH: Is there any other Senator wishing to be heard on the bill?

Senator Hassell-Thompson.

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

ACTING PRESIDENT RATH: Senator Seward, do you yield?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT RATH: Senator Seward yields.

SENATOR HASSELL-THOMPSON: Thank you, Senator.

Through you, Madam President, during the confirmation hearings, the new Superintendent of Insurance stated that he felt with the department's new speed to market reform that they would be able to solve this problem. If this is so, why would this bill be necessary?

ACTING PRESIDENT RATH: Senator Seward.

SENATOR SEWARD: Well, Madam President, I applaud our new Superintendent Serio at the Insurance Department, and the previous superintendent, for initiating the so-called speed to market initiative at the department. They're attempting to speed up the process of approving new insurance products but also in this area of licensing and license renewals.

That certainly is going to help. But the department has indicated to us -- in fact, the legislation before us is a

departmental bill -- that they still would like to spread out the work load throughout the year rather than having every license done at the very same date every other year.

So I think the combination of the two, the initiative that you've outlined and the passage of this legislation, I think would ease the process completely.

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

ACTING PRESIDENT RATH: Senator Seward, do you continue to yield?

SENATOR SEWARD: Certainly, Madam President.

ACTING PRESIDENT RATH: The Senator yields.

SENATOR HASSELL-THOMPSON: Thank you.

If I read this correctly, this bill also calls for the issuance of temporary licensures. And the Assembly Insurance Committee, headed by Assemblyman Grannis, has had serious opposition to this and has been said to say that this problem would keep them

from passing it in the Assembly. How does that augur for us passing this bill?

SENATOR SEWARD: Well, Madam President, I would say this. I think it's important that we pass the bill because in its current form -- the issue of the temporary license is one that I think it's important that our house go on record as supporting it, because this deals with the situations that arise when someone has completed all of the requirements for a license and they are simply awaiting the process at the State Insurance Department. And in the meantime, they are unable to pursue their profession and derive an income from it and serve their prospective new clients.

The temporary license would allow them to, just as the name would suggest, to on a temporary basis, as they are awaiting the final license to be processed and approved, that would allow them to go out and make a living and to serve their clients.

Now, under the legislation we give a great deal of authority, as we should, I believe, to the Superintendent of Insurance to

really come in with some strict rules so that the public is protected here from any unscrupulous activity, shall we say. But I think it's certainly justifiable to include the temporary license provisions in our bill.

Obviously, as we move toward our June 20th adjournment or recess from the regular session, obviously we will have discussions with the Assembly to try to work this out. And stay tuned.

SENATOR HASSELL-THOMPSON: Just a couple of final questions, if the Senator will continue to yield, Madam President.

ACTING PRESIDENT RATH: Senator Seward, do you continue to yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT RATH: The Senator yields.

SENATOR HASSELL-THOMPSON: Thank you, Madam President, through you.

What changes will be made in the certification of continuing education requirements for insurance agents?

SENATOR SEWARD: What changes? We just -- changes from last year?

SENATOR HASSELL-THOMPSON: Mm-hmm. What in terms of this bill?

SENATOR SEWARD: The only change that we make under this bill is to streamline the process, in effect, to allow for electronic filings in terms of the information that is submitted to the department. That's really just to update the law because of the updated technology that now exists.

Rather than saying in the law that you have to submit the information in written form, under the changes we've made, it would allow that to be done electronically.

SENATOR HASSELL-THOMPSON: Thank you, Senator.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson, on the bill.

SENATOR HASSELL-THOMPSON: Thank you.

I appreciate Senator Saland's -- I do this all the time -- Senator Seward's -- I call him that, and I apologize -- Senator Seward's full explanation -- Senator Seward in terms of his explanation.

Having had the opportunity on a couple of occasions to talk with some agents about this problem, I certainly know that there is a tremendous amount of necessity and support, so that there is not -- number one, there's not such a backlog in the numbers of applications that come through at any one time. But also, I also appreciated the fact that you were cognizant too of the possible abuse that could in fact occur with temporary licensure issuance, and so that that is a piece of what will be addressed.

So I certainly support this, and I appreciate your consideration in the way that you answered my questions. Thank you.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Does any other Senator 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, 59.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Alesi.

SENATOR ALESI: Thank you, Mr. President. May we return to motions and resolutions, please.

ACTING PRESIDENT MEIER: Order of motions and resolutions.

Senator Alesi.

SENATOR ALESI: Mr. President, I believe there is a privileged resolution at the desk by Senator Morahan. May we have its title read and move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read the title.

THE SECRETARY: By Senator Morahan, Legislative Resolution Number 1905, commending Dr. Larry R. Pedersen upon the occasion of his designation for special recognition by the members of Rockland's school-community partnership on May 17, 2001.

ACTING PRESIDENT MEIER: The question is on the resolution. All those in

favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Alesi.

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

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I hereby give written notice, pursuant to Rule XI, that I will move to amend the rules of the Senate and add a new rule, XV, which creates ethical standards for officers, employees and members of the New York State Senate.

I would ask that that notice be recorded in the Journal, Mr. President.

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

SENATOR DOLLINGER: Thank you.

ACTING PRESIDENT MEIER: Senator Alesi.

SENATOR ALESI: Thank you, Mr. President. Are there any substitutions at the desk?

ACTING PRESIDENT MEIER: There are. Shall we read them now, Senator?

SENATOR ALESI: Will you please do them now.

ACTING PRESIDENT MEIER: The Secretary will read the substitutions.

THE SECRETARY: On page 31, Senator Spano moves to discharge, from the Committee on Rules, Assembly Bill Number 7404 and substitute it for the identical Senate Bill Number 4383, Third Reading Calendar 550.

ACTING PRESIDENT MEIER: Substitution ordered.

Senator Alesi.

SENATOR ALESI: Thank you, Mr. President. May we have Calendar Number 734, by Senator Larkin.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 734.

THE SECRETARY: Calendar Number 734, by Senator Larkin, Senate Print 4252, an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law, in relation to reports.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Larkin, an explanation has been requested by Senator Paterson of Calendar 734.

SENATOR LARKIN: Yes, Mr. President.

Senator Paterson, this is a Racing and Wagering Department bill. It amends the law to shift various financial reporting dates from March 1 and March 31 into a consolidated date of July 1st.

The problem is that some of these reports were due in February, some were due in March. But in order to get them into the Racing and Wagering Board like they are and to the Legislature and to the Division of the Budget, it was very clear that these reports were mixed and that a complete report was never sent forward, because it was always delayed because some of the information was not available.

And what we've done is we've put four sections into this bill. In order to give the report a bit of accuracy, where here before all it had was some information on the status of the tracks, whether it was simulcasting or not, we have four sections to the bill.

In the first section, we shift from March 31st to July 1st the board's report to the Director of the Budget and the Legislature about the extent of NYRA's utilization, retained percentages, and breakage for operations.

In Section 2 we shift from March 1 to July 1 the board's report to the Director of the Budget and Legislature concerning similar rate and pool distributions, as I said in the previous section. This only involves -- this section involves the harness tracks.

The next one would shift it from 31 March to 1 July, a similar harness track report, as stated. The only difference is that includes their simulcasting revenues.

And the fourth part shifts from 31

March to July 1st the board's report to the Division of the Budget and the Legislature with regard to an evaluation of simulcasting, its capability with the well-being of horse racing, breeding, and pari-mutuels.

This is something we didn't have before. So many times when we were asked at the end of the session to do certain things for the tracks, whether it was the breeders, back stretch, or whatever else we were adding to, we really didn't have all of the factual data, because the reports were not submitted in a manner so they could be consolidated.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Larkin will yield for a question.

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

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: Senator, I'm a little unclear on what it was about the

reports. Was it that by the time we passed the budget the information was obsolete? Or was it that the information was hurried and when it got into the report it wasn't sufficiently compiled?

SENATOR LARKIN: It really wasn't compiled, David.

What happened was when you started to see that they had a deadline of submitting a report on the 15th of March, and they were told to have their part of it done by the 1st of March, they didn't have all of the information, whether it was the part that was simulcasting -- and it was all frustrated.

So what we did, in working with the Racing and Wagering Board, was put it all together so that now when we get a report from them, we will have an up-to-date report and it will actually tell us what the financial status of it is and what they're doing with their operational monies.

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

ACTING PRESIDENT MEIER: Senator Larkin, do you -

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: Thank you.

Senator, what happens if we pass the budget before the report comes in on July 1?

SENATOR LARKIN: That wouldn't have any bearing on us, David. What we're talking about is their operation and the reports that they'll submit to us.

Go back to what I said before. Remember, David, we used to have it the last day of the last night. They would say, we're going to make some changes and cuts and do something for the breeders or the harness or the back stretch or whatever it might be with regard to the industry. And we didn't have all of the data.

We did things, but now this will make sure that when they submit this report, it will consolidate everything on the 1st day of July.

When we start to look at anything

that they come to us in January or February saying, Well, we need to have something, we will actually have in hand a fully documented report, including all aspects of the industry.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, I know exactly and I've been here to witness what Senator Larkin is talking about. If he would yield for another question.

ACTING PRESIDENT MEIER: Senator Larkin?

SENATOR LARKIN: Yes.

ACTING PRESIDENT MEIER: Senator Larkin yields.

SENATOR PATERSON: Then do we need any of this information essentially to accommodate the Racing and Wagering portion of the budget that we pass?

SENATOR LARKIN: Well, take it away from the budget, David. We need to see -- because they're a public authority, we need to see what they're doing, how they're doing.

Every aspect of this here has

something to do with the Racing and Wagering Board. And the Racing and Wagering Board should have the capability of evaluating what's going on in the industry.

And what we're going to do is instead of having them submit reports to the Division of the Budget and the Legislature as we've asked for, we're now going to be able to get a report from them. And the report that we'll get in July will be a total report, rather than the one we got on March 15th, which was a report but it did not include up-to-date financial statement capabilities and stability of the industry.

SENATOR PATERSON: Mr. President, I may have gone to the back stretch when I haven't settled into the gate. I may not understand exactly what is going on.

If Senator Larkin would yield for a final question.

ACTING PRESIDENT MEIER: Senator Larkin, do you yield for what is promised to be a final question?

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT MEIER: Senator Larkin yields.

SENATOR PATERSON: I was under the impression, Mr. President, that the April 1st deadline that we work with or the March 31st deadline that we work with right now was scheduled specifically to coincide specifically with the statutory deadline of the budget.

But from what I'm getting from Senator Larkin, that may not actually be the case, which would really urge us that we need the information, but we don't necessarily need it for that process.

Is that a correct assumption, Senator?

SENATOR LARKIN: Well, in part, David.

Years ago, they used to have this in because they would make some comment on the budget, as I mentioned before, where they would make some shifts and do some changes.

But the point is that the data that they were giving us was never complete, because they in turn did not have all of the

information. They were getting a report together which in some cases was not factual.

Here, what we're doing is moving it to July 1st so everybody will have had their opportunity. And we won't be playing with the budget, we'll be dealing with an agency of the government that has to do with Racing and Wagering. It will take in their simulcasting and every other aspect of the tracks, so that when we get a report on July 1st we should know what that agency is doing and what the industry is doing.

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

ACTING PRESIDENT MEIER: Senator Paterson, on the bill.

SENATOR PATERSON: I guess that it really is the end of session each year where we really need that information. So the change in the period which is seasonable for the information to be accumulated and filed into a report probably is not affecting our process any more by July 1st and may actually give us more relevant information on than March 31st.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Will the sponsor yield to just one question, Mr. President?

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

SENATOR LARKIN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Do we actually get these reports?

SENATOR LARKIN: Yes.

SENATOR DOLLINGER: Could you produce a couple, let's say the last two years' worth, and just make them available to me? I'd love to see them.

SENATOR LARKIN: Yes, I'll send it to you.

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

I'm going to vote in favor of this bill. I don't have a problem pushing the date back to July 1st.

I do find it a bit, I guess, quizzical just in my own mind that they can't get the report done by March 31st and they can get it done by July 1st.

We -- as some people may know, I've begun to rail against constantly requiring state agencies to give us reports that we never see, that we never actually get. I would be pleased as punch if the Racing and Wagering Board were delivering the reports so that we could make the analysis necessary to figure out whether we should play with the simulcast revenues or the betting pools or the percentage pools.

I think that stuff is critically important to figuring out the health of the gaming and wagering business, figuring out what role the state should have in it.

I'm pleased -- if the Racing and Wagering Board is actually producing these reports, I commend them. Unfortunately, many other state agencies are not. And that's why I asked the question.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Does any

other Senator wish to be heard on this bill?

Hearing none, debate is closed.

Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Alesi.

SENATOR ALESI: Thank you, Mr. President. Is there any housekeeping at the desk?

ACTING PRESIDENT MEIER: There is none.

SENATOR ALESI: Thank you, Mr. President.

There being no further business, I move we adjourn until Monday, May 21st, at 3:00 p.m., the intervening days being legislative days.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until

Monday, May 21st, at 3:00 p.m. Intervening days will be legislative days.

(Whereupon, at 3:38 p.m., the Senate adjourned.)