NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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11:10 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

ACTING PRESIDENT FUSCHILLO: The Senate will come to order.

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

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

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

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

ACTING PRESIDENT FUSCHILLO: Reading of the Journal.

THE SECRETARY: In Senate, Monday, May 21, the Senate met pursuant to adjournment. The Journal of Sunday, May 20, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Lack, from the Committee on Judiciary, reports the following nominations:

As a judge of the Court of Claims, Albert J. Emanuelli, of White Plains.

ACTING PRESIDENT FUSCHILLO: Senator Lack.

SENATOR LACK: Thank you, Mr. President. I rise to move the nomination of Albert J. Emanuelli, of White Plains, as a judge of the Court of Claims.

We received the nomination from the Governor. The staff of the committee has vetted the nominee. He appeared this morning before the committee, was unanimously affirmed by the committee to come to the floor at this time.

And before turning the nominee over to Senator Spano for purposes of a second, just a brief mention that I have worked with Judge Emanuelli for the years that I have been chair of the Judiciary Committee, while he was

serving as the surrogate of the County of Westchester, and I have the highest regard and respect for him for his judicial work over those years, and he certainly has been an asset to my ability to function as chairman of the Senate Judiciary Committee.

And I offer him my personal congratulations on once again resuming the role as a judge of this state, and congratulate the Governor for his appointment of Judge Emanuelli to the Court of Claims.

And without further ado, I will yield for purposes of a second to my colleague Senator Spano.

ACTING PRESIDENT FUSCHILLO: Senator Spano.

SENATOR SPANO: Thank you, Mr. President. And thank you, Senator Lack.

It is my pleasure today to stand and to say that it's a proud day for Al Emanuelli, for his family, for the people of Westchester County, and to thank the Governor for once again appointing an outstanding person, who served us real well as our surrogate in Westchester County, to the Court

of Claims.

He has had a great history, starting from the private practice of law back in 1966, has served as a Supreme Court judge in Westchester, and has served as our surrogate, and now will serve us with distinction as a member of the Court of Claims.

So, Judge, it is my pleasure to be here today, to stand on this floor to second, very proudly second your nomination, and to offer to you my best wishes and my congratulations.

ACTING PRESIDENT FUSCHILLO: The question is on the confirmation of Albert J. Emanuelli as judge of the Court of Claims. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT FUSCHILLO: Opposed, nay.

(No response.)

ACTING PRESIDENT FUSCHILLO: Albert J. Emanuelli is hereby confirmed as a judge of the Court of Claims.

(Applause.)

ACTING PRESIDENT FUSCHILLO:

Judge Emanuelli is joined by his wife, Mary Ann.

On behalf of the members of the Senate, I extend my courtesies and wish you godspeed and the best of luck in your new position.

The Secretary will read.

THE SECRETARY: As a judge of the Court of Claims, Renee F. Minarik, of Webster.

ACTING PRESIDENT FUSCHILLO:

Senator Lack.

SENATOR LACK: Thank you, Mr. President.

I rise once again, again for another excellent appointment from the Governor, of Renee F. Minarik, of Webster, as a judge of the Court of Claims.

The staff of the committee has examined her credentials, they were found to be excellent and perfectly in order. Again, she appeared before the committee this morning, was unanimously moved by the committee to the floor.

And it's with great pleasure that I

yield for purposes of a second to my colleague Senator Nozzolio.

ACTING PRESIDENT FUSCHILLO: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President.

And thank you, Senator Lack, for your efforts on behalf of this nominee as she was moved before your committee this morning.

Ladies and gentlemen, my colleagues, it is an honor for me to stand before you today to support this excellent nomination of Governor Pataki. Renee Minarik has had a unique combination of experiences that has brought her to this place. That she has served in judicial, executive, administrative, and legislative capacities at the local, state, and national levels.

As a confidential law clerk and as assistant attorney general, as a regional director from the Department of Environmental Conservation, as an elected official from the Monroe County legislature, and as one who stood to run for the United States Congress, Renee Minarik has provided leadership in her

community. She has served a variety of different endeavors in a great capacity. Service has been her watchword.

And that she has combined that service to her community, to her state, and to her nation also with the development of her family. That she is up in the gallery today with her children, Christopher, Kathleen, Steve, and Stephanie; with her parents, Rudy and Dorothy; and with her husband, Steve.

And that she has -- Renee has worked tirelessly to serve her family first and her community, state, and nation close thereafter.

I am very pleased with Governor Pataki's nominations throughout the judiciary. I should note that Renee Minarik's nomination and confirmation today will see the first woman from Western New York so confirmed to the New York State Court of Claims.

I'm very pleased with Governor Pataki for ensuring that all are represented on the Court of Claims and that we have different perspectives and that certainly the nominee's perspective is one that is highly

qualified and one that will be a great addition to the court.

Mr. President, it is an honor for me to stand and second the nomination of my constituent. She will serve this state extremely well. And I so move her nomination.

ACTING PRESIDENT FUSCHILLO: Senator Alesi.

SENATOR ALESI: Thank you, Mr. President. Thank you, Senator Lack.

Senator Nozzolio has so eloquently described the qualifications and the attributes of Renee Minarik. And for those who had the pleasure of meeting with her during Judiciary, you will know that she is eminently well qualified.

Whether it is her background in private practice, her administrative work with the DEC, the time that she spent in the Attorney General's office, or serving her constituents as a county legislator, Renee Minarik has excelled in everything that she has pursued.

Mr. President, there are two reasons why Renee Minarik has excelled so

well, and that is a combination of two things: Her hard work and perseverance in everything that she pursues, and the values that she inherited as a member of a great family from my little hometown, East Rochester, the Forgensi family, a family that is held in high regard.

And so it comes as no surprise that with her hard work and dedication that Renee Minarik has excelled, and I'm sure that she will continue to excel in this new endeavor. I congratulate the Governor for yet another excellent choice.

And in closing, let me say that behind the resume that lists these wonderful qualifications, there is something that cannot be read, but I can assure you from my heart that they exist. Renee Minarik is a caring wife and mother, and I'm proud to know her as a personal friend because she is simply a wonderful person.

ACTING PRESIDENT FUSCHILLO: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I rise to join the rest of the Rochester, Monroe County, delegation to extol this choice for the Court of Claims.

Renee, I think this is a moment of deliverance too. I can tell you this as your friend, we are delivering you from Doug Gates and Tony Adams, and you can go on to the bench and hopefully stand on the other side of the bench in dealing with them and give them their just due.

These are also two friends of mine that Renee has worked with for the last several years. And if they were here, I hope they would be chuckling, although perhaps not loudly.

Mr. President, this is an excellent choice for the Court of Claims. I concur with Senator Nozzolio that the elevation of a woman from Western New York to the Court of Claims is long overdue. But I think also important to emphasize that Renee Minarik embodies -

ACTING PRESIDENT FUSCHILLO: Senator Dollinger.

SENATOR DOLLINGER: -- a path to the bench -

ACTING PRESIDENT FUSCHILLO:

Senator Dollinger, before you continue, I'd appreciate the doors closed to the chambers, and let's have some silence in here while the Senator is on the floor.

Thank you.

SENATOR DOLLINGER: Thank you, Mr. President.

Just to echo the comments of my colleague Senator Nozzolio, the path that Renee Minarik comes to this bench is an unusual one in the sense that she has been able to combine the job of a mother, the job of a wife, and the job of a lawyer in many different capacities in her path toward this appointment.

And I think it's important that we recognize that the traditional elevation of members to the Court of Claims, individuals who may have been involved in the bench previously, largely males who have had prior services in the judicial system -- that is not the only path, Mr. President, that we should respect and reward in elevation to the bench, that there is another path for an extremely

competent woman, who is both a wife and a mother, to come to the bench and to bring those qualities to it as well.

And so, Renee, as I said in the Judiciary Committee, there may be some in Monroe County who look at this and say, well, this has something to do with your improvement in the political process, who you are married to, or what you've done in the political process. It's my view that that is not the case and that your public service, your running for office, both in the county legislature and for Congress, are examples of your commitment to public service and your ability to stand before the voters to take the chance that everybody in this room has taken, to put yourself before the voters, put your qualifications there, I think is to be administered.

And from my point of view, as I've said a number of times before, the people who qualify for the bench in this state ought to have experience in government, they ought to have experience in their community. And part of the way you do that is through the

political process.

And I applaud the Governor's choice. I continue to say, as I've said a number of times, that from the second floor we have continued to get a steady stream of eminently qualified -- albeit Republican, but nonetheless eminently qualified candidates to serve on the bench.

Renee, you are the next in a long tradition. I'm going to urge all the Democrats to support you, and I wish you well in your future and my best to your family as well.

ACTING PRESIDENT FUSCHILLO: Senator Maziarz.

SENATOR MAZIARZ: Thank you very much, Mr. President.

I join with my colleagues from Monroe County in seconding this nomination and in congratulating Governor Pataki for what I think is an excellent nomination to the Court of Claims.

I first became associated with Renee Minarik when she was the regional director for the Department of Environmental

Conservation. I knew that she had served a term in the county legislature and also had run for Congress. And I can think of no better individual to address the claims that individuals have against the State of New York than someone who has this wide breadth of experience in dealing with people on a daily basis.

I know that several of my constituents, during her tenure as the regional director for the DEC, had long-standing claims and issues dealing with the Department of Environmental Conservation, and we could always go there and find a sympathetic voice. Renee didn't always tell them what they wanted to hear, she always didn't decide in their favor. But they always felt that she was very fair.

And I can think of no better qualification for a judge of the Court of Claims than for that individual to be fair, fair to the taxpayers of the State of New York and fair for those individuals who feel that they have some grievance against the state.

So I join Senator Nozzolio and

Senator Alesi and Senator Dollinger in congratulating Governor Pataki on another fine judicial nomination.

Thank you, Mr. President.

ACTING PRESIDENT FUSCHILLO: The question is on the confirmation of Renee F. Minarik as judge of the Court of Claims. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT FUSCHILLO: Opposed, nay.

(No response.)

ACTING PRESIDENT FUSCHILLO: Renee F. Minarik is hereby confirmed as judge of the Court of Claims.

And she is joined by her husband, Steven, and her children.

Congratulations and best wishes to you.

(Applause.)

ACTING PRESIDENT FUSCHILLO: Reports of select committees.

Communications and reports from state officers.

Motions and resolution.

Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, on page number 63 I offer the following amendments to Calendar Number 903, Senate Print 3195A, and ask that said bill retain its place on the Third Reading Calendar.

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

Senator McGee.

SENATOR McGEE: On behalf of Senator Rath, on page 63 I offer the following amendments to Calendar 902, Senate Print Number 3128, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR McGEE: Thank you, Mr. President.

ACTING PRESIDENT FUSCHILLO: Senator Kuhl, we have some substitutions at the desk.

SENATOR KUHL: Would you take up the substitutions, please, Mr. President.

ACTING PRESIDENT FUSCHILLO: The Secretary will read.

THE SECRETARY: On page 6, Senator Volker moves to discharge, from the Committee on Rules, Assembly Bill Number 808A and substitute it for the identical Senate Bill Number 1697A, Third Reading Calendar 108.

On page 10, Senator Maziarz moves to discharge, from the Committee on Rules, Assembly Bill Number 2692 and substitute it for the identical Senate Bill Number 1895, Third Reading Calendar 183.

On page 11, Senator Rath moves to discharge, from the Committee on Rules, Assembly Bill Number 4693A and substitute it for the identical Senate Bill Number 1811A, Third Reading Calendar 194.

On page 20, Senator Marcellino moves to discharge, from the Committee on Rules, Assembly Bill Number 4528 and substitute it for the identical Senate Bill Number 1970, Third Reading Calendar 397.

On page 30, Senator Lack moves to

discharge, from the Committee on Rules, Assembly Bill Number 980 and substitute it for the identical Senate Bill Number 1324, Third Reading Calendar 546.

On page 35, Senator Hoffmann moves to discharge, from the Committee on Rules, Assembly Bill Number 4909 and substitute it for the identical Senate Bill Number 2563, Third Reading Calendar 607.

On page 50, Senator Stafford moves to discharge, from the Committee on Rules, Assembly Bill Number 5983 and substitute it for the identical Senate Bill Number 3091, Third Reading Calendar 763.

On page 53, Senator Volker moves to discharge, from the Committee on Rules, Assembly Bill Number 5522 and substitute it for the identical Senate Bill Number 2787, Third Reading Calendar 789.

On page 53, Senator Seward moves to discharge, from the Committee on Rules, Assembly Bill Number 7494A and substitute it for the identical Senate Bill Number 3688A, Third Reading Calendar 793.

On page 54, Senator Spano moves to

discharge, from the Committee on Rules, Assembly Bill Number 5242A and substitute it for the identical Senate Bill Number 2793A, Third Reading Calendar 804.

On page 63, Senator Volker moves to discharge, from the Committee on Rules, Assembly Bill Number 2367B and substitute it for the identical Senate Bill Number 1984B, Third Reading Calendar 898.

On page 64, Senator Meier moves to discharge, from the Committee on Rules, Assembly Bill Number 8557 and substitute it for the identical Senate Bill Number 4058, Third Reading Calendar 912.

On page 66, Senator Seward moves to discharge, from the Committee on Rules, Assembly Bill Number 7609 and substitute it for the identical Senate Bill Number 3935, Third Reading Calendar 933.

And on page 67, Senator LaValle moves to discharge, from the Committee on Rules, Assembly Bill Number 8477 and substitute it for the identical Senate Bill Number 5093, Third Reading Calendar 942.

ACTING PRESIDENT FUSCHILLO:

Substitutions ordered.

Senator Kuhl.

SENATOR KUHL: Mr. President, I now move that we adopt the Resolution Calendar that's on the members' desks, with the exception of Resolution Number 1879.

ACTING PRESIDENT FUSCHILLO: All in favor of adopting the Resolution Calendar, with the exception of Resolution 1879, signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT FUSCHILLO: Opposed, nay.

(No response.)

ACTING PRESIDENT FUSCHILLO: The Resolution Calendar is adopted.

Senator Kuhl.

SENATOR KUHL: Yes, now could we have the title of Resolution Number 1879 read, and I move for its adoption.

ACTING PRESIDENT FUSCHILLO: The Secretary will read.

THE SECRETARY: By Senator Bonacic, Legislative Resolution Number 1879, honoring Joseph B. Lynch upon the occasion of

his retirement after 36 years of distinguished government service on June 30, 2001.

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

(Response of "Aye.")

ACTING PRESIDENT FUSCHILLO: Withdrawn.

Senator Kuhl.

SENATOR KUHL: Yes, before we adopt Resolution 1879, both Senator Leibell and Senator Bonacic would like to open that up for multisponsorship to any of the members who are interested.

With that understanding, I move that the resolution be adopted.

ACTING PRESIDENT FUSCHILLO: The resolution is open for cosponsorship. We will put everybody's name on as a cosponsor. If you do not wish to cosponsor, please notify the desk.

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

(Response of "Aye.")

ACTING PRESIDENT FUSCHILLO:

Opposed, nay.

(No response.)

ACTING PRESIDENT FUSCHILLO: The resolution is adopted.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President, there will be an immediate meeting of the Transportation Committee in the Majority Conference Room, Room 332.

ACTING PRESIDENT FUSCHILLO: There will be an immediate meeting of the Transportation Committee in the Majority Conference Room, Room 332.

Senator Kuhl.

SENATOR KUHL: Yes, and now can we go to the controversial reading of the calendar, beginning with Calendar Number 365, by Senator Seward.

ACTING PRESIDENT FUSCHILLO: The Secretary will read.

THE SECRETARY: Calendar Number 365, by Senator Seward, Senate Print 3001, an act to amend the Penal Law, in relation to insurance fraud offenses.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT FUSCHILLO: Senator Seward, an explanation has been requested.

SENATOR SEWARD: Yes, Mr. President. We are on Calendar 365?

ACTING PRESIDENT FUSCHILLO: That's correct, Senator.

SENATOR SEWARD: This legislation before us deals with the fact that we have seen an increase in no-fault insurance fraud, and it's a problem that has been growing at an alarming rate in New York State.

And it's currently estimated that no-fault fraud costs auto insurance consumers in New York State approximately a billion dollars per year. And all signs indicate that unless some kind of action is taken, this number will continue to increase. And that's something obviously that we are all paying for, all those who secure automobile insurance in New York State.

Now, this is a complicated issue. It has to be attacked in a variety of ways. This particular piece of legislation before us would attack the issue and problem in this

way: It would increase the penalties for insurance fraud by cutting in half the requisite value of property which must be obtained through the insurance fraud in order to be convicted of each degree of insurance fraud.

And it also would come down harder on repeat insurance-fraud offenders by creating two new degrees of aggravated insurance fraud.

And it is hoped that by increasing the penalties for this type of criminal activity that we will see additional prosecution of these cases, we will see tougher penalties for those who are convicted. And that sends a very strong signal to those who would engage in this type of activity in New York State that we are not going to continue to tolerate this, that we're serious about fighting fraud.

And believe me, we all will be better off for it if we can cut down on this problem.

ACTING PRESIDENT FUSCHILLO: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. If Senator Seward would yield for a question.

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

SENATOR SEWARD: Yes.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR PATERSON: Senator, as well-intended as this legislation is, I can actually see a way that it might create an obstacle, in the sense that there would be more people eligible to be prosecuted because we've lowered the threshold that would meet the test of what is actually insurance fraud in the fourth degree, and then we've also lowered the amounts that qualify it in degrees succeeding from the fourth degree.

The problem is that if we don't have the law enforcement capacity and the additional prosecutors, I am afraid that we would be in a sense taking away from the resources to prosecute the huge situations where we have insurance fraud.

So in many respects, that's one of

the reasons that we have a threshold in the first place. We'd like to prosecute somebody who was fraudulent even if the victim lost a hundred dollars.

So my question to Senator Seward is, in what ways are we going to bolster the local district attorneys' offices, the insurance divisions of the Attorney General's office, and the other prosecuting agencies or those connected even with the Insurance Department to identify and then convict these individuals?

SENATOR SEWARD: Well, Mr. President, as I had indicated in my explanation, the fight against insurance fraud has to be fought on many different fronts, one of which I think Senator Paterson points out; that is, we do need to provide additional resources for our local prosecutors.

In fact, that is one piece of our Senate antifraud package, is to draw additional funds from the auto theft and fraud fund which exists, handled through the Motor Vehicle Department, which derives its income from the $1 surcharge on all of the auto

policies. There are additional funds existing that could go toward supporting our local prosecution of these cases. And in fact, another aspect of our program is to do exactly that. We do need to provide additional resources toward local prosecution, and we propose to do that.

I might point out, I don't think the passage of this bill would necessarily increase the number of cases where fraud is being committed. It merely comes down harder on those who are tried and convicted.

SENATOR PATERSON: Thank you, Mr. President. I didn't mean to suggest -

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

SENATOR PATERSON: To ask if Senator Seward will yield for another question.

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

SENATOR SEWARD: Certainly.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR PATERSON: I don't know if there will be an increase in cases. Certainly there might be an increase in cases if we're not catching the perpetrators of the offenses that stand unsolved at this particular time. But certainly it would make more people eligible, as Senator Seward said in his original explanation, for prosecution.

My question is, what are the other methods? In other words, because this is a huge problem right now, is really changing, codifying new law the best way to bring down these numbers of cases, which actually increase premiums?

Would it actually be a more effective use of law enforcement now -- in other words, if we just have more people eligible for prosecution but maybe the resources might have been put more in investigation, would that be something that would either act concurrent with or is that something that might even be preferable to changing the law, Senator?

SENATOR SEWARD: Well, Mr. President, I think I've outlined the fact that

I would agree we need to put more resources into investigation and in prosecution. And we propose to do exactly that.

And also, I would point out that this Legislature, when -- in the past we have a lot of precedent for when we identify a problem, an issue, a concern, we have increased penalties, time and time again, as a means of sending the signal that we're serious about cracking down on this type of criminal activity, as we have in others. And this follows that same pattern.

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

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

SENATOR SEWARD: Yes.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR PATERSON: I'm persuaded that Senator Seward is right and passing this legislation would actually be a deterrence, assuming that we provide the resources to prosecute these cases.

I am interested in whether the

increases in the instances of insurance fraud have been such that the increases coming on the lower end of the prosecution scale -- in other words, the $500 to $1,000 fraud -- is that part of the increase, or is it even possible to determine what is causing the rise in these types of instances of fraud?

SENATOR SEWARD: Well, Mr. President, it's a difficult question to answer with specifics. But we have seen this trend, which is growing and it seems to be up and down the scale in terms of the size.

I know on our calendar we have Senator Skelos's so-called runner's bill, which would make it a felony to engage in that type of activity, the staging of accidents and injuries and moving it through these medical mills and that type of abuse and fraud. That's, shall we say, on the high end, and we have seen that row.

But we've seen it up and down the line in terms of the size and the amounts that are associated. So this is why, in addition to Senator Skelos's bill, which deals with the so-called runner issue, this particular piece

of legislation relates to all of the insurance fraud regardless of the size.

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

SENATOR PATERSON: Mr. President, I have a final question for Senator Seward.

ACTING PRESIDENT FUSCHILLO: Senator Seward, do you yield?

SENATOR SEWARD: For Senator Paterson's final question, yes.

ACTING PRESIDENT FUSCHILLO: The Senator yields for your final question, Senator Paterson.

SENATOR PATERSON: You know, I was the one that brought it up, Mr. President. I didn't have to be reminded by everybody.

But I'm just curious, if we are going to be lowering the threshold that would qualify, then what we're actually doing is increasing the penalties on the other offenses, except for insurance fraud in the fourth degree, where we're lowering it to a level where it's never been before.

And I would wish that Senator Seward give us an example of what is the

insurance fraud that would manifest itself in a consumer losing $500. You know, just an example of that.

SENATOR SEWARD: Well, it's -- I think, Mr. President, any -- we could develop any kind of number of examples that could involve $500. It could be as simple as, let's say, an unscrupulous body-shop owner working with someone who has damage to his car and together you're putting in a higher than necessary estimate on the work and charging additional claims to the insurance company that could amount to $500, as an example.

Personally, I think it's -- if it's -- whether it's $500 or $500,000, for that matter, I think it's a serious crime that should be dealt with. And this legislation proposes to do exactly that.

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

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

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

SENATOR SEWARD: Yes, Mr. President.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR SCHNEIDERMAN: Thank you.

My question is that in this bill there's reference several times to a term which doesn't appear to be defined here. It's -- the predicate for some of these aggravated offenses is the commission of a fraudulent insurance act. And I'm wondering what that is and where it's defined, if anywhere.

SENATOR SEWARD: I'm advised by counsel it is defined in the Penal Law.

SENATOR SCHNEIDERMAN: Through you, Mr. President, because if we are changing the definition -

ACTING PRESIDENT FUSCHILLO: Senator Schneiderman, do you have another question?

SENATOR SCHNEIDERMAN: Yes, I do.

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

SENATOR SEWARD: Yes.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR SCHNEIDERMAN: I'm just trying to get clarification of this, because we have quite a few bills on our plate this session that would change the structure of the law and create substantially new offenses and modify old offenses.

And I just want to make sure that the definition of the predicate still works with the revised statutes that we're proposing this year. And I don't know what a fraudulent insurance act is; it's not defined here. And I just am a little concerned about it being listed as a predicate without any modification or instruction as to the definition.

SENATOR SEWARD: Mr. President, I see the point that the Senator is making. However, I would respond this way. We are not changing the definition. It appears elsewhere in the Penal Law. We are not making any modifications that really would impact that definition.

The only change that we are making here is, you know, lowering the thresholds and

thus increasing the penalties.

ACTING PRESIDENT FUSCHILLO: Senator Schneiderman.

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

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

Read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President, I'd like to announce that there will be an immediate meeting of the Corporations, Authorities and Commissions Committee in the Majority Conference Room, Room 332.

ACTING PRESIDENT FUSCHILLO: There will be an immediate meeting of the

Corporations, Authorities and Commissions Committee in the Majority Conference Room, Room 332.

Senator Kuhl.

SENATOR KUHL: Yes, and could we now take up Calendar Number 570.

ACTING PRESIDENT FUSCHILLO: The Secretary will read.

THE SECRETARY: Calendar Number 570, by Senator Seward, Senate Print 2129C, an act to amend the Insurance Law, in relation to fair claims settlement.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT FUSCHILLO: Senator Seward, an explanation has been requested.

SENATOR SEWARD: Yes, Mr. President.

As in our previous legislation, this bill before us also deals with the insurance fraud issue. And it does so in this way. The bill would extend the time which insurers have to investigate a claim from 30 to 45 days and would allow defenses to a claim related to fraud to be raised even after this

time frame if the insurer has made a report to the Insurance Frauds Bureau regarding the claim.

ACTING PRESIDENT FUSCHILLO: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President. Will the sponsor yield to a question, please.

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

SENATOR SEWARD: Yes, Mr. President.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DOLLINGER: What evidence, if any -- through you, Mr. President -- exists that the 30-day period -

ACTING PRESIDENT FUSCHILLO: Senator Dollinger, may I ask just to interrupt you.

I just wanted the doors shut to the chambers. Let's have some silence in here so we can hear your question. Thank you.

SENATOR DOLLINGER: Thank you, Mr. President. Through you.

Senator Seward, what evidence exists that the time lapsing alone creates an inability on the part of insurance carriers to determine the validity of these claims?

SENATOR SEWARD: Well, Mr. President, we have heard from a number of the insurers. We've discussed the matter with the Insurance Department, which of course gets in the middle of these types of issues and disputes. And it seems very reasonable to increase the time frame from 30 to 45 days.

And I might point out that we have not plucked that 45-day time frame out of the air. In fact, under legislation that this house passed and was enacted into law two or three -- about three years ago, all -- the so-called prompt-pay legislation, the medical providers, once they submit a bill to the payors, the insurance payors, they have 45 days in which to pay that claim under our prompt-pay legislation.

This bill before us would mirror that by, in these instances, in these no-fault instances, would be to strike that same 45-day period as we have in our prompt-pay

legislation.

And the reason I think it's fair to do this and important to do this as an antifraud measure is that currently the claims may be submitted up to six months after the treatment or service was rendered. And very often with such a long period of time before a bill has been submitted to the insurer for payment, that it's very difficult in a short 30-day period of time to be able to determine whether or not there has been any fraud committed.

So I think that additional 15 days on a claim which may have not been submitted for a six-month period of time I think is reasonable. I don't think we're outside the bounds of being reasonable with this legislation.

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

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

SENATOR SEWARD: Yes.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DOLLINGER: Senator Seward, I can understand the additional time to investigate this claim if it is filed at the end of the six-month period. But this provision for a 45-day in essence penalty-free payment period would apply to a claim that had been filed immediately after treatment is received; isn't that correct?

SENATOR SEWARD: Well, Mr. President, there is no distinction between whether a claim has been submitted the day after treatment or six months after treatment.

But I would point out that it's the law of the state now, you know, in the straight health insurance coverage, that we call a 45-day payment period prompt pay. So I don't think 45 days is an inordinate amount of time.

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

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

SENATOR SEWARD: Yes.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DOLLINGER: Senator, does this apply to all first-party benefits, including lost wages, or just to health benefits?

SENATOR SEWARD: Mr. President, this deals with first-party benefits and additional first-party benefits.

SENATOR DOLLINGER: But through you, Mr. President, if Senator Seward will continue to yield.

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

SENATOR SEWARD: Yes.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DOLLINGER: That would include lost-wage payments, would it not? Because they're part of the first-party benefits.

It's not just -- I think as you know, Senator Seward, it's lost wages and payment of the medical bills.

SENATOR SEWARD: Mr. President, that is correct, it would be the whole range of the first-party benefits, yes.

SENATOR DOLLINGER: And through you, Mr. President, if Senator Seward will continue to yield for one more question.

ACTING PRESIDENT FUSCHILLO: Senator, do you continue to yield for one final question?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DOLLINGER: When we enacted the no-fault law, we said that claimants are going to give up their right to sue in certain cases involving minor injuries, lack of a serious physical injury -- we said that they were going to give up their right to sue on those small claims in exchange for prompt payment of their meds and their lost wages.

My question is, does expanding the period from 30 to 45 days, does that in essence backtrack on the deal that we struck when we enacted the no-fault law; that is, to

trade off -- remember, a claimant, a person injured, gives up their right to sue for anything other than a serious physical injury. In exchange for that, they were going to get their wages paid quickly and their health benefits paid quickly.

Aren't we really backtracking away from that agreement, that deal when no fault was created?

SENATOR SEWARD: Mr. President, I wouldn't describe it as backtracking or a large change in the system. I would view this 15-day period as merely a modification, a refinement of existing law which is being made in response to changes that we have observed in the whole system in process.

And that is an increase in the amount of fraud. And this merely gives an additional 15 days for a determination to be made whether or not fraud has in fact been committed.

SENATOR DOLLINGER: Thank you, Mr. President. Could I be heard on the bill, if -

ACTING PRESIDENT FUSCHILLO:

Senator Dollinger, on the bill.

SENATOR DOLLINGER: Mr. President, I'm going to vote against this bill. And the reason why I do so is because when we enacted the no-fault law in this state, we said that people with relatively minor claims and people with claims across the board would get prompt payment of their lost wages and prompt payment of any medical bills within a 30-day period.

That was the compromise that we struck when we told people who were injured in accidents that they were going to give up their right to sue for certain recoveries unless they sustained a serious physical injury.

And it seems to me that what we are doing with this bill is we are giving the insurance industry in this state 15 additional days to potentially sit on payments without paying interest to the claimant when the claimant will experience another 15-day period in which they have no income.

And I would suggest that the question of fraud and to what extent there is

fraud in the no-fault system, it seems to me -- and I've heard estimates of that number ranging between 2 percent to 6 percent -- it seems to me that what we're doing is we're swatting a fly with a baseball bat. What we're doing is taking the compromise, which was we said to certain people: You give up your right to sue. In exchange for that, we're going to make sure you get your medicals paid quickly and your lost wages paid quickly. We're now telling them, You're not going to be paid as quickly as we originally promised you.

We're in essence telling the insurance industry in this state that it's okay to sit on these claims for an additional 15 days without paying interest and forcing people who have lost income to wait 15 more days in order to be paid.

I think 30 days is long enough for the insurance industry to investigate these claims. And if they determine that fraud has been committed, let them stand up, file a report with the Insurance Fraud Bureau, let them contest the claim, and let them do it at that point.

I think by doing this we're giving the insurance industry 15 more days to hold wages that are due to people who may, because of their financial circumstances, absolutely need to be paid. We cut a deal when we passed no-fault, Mr. President, and the deal was if you sustain certain injuries, you're going to get your medicals paid promptly, you're going to get your lost wages paid promptly. It seems to me that this bill in essence backtracks on that deal by slowing down the process for people who suffer injuries in accidents.

I don't think it's warranted, Mr. President. This is a way to simply delay payments to deserving claimants. If there's fraud, we ought to deal just with the fraud component and not punish everyone. I'll be voting in the negative, Mr. President.

ACTING PRESIDENT FUSCHILLO: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, I'll be voting in the negative as well.

And I don't think cutting the time frame to just a claim or to make a

determination from 45 days to 30 days has anything whatsoever to do with fraud. And the reason I say that is the second provision in this bill says that you can go beyond the 45 days if you are -- if the insurance company questions the claimant on the basis of fraud.

So there is literally no reason whatsoever to change the claim period from 45 days to 30 days other than to deny payments to insureds for a little longer period of time.

As to the fraud provision, what bothers me about this bill is very simply that it assumes that the only fraud being committed is fraud by people being insured. I've handled so many cases in fire claims and many different types of claims where insurance companies allege arson, they allege misrepresentations, they allege anything and everything to hold up the payment of a legitimate claim by an insured.

And I've had situations where after the case goes to trial there is no proof whatsoever of misrepresentation or fraud, but what it does for insurance companies, it gives them that club over somebody's head. You

either settle, or you're going to go through a long process and that long process is going to bring you back nothing. In fact, it's going to cost you legal fees.

The difference of power between insurance companies and claimants is not even measurable. I believe very strongly that if you want to avoid fraud or you want to have more time to investigate fraud, you're going to have to serve a consequence if there is no fraud involved. There has got to be a consequence on the insurance carriers.

And the concept of having the insurance company file a report with the Insurance Frauds Bureau as to what leads them to believe there might be fraud and what they're investigating, to show some good faith basis. And then if they're wrong and they're holding up funds legitimately due to an insured, they should pay interest on the money that the insured is losing as a result of this particular delay.

And there's a clause that I prepared and provided to Senator Seward hoping that when this bill is negotiated with the

Assembly, there might be some consideration for the insured as well as insurance companies, and that fraud goes both ways. And the heavy hand of an insurance company has hurt a lot of people. And if they hurt somebody unfairly, they should have a consequence, not simply a free ride that this bill gives.

As a result, for those reasons I'm going to vote no and hope that these types of changes that I've suggested to Senator Seward become a part of the final bill when it's negotiated with the other house.

THE PRESIDENT: Senator Gentile.

SENATOR GENTILE: Yes, Madam President, if the sponsor would yield to a question.

THE PRESIDENT: Senator Kuhl first.

SENATOR KUHL: Yes, Madam President, before I -- excuse the interruption, gentlemen.

I'd like to announce an immediate meeting of the Local Government Committee in the Majority Conference Room, Room 332.

THE PRESIDENT: There will be an immediate meeting of the Local Government Committee in the Majority Conference Room, Room 332.

Senator Seward.

SENATOR SEWARD: Yes, I'm available for questions.

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

SENATOR GENTILE: Thank you, Madam President.

Through you, Madam President, I'm just curious to know from the sponsor how this proposal works with some of the other administrative suggestions that have been made by the Insurance Department in the fraud area, and particularly in the proposal to decrease the period of time in which a victim can file a claim from 90 days to 30 days.

That is a proposal now that has been made, and I'm curious as to how this all works together when you're talking about your proposal in conjunction with the proposal to decrease the time in which a victim can file a claim from 90 days to 30 days.

SENATOR SEWARD: Well, Madam President, I believe Senator Gentile was referring to some regulations which have been proposed by the State Insurance Department which would in fact make it within a 30-day period that a claimant would inform their insurance company that they have been involved in an accident. That's down from 90 days.

And then it would compress the time period for submitting medical bills under no-fault from the current six months down to 45 days. So that's what's happening regulatorily.

This legislation deals with the payment of the benefits, on the other end of the process.

SENATOR GENTILE: If the Senator would continue to yield.

THE PRESIDENT: Senator, will you continue to yield?

SENATOR SEWARD: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR GENTILE: Through you, Madam President, whether it's statutorily or

administratively through regulations, wouldn't you agree with me, Senator, that the practical effect of the combination of state legislation as well as regulation will in fact decrease the time in which someone can file a claim from 90 to 30 days and decrease the time in which medical records or medical claims can be filed, I believe you said down to 45 days, and on the other end because of this legislation, increases the time by which an insurance company can deny a no-fault claim from 30 to 45 days?

In essence, Senator, what we're seeing is a combination of regulation and state law, should this pass and become law, that indeed squeezes the consumer on the front end and also squeezes the consumer on the back end with the insurance company as a result of this bill.

Based on that, if you look at the overall picture, how in the world can anyone say that this is -- this kind of legislation, in conjunction with the administrative regulations being proposed, would be protective of the consumer that's legitimately

hurt?

SENATOR SEWARD: Well, Madam President, the regulations that have been proposed by the Insurance Department are exactly that. And they're going through a comment period currently. In fact, they are not in effect.

And I would encourage Senator Gentile to direct his comments to the department as part of their comment period should you have concerns there.

I don't view the compression of the time for the filing of claims as squeezing the consumer. I think that it should be better described as really speeding up the process. Because the claims would have to be in sooner, and it would give the insurers an opportunity to, under my bill, more ample time to investigate fraud and then, you know, move payment out.

And in fact, if they do go beyond, under my legislation, the 45-day period of payment and there's no fraud involved, they still have to pay, which is existing law, 2 percent, which computes to -- on a monthly

basis, which computes to 24 percent annual interest rate on the claim, as well as attorneys' fees.

So I think there certainly is no incentive here that would encourage an insurer to extend beyond 45 days unless there is fraud involved.

SENATOR GENTILE: If the Senator would continue to yield, I do have a -

THE PRESIDENT: Senator, do you continue to yield?

SENATOR SEWARD: Yes.

THE PRESIDENT: Senator Seward yields. You may proceed, Senator Gentile.

SENATOR GENTILE: Thank you, Madam President, through you.

Senator, it -- but as Senator DeFrancisco so aptly pointed out, there is no good-faith requirement on the part of insurance companies in this legislation that would require them to have some basis for claiming a fraud in insurance claim.

Given that fact, how is it that these claims are not sped up but indeed slowed down by just wanton claims of fraud by filing

this report?

SENATOR SEWARD: Well, Madam President, I would call a 24 percent interest rate a disincentive for, you know, extending the time period of payment without cause. I would call the requirement to pay attorneys' fees a further disincentive to go beyond on the time period without cause.

And under existing law, and as well as under our legislation, that they do have to make a report to the Insurance Frauds Bureau should they wish to go beyond the prescribed time period. So, you know, there are controls in the system.

I would further point out this. That the State Insurance Department, on an every-three-year period of time basis, conducts what they call market conduct studies. And believe me, these are well publicized should an insurance company be causing, you know, claimants to wait an inadvertent or an undue time. And all of this is very public information and very, very bad publicity for the insurance companies.

SENATOR GENTILE: If the Senator

would continue to yield.

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

SENATOR SEWARD: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR GENTILE: I appreciate what you just said, and I didn't realize that.

But obviously whatever publication these companies show -- in which they show up has not affected the companies that Senator DeFrancisco has dealt with. Because obviously, based on Senator DeFrancisco's experience, as he just indicated, there are many, many, many, many insurance companies that will claim arson, that will claim misrepresentation, that will claim a host of different reasons for holding up payment on a claim.

Now, whatever publication you just indicated to us obviously is in existence as we speak, but it certainly hasn't been an incentive enough for the companies that Senator DeFrancisco has dealt with to change their ways. So I'm concerned and curious as

to the effectiveness of what you just told us.

SENATOR SEWARD: Well, Madam President, the -- we're mixing apples and oranges here a bit. The legislation before us deals with no-fault auto only. And Senator DeFrancisco was making comments on a broader scale unrelated to this particular piece of legislation before us.

What I described to you in terms of the market conduct study, the 24 percent annual interest rate, the attorneys' fees required to be paid, those types of disincentives for extending the time period of payment of claims deal specifically with no-fault auto claims. Which is the bill before us at this time.

SENATOR GENTILE: Thank you, Senator. On the bill.

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

SENATOR GENTILE: Thank you.

I tend to agree with my colleague Senator Dollinger, in that when we set up our no-fault insurance legislation, our law, we set out certain time periods that I believe,

absent the fraud, work well. This piece of legislation that intends to deal with the fraud I think instead really deals with hurting the legitimate consumer who is hurt and needs to file a claim.

Certainly I believe -- and Senator DeFrancisco made an excellent point, the fact that if we're going to do something like this, there should be an explicit good-faith requirement on the part of insurance companies for claiming a fraud basis and filing a fraud report.

Because otherwise, even though Senator DeFrancisco mentioned those instances where insurance companies have claimed everything under the sun to deny payment to a claimant, although he may have not mentioned something in the auto insurance industry, I would imagine that it's not much different in the auto insurance industry as in the case of arson or some other area that may not be related to auto insurance.

So I think that while fraud is a concern in this state, it's a concern to consumers as well as to insurance companies.

I think this bill weighs too heavily, too heavily in favor of an insurance company and squeezes the legitimate consumer with -- in conjunction to the regulatory proposals that are now before the Insurance Department to decrease the time in which someone can file a claim.

Given those two factors, this bill and that regulation, I believe the passage of both will mean very serious consequences to legitimately injured victims in this state. So I will be voting in the negative on this legislation.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. I'd like to announce an immediate meeting of the Consumer Protection Committee in the Majority Conference Room, Room 332.

ACTING PRESIDENT MEIER: Immediate meeting of the Consumer Protection Committee in the Majority Conference Room.

Senator Lachman.

SENATOR LACHMAN: Since Senator

Gentile asked the questions I would have asked, I pass.

ACTING PRESIDENT MEIER: Thank you, Senator.

Any other member wish to be heard on the bill?

Hearing none, debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

SENATOR PATERSON: Slow roll call.

SENATOR ONORATO: Slow roll call.

ACTING PRESIDENT MEIER: Are there five Senators standing?

More than five Senators have arisen. A slow roll call is ordered.

The Secretary will ring the bells.

The Secretary will call the roll.

THE SECRETARY: Senator Alesi.

(No response.)

THE SECRETARY: Senator Balboni.

SENATOR BALBONI: Yes.

THE SECRETARY: Senator Bonacic.

SENATOR BONACIC: No.

THE SECRETARY: Senator Breslin.

(No response.)

THE SECRETARY: Senator Brown.

SENATOR BROWN: No.

THE SECRETARY: Senator Bruno.

(Senator Bruno was indicated as voting in the affirmative.)

THE SECRETARY: Senator Connor.

(Senator Connor was indicated as voting in the negative.)

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: No.

THE SECRETARY: Senator Dollinger.

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

ACTING PRESIDENT MEIER: Senator Dollinger, to explain his vote.

SENATOR DOLLINGER: I just want to join the comments made by my colleagues Senator DeFrancisco and Senator Gentile.

As I said earlier, I think this is

backtracking on the original compromise that we cut for the benefit of the no-fault law, that certain people gave up their right to sue in exchange for prompt payment of their lost wages and medical benefits.

I'm very reluctant to go against that original compromise, and I don't think that there's a foundation laid for fraud as the basis to overturn that agreement.

So, Mr. President, I will vote in the negative.

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

The Secretary will continue to call the roll.

THE SECRETARY: Senator Duane.

SENATOR DUANE: No.

THE SECRETARY: Senator Espada.

(No response.)

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: Aye.

THE SECRETARY: Senator Gentile.

SENATOR GENTILE: No.

THE SECRETARY: Senator Gonzalez.

(No response.)

THE SECRETARY: Senator Goodman.

SENATOR GOODMAN: Aye.

THE SECRETARY: Senator Hannon.

(No response.)

THE SECRETARY: Senator Hassell-Thompson.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson, to explain her vote.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President.

Because I perceive this bill to be unduly harsh for legitimately injured victims and it denies payment -- denial of payment could result in the victim not getting needed medical attention or even proper diagnosis of an injury -- as the ranker on Consumer, I would have to vote against this bill.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson will be recorded in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Hevesi.

ACTING PRESIDENT MEIER: Senator Hevesi, to explain his vote.

SENATOR HEVESI: Thank you, Mr. President.

Since under current law insurance carriers can right now effectively extend the amount of time by requesting within 10 business days additional verification before the 30-day window begins, this bill is not going to crack down on fraud. It is simply an anticonsumer measure that is going to give much freer rein for insurance companies to deny claims and cause problems for the insured.

As a result, I vote no on this bill.

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

The Secretary will continue to call the roll.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Aye.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator Kruger.

(No response.)

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lachman.

SENATOR LACHMAN: Nay.

THE SECRETARY: Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Larkin.

(No response.)

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Aye.

THE SECRETARY: Senator Libous.

(No response.)

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: Aye.

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: Aye.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Aye.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: No.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: Yes.

THE SECRETARY: Senator McGee.

SENATOR McGEE: Yes.

THE SECRETARY: Senator Meier.

SENATOR MEIER: No.

THE SECRETARY: Senator Mendez, excused.

Senator Montgomery.

(No response.)

THE SECRETARY: Senator Morahan.

SENATOR MORAHAN: Yes.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: No.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: No.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: No.

THE SECRETARY: Senator Rath.

SENATOR RATH: Aye.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Sampson.

SENATOR SAMPSON: No.

THE SECRETARY: Senator Santiago.

(No response.)

THE SECRETARY: Senator Schneiderman.

SENATOR SCHNEIDERMAN: No.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Aye.

THE SECRETARY: Senator Skelos.

(No response.)

THE SECRETARY: Senator A. Smith.

SENATOR ADA SMITH: No.

THE SECRETARY: Senator M. Smith.

SENATOR MALCOLM SMITH: No.

THE SECRETARY: Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: No.

THE SECRETARY: Senator Stafford.

(No response.)

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: No.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Velella.

(No response.)

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: Aye.

ACTING PRESIDENT MEIER: The Secretary will call the absentees.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Breslin.

SENATOR BRESLIN: Yes.

THE SECRETARY: Senator Espada.

(No response.)

THE SECRETARY: Senator Gonzalez.

(No response.)

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Yes.

THE SECRETARY: Senator Kruger.

(No response.)

THE SECRETARY: Senator Larkin.

(No response.)

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Aye.

THE SECRETARY: Senator Montgomery.

(No response.)

THE SECRETARY: Senator Santiago.

(No response.)

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Yes.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Aye.

ACTING PRESIDENT MEIER: The Secretary will announce the results.

THE SECRETARY: Ayes, 33. Nays, 21.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, would you recognize Senator Volker, please.

ACTING PRESIDENT MEIER: Senator Volker.

SENATOR VOLKER: Mr. President, to facilitate the budget process, would you please star my bills Calendar 239, Senate Print 2833, and Calendar 240, Senate Print 2834. Both those bills will be starred.

ACTING PRESIDENT MEIER: A sponsor's star will be placed on Calendar Numbers 239 and 240.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President, would you also, while we're adjusting the calendar, lay aside for the day Calendar Number 715.

ACTING PRESIDENT MEIER: Calendar 715 will be laid aside for the day.

SENATOR KUHL: And would you lay aside Calendar Number 791, by Senator Johnson, for the day.

ACTING PRESIDENT MEIER: 791 will be laid aside for the day.

SENATOR KUHL: Then would you call up Calendar Number 515, please.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 515.

THE SECRETARY: Calendar Number

515, by Senator Johnson, Senate Print 2221A, an act to amend the Vehicle and Traffic Law, in relation to accident reporting.

SENATOR LACHMAN: Explanation, please.

ACTING PRESIDENT MEIER: Senator Johnson, an explanation has been requested of Calendar 515 by Senator Lachman.

SENATOR JOHNSON: Yes, Mr. President.

This bill requires that all auto vehicle accidents -- autos, trucks, motorcycles, et cetera -- in which there is serious personal injury or death be investigated by the police, those reports be forwarded to the Department of Motor Vehicles, who will tabulate those reports -- study those results and tabulate them into some kind of a report by December 2004 to find out the reason for those accidents, were there any summons, who was at fault, and so on, so we can improve our traffic safety procedures and regulations to save lives.

ACTING PRESIDENT MEIER: Senator Lachman.

SENATOR LACHMAN: Mr. President, through you, will the sponsor yield for a question?

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

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR LACHMAN: My last question I will ask first, because you used it in summarizing your position.

Why do we have to wait three years, until December 31st in the year 2004, before we have an official report going to the State Legislature from the Department of Motor Vehicles?

SENATOR JOHNSON: Senator, that's the very question which occurred to me but which I failed to ask my bill drafter.

SENATOR LACHMAN: I'm sorry, can you speak louder?

SENATOR JOHNSON: That is a question which occurred to me but which I failed to ask my bill drafter.

They seem to have gotten a feedback from the department that it takes several years to get these results and tabulate them and so on. I think it should be sooner, Senator, I agree with you. But this is the form in which we passed a similar bill for the past four years.

SENATOR LACHMAN: Mr. President, through you, do I assume, then, Senator, that you will attempt to shorten the time period from three years to at least one year before the Department of Motor Vehicles informs the State Legislature in this area?

SENATOR JOHNSON: Well, I think it should be shortened. I'm doubtful whether one year, at the end of one year a report could be in, because they wouldn't have that much material together and tabulated and really analyzed at that point.

But perhaps they could take a year off. I'd certainly like to do that. If we pass this bill -- and it now has a companion in the Assembly. So I think we might talk with them, and if they're agreeable, we take a year off, I would say that would be good.

SENATOR LACHMAN: A compromise, all right.

Mr. President, through you, will the Senator continue to yield?

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

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LACHMAN: Where does the Department of Motor Vehicles currently receive its information regarding fatalities and injuries by bicyclists?

SENATOR JOHNSON: Where do they get the information from, you're asking me? Is that the question?

SENATOR LACHMAN: Mm-hmm. Where does it get its exact data, its precise data, its information?

SENATOR JOHNSON: Where do we get the data? Well, we get raw data on accidents and the number of -- the type of vehicle and so on. But we don't get what we need to do a study because we don't get any information

other than it happened and this is when it happened and this is what was involved.

There's no required investigation of any accident, whether it's a fatality or a serious injury right now, except for tractor trailer trucks, because that's required under the federal law, which we had to comply with in 1993. But there's not necessarily an investigation in most of these accidents.

As you know, what precipitated this was the carnage on the weekend, where every weekend a motorcyclist gets killed because someone pulled out in front of him or made a left turn in front of him, and there's no investigation, no -- it's just considered an accident. That's not good enough for me.

And now what we're doing when we rebuild the roads, at least on the South Shore and over to the beaches, we're putting a bicycle path alongside the roads. Now, are we going to have the same thing there that those people get run over and it's just an accident? No, there has to be some inquiry into this and something done to make sure this doesn't continue to happen.

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

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

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LACHMAN: Senator, I think it's noble of you and correct of you in trying to draft the bill in response to that terrible event, to prevent such events from occurring in the future. But would you not agree that there should be some standardized, across-the-board method of gathering data through the state?

SENATOR JOHNSON: Well, I'm hoping this bill will bring about that occurrence, yes.

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

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

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LACHMAN: What is the current procedure, Senator, that a police officer is instructed to follow when there is an accident on the road, whether it is a motorcycle accident or a bicycle accident, an accident involving a pedestrian? Do we have a standard procedure on this issue?

SENATOR JOHNSON: I can tell you that I have spoken with our police, and they say if they feel it warrants an investigation, they do it. Most of the times they just say it's just an accident, period, and it's just a statistic and that's the end of it.

And that's why we're requiring them to investigate the facts and circumstances of these accidents, the type of vehicles involved, whether pedestrians were involved, the contributing factors, weather, other things, whether any violations of the law occurred that precipitated this accident, and so on.

We are telling them this is the information we want so we can find out what's going on on the roads and correct it.

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

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

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LACHMAN: On this question that I asked you immediately preceding what I'm asking you now, since the bill was drafted very quickly to respond to an immediate problem, will you commit yourself to improving the bill, and especially police procedures in reporting such accidents in the future, and have a standardized procedure throughout the State of New York?

SENATOR JOHNSON: Senator, I don't want to legitimatize your observation that this bill was drafted quickly, because this bill in one form or another has been

around for four years and passed for four years. So it's not a precipitate act on our part.

It does provide in the bill the procedures that are to take place by the police. Let me just find the section for you which says what they are supposed to do.

This -- it will be in the Motor Vehicle Law, and it says "Whenever a motor vehicle accident results in serious physical injury or death to a person and such accident is either discovered by the police officer or reported to a police officer, within five days after such accident occurred, police are to conduct an investigation of such accident. Such investigation shall be conducted for the purpose of making a determination of the following: The facts and circumstances of the accident, the number and type of vehicles involved, including passenger motor vehicles, commercial motor vehicles, motorcycles, limited-use motorcycles, off-highway motorcycles, and/or bicycles, whether pedestrians were involved, contributing factor or factors, whether it can be determined if a

violation or violations of this chapter occurred, and, if so, the specific provisions of this chapter which were violated and by whom, and the cause of such action where such cause can be determined. The police shall forward a copy of the investigation report to the commission within five business days of the completion of such report."

So it's quite specific in what they have to do, Senator. But if you feel there are improvements that could be made, I'd certainly be willing to listen to those. But I'd like to get this bill passed during this session, and I believe the Assembly is ready to pass their version of it.

Thank you.

SENATOR LACHMAN: Final question, Mr. President.

ACTING PRESIDENT MEIER: Senator Johnson, do you yield for what's promised to be the final question?

SENATOR JOHNSON: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LACHMAN: Based upon your

last response, I assume that if it has to be improved, you will act to improve it. In terms of the police procedure.

SENATOR JOHNSON: Senator, I didn't hear your question too well.

SENATOR LACHMAN: In response to my previous question, I assume that if you find that this is not thorough enough and strong enough, you will move to improve the police procedure in these instances.

SENATOR JOHNSON: I think that this will establish the procedure where none presently exists, other than some sort of judgment at the scene, perhaps. And I don't think that's sufficient enough, Senator. There's no content of those reports, superficial reports, upon which to basis any observations or any improvements, potential improvements in the law.

This would give us that background information.

SENATOR LACHMAN: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Hevesi.

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

ACTING PRESIDENT MEIER: Senator Johnson, do you yield?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you, Mr. President.

I've supported this legislation in the past. I think it's a good bill. But I have one concern as to the scope of the legislation. So let me pose the following question. It seems to me that this very well intended piece of legislation seeks to determine information that may have led to serious or fatal accidents, the purpose being that we can garner better knowledge about what happened in order to try and prevent the accidents from occurring in the first place.

My question to you is, it doesn't seem to me from the criteria that is listed in the legislation as to what needs to be compiled, that we are going to allow ourselves

to obtain information that will determine whether or not some safety precautions after the accident has already taken place were beneficial.

So for example -- and why don't I pose this as a question -- am I correct in assuming that nothing in this bill would require there to be reporting about whether or not a seat belt was used and to do some kind of causal analysis as to whether injuries were lessened as a result of the use of the seat belt, or the use of a helmet by a child riding a bicycle? And this is important because we recently exempted some individuals, some children, from wearing helmets under New York State law.

So my question to you is, could we go a little bit further in this to try and minimize the impact of injuries, in addition to what I believe you do here, which is trying to prevent accidents in the first place?

SENATOR JOHNSON: Senator, perhaps you didn't hear my listing of the criteria. And one of them was whether any specific violation of the Vehicle and Traffic

Law occurred at the time of this accident. In other words, seat belts, helmets, wherever they're mandated are a violation of the law if you don't comply with that. So that would also be investigated under this present draft of the law.

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

ACTING PRESIDENT MEIER: Senator Johnson, will you continue to yield?

SENATOR JOHNSON: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you.

I understand that, and you raise a good point. My question, though, is that is there anything that the commissioner is currently required to do with this information other than report the stats to the Legislature and the Governor three years from now, as opposed to getting the information and doing some statistical analysis with it to make assessments in order to minimize the seriousness and severity of injury as a consequence of those who may have violated the

law, such as the seat belt law or the helmet law?

SENATOR JOHNSON: I feel that this bill requires what you just stated. It requires study and analysis with some recommendations. And I think we'll have that with this law.

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

ACTING PRESIDENT MEIER: Senator Johnson, do you yield?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Maybe I'm mistaken. I'll make this my final question.

I'm not sure where in the bill it requires an analysis of the information with an eye to minimizing injury impact or what have you. I could be wrong. Could you point that out to me?

SENATOR JOHNSON: Senator, do you have the bill before you?

SENATOR HEVESI: I do.

SENATOR JOHNSON: If you'll look at the last paragraph, number 2 way at the end, page 2, line 17, if you read from there, you will see what the requirements are upon the department, what they should do with that information.

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

ACTING PRESIDENT MEIER: Senator Johnson, do you yield?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you.

Can you tell me specifically the line you're referring to on the requirements after the information has been provided?

SENATOR JOHNSON: Well, I'll read it to you, Senator, and to the other members of this body:

"The Commissioner of Motor Vehicles shall, on or before December 31, 2004, submit a report to the Governor, the Temporary President of the Senate, and the Speaker of

the Assembly as to the nature and cause of motor vehicles accidents resulting in death or serious physical injury, based upon the investigation reports submitted pursuant to Section 603A of the Vehicle and Traffic Law, as added by Section 1 of this act, and make appropriate recommendations for passenger motor vehicle, commercial motor vehicle, motorcycle, bicycle, and pedestrian accident prevention."

SENATOR HEVESI: Thank you.

On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Hevesi, on the bill.

SENATOR HEVESI: Thank you. And I thank the sponsor for bringing this important piece of legislation. That was a very satisfactory answer.

I just had a slight concern - although my fears are somewhat allayed by that last section that the sponsor just read - because, for example, seat belts are not required for passengers riding in the back seat of a vehicle, and there could be an issue as to the extent to which the use or the

failure to use a seat belt for a rear passenger, somebody who is a rear passenger, resulted in injury.

And I know from personal experience, because I had a friend who was in a very serious head-on collision with a telephone pole who was riding in the back seat, and the use of a lap belt in the back seat actually caused him much more serious injury than he would have otherwise sustained without having used it.

But I am pretty confident, particularly because of that section in the bill, that the commissioner will expand on his own, for the benefits of public safety and public policy, the scope of any investigation and recommendations. I think this is a good bill, and I'd like to see it passed. I don't know why it's taking so long to have this legislation passed.

But short of that, Mr. President, I thank the sponsor for bringing the legislation, and I support it.

ACTING PRESIDENT MEIER: Senator Lachman.

SENATOR LACHMAN: To explain my vote, Mr. President -

ACTING PRESIDENT MEIER: Well, we're not on the roll call yet, Senator.

SENATOR LACHMAN: Okay, whenever we are.

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

Hearing none, debate is closed.

Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 180th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Lachman, to explain his vote.

SENATOR LACHMAN: Yes, to explain my vote.

Based upon the answers to the questions to Senator Hevesi and to me, I will be voting for this, Senator Johnson, but as an initial and good first step.

I'm delighted that you agree that you also feel that the three-year interval for

an official report to the legislators is unacceptable and should be shortened to one year or two years.

I am also happy to learn that you would be available or amenable to other compromises if it improves the bill and gets the bill through the other half of the New York State Legislature. I will be voting in favor of the bill.

Thank you.

ACTING PRESIDENT MEIER: Senator Dollinger, to explain his vote.

SENATOR DOLLINGER: Mr. President, just very briefly. I'm going to vote against this bill for two reasons -- or actually for three reasons.

First of all, I think the three-year period of time that Senator Lachman pointed out is way too long. We should do it quicker.

Two, anyone who thinks this can be done with no local fiscal impact, which is what the memo says, Senator Johnson, with all due respect, is just not dealing in reality. The reality is we're going to require the

police to go out and investigate a whole series of accidents in much greater detail than we've ever done before. This is a huge mandate to local governments, to go out - every time there's a serious physical injury, to go out and conduct the eight- or nine-point investigation that Senator Johnson wants to do.

I think that that's an enormous mandate. I would suggest to Senator Rath and others who have carried mandate-free bills, that we ought to repeal mandates, we're now imposing one in this bill. We're requiring them to do something that they haven't done before, and we're not giving them any money to do it. I think that's unfair to our local communities.

The last thing, Senator Johnson - I didn't get a chance to talk to you about this. But you ought to look at the discoverability of these report for lawyers in civil litigation. I think the State of New York is going to create liability on communities by virtue of the fact that they have to investigate these accidents and

determine what the cause is. As you know, Senator Johnson, that's what civil litigators like myself do all the time.

There will be a flood of discovery requests. These documents should be considered immune, if you believe it's appropriate, from disclosure under the Freedom of Information Act.

I think it's an interesting idea, Mr. President. I think it needs a little more thinking, though, before we put it through. And most importantly, Senator Johnson, let's give local police departments the $10 million or $20 million necessary to perform these otherwise mandated tasks.

When the bill comes back with those changes, Mr. President, I'll vote in favor. But until then, I vote no.

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

Announce the results.

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

ACTING PRESIDENT MEIER: The bill

is passed.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. Could we now announce that there will be an immediate Civil Service and Pensions Committee meeting in the Majority Conference Room, Room 332.

ACTING PRESIDENT MEIER: Immediate meeting of the Civil Service and Pensions Committee in the Majority Conference Room.

Senator Kuhl.

SENATOR KUHL: Yes, would you now recognize Senator Larkin, please.

ACTING PRESIDENT MEIER: Senator Larkin.

SENATOR LARKIN: Mr. President, I'd like to be recorded that had I been in the chamber on Calendar Number 570, I would have voted in the affirmative.

ACTING PRESIDENT MEIER: The record will so reflect, Senator.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. Will you now call up Calendar

Number 954, please.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 954.

THE SECRETARY: Calendar Number 954, by Senator Johnson, Senate Print 705, an act to amend the Public Authorities Law, in relation to directing.

SENATOR DOLLINGER: Explanation, Mr. President.

SENATOR JOHNSON: As some of you may be aware, this is Motorcycle Awareness Month, and that's why these three bills are coming this month.

This particular bill authorizes the Thruway Authority to establish a separate toll rate for motorcycles lower than the rate charged passenger and commercial vehicles.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Through you, Mr. President, just one brief question of Senator Johnson.

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

SENATOR JOHNSON: Yes, Mr.

President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Are there currently any other state highway systems that have toll roads that have made an exception for motorcycles? Are there any other states that have precedents for reduced discounts for I think the valid reasons you mention in the bill -- that is, that they are a much lesser weight, generally extract a smaller -- a toll, toll from the road. Thank you, Senator Oppenheimer.

Are there any other states, Senator Johnson, that have similar provisions, discounts for motorcycles?

SENATOR JOHNSON: I haven't researched other states.

But as you know, weight is a factor in establishing tolls, certainly on trucks, and even the number of axles is one of the criteria. But they haven't established any difference for motorcycles, which are lighter, smaller, take up less space, less wear and tear, and they're categorized the same as

automobiles.

Now, the New York City bridges, they have lower rates for motorcycles. And I think there should be lower rates for motorcycles on the Thruway as well.

SENATOR DOLLINGER: No further questions, Mr. President.

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

Hearing none, debate is closed.

Read the last section.

THE SECRETARY: Section 3. This act shall take effect 180 days.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MEIER: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Would you call up Calendar Number 955, by Senator Johnson, please.

ACTING PRESIDENT MEIER: The

Secretary will read Calendar 955.

THE SECRETARY: Calendar Number 955, by Senator Johnson, Senate Print 1366, an act to amend the Public Authorities Law, in relation to requiring.

SENATOR DOLLINGER: Explanation, please, Mr. President.

ACTING PRESIDENT MEIER: Senator Johnson, an explanation has been requested of Calendar 955 by Senator Dollinger.

SENATOR JOHNSON: The New York City bridges give a discount and even -- even the -- yes, all New York City bridges, including the Throgs Neck and the Whitestone, all give a discount for using E-ZPass. And they don't give that discount to motorcycles as they do for cars and trucks and so on.

In order to encourage use of E-ZPass, this bill would require that they give a discount to use E-ZPass like they do for cars and trucks. And we're not telling them what the discount should be, but I think it's important to use encourage the use of E-ZPass to speed the flow of traffic. And I think it's equitable as well that they should

get a discount similar to other vehicles.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Just one question.

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

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Is there any way to prevent the use of an E-ZPass for a motorcycle if it's used on some other vehicle?

What's the chance -- again, I'm not assuming that someone would do this, but you could remove the E-ZPass from a motorcycle and put it on an automobile. Is there any way that the E-ZPass system would detect whether it's attached to a motorcycle versus an automobile?

I only say that, Senator Johnson, because to be candid with you, I took an

E-ZPass off one of my cars and put it on another car because I was driving -- instead of driving my own car, I drove one of my sons' cars to Syracuse. So I was driving around with an E-ZPass on a vehicle that was other than my own.

And my question is, if you grant a preferred rate to motorcycles, what's to prevent someone from taking it off the motorcycle and putting it on a car?

SENATOR JOHNSON: You know, I think we're getting bollixed up here with what the charges are and discounts for using E-ZPass. There's two different things we're talking about here.

There is a low rate for motorcycles already. Many people have E-ZPass already for their motorcycles. All this says is if you give a discount to a car or a truck, you should give a discount to a motorcycle. Period.

SENATOR DOLLINGER: Right. And through you, Mr. President, if Senator Johnson will continue to yield.

ACTING PRESIDENT MEIER: Senator

Johnson, do you continue to yield?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: I'm just trying to figure out if there's anything in the E-ZPass that's used for a motorcycle that prevents it from being used in a car.

SENATOR JOHNSON: Well, if not, I'm going to get over the bridge a lot cheaper in the future, because I'll just take my motorcycle pass and put it on my car.

No, you know, there are cameras at all these toll booths. And even if you use one that belongs to a different car, you might get a letter, which some of my constituents have gotten, that you don't have a card for this car. Okay, we're not going to prosecute you, but you're supposed to have one for each vehicle.

And so I'm sure they would identify a motorcycle, in contrast to a car, immediately and know that that pass is only for a motorcycle.

SENATOR DOLLINGER: That's fine, Mr. President. I appreciate Senator Johnson's candor in responding to the question.

I think that that may be a problem at some point in the future. But I'm willing to vote in favor of this bill, and we'll deal with that issue if it crops up and turns out to be a problem. But it's something we should be aware of.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Hevesi.

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

ACTING PRESIDENT MEIER: Senator Johnson, do you yield to a question from Senator Hevesi?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you, Mr. President.

I think this is a good bill. Motorcyclists certainly should get the same

type of discount. I'm just concerned with the language of this bill.

Specifically -- well, let me do it by example. Right now a car traveling through one of the TBTA facilities without E-ZPass pays $3.50. With E-ZPass, they pay $3. That's about a 14 percent discount. From my reading of your legislation here, it doesn't require that there be an identical percentage discount for motorcycles. So I guess I'm concerned that motorcyclists still could be cheated if the TBTA decided to get around this or what have you, they were going to provide less of a discount.

Is that a problem that you foresee, Senator?

SENATOR JOHNSON: Well, you know, I don't like to mandate a certain percentage, although I think it should be equitable. And that's the intention. Because I'd like to see it concurred with, and I don't want to put a percentage in, like 25 percent, and they might say, well -- they might tell the Governor, Don't sign this bill, because we only want to give 20 percent or 18 percent or whatever

we're giving on other vehicles.

So I think they understand it would be a similar percentage, but I didn't mandate any percentage, that's true.

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

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

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you.

Senator, I agree with you. I don't think we should be requiring, for the purposes of this bill, exactly what the percentage should be. Rather, I'm suggesting that we mandate in the bill that you have here that the motorcyclist shall receive the exact same percentage discount as the automobile driver does, regardless of what that percentage is.

SENATOR JOHNSON: I agree with you, Senator. I agree with you. It should be the same.

I don't think the lack of putting

the percentage in the bill would lead to an insignificant or minuscule discount. I think they will put the same percentage in. I expect that they will. And I don't think it's a shortcoming of the bill that we didn't mention it.

SENATOR HEVESI: Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Hevesi, on the bill.

SENATOR HEVESI: Thanks, Mr. President.

A very well intended bill. I just would make it cleaner here. We're saying if the authority grants reduced tolls to passenger cars using the electronic toll collection system, reduced tolls shall also be granted to motorcyclists using such system.

If we simply put in a comma that says "at the exact same percentage as that which the automobiles receive the discount," we'd be ensuring that the TBTA, which in the sponsor's memo is going to lose up to a million dollars in revenue, and they're not going to be happy about that -- we will, by

doing that, prevent them from in their discretion deciding that they're going to give less of a discount.

So I agree with you, you know, if I was them, the legislative intent is fairly clear here, that we want to provide the same discount. I would just go the further step and mandate it in a law. It's an extra four or five words. But I'll still support this bill. I would just suggest we clean it up a little bit.

SENATOR JOHNSON: I want to respond to that, even though it's not a question, Senator, just by saying that the million-dollar loss is over four years, so it's not a significant loss to the TBTA.

But more than that, each of these bills have been negotiated with an individual sponsor in the other house, and they're moving it through the system, the Ways and Means, they're getting these on the floor. They're going to pass them this year. So the fact that you might feel that should be in there may not have been the desire of the other house to put that percentage in. And during

negotiation, this is the draft which they approved, and I appreciate passing it the way it is.

Thank you.

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

Hearing none, debate is closed.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect in 30 days.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Alesi, to explain his vote.

SENATOR ALESI: Mr. President, very briefly, to explain my vote.

It just seems to me that Senator Johnson is being very diligent in recognizing the disparity between charging motorcycles and automobiles when you consider the fact that large trucks are charged a different toll as well.

And while this has nothing to do with the explanation of my vote, if we were

permitted to acknowledge people in the gallery. I would be very honored to acknowledge the class from East Rochester that is here, first-place winners from the "I'm a Green Nation" contest.

However, since we're not able to do that, I will simply say, in explaining my vote, that I will vote yes.

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

And thank you for sharing that with us, Senator.

Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, thank you, Mr. President. Could you call up Calendar Number 111.

And also, would you tell Senator Alesi that Senator Bruno has indicated to myself that he'd like to talk to him about the rules of the chamber.

(Laughter.)

ACTING PRESIDENT MEIER: I think you just told him, Senator, but it's noted.

The Secretary will read Calendar 111.

THE SECRETARY: Calendar Number 111, by Senator Libous, Senate Print 1989A, an act to amend the Penal Law, in relation to the provision.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MEIER: Senator Maziarz, an explanation has been requested by Senator -

SENATOR MAZIARZ: Well, I'd be happy to explain it, Mr. President, but -

ACTING PRESIDENT MEIER: No, I think Senator Libous would probably do a better job of explaining this bill.

SENATOR MAZIARZ: I stayed up all last night reading it, but I'm going to defer to my colleague Senator Libous, because he's much more knowledgeable about the bill.

ACTING PRESIDENT MEIER: All right. Senator Libous, an explanation has been requested.

SENATOR LIBOUS: Thank you,

Senator Maziarz, for yielding the floor to me so I could explain this bill, Mr. President.

Mr. President, this legislation is a bill that has come before this house too many times, because in the past we have been unable to secure an Assembly sponsor who had conviction and belief in a problem that takes place in our society.

I'm pleased to say, as I explain the contents of this bill, that for the very first time there is a new Assembly sponsor. He has indicated that he is committed to passing it this year and sending it to the Governor for approval.

This bill has been referred to as the "Keg Bill," because it deals the sale of large quantities of alcohol. And basically it would make it a Class E felony for individuals who are over the age -- 21 and over and buy large quantities for minors, and then those minors take the alcohol off to various parties.

And, Mr. President, one of the problems we've had -- and I have a whole slew of newspaper clippings before me, from the New

York Times to local newspapers, in which young people under the legal drinking age of 21 have gone off, unfortunately drank at these gatherings, and have lost their life.

So what this does is makes the adult that's 21 or older responsible, it makes them responsible for purchasing beverages and providing them to underage individuals. And what it does is it takes existing law and cranks it up to a felony.

And we believe, as I believe this chamber has in past years, because I know the past several years it passed unanimously, that this is something that as we approach prom time there will be, unfortunately, many tragedies that we will read about throughout New York State in all of our communities where some individual who was 21 or over purchased alcohol and therefore those that were minors consumed that alcohol and unfortunately, for whatever reason, will lose their lives, either in traffic fatalities or in other situations.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Will the

sponsor yield to one question.

ACTING PRESIDENT MEIER: Senator Libous, will you yield to a question?

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

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Through you, Mr. President, I understand, Senator Libous, that you've eliminated the immunity provision from prior drafts of this bill.

SENATOR LIBOUS: That's correct.

SENATOR DOLLINGER: But my only question is, I'm just not clear on the language in page 2, the paragraph -- lines 17 through 19. It says, in essence, if you hold a license or a permit under Sections 4, 5, 6, or 7 -- I'm not sure what those are. That's part of my question -- but more importantly, it says if you lawfully sell or make the beverage available, in accordance with the provision in such articles, you shall not be deemed to have violated it.

Are you saying that if you comply with 4, 5, 6, and 7, irrespective of what else

you do, you don't have liability under this, you're not deemed to have violated this section?

SENATOR LIBOUS: Yes. To answer your question, yes.

SENATOR DOLLINGER: Okay. Through you, Mr. President, just briefly on the bill. I appreciate that.

The interesting thing, Senator Libous, is that this bill, while you call it the "Keg Bill," could easily be called the "Frat Bill." One of the problems, as you know, in the community that you represent, and certainly in the community that I represent, in our major college towns, we have a problem with underage drinking, especially in the context of the rituals of rushing for fraternities. And under those circumstances, some of the types of tragedies that this bill is designed to prevent have occurred.

And it seems to me it's not unreasonable to place restrictions and to show our substantial disapproval of that type of binge drinking and of that type of situation where underage people consume excessive

amounts of alcohol, exposing their personal health and the health of others whom they may come into contact with.

I appreciate, Senator Libous, your willingness to remove the immunity provision. I know that the trial lawyers have been opposed to that. But as always, I think that's just their opinion. But my point of view, we should require that everyone do what is reasonable under all the circumstances.

I've voted for this bill in the past, I think. I'm going to vote for it now. I really think that this is a critical problem for people between the ages of 17 and 22. And if we can send a clearer message to the people who buy that alcohol that we're going to watch them darn carefully to make sure that there aren't those kinds of annual springtime tragedies that occur or the falltime tragedies, as people are rushing for fraternities, we've done the right job. I commend you on the bill.

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

Hearing none, debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Would you call up Calendar Number 171, by Senator Marcellino, now, please.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 171.

THE SECRETARY: Calendar Number 171, by Senator Marcellino, Senate Print 96, an act to amend the Vehicle and Traffic Law, in relation to increasing.

SENATOR DOLLINGER: Explanation, please.

ACTING PRESIDENT MEIER: Senator Marcellino, an explanation has been requested of Calendar 171 by Senator Dollinger.

SENATOR MARCELLINO: Thank you, Mr. President.

This bill increases the parameters of driving while ability-impaired to include driving while ability is affected to any extent by the utilization of a drug.

Currently, if someone is picked up by an officer and they're stopped and obviously they're driving while impaired, if they have a drug offense, in many cases if it's the first time they're allowed to bargain down or plead down to a lesser charge.

Unfortunately, the section they plead down to does not relate to drugs, it relates to alcohol. So this creates a fiction. They plead down to an alcohol offense, and their record shows no arrest for drug impairment, which in fact they were.

So we're trying to eliminate that problem from the VTL by placing in the section that everybody pleads down to drug abuse.

ACTING PRESIDENT MEIER: Senator Hevesi.

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

ACTING PRESIDENT MEIER: Senator Marcellino, do you yield?

SENATOR MARCELLINO: Sure.

SENATOR DOLLINGER: The sponsor yields.

SENATOR HEVESI: Thank you, Mr. President. I very much appreciate what the sponsor is trying to do with this legislation. I just have a question on how this would play out.

We have established in New York State that if your blood alcohol count is 0.1 or higher, that that crosses a legal threshold. Implicit in that is that lesser amounts don't cause the same type of impairment of abilities, and so we have DWAI offenses. And if it's low enough, you are actually permitted to have a glass of wine and if your blood alcohol level is sufficiently low, it's not a penalty at all. It would seem to me exceedingly difficult to come up with some kind of objective test when one has consumed some kind of drug, whatever the type.

And so my question to the sponsor here is, according to my reading, any drug

usage at all, if you are able to determine that an individual was operating a motor vehicle, having done any type of a drug of any amount, irrespective of the extent to which that individual was impaired, he would be subject to penalties under this section. Is that a true statement?

SENATOR MARCELLINO: Senator, yeah, the brief answer is yes. And then you've got to look at the law itself, because "drug" is defined in the VTL in a certain way and there are certain drugs that are listed. I believe the number is some 239. Counsel advises me I am correct, that there are some 239 illegal drugs listed in the VTL.

If you test positively for any one of those, you are in violation of law currently. So it doesn't matter how much may be in your system, you have broken a law by simply using any of those drugs and should be subject to whatever penalties you would incur.

SENATOR HEVESI: Thank you.

Mr. President, would the sponsor continue to yield?

SENATOR MARCELLINO: Yes, I will.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you.

Senator, I agree with you that any level of narcotic use while coupled with driving a motor vehicle should be punished, and I don't have a problem with that.

I'm concerned that somebody could make a legal challenge to this law stating that the legislative intent -- which is to penalize not the drug use itself, but the drug use in concert with operating a motor vehicle -- would be unconstitutional on the grounds that the drug use in and of itself didn't impair the driving abilities of the individual, and therefore it would be unconstitutional to provide penalties for an offense of driving presumably while the individual's ability was impaired.

Does counsel inform you that this legislation would survive such a legal challenge?

SENATOR MARCELLINO: We believe it would, Senator, because the language does state "to any extent."

SENATOR HEVESI: Okay. I'm not sure that that would do it. But regardless, I'm satisfied that this is a good piece of legislation. And if it has to be challenged through the courts, let it do so. And if we have to remedy it, we can do that too.

Thank you.

SENATOR MARCELLINO: Thank you.

ACTING PRESIDENT MAZIARZ: Any other Senator wish to be heard on the bill?

Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MAZIARZ: The bill is passed.

SENATOR DUANE: Mr. President.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

Excuse me, Senator Duane.

SENATOR DUANE: With unanimous

consent, I'd like to be recorded in the negative on Calendar Number 111, please.

ACTING PRESIDENT MAZIARZ: Without objection, so ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 175, by Senator McGee, Senate Print 2513, an act to amend the Vehicle and Traffic Law, in relation to the definition of "drug."

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MAZIARZ: Senator McGee, an explanation has been requested by Senator Dollinger.

SENATOR McGEE: Thank you, Mr. President.

This bill amends the Vehicle and Traffic Law by expanding the definition of "drug" to include inhalants and certain glues.

ACTING PRESIDENT MAZIARZ: Senator Dollinger.

SENATOR DOLLINGER: Just briefly, Mr. President, if the sponsor will yield to one question.

ACTING PRESIDENT MAZIARZ: Senator McGee, would you yield to a question?

SENATOR McGEE: Certainly.

ACTING PRESIDENT MAZIARZ: Senator Dollinger.

SENATOR DOLLINGER: In the discussion on the prior bill between Senator Marcellino and Senator Hevesi, there was a discussion about whether the conduct affected the ability to operate a vehicle. Is it your intention that the same proof would be to be provided with respect to the use of inhalants?

I mean, I don't think Senator Hevesi or I want to see anybody inhaling anything while driving an automobile. But the question is, does this require that the inhalant in effect impair someone's ability to operate a motor vehicle? Is that required by your statute?

SENATOR McGEE: Well, the present law, the current law, the Vehicle and Traffic Law, defines a drug as those listed in the Public Health Law section, which includes illegal and prescription drugs but not glues and aerosol inhalants.

I think this bill merely defines what inhalants are. The law already states

the illegal and prescription drugs. This bill now tells you it's glues and aerosol inhalants. Glue sniffing and aerosol inhalants or inhalation of any toxic vapor affects one's ability to drive safely and should be included as grounds for drug-impaired driving.

SENATOR DOLLINGER: Through you, Mr. President, if the sponsor will yield just to one other question.

ACTING PRESIDENT MAZIARZ: Senator McGee?

SENATOR McGEE: Certainly.

ACTING PRESIDENT MAZIARZ: Senator Dollinger.

SENATOR DOLLINGER: Are the phrases "solvent" and "toxic vapors and fumes," are they defined elsewhere in the Penal Law?

SENATOR McGEE: No, they're already defined in the Public Health Law.

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

ACTING PRESIDENT MAZIARZ: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I'm going to vote in favor of this bill. I think this is a good move by Senator McGee. I think this is keeping track of what's going on out there in the sense of people using artificial stimulants and inhalants in operating motor vehicles, creating a danger to people on the streets.

I would just suggest, Senator McGee, that one of the things you may have to do at some point is include those Public Health Law definitions into the Penal Law, just for translation purposes, I think, to meet constitutional or other requirements. If we define very specifically the exact conduct we're prohibiting under our Penal Law, I would feel more comfortable that we include those definitions within the Penal Law.

I'm going to vote in favor of it. I hope that when the bill goes to a conference committee or is eventually reviewed by both houses that you'll simply take those definitions and repeat them in the Penal Law so we eliminate any potential confusion. But I'm going to vote in favor.

ACTING PRESIDENT MAZIARZ: Any other Senator -- Senator Duane.

SENATOR DUANE: Thank you, Mr. President.

ACTING PRESIDENT MAZIARZ: I'm sorry, I couldn't see you over there, Senator Duane.

SENATOR DUANE: Would the sponsor yield, please.

ACTING PRESIDENT MAZIARZ: Senator McGee, would you yield to a question from Senator Duane?

SENATOR McGEE: Yes.

ACTING PRESIDENT MAZIARZ: Senator Duane, the sponsor yields.

SENATOR DUANE: Thank you. What happens now if a driver is found to be driving under the influence of one of these inhalants or glue?

SENATOR McGEE: They cannot be charged with driving while impaired.

SENATOR DUANE: I'm sorry, Mr. President, I missed the answer.

SENATOR McGEE: They cannot be charged with driving while impaired.

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

ACTING PRESIDENT MAZIARZ: Senator McGee, would you continue to yield?

SENATOR McGEE: Absolutely.

ACTING PRESIDENT MAZIARZ: Senator Duane.

SENATOR DUANE: Does the sponsor know of cases where people have gotten off with no penalty and no conviction of anything that have been found to be using inhalants or glue?

SENATOR McGEE: I understand that the State Police indicate that about 10 percent of the driving while impaired are usually caused by those who are inhaling drugs -- inhaling, sniffing.

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

ACTING PRESIDENT MAZIARZ: Senator McGee?

SENATOR McGEE: Absolutely.

ACTING PRESIDENT MAZIARZ:

Senator Duane.

SENATOR DUANE: And what happens to that 10 percent of the drivers when they go to court? Have they all -- they all got off?

SENATOR McGEE: They cannot be charged with driving while impaired when they're impaired by drugs. So there is not, at the present moment -- that is, not -- the inhalants and aerosols are not listed under the law.

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

ACTING PRESIDENT MAZIARZ: Senator McGee?

SENATOR McGEE: Absolutely. Yes.

ACTING PRESIDENT MAZIARZ: Senator Duane.

SENATOR DUANE: The question I'm trying to ask, and so I'll just ask it this way, is that all those cases the charges were dismissed?

SENATOR McGEE: They weren't charged with anything.

SENATOR DUANE: Through you, Mr.

President, if the sponsor would continue to yield.

ACTING PRESIDENT MAZIARZ: Senator McGee, will you continue to yield to Senator Duane?

SENATOR McGEE: Yes, I will.

ACTING PRESIDENT MAZIARZ: Senator Duane.

SENATOR DUANE: What's the genesis for the bill? Were there cases that the sponsor was aware of where the people were charged? I mean, it's -

SENATOR McGEE: I think I just answered it, Senator Duane, that currently glue sniffing and aerosol inhalation or inhalation of any toxic vapor do in fact impair an individual's ability to drive. Currently, unsafe drivers who have been sniffing glues or aerosols cannot be charged with driving while impaired by the drugs. I think that answers your question. They cannot be charged with it.

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

ACTING PRESIDENT MAZIARZ:

Senator McGee, do you continue to yield to Senator Duane?

SENATOR McGEE: Yes, I will.

ACTING PRESIDENT MAZIARZ:

Senator Duane.

SENATOR DUANE: What would happen in a case now if someone killed someone while driving under the influence of an inhalant?

SENATOR McGEE: I would assume - and I'm not an attorney, but I would assume they would be charged with a negligent act of some type. But I would suspect that they would not be charged of driving while impaired by the use of drugs, inhalants.

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

ACTING PRESIDENT MAZIARZ:

Senator McGee, do you continue to yield?

SENATOR McGEE: Certainly.

ACTING PRESIDENT MAZIARZ:

Senator Duane.

SENATOR DUANE: I'm wondering if the sponsor knows if any other states have

this statute or include these specific substances in their laws.

SENATOR McGEE: I'm sorry, I don't have that information at hand right now. However, if you wait just a minute.

I don't have that information at hand right now.

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

ACTING PRESIDENT MAZIARZ: Senator McGee, will you continue to yield to Senator Duane?

SENATOR McGEE: Certainly. Absolutely.

ACTING PRESIDENT MAZIARZ: Senator Duane.

SENATOR DUANE: I'm wondering what the industry has had to say about this, the ones that make the products that young people and adults inhale, whether the sponsor has reached out to them or heard anything from them on how to make these products less readily available, particularly to young people.

SENATOR McGEE: I do not have a memo in opposition or support.

However, in answer to your previous question, the general laws of Massachusetts use toxic materials, inhalants. Arizona, the state of Arizona has a law on it. The state of Georgia has a law on any glue, aerosol, or toxic vapor to the extent that it is less safe for a person to drive. And it is my understanding that, again, Arizona has any drug or vapor releasing a substance containing a toxic substance.

So in answer to your question, there are several states outside there that do have this law.

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

ACTING PRESIDENT MAZIARZ: Senator McGee, do you continue to yield?

SENATOR McGEE: I do.

ACTING PRESIDENT MAZIARZ: Senator Duane.

SENATOR DUANE: Now that that information is there, I'm just curious, does

the sponsor know are there also statistics on the number of arrests that have happened in those states that have this?

SENATOR McGEE: I'm sorry, I don't have those, Senator.

I would suspect -- I would be more than happy to provide the address if you want to get those statistics.

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

ACTING PRESIDENT MAZIARZ: Senator McGee, do you continue to yield?

SENATOR McGEE: Absolutely.

ACTING PRESIDENT MAZIARZ: Senator Duane.

SENATOR DUANE: Did the State Police testify at the hearing on this bill?

SENATOR McGEE: Not to my knowledge, Senator Duane.

SENATOR DUANE: And could the sponsor tell me when the hearing was on the bill?

SENATOR McGEE: I don't believe there was a hearing, Senator Duane. Certainly

you would have been invited had there been one. But maybe not, because you're not a member of the committee anymore, so that may not be true.

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

ACTING PRESIDENT MAZIARZ: Senator Duane, on the bill.

SENATOR DUANE: Thank you, Mr. President. And though -- I do know I'm sorely missed on that committee. My absence has been noted.

But I am really shocked that you can't charge someone that's driving under the influence of glue or an inhalant with any - with anything. I just -- I -- I don't believe it. I mean, I -- I guess I shouldn't say I don't believe it, but I don't believe it. I can't believe that that's the case.

So I'm pretty torn about this bill. Also because, you know, as usual, it's only providing for penalties and no, you know, recovery. I just think that we have to stop only treating these driving under the influence or driving while intoxicated bills

as purely criminal justice issues and not as health issues. Because we're not really going to solve the problem of drunk driving or driving under the influence or the problems of alcoholism and drug addiction if we don't spend as much time working on the treatment of these diseases as much as the punishment for them.

So just because I'm so skeptical about the information that's been provided, I'm going to vote no on this bill, Mr. President.

ACTING PRESIDENT MAZIARZ: Any other Senator wish to speak on this bill?

Read the last section.

THE SECRETARY: Section 4. This act shall take effect in 30 days.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MAZIARZ: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President, could you call up Calendar Number 470, by Senator McGee, please.

ACTING PRESIDENT MAZIARZ: The Secretary will read Calendar Number 470.

THE SECRETARY: Calendar Number 470, by Senator McGee, Senate Print 1167, an act to amend the Vehicle and Traffic Law, in relation to providing.

ACTING PRESIDENT MAZIARZ: Read the last section.

SENATOR DUANE: Explanation, please.

ACTING PRESIDENT MAZIARZ: Senator McGee, an explanation has been requested by Senator Duane of Calendar Number 470.

SENATOR McGEE: Thank you, Senator Maziarz. Good try.

The first section of this bill would amend the Vehicle and Traffic Law by adding that the operation of a motor vehicle during a permanent license revocation for a DWI, DWAI, driving under the influence of drugs, or a chemical test refusal offense

shall constitute aggravated operation of a motor vehicle in the first degree, a Class E felony.

Currently this violation is aggravated operation of a motor vehicle in the second degree, a misdemeanor. This increases the penalty for operating the vehicle under those circumstances.

The second section of this bill would amend the Vehicle and Traffic Law by adding a permanent license revocation requirement for persons convicted of refusal to submit to a chemical test or any DWI, DWAI, or driving while impaired by drugs violation and has within the past five years been twice convicted of any DWI, DWAI, or driving while impair by drugs or refusal to submit to a chemical test or has within the last ten years been three times convicted of a DWI, DWAI, or driving while ability impaired by drugs or refusal to submit to a chemical test.

ACTING PRESIDENT MAZIARZ: Read the last section.

Oh, I'm sorry. Senator Duane, you have to be quicker.

Senator Duane.

SENATOR McGEE: Good try.

SENATOR DUANE: Mr. President is so quick today.

If the sponsor would yield, Mr. President.

ACTING PRESIDENT MAZIARZ: Senator McGee, would you yield to a question from Senator Duane?

SENATOR McGEE: I certainly will.

ACTING PRESIDENT MAZIARZ: Senator Duane, the sponsor yields.

SENATOR DUANE: Thank you, Mr. President. I do have to acknowledge, though, in advance that it's like a test to see how quickly I can find my notes on these bills. I'm like, you know, 178 to 470 -- I mean, how many trees had to die on my desk already for all this paper. And then I have to find my questions.

Anyway, I appreciate your patience. Your explanation was long enough that I was able to find some of what I wanted to ask.

I know what the bill does in terms of the mandatory revocation. But I'm

wondering whether or not there's any discretion on the part of the commissioner or criteria that would include a mandate for treatment in a situation like this.

SENATOR McGEE: Thank you so much for asking, Senator.

Currently a permanent license revocation is only issued in cases with two convictions of alcohol-or-drug-related crashes involving personal injury or death. If a person has multiple alcohol-or-drug-related vehicle operation violations, there's no provision for a permanent license revocation.

This bill is targeted toward the repeat offender, to permanently remove them from the streets. This bill would allow the commissioner to establish rules for conditional or restricted operation under certain circumstances. The bill would prohibit the commissioner from offering a waiver or conditional operating privileges to persons who will have had four alcohol-related incidents in a five-year period or five incidents within a ten-year period.

SENATOR DUANE: Through you, Mr.

President, if the sponsor would continue to yield.

ACTING PRESIDENT MAZIARZ: Senator McGee, do you yield for another question from Senator Duane?

SENATOR McGEE: Certainly.

ACTING PRESIDENT MAZIARZ: Senator Duane, the sponsor yields.

SENATOR DUANE: Thank you. Did I understand this to mean that the commissioner would be required to provide for a permanent revocation under that circumstance?

SENATOR McGEE: The bill would allow for the commissioner to establish rules for conditional or restricted operation under certain circumstances.

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

ACTING PRESIDENT MAZIARZ: Senator McGee?

SENATOR McGEE: Certainly, yes, sir.

ACTING PRESIDENT MAZIARZ: Senator Duane.

SENATOR DUANE: I misunderstood. I thought that the sponsor said, though I hadn't seen it, that the commissioner, after four such incidents, would have to revoke the license.

SENATOR McGEE: It prohibits the commissioner from offering a waiver or conditional operating privileges to a person who has had four alcohol-related incidents in a five-year period or five incidents in a ten-year period. It does prohibit the commissioner from doing that.

Prior to any of those offenses, the commissioner has the -- it would allow him to establish a conditional or restricted operation under certain circumstances.

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

ACTING PRESIDENT MAZIARZ: Senator McGee?

SENATOR McGEE: Yes.

ACTING PRESIDENT MAZIARZ: Senator Duane.

SENATOR DUANE: Have there been cases where the commissioner has been too lax

and has, you know, given back or provided a waiver too leniently and that's what this bill is here for?

SENATOR McGEE: I have no documented information on that, Senator Duane. That probably could exist. I'm not sure.

The purpose of this bill is targeted to get the repeat offender off our streets permanently.

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

ACTING PRESIDENT MAZIARZ: Senator McGee, do you continue to yield?

SENATOR McGEE: Oh, sure.

ACTING PRESIDENT MAZIARZ: Senator Duane, the sponsor yields.

SENATOR DUANE: It occurs to me -- and, you know, my memory is not great, but is this similar to a bill that Senator Fuschillo had on the floor last week? I'm wondering what the differences are.

SENATOR McGEE: Gee, I really don't know. I can't answer that question for you. You might have to review your records to

find out. I can't answer the question for you.

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

ACTING PRESIDENT MAZIARZ: Senator McGee?

SENATOR McGEE: Absolutely.

ACTING PRESIDENT MAZIARZ: Senator Duane, the sponsor yields.

SENATOR DUANE: I'm not disputing that harsh penalties are needed. However, I also think that some people are able to achieve recovery. And while they may not be cured of an alcohol and drug problem, they may be able to, you know, to keep it -- what's the word on groping for? Not under control. Stronger that that -- in remission and not actually be using drugs or alcohol after or during a ten-year period.

And I'm wondering whether the sponsor, since this would prohibit the commissioner from giving a waiver, thinks that -- or isn't it possible that someone could be in recovery and have their disease in

remission and not, for a lengthy, very lengthy period of time, not use drugs and alcohol?

SENATOR McGEE: I am told that currently the judge does have that option to indicate that the individual needs to take that type of counseling.

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

SENATOR McGEE: Certainly.

ACTING PRESIDENT MAZIARZ: Senator McGee?

Senator Duane.

SENATOR DUANE: But even if the judge thought that the person after treatment could be eligible to drive again, this bill basically ties the hands of the commissioner so, no matter what, the person would not be able to drive again, isn't that correct, after four convictions?

SENATOR McGEE: As I have said before, the bill allows the commissioner to establish rules for conditional or restricted operation under certain circumstances.

I would suspect, Senator Duane, if

the individual continues to go out and commit these repeat offenses, then the individual should have his license permanently revoked.

SENATOR DUANE: Through you, Mr. President, I'm sorry, I'm confused. Either upon the fourth incident or fifth finding of refusal and conviction within ten years, the commissioner has absolutely no choice but to permanently revoke the license; is that correct?

SENATOR McGEE: That's exactly what the bill says.

SENATOR DUANE: So that person, then -- through you, Mr. President -- could not ever get a license again?

SENATOR McGEE: That is what the bill says. If the individual continuously repeats these offenses, then that is what the bill says, Senator. There is a permanent revocation.

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

ACTING PRESIDENT MAZIARZ: Senator McGee, do you continue to yield?

SENATOR McGEE: Yes.

ACTING PRESIDENT MAZIARZ: Senator Duane, the sponsor yields.

SENATOR DUANE: Then the sponsor does believe that someone that has had a conviction within five years or a fifth finding or refusal has no chance of recovery?

SENATOR McGEE: Senator, this is my bill, the bill says -- and I believe in it, yes.

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

ACTING PRESIDENT MAZIARZ: Senator McGee, do you continue to yield to Senator Duane?

SENATOR McGEE: Yes, I do, Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Duane, the sponsor yields.

SENATOR DUANE: Earlier the sponsor said that a judge has the discretion basically to do most of what this bill already is putting into the law. Is that -- did I understand her correctly?

SENATOR McGEE: No, I don't - I -- I'm not understanding what you're saying, Senator.

SENATOR DUANE: To clarify, Mr. President.

SENATOR McGEE: Could you clarify it? I don't understand -

ACTING PRESIDENT MAZIARZ: Senator McGee, do you continue to yield to Senator Duane?

SENATOR McGEE: I will, yes. I don't understand what he's asking, but okay.

SENATOR DUANE: The sponsor said, I believe, that -- and it was in the middle of a paragraph that she was speaking -- but that there was a section of the bill where I believe she said that the judge already had the power to mandate I guess it was treatment.

SENATOR McGEE: Oh, I'm sorry. If I may, that this is the -- currently? Are you talking about currently?

ACTING PRESIDENT MAZIARZ: Senator McGee.

SENATOR McGEE: Excuse me, I'm sorry. If I may interrupt Senator Duane.

ACTING PRESIDENT MAZIARZ:

Senator McGee, you are recognized.

SENATOR McGEE: I think I know what he's talking about now. Currently a permanent license revocation is only issued in cases where two convictions of alcohol- and drug-related crashes involving personal injury or death, and that's in the Vehicle and Traffic Law right now, if a person has multiple alcohol- or drug-related vehicle operation violations, there is no provision for a permanent license revocation.

This bill is targeted to do that. And then I say multiple, because if an individual actually has one -- four alcohol-related incidents in a five-year period, or five incidents within a ten-year period, I think that the permanent revocation is qualified for.

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

ACTING PRESIDENT MAZIARZ:

Senator McGee, do you continue to yield to Senator Duane?

SENATOR McGEE: I do.

ACTING PRESIDENT MAZIARZ: Senator Duane, the sponsor yields.

SENATOR DUANE: Even after a license has been revoked in the State of New York, cannot a person just go to Massachusetts or New Jersey or Pennsylvania and apply for a license?

SENATOR McGEE: I have no -- I assume they can. I mean, I'm not a Senator from Massachusetts, I'm a Senator from New York State. I want to get the repeat offender off the road. This is a bill that's designed to do it. I have no idea what happens in Massachusetts, I'm terribly sorry.

You could drop a note to the Bureau of Motor Vehicles; they perhaps could tell you.

SENATOR DUANE: Thank you. Thank you.

SENATOR McGEE: You're welcome.

SENATOR DUANE: Mr. President, on the bill.

ACTING PRESIDENT MAZIARZ: Senator Duane, on the bill.

SENATOR DUANE: I'm troubled by this bill. I think that it's important to leave discretion to the judges and, in this case, the commissioner. I do hold out hope that a person is able to go into recovery and keep their alcoholism or drug abuse disease in remission for lengthy periods. I believe in recovery. I also believe in redemption.

And I also -- you know, I'm just - and I've said this before, I just think that we should stop already with these harsh penalty bills without doing, on the other hand, bills that deal with helping people to go into recovery and staying in recovery.

I mean, all of these things, whether, you know, it's driving while drunk or deciding to go into recovery, are deeply, you know, personally decided. However, I believe that people can change and that people can get their disease of alcoholism and drug addiction into remission. And under those circumstances, I think that a person can prove that they can be a productive citizen and that they should be entitled to get their license back under some circumstances.

So I'm going to vote in the negative on this bill, holding out the hope that at some point in the future, and preferably the near future in this body, we will also discuss various programs and treatments which have allowed individuals to get into and stay in recovery.

Thank you, Mr. President.

ACTING PRESIDENT MAZIARZ: Thank you.

Senator Hevesi.

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

ACTING PRESIDENT MAZIARZ: Senator Hevesi, on the bill.

SENATOR HEVESI: Thank you, Mr. President.

I would have presented this question to the sponsor, but it would have been a little unfair to do that. I just want to point out a potential inconsistency between this bill and current law as I see it.

And I support this bill. I think it's a good piece of legislation. Although I do share some of the concerns of my colleague

Senator Duane on a number of these issues.

But let me say the following here. Whether or not you agree with whether we should provide for a permanent revocation upon a certain number of repeat offenses, whether or not you agree with that, I think everyone would agree that if that's the law, you have permanent revocation, that for that penalty to have any teeth, that that penalty of permanent revocation, if somebody reoffends, shall constitute a serious violation under law in New York State.

And Senator McGee's bill, unlike the rest of New York State law currently in this area, does provide that if you have a permanent revocation and you reoffend, that that constitutes aggravated operation of a motor vehicle, which is a felony.

The inconsistency that I want to draw everybody's attention to here today is that if you have not had a permanent revocation under this section of the law and your license has simply been suspended, you can drive with that suspended license, I believe it is -- and we've had this debate

before -- up to 14 separate times before you're eligible for felony-level offenses. And that is a huge problem.

So while I commend Senator McGee for providing teeth in this bill here today, simply driving with an unlicensed operation offense that is not the consequence of a permanent revocation but a nonpermanent revocation is still not adequately punished in the State of New York. And that is an inconsistency and a problem that we should address as soon as possible.

Having said that, I'm going to support Senator McGee's bill. Although I will point out -- and Senator Duane pointed this out too, and I have a problem with this. We've dealt with a lot of different pieces of legislation in the same subject area this session -- we've done it last session too - amending the same section of law and even the exact sections of law. And I've forgotten, frankly, what we've done in some other areas.

And I'm willing to bet that if we went back and did an analysis of the bills that have passed this year -- and every one in

this area I've supported -- that we would see some disjointedness in terms of the sections that we've amended.

It's unclear to me what this does. Are we making a progression based on the other piece of legislation that we've passed? Are we simply doing this piecemeal? Is it being done because we stand a better chance of passing some of these sections individually as opposed to putting all of these into an omnibus bill, which would be more easily understandable and comprehensible, but which might in fact jeopardize its chances of passage in the Assembly? I'm unclear on that.

And so I'm not faulting the sponsor or anybody else who's brought legislation of that nature. I'm just expressing the concern that I have because we're repeatedly expressing something I think in different ways, and it's not conducive to the best public-policy-making to have a really disjointed process.

For example, Senator Johnson today brought a series of bills that all dealt with the same issue, motorcycle safety and what

have you. That's the way to do things. This is difficult to ascertain the progress we're making. And frankly, I don't know whether any of the bills that we've passed this year have passed already, or whether they even stand a chance of passing. And that would be information that's useful in trying to decide whether or not a particular bill that comes before us subsequent to that is a good idea.

Having all said all of that, having said all of that, and with respect to Senator Duane, who's repeatedly raised some important issues, though there may be philosophical differences on the extent to which we should penalize individuals or take away their rights upon a certain number of offenses, I could not agree with Senator Duane more, and I've spoken about this a number of times this year on the floor, that the most important thing that we can do, in addition, in addition to punitive action taken against recidivists in this particular area of the law is to provide a mandatory treatment option, which we know is not only the right thing to do but is cost-effective.

You know, Senator Duane is right on the money about this. And until we start getting serious about mandating, in almost every instance when somebody commits some kind of alcohol-related offense, that they have mandatory treatment, then we're not going to solve the problem to the extent that we can since we simply know that so many of the people who are reoffending are doing it -- and by the way, this does not make any excuses for them. And I for one -- and I diverge from some of my colleagues here -- though I am sympathetic to their ailment, don't believe that that is an excuse for us to be more lenient on them, because ultimately they're responsible for their behavior and the potential damages that they cause as a result of that behavior.

But we have a responsibility as a matter of public policy to provide those individuals with the means to help them themselves, which in response and in return will help protect the lives of individuals in society who may now be victimized because somebody's got a drug or alcohol problem.

So it's not being liberal or what have you, it's being smart about government. It's the right thing to do.

So I commend Senator McGee on this legislation. I think we need to see passage of some of the bills that we've had this year by the Assembly to get the punitive and deterring facet into the law.

But at the same time, if somebody is reoffending time after time after time, the fact that we've increased penalties may not do the trick, and we need to go and make sure that we've done absolutely everything we can to get these individuals to no longer be alcoholics, if that's possible, to no longer be addicted to narcotics, if that's possible, and to reinforce with them, both from the physiological point of view, if they have an addiction, and from a psychological or mental-health point of view that their behavior is jeopardizing people to the extent that they're causing grievous harm. And maybe if we can get through there, we can alter the behavior.

So having said that, I support this

legislation but look forward to a much more comprehensive dialogue and potential solution on this very important issue.

ACTING PRESIDENT MAZIARZ: Any other Senator wish to speak on this legislation?

Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of September.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MAZIARZ: Senator Marcellino, to explain his vote.

SENATOR MARCELLINO: Thank you, Mr. President.

I'm going to vote aye on this bill, and I commend Senator McGee for bringing it up. We've heard a lot about getting people into treatment who are involved in a disease. I agree, drug abuse, alcoholism, it's a disease, it should be treated. We should get as many people into treatment programs as is possible. But we all know most of these

treatment programs have a high failure rate, an extremely high failure rate. And the recidivism rate is even higher.

Darryl Strawberry, if there isn't a better example -- mandated to a program, house arrest, broke away, went away and went on a drug binge again. He's now in a Phoenix program. You know that program? No locked doors, no locked windows, no bars. He can do it again.

Now, I'm not suggesting we shouldn't offer as much as possible help to these people as we can. But when you put a car in their hands where they can kill somebody while they're getting their act together, I think we've gone too far. We are all victims of the choices we make in life. And sometimes we make choices that are dangerous and impair other people's ability to their health and well-being and their pursuit of happiness.

So when you do that, you have to pay a price. The price in this case may be the loss of a driver's license. And, frankly, to get someone who is a repeat offender off

the road and to protect my family and your family, that's a small price for society to pay.

ACTING PRESIDENT MAZIARZ: Senator Kuhl.

I'm sorry, Senator Duane, to explain your vote.

SENATOR DUANE: Thank you, Mr. President.

I hope I didn't leave the wrong impression. I don't think I did. But I don't want anybody to think I don't believe that people need to be given harsh penalties for drunken driving or driving under the influence. I absolutely think that that's the case.

And I also think that a person who tries to go into recovery doesn't necessarily make it the first time. In fact, most people don't make it the first time they try to recover. Think of yourselves when you've said, You know, I'm going to go on a diet for New Year's and you fall off that diet a little while later. It's really no different with drugs and alcohol. People are not perfect.

And sometimes it takes people many times, many attempts to recover.

Do I think they should be driving while they're relapsing? No, I don't think they should be driving while they're relapsing. And I think that they should be held accountable for the decisions they make. That's why we revoke licenses for periods of time, often an extended period of time. That's why we have judges monitoring these cases and district attorneys monitoring these cases.

But I think that we have to allow some discretion about whether or not a person has hope to ever get a license back again. For every addict and alcoholic, I think that everybody, people in the treatment field across the board would say you have to continue to provide some hope for people who are addicted. Maybe they never get to take advantage of that hope. But it's still important to hold out that hope for people who do have -- who are alcoholics or drug addicts.

And I actually that think we would be -- I think this is food for a lengthier

discussion, and I frankly think that a hearing on New York State's drug and alcohol positions would be very, very helpful, so that we could sort this out and hear from the experts on both sides. I think that you could both agree with MADD and agree with people who are in the addiction and alcohol treatment program.

But again, we don't hear about that. And I think it's time that we talk about that as well.

I'm going to vote no on this for the reasons that I've indicated. Thank you, Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President, to explain my vote.

ACTING PRESIDENT MAZIARZ: Senator Hevesi, to explain his vote.

SENATOR HEVESI: Thank you.

I feel obligated to make another statement about this, since I heard Senator Marcellino's comments. And they came in the wake of my comments, and I don't want anybody to have the impression that I was presenting a

mutually exclusive option, that either you do more punitive requirements if somebody has reoffended or you do a treatment option. That's absolutely not what I was saying.

And I agree with Senator Marcellino. If you reoffend, you should be hit with severe, severe penalties. But the point -- and I don't want it to get lost here -- is that at the exact same time, if you don't provide a treatment option -- and you can do it when somebody is incarcerated. In fact, that's a really good time to do it.

We have the statistics, and I've read them into the record before. I don't have the numbers here today. But there is a dramatic, dramatic difference in the percentage of people who reoffend having gone through an alcohol treatment program and the people who reoffend having not gone through it. Obviously, the people and the numbers sustain this. I mean, it's a huge difference. If you don't go through an alcohol treatment program, your recidivism percentage is dramatically, dramatically higher than those who go through an alcohol treatment program.

And by the way, those who go through the alcohol treatment program do still reoffend at a fairly high rate. I believe it was somewhere in the 20 percent level. But those who don't, it shoots up to something in the order of 60 or 70 percent. And that is the most fundamental and basic and strong argument why you need the mandatory treatment option.

But, Senator Marcellino, I, like you, agree that if somebody reoffends, they've got to take the consequences of their actions. And I agree with additional penalties. But let's do them both together. They're not mutually exclusive. Let's do them together. They'll have the biggest impact on stopping people from compromising the lives of New Yorkers on the roads.

I vote yes.

ACTING PRESIDENT MAZIARZ: Announce the results.

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

ACTING PRESIDENT MAZIARZ: The

bill is passed.

Senator Kuhl.

SENATOR KUHL: Mr. President, would you recognize Senator Montgomery.

ACTING PRESIDENT MAZIARZ: Senator Montgomery.

SENATOR MONTGOMERY: Yes, thank you, Mr. President. I would like to have the record show that had I been in the chamber, I would have voted no on Calendar 570.

ACTING PRESIDENT MAZIARZ: The record will so reflect.

Senator Kuhl.

SENATOR KUHL: Would you recognize Senator DeFrancisco.

ACTING PRESIDENT MAZIARZ: Senator DeFrancisco.

SENATOR DeFRANCISCO: I request unanimous consent to vote in the negative on Calendar 171, Senate Print 96.

ACTING PRESIDENT MAZIARZ: Without objection, so ordered.

Senator Kuhl.

SENATOR KUHL: Now would you call up Calendar Number 738 by Senator DeFrancisco,

please.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number 738, by Senator DeFrancisco, Senate Print 431, an act to amend the Navigation Law, in relation to the operation of a vessel.

SENATOR BROWN: Explanation.

ACTING PRESIDENT MAZIARZ: Read the last section.

Oh, I'm sorry, someone called for an explanation? Oh, Senator Brown.

Senator DeFrancisco, an explanation has been requested by Senator Brown.

SENATOR DeFRANCISCO: Yes, presently the law is, as far as sentencing in various offenses that boaters are charged with and convicted of, it's basically a three-month suspension.

What happens is since boating is seasonal, at least in Central New York it's seasonal -- we don't do too much boating in the winter -- if you get a ticket in August and you're convicted, it's adjourned, you're convicted maybe in September, October, you're

not doing too much boating then, you get a three-month suspension over the winter months, it's not really a punishment at all. Because you're not being deprived of using your boat.

So this gives flexibility. Rather than saying the suspension would be three months, it says at least three months but not less than twelve months for being convicted of various offenses, so that a judge can fashion the sentence so that it's truly a penalty and it can be fashioned so that it could be a penalty during the summer months and you're actually being deprived of a benefit, the use of your boat, when you're convicted of something during your boating season.

ACTING PRESIDENT MAZIARZ: Senator Brown.

SENATOR BROWN: Thank you, Mr. President.

The explanation was satisfactory, but I still do have one question if the sponsor would yield.

SENATOR DeFRANCISCO: Yes.

SENATOR BROWN: Currently, are there any penalties for boating while -

pardon me. When boating while intoxicated, are there any mandated treatment options that are offered in any of the legislation that we have?

SENATOR DeFRANCISCO: Well, presently, operating under the influence of alcohol, your privileges can be suspended for six months, your registration may be suspended for six months, and there's a fine and also you must take a driver boating safety course.

I know some jurisdictions also, as a requirement for a reduction in a charge, oftentimes require treatment or proof that you don't have a problem with alcohol. That's something that the DA normally requires.

SENATOR BROWN: Thank you, Senator.

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

Read the last section.

THE SECRETARY: Section 3. 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 Kuhl.

SENATOR KUHL: Madam President, would you now call up Calendar Number 472, by Senator Nozzolio.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 472, by Senator Nozzolio, Senate Print 2668, an act to amend the Vehicle and Traffic Law, in relation to the application.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT McGEE: Senator Nozzolio, an explanation has been requested by Senator Paterson, I believe, or Senator Dollinger.

SENATOR NOZZOLIO: Senator

Dollinger, my colleagues, the purpose of this measure is to mandate that all drivers involved in serious or fatal accidents submit to blood alcohol tests when there's a reasonable cause to believe that an alcohol offense has been committed.

Currently, police officers have the discretion to -- and district attorneys as well -- to authorize and to seek court orders to compel submission to chemical tests in fatal or serious accidents where there's reasonable cause.

We believe that we should take away that discretion and give them the mandate that this test be so required.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: I just have one question for Senator Nozzolio.

ACTING PRESIDENT McGEE: Senator Nozzolio, will you yield?

SENATOR NOZZOLIO: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR PATERSON: Senator, as serious as the subject is, since the view of the police is discretionary as it stands right now, suspicion of and in itself is a discretionary reaction. So I'm just a little curious as to why we have to codify a presumption that already exists in the law as it stands.

And I just wanted you to answer for me why I should see it your way and not as just described.

SENATOR NOZZOLIO: Thank you, Madam President. I'd be glad to try to address Senator Paterson's question.

The issue is certainly one where there is serious accident or injury, we have an interest in promoting the public safety by obtaining blood-alcohol-related evidence. We believe that this is a public need that clearly overrides the driver's privilege of refusing the test.

The circumstance will be where a death or serious accident took place. The National Highway Traffic Safety Administration has recommended mandatory BACA testing for all

drivers involved in serious or fatal accidents.

And beyond the statistics and beyond the arguments for public safety, I stood in front of a mother who lost her son, and that mother was full of tears, as one would expect. Her son was killed, she believes, by a drunk driver. However, the appropriate alcohol testing was never accomplished.

What we're saying is that this requirement will place our accident victims at least -- in a situation where the police officer cannot reasonably make a request, there certainly would be an exemption if that was the case. But when there's reasonable cause, we believe that that public interest would be served by requiring the collection of evidence, evidence that can only be obtained by appropriate testing measures, and that those appropriate testing measures are timely.

So that's why we believe that requirement be established.

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

Senator Duane, why do you rise?

SENATOR DUANE: To speak on the bill, Madam President.

ACTING PRESIDENT McGEE: On the bill. Senator Duane, on the bill.

SENATOR DUANE: Thank you.

It's not going to surprise anyone, I don't think, but I just -- I don't favor these types of bills which force the police to do blood tests. I think that, you know, they're essentially saying that we don't think the police do their jobs.

And I'm trying to put myself in the place of a police officer, and I think I would be disturbed by this, because it implies that police officers don't do their jobs and that they wouldn't be asking for blood tests, when the fact is I think they do.

And rather than have it be a matter of legislation -- or I don't even think this bill is going to pass both houses. But it should be training for police officers. And if they're not being trained appropriately, then we should fix that.

You know, I'd be interested to hear

what the police officers and the DAs and the state troopers have to say about this bill.

So before we pass any more of these bills which in some way question police officers' ability or desire or that they actually are doing their jobs, I think we should hear from them and see whether or not they think that this kind of law is necessary to tell them to do their jobs. Because I think they'll say, We're already doing our jobs.

So I'm going to vote against this bill, Madam President.

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

Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 30th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 472 are

Senators Connor, Duane, and Paterson. Also Senator Montgomery. Ayes, 56. Nays, 4.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. I would note that we have been jumping around, and very soon we'll be starting in regular order on the calendar. And there are a number of members who have bills on this calendar who are not in the chamber.

So we are asking them to come to the chamber to be able to present and debate their bills.

And with that, would you call up Calendar Number 575, by a member who is in the chamber, Senator Bonacic.

ACTING PRESIDENT McGEE: The Secretary will read.

SENATOR BROWN: Explanation.

THE SECRETARY: Calendar Number 575, by Senator Bonacic, Senate Print 5116, an act to amend the Public Housing Law, in relation to the sale.

SENATOR DUANE: Explanation.

ACTING PRESIDENT McGEE: Senator Bonacic, an explanation has been requested by Senator Brown and Senator Duane. Thank you.

SENATOR BONACIC: Thank you, Madam President.

This is legislation to amend the Public Housing Law with relation to the sale or lease of a housing project. It would allow the Commissioner of the Division of Housing and Community Renewal to approve the sale or lease of a municipal housing authority to a private entity if a feasible plan is submitted which provides for the rehabilitation of the project, does not permanently displace the current tenants that are there, and provides a priority in tenant selection to persons currently residing in public housing.

Presently the State of New York allocates about $110 million to $120 million on capital improvements for housing. The truth of the matter is we could spend a hundred times that amount, and we don't have sufficient available resources to upgrade capital improvements for the housing units in

the State of New York.

So what we want to do is to allow the commissioner to enter into public/private partnerships where they can do business with a private entity, they come in with new money, and they upgrade the facilities. They have to sign an agreement that they don't disrupt those tenants that are in there.

And most of the units are for people that are 50 percent of the median income of that community, people that are poor, struggling to find affordable housing.

And the state continues to pay the general obligations bonds, which is our obligation anyway. And that's what we're doing now to try to upgrade our housing units in the State of New York.

It's worked very well, by the way, where we have private developers come in. The problem is we can't find enough private developers to come in that have the capital, pay off the bonds, and then spend the money to upgrade.

So we say okay, we have the obligation anyway to pay the bonds, you come

in and upgrade and raise the dignity of housing for those tenants that live there.

That's the purpose of the legislation.

ACTING PRESIDENT McGEE: Senator Duane.

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

ACTING PRESIDENT McGEE: Senator Bonacic, will you yield?

SENATOR BONACIC: I do.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DUANE: Thank you.

I think the sponsor mentioned it, but could he just describe again how "low-income" is currently defined in the state?

SENATOR BONACIC: Senator, how -

SENATOR DUANE: How "low-income" is defined.

SENATOR BONACIC: I'm sorry, I still didn't -

SENATOR DUANE: "Low-income."

SENATOR BONACIC: How "low-income" is -

SENATOR DUANE: Defined.

SENATOR BONACIC: Defined, okay.

It's not -- there is no set definition for what "low-income" is. We have different housing programs in the State of New York. Some we try to gear for 40 percent of the people of the median income of that particular -- like, say, New York City. Some, it's 60 percent. But they're all people that are below the median income of a family of four, or one, depending on specific housing projects. Okay?

I know it's -- the answer is not black and white because the formulas change depending on the housing projects.

ACTING PRESIDENT McGEE: Senator Duane.

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

ACTING PRESIDENT McGEE: Senator Bonacic?

SENATOR BONACIC: I do.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR DUANE: I understand that what happens is that as long as a developer can show that the financing, that the federal financing is going to be able to -- in addition to what the private developer's putting in, as long as they're able to show that housing will be decent and affordable, et cetera, that this could go forward.

What I'm concerned about is at the time that federal funding might run out, what guarantees that the housing would remain affordable?

SENATOR BONACIC: Well, you're asking a public policy question.

I believe that the trends are to the contrary. I know that in the State of New York, we in our budget resolution in our Senate, we put in $10 million more than what the Governor did for affordable housing. The Assembly is asking for $50 million more. Mayor Giuliani always has committed $300 million for affordable housing on city projects. This year he's proposing

$600 million.

I think we are beginning to realize that affordable housing is not only the decent and right thing to do, but it creates jobs, it's a tool for economic vitality. And so I don't see that trend ever happening where government would turn its back at the federal level of not increasing or maintaining those federal tax credits and federal dollars for housing.

What we've done, so you know, the HUD program has been transferred to the State of New York, with $60 million that Andrew Cuomo used to control. Now it's being run through Governor Pataki and the administration.

So we're closer to the problems of the people of the State of New York, and it's working well. We are creating thousands and thousands of new, affordable housing units each year in the State of New York. We're going in the right direction.

SENATOR DUANE: Thank you.

SENATOR BONACIC: You're welcome.

SENATOR DUANE: Madam President,

briefly on the bill.

ACTING PRESIDENT McGEE: Senator Duane, on the bill.

SENATOR DUANE: I've been enlightened by what Senator Bonacic has said.

However, the experience that I'm having in my district is that buildings which have been funded through Section 8 programs and which are sponsored by private developers -- and maybe this is running against what's happening elsewhere, but some of them are opting to buy their buildings and make them go market rate.

And so without a further analysis of what the impact would be both in New York City and statewide -- and I'm not in any way discounting what Senator Bonacic says, it's just that my experience has been a little bit different. And I feel that I need to err on the side of caution here and vote no because of the experience I'm seeing in and around my district.

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 2. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT McGEE: Senator Kuhl.

SENATOR KUHL: Would you call up -

ACTING PRESIDENT McGEE: The bill is passed, I'm sorry.

Senator Kuhl.

SENATOR KUHL: Would you call up Calendar Number 577, please.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 577, by Senator Bonacic, Senate Print 5123, an act to amend Chapter 514 of the Laws of 1983.

SENATOR BONACIC: Last section.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Would you call up Calendar Number 883, please.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 883, by Senator Bonacic, Senate Print 4917A, an act in relation to authorizing and directing.

SENATOR ADA SMITH: Read the last section.

ACTING PRESIDENT McGEE: Local fiscal impact note at the desk.

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, 60.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Would you call up Calendar Number 771, by Senator Marcellino, please.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 771, by Senator Marcellino, Senate Print 3911, an act to authorize the Mesorah Foundation of Long Island, Incorporated.

SENATOR ADA SMITH: Explanation.

ACTING PRESIDENT McGEE: Senator Marcellino, an explanation has been requested by Senator Smith.

SENATOR MARCELLINO: Thank you. Perhaps I should have changed my name to Bonacic.

(Laughter.)

SENATOR MARCELLINO: The Mesorah Foundation purchased some parcels of property in 1999. The foundation is a tax-exempt group. They were informed by the assessor of the Town of Huntington that they were owed a rebate in taxes that they had already paid to the original owner at the time of closing.

So they're just simply here and this legislation would entitle them to seek that money that they are owed.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

The explanation is satisfactory, Senator Marcellino. I just wanted to -- I'll continue to vote against these bills. Senator Marcellino and my colleagues from Nassau County are probably sick of hearing my continual repetition of the need for a countywide bill in Nassau County and, frankly, a statewide bill.

SENATOR MARCELLINO: Senator, if I might interrupt, this is not Nassau County. This is a Suffolk County situation. And in

Suffolk County, they do not have a countywide assessment system, they use a townwide system. Town by town, each has their own individual assessor. And this isn't seeking to relieve -- they paid this bill. They're getting money back that's owed.

SENATOR DOLLINGER: Through you, Madam President.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Wouldn't you know, on the luck of the draw I raise the issue with the Senator who represents both Suffolk and Nassau County.

Madam President, I'm still going to vote against this bill. I appreciate the -

ACTING PRESIDENT McGEE: Senator Dollinger, on the bill.

SENATOR DOLLINGER: -- advocacy of Senator Marcellino. But I still think that granting a partial property tax exemption ought to be something available to assessors statewide.

There are many ways we can deal with this. I know Senator Hannon carries a

bill that will solve the problem. That's the bill that we ought to do. I'm going to continue to push for that bill.

I appreciate all my colleagues from Nassau and Suffolk who seem to have a profusion of these problems. But from my point of view, the way to solve this is with a statewide bill. Let the individual assessor deal with it. Keep it out of the State Legislature.

It's wonderful that my colleagues bring these bills forward and get chapters for them. But the best way to do is to pass a chapter that leaves to the assessors the reconciliation of these issues.

With that, Madam President, I'll vote in the negative.

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: Announce the results.

THE SECRETARY: Ayes, 59. Nays, 1. Senator Dollinger recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Would you call up Senator Balboni's bill, Calendar Number 568, please.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 568, by Senator Balboni, Senate Print 857, an act to amend the Insurance Law, in relation to eliminating.

SENATOR DOLLINGER: Explanation.

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

SENATOR BALBONI: You're kidding.

ACTING PRESIDENT McGEE: No, I'm serious.

SENATOR BROWN: At least you have counsel here.

SENATOR BALBONI: Yes, I have Senate counsel next to me. He's going to help me debate this bill.

I have tried to find an exciting way to describe the provisions of this bill, and I have failed miserably. This bill is arguably one of the most boring bills that we've done today. That says a lot.

This would update viatical settlement document requirements in the Insurance Law. It would take away a $50 fee for sitting for an insurance examination, because it's done by a vendor, and then it would clarify that you need to do continuing education in order to be relicensed. And, lastly, it would establish the requirements for an affidavit and a fee for replacement of documents lost.

That is what the bill does. It has passed this house three times with no "no" votes.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you, Senator Balboni.

Any Senator wishing to speak on the

bill?

Read the last section.

THE SECRETARY: Section 6. 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, 60.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. Would you call up Senator Fuschillo's bill, Calendar Number 510.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 510, by Senator Fuschillo, Senate Print 3901, an act authorizing the assessor of the County of Nassau.

SENATOR DOLLINGER: Madam President.

ACTING PRESIDENT McGEE: Senator

Dollinger.

SENATOR DOLLINGER: Explanation, Madam President.

ACTING PRESIDENT McGEE: Thank you very much.

Senator Fuschillo, an explanation has been requested.

SENATOR FUSCHILLO: Thank you, Madam President.

This legislation would authorize the assessor of the County of Nassau to accept an application from exempting a piece of real property located in Merrick, Yeshiva Torah Mitzion, for their purchase. They bought the property after the filing date. The fiscal impact to the municipality would be approximately $1,000.

ACTING PRESIDENT McGEE: Thank you, Senator Fuschillo.

Senator Dollinger.

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

ACTING PRESIDENT McGEE: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Again, I

assume that this is another Nassau County bill that doesn't invoke the Suffolk County issue that Senator Marcellino talked about.

But I don't dispute their entitlement to a tax exemption. I'd just point out one of the interesting things about these bills, and they all say it, is that the assessor, upon approval by the Nassau County legislature, may accept the permit and grant the permit.

The county legislature is already involved. They are already in a position of governing the assessor. It's so easy and so convenient for them to just grant the ability unilaterally, without our intervention. And it seems to me that that's consistent with the concept of home rule. They're doing it anyway. They get our authority, and then they have to pass a resolution that approves it again.

So we approve the bill to give them the authority to give the assessor the authority. There's an extra step in that process, Madam President, that just isn't needed. And in the spirit of streamlining the

concept of government and achieving true home rule in Nassau and in Suffolk, I go back to it -- bring the Hannon bill forward. I'll vote in favor of that. I'll vote in favor of that as often as I can, Madam President.

Until we get that, I'm going to vote no.

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: Announce the results.

THE SECRETARY: Ayes, 59. Nays, 1. Senator Dollinger recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Would you call up Senator Trunzo's bill, Calendar Number 826,

please.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 826, by Senator Trunzo, Senate Print 4667, an act to amend Chapter 672 of the Laws of 1993.

ACTING PRESIDENT McGEE: 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.)

SENATOR DOLLINGER: To explain my vote, Madam President.

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

SENATOR DOLLINGER: Thank you, Madam President.

I can't remember whether it was Senator Marcellino or Senator Farley that we did the bill to extend Dormitory Authority bonding authority for one of the libraries I believe in their district, and we had a discussion about why shouldn't every library

in their state get the benefit of Dormitory bonding.

And, Senator Trunzo, I'm going to vote in favor of this bill because I think that's something we should not only do for the Patchogue-Medford Library but, frankly, we ought to do it for every library. We ought to give the libraries the benefit of Dormitory financing.

I mean, we've started to do it on an individual basis through individual bills. But could there be any better investment of low-cost state financing through the Dormitory Authority than to build and improve libraries?

Senator Trunzo, I think it's the right idea for your community, I think it's the right idea for Senator Farley's community, it's the right idea for Senator Paterson's community. Let's pass a statewide bill that allows the Dormitory Authority to bond these expenses for libraries.

I'm reminded of the great library at Alexandria which was lost through a fire back before the time of Christ. It's amazing how much we lose if we don't use our

libraries. We ought to have bonding for them to make them accessible to everyone.

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President, now would you call up Calendar Number 818, by Senator Morahan, please.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 818, by Senator Morahan, Senate Print 361, an act to amend the Not-for-Profit Corporation Law, in relation to corporations.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT McGEE: An explanation has been requested by Senator Paterson, Senator Morahan.

SENATOR MORAHAN: Yes, Madam President. This bill would amend the Not-for-Profit Corporation Law in relation to corporations for the Prevention of Cruelty to

Animals. And it would authorize the Warwick Valley Humane Society to act as a second Society of the Prevention of Cruelty to Animals in Orange County.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: A brief question, Madam President, if Senator Morahan would yield.

ACTING PRESIDENT McGEE: Senator Morahan, will you yield?

SENATOR MORAHAN: Yes, ma'am.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR PATERSON: Senator Morahan, they already have such a society in Orange County. Why do they need two?

SENATOR MORAHAN: Orange County is a unique county in that it is burgeoning in population, which is bringing more and more pets into the area, small domestic animals, and yet we only have one ASPCA. And on the other hand, it's a geographically large county which now requires people to travel at great lengths to get to the Humane Society.

This would strategically locate another one within the county, on the other side of the county, that would be a little bit more convenient.

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

Any other Senator wishing to speak on the bill?

Home rule message at the desk.

Read the last section.

THE SECRETARY: Section 3. 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, 60.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. Would you now call up Senator Skelos's bill, Calendar Number 362, please.

ACTING PRESIDENT McGEE: The

Secretary will read.

THE SECRETARY: Calendar Number 362, by Senator Skelos, Senate Print 123, an act to amend the Penal Law, in relation to establishing.

SENATOR PATERSON: Explanation.

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

SENATOR SKELOS: Yes, Madam President.

This bill seeks to target a growing crime whereby individuals stage motor vehicle accidents so they can file no-fault lawsuits for alleged injuries and bill for repeated services provided at some medical mills. This bill would make it a crime to act as a runner or to solicit or employ a runner to procure clients. It would make it a Class E felony.

It's very similar to legislation that was enacted in New Jersey, which has been proven to be successful in punishing these fraudulent acts. In meeting with various district attorneys, in particular in the New York City area, they have indicated that this legislation is necessary to prosecute

these individuals and hopefully bring down the no-fault rates in counties such as Queens and Brooklyn.

ACTING PRESIDENT McGEE: Any other Senator wishing to speak -

Senator Paterson.

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

ACTING PRESIDENT McGEE: Senator Skelos, will you yield?

SENATOR SKELOS: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR PATERSON: Do you have an idea, Senator, as to the value of the fraud, how much we're losing, or even what the prediction would be in terms of what the rate adjustment would be if this bill passes?

SENATOR SKELOS: All I know is that meeting with people in industry, meeting with people in the -- for example, the district attorney's office in Brooklyn, they feel that this would have a substantial impact

in bringing down no-fault rates, in particular in the city.

And I want to point out that these types of scams are now coming out to Long Island, working their way up the Thruway to our cities in upstate New York -- Albany, Buffalo, Rochester.

So the bottom line is we're looking to stabilize no-fault rates, and I think this is part of the package that could help accomplish this. And if I'm correct, it passed the Senate unanimously hast year.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: One question, if the Senator would yield.

ACTING PRESIDENT McGEE: One more question, Senator Skelos.

SENATOR SKELOS: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR PATERSON: It's a little unrelated, but are you addressing the issue of the doctors? Because that's part of it. You

know, the issue of the doctors colluding, you know, with the attorneys and these runners to create these claims.

SENATOR SKELOS: Well, they're part of a scheme to create this type of crime and to create an accident and then steer the individuals -- or many times the individuals are part of the scheme -- to either the lawyer or the medical mill, which then starts outrageous billing practices and costs no-fault an awful lot.

Again, this is not aimed at 99.9 percent of the legitimate doctors or medical professionals. It's aimed at that small percentage which are definitely impacting on no-fault rates.

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

Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of November.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

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

SENATOR FARLEY: Just to explain my vote for a second.

I just want to say this is a terrific bill. If there's a crisis facing New York State, it is the no-fault insurance rates, particularly for young people in the metropolitan areas. It is outrageous. And these runners, quote, are the ones that are stealing from the insurance consumers.

It's something that needs to be addressed. It is just not a problem for New York State, it's around the nation. And it's a terrible, terrible problem. This is a great piece of legislation that really should be signed into law, because it's causing a tremendous problem, particularly for youngsters that are trying to buy car insurance.

ACTING PRESIDENT McGEE: Senator Farley, in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT McGEE: The bill

is passed.

Senator Kuhl.

SENATOR KUHL: Madam President, could you call up Senator Stafford's bill, Calendar Number 295, please.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 295, by Senator Stafford, Senate Print 1053, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT McGEE: 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: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Would you call up

Calendar Number 353, by Senator Stafford, please.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 353, by Senator Stafford, Senate Print 2368, an act to amend Chapter 138 of the Laws of 1984.

ACTING PRESIDENT McGEE: 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 McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Now would you call up Calendar Number 306, by Senator LaValle.

ACTING PRESIDENT McGEE: The

Secretary will read.

THE SECRETARY: Calendar Number 306, by Senator LaValle, Senate Print 2352, an act to amend the Education Law, in relation to the unlawful sale of dissertations.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT McGEE: Read the last section.

Senator Stavisky.

SENATOR STAVISKY: Madam President, I just want to comment very briefly on this bill. I have no questions for -

ACTING PRESIDENT McGEE: Senator LaValle, I'm sorry.

SENATOR STAVISKY: Oh, may I have an explanation from Senator LaValle. I'm sorry.

ACTING PRESIDENT McGEE: Senator Paterson had asked for an explanation. I'm sincerely sorry.

Senator Paterson has asked for an explanation, Senator LaValle.

SENATOR KUHL: Madam President.

ACTING PRESIDENT McGEE: Senator Kuhl.

SENATOR KUHL: Yes, may I just interrupt before we start this.

ACTING PRESIDENT McGEE: Certainly.

SENATOR KUHL: This is just to inform the members, because I note that there are a number of members who have committee meetings and other committee meetings with people outside the chamber that we're now back on regular order. And after Senator LaValle's bill, we'll be taking up a bill by Senator Stafford and then, continuing along, Senator Volker, Senator Leibell, Senator Saland, Senator Lack, and Senator Seward.

So if those members could arrange to be in the chamber for an organized debate, we will be proceeding in that order.

Thank you.

ACTING PRESIDENT McGEE: Senator LaValle, will you yield for an explanation, please?

SENATOR LAVALLE: Yes, Madam President.

ACTING PRESIDENT McGEE: Thank you.

SENATOR LAVALLE: Under the current law, it is illegal to sell written material that is intended or could be used as a dissertation or other school, college assignment. What we are doing here is to make a change to ensure that the electronic media, the Internet, is also covered by this law.

And it's a law that I know Senator Stavisky -- it's important to her. But I'm not going to steal her thunder, I will allow her to explain why she wants to speak on this bill, Madam President.

ACTING PRESIDENT McGEE: Thank you, Senator LaValle.

Senator Breslin.

SENATOR BRESLIN: Madam President, if the sponsor would yield to a question.

ACTING PRESIDENT McGEE: Senator LaValle, will you yield for some questions?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR BRESLIN: Through you, Madam President, how has enforcement been on

the legislation as it exists now been?

SENATOR LAVALLE: Senator, I'm sorry, I couldn't -

SENATOR BRESLIN: We have a piece of legislation, but we have a statute -

SENATOR LAVALLE: We have a statute now.

SENATOR BRESLIN: -- and the Internet will be added on to it. How has enforcement been under the existing legislation?

SENATOR LAVALLE: I can't tell you, Senator.

SENATOR BRESLIN: Can you tell us, just reading the bill, how you would prove the intent of someone? Again through you, Madam President, if the sponsor would yield.

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

SENATOR LAVALLE: Yes, I will.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR BRESLIN: How would someone prove intent to violate the statute?

SENATOR LAVALLE: Well, Senator,

I think it becomes very clear that - particularly on the Internet, we know -- and the reason why this bill is before us, is that we have people openly selling services, selling dissertations and other material that would be used as a term paper or other material.

So we want to make sure that -- and I believe the marketplace for written material, and the advertisements in that form, have been, as far as I know, in check. Now we want to make sure that we are following the 21st century by ensuring that electronic advertising and use and transferring of this material will also be illegal.

SENATOR BRESLIN: One final question, Madam President, through you.

ACTING PRESIDENT McGEE: Senator LaValle, will you yield for one final question?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR BRESLIN: How will it be enforced on the Internet? How will New York

State, with this statute, enforce it on the Internet?

Will there be particular devices set up beyond the passage of the statute to ferret out violators of the statute who attempt to sell materials, educational materials and papers on the Internet? Will there be anything specific done?

SENATOR LAVALLE: Would there be anything specifically done?

SENATOR BRESLIN: Right, other than -- would there be anything specific done?

SENATOR LAVALLE: Well, you know, Senator, both with written form, the same things, whether it's enforcement through the Attorney General, that we're ensuring that - or where it's brought to the attention of a local district attorney, that they now have the ability to move forward.

And I believe once this becomes law, I believe people will be or should be skittish about flying in the face of the statute that we put into place.

SENATOR BRESLIN: Very good. Thank you, Senator.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Stavisky.

SENATOR STAVISKY: Yes, Madam President. On the bill.

ACTING PRESIDENT McGEE: Senator Stavisky, on the bill.

SENATOR STAVISKY: Approximately twenty years ago, if you took a look at any of the college newspapers or the bulletin boards on college campuses, there was a proliferation of ads for term papers. And as a result of people not only submitting work done by someone else for their course credits, they were also used, unfortunately, for masters' and even Ph.D. dissertations. It was an outrageous situation.

And a corollary of that problem was the proliferation of the so-called mail order diploma mills. Unfortunately, they still exist. But we have, for the most part, eliminated these ads from the college newspapers.

In 1981, my husband was the chairman of the Education Committee in the

Assembly and wrote the original language, and he wrote it himself. And he was not an attorney, but he wrote it himself -- and I know, because I was there -- he wrote the current statute.

And I commend Senator LaValle for bringing it into the 21st century to include those papers that could or would be served over the Internet.

I think, in response to Senator Breslin's question, the enforcement is in a sense in the statute itself, because you no longer see college newspapers filled with ads for someone to write a term paper or to write a thesis or to write a dissertation.

And in fact, twenty years ago to dramatize the need for this type of legislation and to show the idiocy of the situation, he enrolled a resident of Schenectady County, if I'm not mistaken, for a Ph.D. in one of the mail-order factories. The problem was that this was a four-legged creature. But we did enroll a dog, and the dog was about to be matriculated for a Ph.D.

This is outrageous. And

unfortunately, it continues in the form of the Internet. And I urge my colleagues to support this legislation.

ACTING PRESIDENT McGEE: Senator Lachman.

SENATOR LACHMAN: Yes, I would like to echo many of the comments of Senator Stavisky -

ACTING PRESIDENT McGEE: Senator Lachman, on the bill.

SENATOR LACHMAN: -- on the bill, and I want to commend Senator LaValle for this legislation.

Unfortunately, as my colleagues have mentioned, this is still a major problem, with or without the Internet, as I learned from my wife who is still a full-time academic and who pays my salary as long as the state does not.

It is a very serious problem, an ongoing problem, and anything we can do that can alleviate it should be done. And this is one area in which it can be alleviated. And I want to commend Senator LaValle for this legislation, and I strongly urge the entire

chamber to support it.

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: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. Would you call up Calendar Number 911, by Senator LaValle, please.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 911, by Member of the Assembly Englebright, Assembly Print Number 7435A, an act to amend the Tax Law, in relation to clarifying.

SENATOR BROWN: Explanation.

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

SENATOR LAVALLE: Thank you, Madam President.

In 1987, the State Legislature adopted legislation which permitted the County of Suffolk to establish a Drinking Water Protection Program that included the acquisition of watershed lands, to be financed by a an additional quarter-percent sales tax.

ACTING PRESIDENT McGEE: May we have some quiet in the chamber, please.

SENATOR LAVALLE: The County of Suffolk adopted the program, and it was approved by a countywide referendum, with 84 percent of the vote in the affirmative.

There have been certain questions on the protection of open space and farmland protection and incurring additional indebtedness. We have worked with the County of Suffolk and with bond counsel to bring before this body the proposed legislation and language for your approval so that we can continue to protect valuable lands that are being threatened by development.

I think many of the members know that we have a memorandum in support of this by the League of Conservation Voters.

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

SENATOR OPPENHEIMER: If the sponsor would yield for a few questions.

ACTING PRESIDENT McGEE: Senator LaValle?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR OPPENHEIMER: Every time the local SCDWPP has -- every time the law has been changed, it's done by referendum. Was there a referendum this time?

SENATOR LAVALLE: Senator, yes, there was, this last November.

And the reason this legislation is before us is because there was great confusion in the County of Suffolk in what the people believed was an affirmative vote to continue this, later finding out, when it got before the county legislature, that their counsel had a different reading. This was after the fact,

after the vote.

So in other words, even before - and I know you are incredulous over this -

SENATOR OPPENHEIMER: It's amazing.

SENATOR LAVALLE: -- that the county legislature had to take an affirmative action to get it on the ballot. And everyone was of the belief of what they -- how they were casting their votes, including this Senator, only to find out that we had all voted the wrong way, according to local counsel.

So much debate has gone on both at the county legislative level and with the county executive, who said that Suffolk County has been a leader in this state and we believe in the nation in protecting our open space lands. And we just cannot have a program that would take a step back, a step that would have pay-as-you-go. We could not continue to protect the lands that we need to protect, given the development threat at this juncture.

ACTING PRESIDENT McGEE: Senator Oppenheimer.

SENATOR OPPENHEIMER: I have another question, but I do want to applaud what Suffolk has been doing, because they are under enormous pressure of development.

ACTING PRESIDENT McGEE: Senator Oppenheimer, do you wish the Senator to continue to yield?

SENATOR OPPENHEIMER: Here's my next question. Yes, if the Senator would yield.

ACTING PRESIDENT McGEE: Senator LaValle, do you continue to yield?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT McGEE: Thank you. The Senator yields.

SENATOR OPPENHEIMER: This is a question less environmentally oriented. But is providing Suffolk County the authority to charge more in sales tax, in order for them to possibly reduce property taxes, is this a matter of state concern? And is that understood by the residents, that this may be a way of reducing the property tax burden by the sales tax?

SENATOR LAVALLE: Senator, a

number of years ago, on this floor, myself and Senator Lack debated the quarter-percent sales tax for the Drinking Water Protection Program. We had indicated on this floor before this body that there was a provision in that law that allowed for some monies to be used for real property tax reduction. In other words, to go into the general fund, not to be used for the specific purpose of land protection, drinking water protection.

Our county executive, who is currently the county executive for the last eight years -- ten years, excuse me -- last ten years, has never used that particular trigger. And he has moved forward very aggressively to protect as much as land as we possibly could. There was some confusion as to whether we could use quarter-percent sales tax money for bringing water protection, whether we could broaden that to use it for open space and farmland protection.

And that's where we got caught up on this debate of no, you can't use bonded indebtedness to purchase these lands, but you have to put money into a fund and pay as you

go.

And the reason we are here before this body is to say that is madness, we cannot do that, because the -- it would be -- the clock would run out and there would be development.

Now, Senator, what you should know is before, just to show you -- and I think every member in this room that has a county legislature knows the ebb and flow that takes place within county legislatures. After putting people through a vote and then saying no, the way the ballot was worded and so forth -- which was their words -- was incorrect, they now, by a vote of 16 to 2 - we have 18 members on our county legislature -- said they wanted Senator LaValle and Assemblyman Englebright to come before our respective houses to ensure, notwithstanding any charter provisions or any other provisions, that we need to move forward and be able to, in the same manner as we use the quarter-percent drinking water protection program, to protect other sensitive lands.

And it has of course, without any

mistake, the imprimatur of our County Executive Gaffney, so we literally have both the executive and the vast majority of county legislators in full support of this measure.

ACTING PRESIDENT McGEE: Senator Oppenheimer, do you continue to -

SENATOR OPPENHEIMER: Yeah, I think I have one more question.

ACTING PRESIDENT McGEE: Senator LaValle, Senator Oppenheimer has one more question.

SENATOR LAVALLE: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR OPPENHEIMER: Does this bill expressly provide for property and sewer tax protections in it?

SENATOR LAVALLE: No.

SENATOR OPPENHEIMER: It doesn't?

SENATOR LAVALLE: It does not. Does not.

SENATOR OPPENHEIMER: All right, let me -- thank you, Senator.

ACTING PRESIDENT McGEE: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: Just a few words on the bill.

ACTING PRESIDENT McGEE: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: Obviously there was a certain amount of confusion in Suffolk, and I think this bill will straighten it out. I think it's something that we should emulate in more than just Suffolk County.

But Suffolk County in particular has sort of peculiar, specific needs. Certainly your single aquifer for water is a specific need. The kind of development you are experiencing, or potential development, is highly specific there, though it is also in other suburban counties. And we have to do what we can to protect the open space that remains. And this is one venue, one avenue.

And it's a fine bill, and I hope it will correct the confusion that existed in Suffolk County.

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

Senator Gentile.

SENATOR GENTILE: Thank you,

Madam President. If the sponsor would yield to a question or two.

ACTING PRESIDENT McGEE: Senator LaValle, will you yield?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR GENTILE: Yes, thank you, Madam President, through you.

Senator, I'm just a little confused now because it was my impression that this bill did provide, with any surplus funds left over from the collection of the quarter-percent sales tax, for the provision, which you indicate has not been used ever before, for property tax reduction. Am I on score with that?

SENATOR LAVALLE: Senator, I had answered that question. Senator Oppenheimer asked me that question. And I said in the original law there were provisions in there to do that. County Executive Gaffney has not used those -- used that, but has used it for the sole purpose of protecting the aquifer or the drinking water.

SENATOR GENTILE: Correct. If the Senator would continue to yield, Madam President.

SENATOR LAVALLE: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR GENTILE: But then what I also hear you saying is that this legislation doesn't change the original construction of the law -

SENATOR LAVALLE: No, it doesn't.

SENATOR GENTILE: -- that allows the property tax reduction.

SENATOR LAVALLE: No. In my answer to Senator Oppenheimer, I was clear about that.

If you look at the section that we're adding here, subdivision (d) of Section 1210 of the Tax Law is amended. And we're adding all of that language to ensure -- and that was done, Senator, once again, with bond counsel and counsel from the County of Suffolk, to construct those words.

You will note also on this bill it's an A version. So that we literally

ensured that all of the parties were satisfied and bond counsel was satisfied that we would not need an additional referendum, which there was some concern, and so that is the language that we have -

And, Senator, you know, as an attorney, to get an opinion from bond counsel many times is like pulling teeth. We have that from bond counsel, giving their stamp of approval on the very language that they helped construct.

But just to go back again, is that the existing law that created this in 1987 that has the one provision that you're interested in that Senator Oppenheimer asked about, we are not changing that, unfortunately.

And I must tell you, Senator, that when that came before us, Senator Lack and I debated that, and I voted in the negative on that bill because of that provision. I went before the county legislature, my own county legislature, and explained my vote and my concerns. Because 84 percent of the people that voted for the Drinking Water Protection

Program voted for it with the understanding that every dollar was going to be used to protect our aquifer, to protect our drinking water.

We have not changed that. But our county executive, on his watch, has kept faith with the people.

SENATOR GENTILE: That certainly sounds like a good policy from your current county executive.

If the Senator would continue to yield, I do have another question, though.

SENATOR LAVALLE: Yes.

ACTING PRESIDENT McGEE: Senator, do you continue to yield?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR GENTILE: Through you, Madam President. I would assume, then, Senator, though, what we are saying, though, as a matter of public policy -- and that's what we're talking about, not so much the current county executive -- but as a matter of public policy, it is in the current

legislation -- and I understand it's not in the amendment, but it's in the current legislation where such action can take place, where surpluses from the sales tax are used to reduce property taxes.

Am I correct in the fact that that -- and I think you and I agree with this if that's what you've argued about in the past.

SENATOR LAVALLE: Senator, as you well know, when we come before this body legislation is targeted very specifically to do a particular job. When the county legislature voted 16 to 2, the only mission that they asked this body and the Assembly to undertake was not to revisit the 1984 statute, '87 statute, but to just unravel this confusion that attorneys had and bond counsel may have had on how we could move forward. That is the only task that was given to us, and that is the only thing that we are fixing.

We are not into the broader debate on fixing prior law, because people in the county of Suffolk have differing opinions. I had a very specific opinion. I spoke on this

floor, I voted on this floor in a particular way. But that is not our -- that is not what we are being asked to do today.

And the amendment that is before us does something entirely different, Senator, than the questions that you have asked and certainly the concerns that Senator Oppenheimer raised before you. Good concerns, concerns that this Senator has also, and the concerns that the majority of Suffolk residents would concur in. That is not our mission. That is not what is before us today, Senator.

SENATOR GENTILE: Senator LaValle, I want to thank you for your answers.

And if I can speak on the bill.

ACTING PRESIDENT McGEE: Senator Gentile, on the bill.

SENATOR GENTILE: Again, Senator LaValle, I thank you for your forthrightness in answering those questions. And I suppose, then, as you know, I've been a staunch opponent of any increase in the sales tax, wherever and for whatever reason. While this may be a good intention, for land acquisition,

the fact remains that in the original legislation there is a provision that allows any surplus collected from the sales tax to be used to reduce property taxes.

From a public policy point of view, I believe that's an outrageous use of legislation, the use of collection of taxes from the sales tax to go potentially to be used to reduce property taxes. And I think, Senator, from your discussion that we've just had here, that you agree with me on that, and you in fact had the opportunity when the legislation was first passed to vote in the negative because of a provision like that.

I didn't have that opportunity when this first was passed back in, I believe, as you said, in the 1980s. I have an opportunity now to vote on a provision that is an amendment to this piece of legislation. In good conscience, I can't vote for it because I just disagree with the premise of the entire legislation, despite the fact of its good intention. So, Madam President, I will be voting in the negative.

ACTING PRESIDENT McGEE: Senator

LaValle.

SENATOR LAVALLE: I'd like to ask Senator Gentile a question.

ACTING PRESIDENT McGEE: Senator Gentile, will you yield?

SENATOR GENTILE: Yes.

ACTING PRESIDENT McGEE: He yields.

SENATOR LAVALLE: Senator, were you a member of this body in the year 2000?

SENATOR GENTILE: Yes, I was.

SENATOR LAVALLE: Senator, there was an extension of the quarter-percent Sales Tax Law before this body in the year 2000, in which we extended it to the year 2013. I don't know how you voted on that, Senator. But I would just indicate that that issue has already passed us, passed this body, in which we took a vote on this floor to extend the quarter-percent drinking water program, asked this body for permission. Both houses concurred, I believe unanimously, but I don't have the vote. Senator, you would know how you voted. And it is extended to the year 2013.

So again, I'd just ask you to - this is a different vote. This is a vote in which you are giving to the people of the County of Suffolk an opportunity to unravel a legal debate on whether they can continue to incur bonded indebtedness for land transactions that are open space or farmland.

We are not asking you, Senator, to vote on a sales tax issue here, but we're merely asking you to help us unravel a legal dispute. And I hope when you cast your vote you will cast it in that context.

SENATOR GENTILE: Well, Senator, I don't know myself how I voted on the bill in 2000. But seeing the fact that I have consistently voted against sales tax increases across the board, my guess -- and it's only a guess -- is that I voted in the negative on that bill also in the year 2000.

And if that's not the case, then it only goes to underscore the fact that a debate of this type that we've been having this year, as opposed to having in the year 2000, has served to air some of these issues that may have not been aired in the year 2000. So

that's all I can say about that.

But I understand your situation and the amendment that we have before us. I'm uncomfortable with the fact of the legislation that is not being changed but is still a law today.

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

Read the last section.

THE SECRETARY: Section 3. 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. Nays, 1. Senator Gentile recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. Would you call up Calendar Number 400, by Senator Stafford, please.

ACTING PRESIDENT McGEE: The

Secretary will read.

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

SENATOR PATERSON: Explanation.

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

SENATOR STAFFORD: Senator Paterson -- Madam President, thank you.

Senator Paterson, when I said yesterday thank you for not asking any questions, I didn't mean that I wanted you to. I didn't want anyone to get confused.

This is a bill whereby the off-track betting corporations get a tax exemption. It's a situation where, for instance, an off-track betting corporation can have a relatively large piece of property and, for instance, they might lease it out to a restaurant. Well, the restaurant really isn't doing the work of an OTB, it's really out there in the economy working like all of us. But on the other hand, we certainly question whether if the property isn't being used for

an OTB purpose, well, we figure that probably there -- not probably, we figure there should not be an exemption.

So this is what this bill does. And we think that it's what really is equitable, to have this bill passed.

ACTING PRESIDENT McGEE: Senator Paterson, why do you rise?

SENATOR PATERSON: Madam President, if Senator Stafford would yield for another question I know he'll like, because it will help to improve the chances of passing this bill.

ACTING PRESIDENT McGEE: Senator Stafford, will you yield?

SENATOR STAFFORD: Thank you, yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR PATERSON: Senator, what I don't understand is that since OTB funds the county in the first place -- in other words, that's where the money goes -- if we're going to subject that land to a tax or that area of the facility to a tax, then the money is going

to go to the local governments, to the schools. And in a sense, we're just shifting the money. So I don't understand why we would do that.

In other words, if it was money that somebody else was keeping, and then we taxed it to get the money back for the state, that would be one thing. But here we're just basically shifting the line in which the revenues flow, away from the counties to the villages and the towns and the school districts.

SENATOR STAFFORD: Madam President.

ACTING PRESIDENT McGEE: Senator Stafford.

SENATOR STAFFORD: I guess yesterday I questioned one of Senator Paterson's questions. On this question, I compliment you for a very sensible, a very clear and a concise question.

We certainly would answer by saying really what we do here in this Legislature really is shift money. We decide where the monies will go. And it gets right back to the

heart of the matter that I mentioned earlier, that in effect we just are not allowing an exemption where there is not an OTB function going on.

And indirectly, the portion of those taxes when it is in the economy as it should be, being taxed as it should be, the portion which should go to the county will go to the county, the portions that would go ordinarily to other entities will go to other entities. We just don't want to have exemptions where we don't have a nontaxable function.

ACTING PRESIDENT McGEE: Thank you, Senator Stafford.

Senator Onorato, why do you rise?

SENATOR ONORATO: Madam President, will the sponsor yield to a question?

ACTING PRESIDENT McGEE: Senator Stafford, will you yield?

SENATOR STAFFORD: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR ONORATO: Senator

Stafford, how will the assessment of what the portion of the property is worth be evaluated?

SENATOR STAFFORD: Well, that's a very good question.

SENATOR ONORATO: You know, what will be the basis? The square footage, the retail sales, the value of the lease? In other words, basically splitting it up to a nontaxable portion and a taxable portion of the property.

SENATOR STAFFORD: Madam President, also a good question that I think we can answer clearly, concisely, directly, and fully.

We do that every day. We have what we call assessors and we have what we call the Real Property Bureau. Very often we're not especially pleased with some of the results - I know I'm not, especially when is it January 1 when taxes come out and then September when taxes come out. But we have functionaries, we have entities that can do this and do it well.

For instance, we have one OTB entity that we know of where it has been

determined that 25 percent of the property is being used for an OTB function, 3/4 of it is being used for a very good business. I think that would mean three-quarters, that would be 75 percent. So you'd take 75 percent, multiply it by what the assessment is, and I think you can come out with a pretty clear, concise, full, and understandable figure.

SENATOR ONORATO: That sounded like a bookmaker's answer. I accept it.

(Laughter.)

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 in 90 days.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Volker, why do you rise?

Senator Kuhl.

SENATOR KUHL: Would you continue in regular order now and call up Senator Volker's bill, Calendar 648, for us, please.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 648, by Senator Volker, Senate Print 3678, an act to amend the Penal Law, in relation to the unlawful wearing of body vests.

SENATOR PATERSON: Explanation.

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

SENATOR VOLKER: Madam President, I apologize for rising prematurely, but I anticipated the request.

This is a fairly simple bill. Some years ago, I think before I was here as chairman of Codes, in 1984 -- I just realized I was here, but I wasn't chairman of Codes - a bill was passed which said that if a person was wearing a body vest and commits any violent offense while possessing a firearm, then that person in effect would be guilty of a felony. And it would be an enhanced felony.

There's been court cases, and there was a case, People versus Carvey, that discussed that statute, and I think rightfully so decided that a firearm does not include a rifle or a shotgun because a firearm, under today's definitions, is a handgun.

And therefore, what we are doing today is adding "rifle or shotgun" to the term "firearm." We're not changing any of the penalties or anything like that.

So if a person is wearing a vest with no legal purpose -- and obviously a police officer or something like that would not be in this case -- and commits a violent crime with a handgun, rifle or shotgun, then that person would be subject to an enhanced felony.

ACTING PRESIDENT McGEE: Senator Gentile.

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

ACTING PRESIDENT McGEE: Senator Gentile, on the bill.

SENATOR GENTILE: I want to congratulate Senator Volker on the bill here.

Certainly as a prosecutor I've come up against that problem of rifles and shotguns not being contained under the Penal Law definition of a firearm. And certainly if someone is using either a rifle or a shotgun and has a bulletproof vest, a body vest on, that should constitute a higher felony, as you suggest with this legislation.

However, I believe that we need to go further with body vests and protect those police officers that wear those body vests on an everyday basis. And I think Senator Volker and I have talked about this before, that we could do it from the perspective of the assailant who has the body vest but we also should do something for the police officers who protect us who wear body vests.

And indeed, what I have spoken to Senator Volker about and proposed is that we pass legislation that would require body vests for police officers that have attachments to them that will go around the neck and will go around the side of the torso, so that those wearing those attachments will be protected in those areas where they are not today.

Indeed, in New York City three years ago, Police Officer Anthony Mosomillo was executing a search warrant, and he had a body vest on. He walked into a building, and he was shot, with his body vest on, he was shot in the neck and shot in the side of the torso. He died wearing that body vest, and he died because that body vest did not have those attachments that would have protected him around the neck and around the side of the torso.

When I attended Officer Mosomillo's wake, I spoke to Officer Mosomillo's father, who indicated to me that there are such attachments for body vests for police officers. And he said to me, right in front of the open coffin, as I stood next to his son in that casket, and he said: "Senator, we must be sure that no other police officer is subjected to this kind of attack where, with a body vest, they are still hit in locations on their torso or in their neck where they're not protected."

We have the technology to protect police officers with body vest attachments.

We need to do it.

So while Senator Volker's legislation is a good piece of legislation that will increase penalties for those who commit crime and wear body vests, we at the same time must take a step in this state to protect our police officers who wear body vests by including the attachments on the side of the torso and around the neck so those officers will be protected in dangerous situations.

Thank you.

ACTING PRESIDENT McGEE: Senator Volker.

SENATOR VOLKER: Madam President, let me just say that Senator Gentile and I have discussed this issue, and we have been doing quite a bit of research on body vests.

And although part of the problem is that we don't mandate what kind of body vests, we're trying to convince local governments to utilize the most up-to-date vests. There's a federal program that provides additional money for body vests. And actually, we provide money now for all initial body vests -- that

is, for new police officers.

As you have pointed out, the real need is for replacement vests. And we're working on a program as part of this budget, which we hope will be done before too long, which can deal with that issue, because I think it really -- I think you're absolutely right, it's a very important issue. There has been your legislation, Senator Marchi's, I've had legislation myself. And I would hope that we would all be able to come up with a way to do this, because it is a very, very serious issue.

I too know of law enforcement officers who have been hit around the fringes of a body vest. And it's something I think that you're absolutely right, we should deal with. And so we'll try to do that.

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 on the first day of November.

ACTING PRESIDENT McGEE: Call the

roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, would you call up Calendar Number 816, by Senator Leibell, please.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 816, by Senator Leibell, Senate Print 4556, an act to amend the Military Law, in relation to payment.

SENATOR PATERSON: Explanation.

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

SENATOR LEIBELL: Thank you, Madam President.

This bill would amend Section 210 of the Military Law to permit members of the National Guard under state activation to be

paid by electronic fund transfer. In doing so, this bill would conform payment procedures for state activation with those currently followed for federal activation.

During a federal activation of the Guard, military pay is deposited directly into the bank account of the Guardsman. During state activation, however, checks are currently sent to the unit's armory, where neither the Guardsman nor his family can obtain the funds until the member returns from duty.

As a result, should a Guardsman be away for an extended period of time, as was the case during the ice storm of 1998, the family of the Guardsman could go a substantial period of time -- weeks, even -- without incoming funds.

This bill would correct this inequity.

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 on the 60th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President, could we call up now Calendar Number 833, by Senator Saland.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 833, by Senator Saland, Senate Print 2782, an act to amend the Penal Law, in relation to including.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT McGEE: Senator Saland, there's been an explanation requested.

SENATOR SALAND: Thank you, Madam President.

Madam President, under the existing law there are special provisions with regard

to the sale of controlled substances on school grounds. And the definition of school grounds, under what's being proposed under this bill, would be expanded to include a school bus, as is defined in the Vehicle and Traffic Law under Section 142.

This is merely an effort to expand the protections afforded by the School Zone Safety Program, to provide the deterrent effect associated with stepped-up penalties and discourage the trafficking in drugs on school buses.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Madam President, would you call up Calendar Number 884, by Senator Lack.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 884, by Senator Lack, Senate Print 4982, an act to amend Chapter 69 of the Laws of 1992.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT McGEE: Senator Lack, an explanation has been requested by Senator Paterson.

SENATOR LACK: Madam President, this bill extends from June 30, 2001, to 2003 provisions relating to child safety zones.

ACTING PRESIDENT McGEE: Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you. If the Senator would yield for a few questions.

ACTING PRESIDENT McGEE: Senator Lack, will you yield for some questions?

SENATOR LACK: Yes.

ACTING PRESIDENT McGEE: The

Senator yields.

SENATOR OPPENHEIMER: Now, I notice we extended this bill, Senator Lack, in '99 for two years. It had been in place for seven years before that, and then we did a two-year extender. Why are we not making this bill permanent? Is there a reason?

SENATOR LACK: Yes. The New York State Department of Education, Madam President, hasn't issued the report that is required in the 1999 extension.

SENATOR OPPENHEIMER: Through you, Madam President, if the Senator will yield again.

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

SENATOR LACK: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR OPPENHEIMER: Yeah, State Ed is doing a report. Do you have any idea when that report is supposed to come out?

SENATOR LACK: No, I do not, Madam President.

SENATOR OPPENHEIMER: That's

unfortunate.

If the Senator will yield again.

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

SENATOR LACK: Yes.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR OPPENHEIMER: Now, in this bill will transportation costs be classified as ordinary contingent expense for state aid?

SENATOR LACK: There is nothing that changes whatsoever in this bill, Madam President, except for 2001 to 2003. So just what the law is now will be the law to June 30, 2003. Period.

SENATOR OPPENHEIMER: Okay. Thank you, Senator.

On the bill, Madam President.

ACTING PRESIDENT McGEE: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: This has been something that's been utilized and fairly important in certain areas of my -- in certain various spots, kind of, really small spots

within certain school districts of mine. They are areas where it would be hard for the child to walk to school from these particular spots.

And this is something that's very important because even though they're very close to school, the area they have to walk through is rather dangerous. And I think it's important that we maintain this for the children and that we get the aid which comes -- the transportation aid which comes to the school in spite of the fact that the children are being transported less than the prescribed distance from the school.

So I'll be voting in favor of it. And it's really a very good bill that I hope will be made permanent at some time in the future.

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: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Would you call up Calendar Number 933, by Senator Seward.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 933, substituted earlier today by Member of the Assembly Luster, Assembly Print Number 7609, an act to amend the Education Law, in relation to exemptions.

SENATOR PATERSON: Explanation.

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

SENATOR SEWARD: Yes, Madam President.

Currently in the Education Law there are 11 exemptions from licensing requirements for veterinary medicine. This legislation before us today amends three of those exemptions to address some of the

changing trends that we've seen within the field of veterinary medicine.

For example, the two-year limitation for interns and residents is eliminated due to the growing time commitments of the programs. And also the term "professor of veterinary medicine" is changed to "faculty member" to reflect the recent trends that cause the use of other titles other than straight professors in veterinary school.

And the unlicensed faculty members are authorized to supervise students and residents, as a growing number have not been issued licenses due to their exempt status.

This bill has been suggested and recommended by our only veterinary school in New York State, and that is the New York State College of Veterinary Medicine at Cornell, and also by the New York State Veterinary Society as well as the New York State Veterinary Board.

ACTING PRESIDENT McGEE: Senator Stavisky, why do you rise?

SENATOR STAVISKY: If the sponsor would yield to a couple of questions.

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

SENATOR SEWARD: Certainly.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR STAVISKY: I will try to make them very brief.

Senator, on line 4 of your bill - Madam President, through you -- it talks about "an intern or resident." Can you tell me if those terms are interchangeable?

And, secondly, how long is the intern or residency program?

SENATOR SEWARD: Madam President, I must confess I do not have that information before me.

SENATOR STAVISKY: Okay.

ACTING PRESIDENT McGEE: Senator Stavisky.

SENATOR STAVISKY: Let me ask another question, if the Senator will continue to yield.

ACTING PRESIDENT McGEE: Senator, do you continue to yield?

SENATOR SEWARD: Yes, Madam

President.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR STAVISKY: Section 6, I guess, or subdivision 6 of the bill, lines 11 through 16, talk about the practice of veterinary medicine in other states. Are there other states -- are the other states' standards similar to or are they substantially different? In other words, is there uniformity in the practice of veterinary medicine between New York State and, let's say, Vermont or Pennsylvania or Massachusetts or New Jersey?

SENATOR SEWARD: Madam President, the answer to that question is yes, the standards appear to be quite similar in other states.

In fact, if you look at other sections of Section 6705 of the Education Law, which deal with some of the other exemptions, in fact some of the other exemptions indicate that as long as a person has a license in another state to practice veterinary medicine, that they can do that in New York on sort of

an incidental basis while being here.

And so I would have to conclude that the standards are quite similar.

SENATOR STAVISKY: Through you, Madam President, if the Senator will yield for -

ACTING PRESIDENT McGEE: Senator, do you continue to yield?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR STAVISKY: How many people do you anticipate being affected by in legislation?

SENATOR SEWARD: I can't give you an exact number, Madam President. But I would estimate that it would be a mere handful of people. It's not a large number.

But it would be a situation that would help the College of Veterinary Medicine at Cornell operate in a more effective manner because of the changes that we've seen and the better utilization of personnel at the college.

SENATOR STAVISKY: I thank the

Senator for answering my questions.

I voted for -- Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator Stavisky, on the bill.

SENATOR STAVISKY: I voted for this bill in committee, Madam President, and I'm delighted to vote for it on the floor.

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

Senator Onorato.

SENATOR ONORATO: Madam President, will the sponsor yield to one question?

ACTING PRESIDENT McGEE: Senator Seward, will you yield for one question from Senator Onorato?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR ONORATO: Senator Seward, I'm just perplexed a little bit. Section 6705 provides that any intern or resident who practices veterinary medicine for two years or less in any college in the state offering a

program in veterinary medicine will be exempt from licensing.

Does that mean if somebody went to one of these schools for five months or six months that he could go out and practice as a veterinarian without a license?

SENATOR SEWARD: No, certainly not. In fact, the -- what we are doing -- the effect of what we are doing here would allow an individual to practice veterinary medicine as an intern or resident for a longer period than two years -- we're not shortening the time, we're lengthening it -- because of the fact that these programs are growing in terms of the time commitment. Actually, we need more time rather than less time.

SENATOR ONORATO: Thank you.

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: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President, would you call up Calendar Number 956, by Senator Libous, please.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 956, by Senator Libous, Senate Print 4106, an act to amend the Executive Law, in relation to requiring.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR PATERSON: Explanation.

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

SENATOR LIBOUS: Thank you, Madam President.

This legislation should have actually been before us when we had Disability

Awareness Day in the chamber. And, unfortunately, because of some technicalities, it did not make the floor.

But basically this bill is pretty much up front. It makes it an unlawful discriminatory practice in the Human Rights Law to make a patient with disabilities be subject to observation by unnecessary medical personnel during a medical examination without prior informed oral consent.

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: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Is there any

housekeeping at the desk?

ACTING PRESIDENT McGEE: There is no housekeeping at the desk.

SENATOR KUHL: There being no further business to come before the house today, we move that we adjourn until tomorrow, Wednesday, May 23rd, at 11:00 a.m.

ACTING PRESIDENT McGEE: On motion, the Senate stands adjourned until Wednesday, May 23rd, 11:00 a.m.

SENATOR PATERSON: Madam President.

SENATOR KUHL: Madam President, for the benefit of the members who are present, I think Senator Paterson has an announcement.

ACTING PRESIDENT McGEE: I'm sorry. The chair recognizes Senator Paterson.

SENATOR PATERSON: Madam President, there will be an immediate conference of the Minority in the Minority Conference Room, Room 314, immediately following the session.

ACTING PRESIDENT McGEE: There will be an immediate meeting of the Minority

in the Minority Conference Room, immediately, right now.

Thank you, Senator Paterson.

(Whereupon, at 3:25 p.m., the Senate adjourned.)