NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 31, 2001

11:08 a.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

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

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

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Wednesday, May 30, the Senate met pursuant to adjournment. The Journal of Tuesday, May 29, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Kuhl.

SENATOR KUHL: Madam President, on behalf of Senator Rath, on page 12 I offer the following amendments to Calendar Number 234, Senate Print 2617, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR KUHL: And on behalf of Senator Trunzo, Madam President, on page 57, I offer the following amendments to Calendar Number 931, Senate Print 1564, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR KUHL: And on behalf of Senator Johnson, Madam President, on page 61, I offer the following amendments to Calendar Number 997, Senate Print 5299, and ask that said bill retain its place on the Third Reading Calendar.

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

Senator Velella.

SENATOR VELELLA: Madam President, are there any substitutions at the desk? And if so, may we make them at this time.

THE PRESIDENT: There are, Senator.

The Secretary will read.

THE SECRETARY: On page 8, Senator Saland moves to discharge, from the Committee on Rules, Assembly Bill Number 5121 and substitute it for the identical Senate Bill Number 393, Third Reading Calendar 144.

On page 15, Senator Saland moves to discharge, from the Committee on Rules, Assembly Bill Number 7923 and substitute it

for the identical Senate Bill Number 3611, Third Reading Calendar 319.

On page 17, Senator Morahan moves to discharge, from the Committee on Rules, Assembly Bill Number 7407A and substitute it for the identical Senate Bill Number 3720A, Third Reading Calendar 373.

On page 20, Senator Marcellino moves to discharge, from the Committee on Rules, Assembly Bill Number 1990 and substitute it for the identical Senate Bill Number 491, Third Reading Calendar 415.

On page 23, Senator McGee moves to discharge, from the Committee on Rules, Assembly Bill Number 7804 and substitute it for the identical Senate Bill Number 3671, Third Reading Calendar 474.

On page 30, Senator Bonacic moves to discharge, from the Committee on Rules, Assembly Bill Number 29B and substitute it for the identical Senate Bill Number 3581A, Third Reading Calendar 585.

On page 48, Senator Kuhl moves to discharge, from the Committee on Finance, Assembly Bill Number 5584A and substitute it

for the identical Senate Bill Number 2956A, Third Reading Calendar 805.

On page 61, Senator Seward moves to discharge, from the Committee on Rules, Assembly Bill Number 933B and substitute it for the identical Senate Bill Number 4371A, Third Reading Calendar 991.

And on page 61, Senator Leibell moves to discharge, from the Committee on Rules, Assembly Bill Number 8342 and substitute it for the identical Senate Bill Number 4454, Third Reading Calendar 992.

THE PRESIDENT: Substitutions ordered.

Senator Velella.

SENATOR VELELLA: Madam President, I believe Senator Volker has a privileged resolution at the desk. May we read the title and move its adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Volker, Legislative Resolution Number 2186, acknowledging the Ford Motor Company as it celebrates its Living Legends Tour featuring

the American Classic 2002 Thunderbird, at the State Capitol in Albany, New York, on June 5, 2001.

THE PRESIDENT: All in favor of the resolution signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Velella.

SENATOR VELELLA: Madam President, Senator Goodman, I believe, has two privileged resolutions at the desk. May we read the titles each and move their adoptions respectively.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Goodman, Legislative Resolution Number 2187, mourning the death of Bernard Mendik, distinguished citizen and devoted member of the community.

And by Senator Goodman, Legislative Resolution Number 2188, mourning the death of

Victor Kiam, distinguished entrepreneur, author, and devoted member of the community.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolutions are adopted.

Senator Velella.

SENATOR VELELLA: Madam President, I believe Senator Balboni has a privileged resolution at the desk. I ask that the title be read and that it be acted on.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Balboni, Legislative Resolution Number 2077 commending Frank Castagna upon the occasion of his designation for special honor at The Museum Ball, sponsored by the Nassau County Museum of Art on June 9, 2001.

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: Yes, Madam

President, just for the record, I would like to just say a word about the job that Frank Castagna has done for the Nassau County Fine Arts Museum.

If anyone gets a chance to travel to the Gold Coast of Nassau County and go through the pristine pastures and the artwork both outside and inside of this facility, this early nineteenth-century facility, you will see a gem that is nowhere else in the State of New York.

And Frank Castagna has held this institution together. He has gotten more people involved on a volunteer basis than any other chairman of the board. And he really deserves a lot of credit for all of the work he's done on behalf not only of the residents of Nassau County but for all art fans throughout the state.

Thank you, Madam President.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

SENATOR VELELLA: Madam President, please recognize Senator Dollinger for his -

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

I hereby give written notice, as required by Rule XI, that I will move in the Senate to amend the Rules and add a new rule, XV, which will set ethical standards for members, officers, and employees of the New York State Senate.

I would ask that that be recorded in the Journal, Madam President.

THE PRESIDENT: Once again, the notice of motion has been received, and it will be filed in the Journal.

SENATOR DOLLINGER: Thank you.

THE PRESIDENT: Senator Velella.

SENATOR VELELLA: Madam President, may we proceed to the noncontroversial calendar, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 184, by Senator Maziarz, Senate Print 1899A, an act to amend the Real Property Tax Law and the Real Property Law, in relation to the time within.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Maziarz, to explain your vote.

SENATOR MAZIARZ: Madam President, to explain my vote. Thank you very much.

I just want to say that I think this legislation is very important to the thousands of New Yorkers who live in mobile home parks. They are prominently two areas of individuals, senior citizens or first-time, young home buyers. And the STAR program, which was enacted several years ago under the leadership of Governor Pataki, granted them - included them in the STAR rebate program.

However, there was one loophole in the law, if you will, Madam President, which allows the mobile home park owner to not issue the refunds to the individual tenants for up to one year. This bill would require the mobile home park owner to issue those refunds to the individuals within a 90-day period.

It does have a majority sponsor in the other house. I think it's a good piece of legislation that deserves our support.

Thank you.

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Ayes, 45.

THE PRESIDENT: And Senator Maziarz is so recorded as voting in the affirmative on this bill.

The bill is passed.

Senator Velella.

SENATOR VELELLA: Continue with the noncontroversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 197, by Senator Libous, Senate Print 2533B, an

act to amend the Real Property Tax Law, in relation to real property tax exemption.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 233, by Senator Trunzo, Senate Print 2592, an act to amend the Criminal Procedure Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 238, by Senator Volker, Senate Print 2829, an act to amend the Criminal Procedure Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 350, by Senator DeFrancisco, Senate Print 581, an act to amend the General Municipal Law.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 396, by Senator Wright, Senate Print 4150, an act to amend the Public Service Law.

SENATOR VELELLA: Lay that aside for the day, Madam President.

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

THE SECRETARY: Calendar Number 430, by Senator Lack, Senate Print 3987A, an act in relation to establishing.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 8. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 506, by Senator Stafford, Senate Print 3092, an act to authorize the County of Warren.

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

Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 558, by Senator Trunzo, Senate Print 3358A, an act to amend Chapter 719 of the Laws of 1982.

THE PRESIDENT: Read the last section.

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

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 569, by Senator Maziarz, Senate Print 1517A, an act to amend the Insurance Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 621, by Senator Bruno, Senate Print 3996, an act to amend the Public Officers Law and the Uniform City Court Act.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46. Nays, 1. Senator Dollinger recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 769, by Senator Larkin, Senate Print 3786, an act -

SENATOR VELELLA: Please lay it aside for the day.

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

THE SECRETARY: Calendar Number 770, by Senator Kuhl, Senate Print 3907, an act to amend Chapter 341 of the Laws of 2000.

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

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 841, by Senator Rath, Senate Print 3644, an act to amend the Penal Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 847, by Senator Volker, Senate Print 4283, an act -

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 848, by Senator Volker, Senate Print 4299A, an act to amend the Penal Law.

THE PRESIDENT: Read the last

section.

THE SECRETARY: Section 2. This act shall take effect in 90 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 856, by Senator Kuhl, Senate Print -

SENATOR VELELLA: Lay that aside for the day, please.

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

THE SECRETARY: Calendar Number 873, by Senator Wright, Senate Print 4069, an act to amend the State Technology Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 876, by Senator Wright, Senate Print 4869, an act to amend the Public Service Law.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 878, by Senator Morahan, Senate Print 2878A, an act to amend the Education Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 909, by Senator Stafford, Senate Print 3557A, an act to amend the Alcoholic Beverage Control Law.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 941, by Senator LaValle, Senate Print 5092, an act to amend the Education Law.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 951, by Senator Stafford, Senate Print 4324A, an act to amend the Arts and Cultural Affairs Law.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the first day of January.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 952, by Senator LaValle, Senate Print 5015, an act to amend the State Finance Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 961, by Senator Kuhl, Senate Print 1963, an act to amend the Alcoholic Beverage Control Law.

THE PRESIDENT: Read the last section.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 968, by Senator Bruno, Senate Print 5212, an act to authorize the Office of General

Services.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 977, by Senator Seward, Senate Print 4216, an act to amend the Alcoholic Beverage Control Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Dollinger, to explain your vote.

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

This is another one of those

regulations that I've never quite understood why we ever had this restriction in the first place, why we're now increasing it to 80 cases versus 100 or 120.

I'm going to vote in favor of this bill because I think it makes it easier to obtain these permits and engage in this kind of activity. But, frankly, I would put this under Senator Rath's mandate relief bill. This is just the kind of thing, that we have some archaic restriction on charities' sale of packaged alcoholic beverage goods. For the life of me, I can't understand why there's any limitation on it at all.

And so I think Senator Seward opening it up to more possibilities is a good thing. But, frankly, this is the kind of little thing that dots our landscape of our laws that we should just repeal completely. I don't think that it serves any purpose whatsoever.

So this is the kind of mandate relief that we've talked about. But I would hope Senator Rath, when we do the mandate relief bill, might do this specific

restriction and just abolish it completely.

Thank you, Madam President.

THE PRESIDENT: Senator Dollinger, you will be so recorded as voting in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 986, by Senator Leibell, Senate Print 2540, an act in relation to maintaining the existence.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 987, by Senator Marchi, Senate Print 2546, an act to amend the Not-for-Profit Corporation

Law.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 60th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 988, by Senator Padavan, Senate Print 2711, an act to amend the Penal Law.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 989, by Senator Velella, Senate Print 3408, an act to amend the Penal Law.

THE PRESIDENT: Read the last section.

SENATOR PATERSON: Lay that aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 991, substituted earlier today by Member of the Assembly Luster, Assembly Print Number 933B, an act to amend the Criminal Procedure Law.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 992, substituted earlier today by the Assembly Committee on Rules -

THE PRESIDENT: Senator Padavan.

Excuse me, Mr. Secretary.

SENATOR PADAVAN: Madam President, by unanimous consent I'd like to be recorded in the negative on Calendar Number 977, Senate Bill 4216.

THE PRESIDENT: Without objection, Senator, you will be recorded as voting in the negative on that bill.

The Secretary will continue to read. Excuse me, Mr. Secretary.

THE SECRETARY: Calendar Number 992, by the Assembly Committee on Rules, Assembly Print Number 8342, an act to amend the Public Officers Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 995, by Senator Connor, Senate Print 5090A, an act to authorize the St. Ann's School to file an application.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50. Nays, 1. Senator Dollinger recorded in the

negative.

THE PRESIDENT: The bill is passed.

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

SENATOR VELELLA: Madam President, may we go to the controversial calendar and take the bills up in order.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 197, by Senator Libous, Senate Print 2533B, an act to amend the Real Property Tax Law, in relation to the real property tax exemption.

SENATOR VELELLA: Please lay that aside temporarily.

THE PRESIDENT: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 350, by Senator DeFrancisco, Senate Print 581, an act to amend the General Municipal Law, in relation to authorizing.

SENATOR DUANE: Explanation, please.

SENATOR MORAHAN: Senator

DeFrancisco, an explanation has been requested.

SENATOR DeFRANCISCO: This bill would increase the amount that municipalities can charge for returned checks from $15 to $20.

In addition, it expands the reasons why a municipality can charge the $20 charge, to include not only insufficient funds but also when the check is returned for uncollected funds, account closed, payment stopped, refer to maker, lack of signature - in other words, other reasons that banks return checks.

The first time that this bill - the current law is $15, and the current law went into effect in 1989. And probably most importantly, the General Obligations Law allows merchants to charge $20 but municipalities have not been allowed to charge that amount.

And this was brought to my attention by a clerk of a municipal government in our area, and it's supported by, obviously, the New York Conference of Mayors and

Municipal Officials.

SENATOR DUANE: Explanation satisfactory.

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

SENATOR VELELLA: Read the last section.

THE PRESIDENT: Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49. Nays, 2. Senators Duane and Kuhl recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 558, by Senator Trunzo, Senate Print 3358A, an act to amend Chapter 719 of the Laws of 1982.

SENATOR PATERSON: Explanation.

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

SENATOR TRUNZO: Madam President, this bill is to enact an amendment to Chapter 719 of the Laws of 1982 related to authorizing the Commissioner of General Services to convey certain lands to the town of Islip.

Now, there are 76 acres of land that the New York Institute of Technology is looking to free from the restrictions that were placed upon the original sale of the state land to Islip back in 1982.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50. Nays, 1. Senator Padavan recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 847, by Senator Volker, Senate Print 4283, an act to amend the Criminal Procedure Law, in relation to proof.

SENATOR PATERSON: Explanation.

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

SENATOR VOLKER: This is 4283, Madam President? 847?

THE PRESIDENT: That's correct, Senator Volker.

SENATOR VOLKER: Thank you.

This bill, which passed this house last year, is very honestly the remnants of the Sexual Assault Reform Bill that passed this house last year in an agreement with the Assembly and the Governor. By "remnants" I mean this is the part that the Assembly did not want.

Basically, there are three provisions in this bill. This bill modifies the so-called Molineaux decision that says that prior bad acts, which is arrests or convictions on such crimes, could be entered in as proof in a proceeding involving a sexual assault trial. The judge, of course, would have the right to exclude such information based on its probative value and the possibility of undue influence on the jury.

Secondly, there is a provision in

this bill that allows the prosecutor in a case to appeal what he considers to be a lenient sentence. In all honesty, this provision does not just apply to sexual assaults but applies to any criminal charge.

So this is a provision which has been in a couple of other bills, by the way, of the Governor's. And we just got another Governor's program bill which we're now reading to see if it might be in that program bill also.

Thirdly, it allows an appeal in any case, if I'm not mistaken -- in any case, for lenient bail. So that if bail is -- has been set up in a case, the prosecutor or the individuals can appeal a bail decision that they consider to be overly unjust.

Basically, that's what the bill involves.

THE PRESIDENT: Senator Gentile.

SENATOR GENTILE: Yes, on the bill, Madam President.

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

SENATOR GENTILE: Thank you.

I want to commend Senator Volker for once again bringing forth this piece of legislation, a multifaceted piece of legislation.

Because having experienced each of these provisions in a real-life setting in the courtroom, I understand from a prosecutor's point of view the seriousness with which we're dealing with these issues, particularly the Molineaux rule and how the Molineaux rule ostensibly has the objective of protecting the defendant from other actions but in effect, in practical effect, I believe it excludes real-life incidents that a jury may use in determining whether the credibility of a witness is in fact there or not.

And I believe the Molineaux rule as now used by the courts is clearly too restrictive from that point of view. And I believe much credible evidence is kept out of a criminal trial unnecessarily. And I believe that this provision that Senator Volker puts forth will help correct that.

Certainly the review of bail and recognizance determinations has been something

that I have been advocating for since I first started here in the Senate, so I congratulate him for that. And the fact that we will now be allowing, under this bill, for appeal of a criminal sentence based on the fact that it's unduly lenient is something that I believe is a fair provision for the prosecution, given circumstances of a case.

It's hard to explain without particulars of a particular case. But I've seen instances where judges have clearly, clearly imposed a sentence that is far below the severity of the crime which was committed. And in those instances, the prosecution and the victims, who the prosecution has brought the case in the name of the State of New York and on behalf of the victims, do not have an option to appeal those cases.

It will be so under this bill. So, Senator Volker, again, I commend you for it, and I only hope that this time we'll get it past both houses.

Thank you, Madam President.

THE PRESIDENT: Senator Dollinger.

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

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

SENATOR VOLKER: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR VELELLA: If you'll suffer an interruption.

THE PRESIDENT: Senator Velella.

SENATOR VELELLA: There will be an immediate meeting of the Rules Committee in the Majority Conference Room.

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

Senator Dollinger, you may proceed with a question.

SENATOR DOLLINGER: Will my fellow member of the Rules Committee yield for a question?

SENATOR VOLKER: Yes.

SENATOR DOLLINGER: Senator, so I

understand the Molineaux change that we're making here, this bill does not require that the prior bad acts of the defendant be either indicted or convicted bad acts; is that correct?

SENATOR VOLKER: That's true.

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

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

SENATOR VOLKER: Yes, I continue to yield.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: So this will allow any evidence of any other bad act that involves sexual assault to be introduced at the time of trial as a separate incident that would be used by the prosecution to show a tendency or propensity to engage in the indicted offense; is that correct?

SENATOR VOLKER: It is correct. To this point, though, that they would have to be related to sex offenses. Because we are

only -- in this bill we are only relaxing the Molineaux rule in relation to sex offenses.

So in other words, prior bad acts of something else would not be enterable, only prior bad acts, as I understand it, that related to sexual assault or sexual acts. And they would be subject to the decision of the judge in the case as to whether they're relevant or not.

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

SENATOR VOLKER: Certainly.

THE PRESIDENT: Senator Volker, will you yield?

SENATOR VOLKER: I do.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Under this bill there is no time restriction on when those incidents might have occurred, is there?

SENATOR VOLKER: Not that I'm aware of, Senator, there's no time restrictions.

Although I suppose, depending on

the time when those incidents occurred, the judge probably would be less likely to allow them in if they occurred a long period of time in the past.

SENATOR DOLLINGER: Through you, Madam President, again, if Senator Volker will continue to yield on the Molineaux issue.

SENATOR VOLKER: Yes. Mm-hmm.

SENATOR DOLLINGER: How do we prevent, Senator Volker, from the trial for the indicted sexual offense becoming a trial within a trial, as there may be several other incidents of alleged bad acts that may be over a relatively long period of time, none of which have been previously indicted or convicted? How do we confine the trial solely to the indicted offense? How do we prevent this from becoming a series of trials within trials about other bad acts?

And clearly, I agree with you that sexual assaults, unindicted or otherwise, clearly fall into the category of bad acts. But how do we prevent this from becoming a series of trials within a trial?

SENATOR VOLKER: I think,

Senator, that we go back to some of the urgings of many of your colleagues here in the Minority, in particular, that we allow more flexibility to judges in this state. And what this bill would do is to allow more flexibility to a judge to allow in prior bad acts where that judge believes that they wouldn't be prejudicial and/or that they would be relevant to the present case.

So what I was suggesting before, that obviously if you had something that happened 25 years ago, the likelihood that it would be entered if there was no other history of sexual bad acts, then it would seem to me that a rational judge would probably be less likely to allow it in as relevant in the proceeding that was at hand.

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

SENATOR VOLKER: Certainly I will, yes.

THE PRESIDENT: Senator Volker does yield.

You may proceed, Senator.

SENATOR DOLLINGER: In line 10 of the bill, Senator Volker, the standard that the court would apply is that it would be presumed -- and again, correct me if I'm wrong here, but it would be presumed that the other bad acts would be admissible unless the court determines that its probative value is substantially outweighed by the danger of prejudice.

My question is, Senator, how does that fact that in essence the defense would have to show that the probative value was substantially outweighed by the danger of prejudice, how does that impact on the presumption of innocence, that in essence on the indicted offense the defendant is presumed to be innocent yet he's going to have to have this burden to show that it's substantially outweighed -- not just outweighed, but substantially outweighed -- in order to prevent its admission at the time of trial?

SENATOR VOLKER: I think, Senator, that the argument is that certainly it doesn't reverse the -- the burden of proof of beyond a reasonable doubt is obviously

still on the prosecutor.

And what I think is being said here is that the difficulty in many of these sex cases, where you have one-on-one individuals and the only testimony, essentially, is the testimony of the victim -- and this is particularly true with child victims, obviously, where it's extremely difficult. And I've been on both sides of those cases, both prosecuting and on a couple of -- one occasion defending, and they are extremely difficult, because you have a very difficult witness.

And I think the attitude there is that -- and the reason it says "substantial" is -- I guess as an example, if you have a conviction, then the likelihood that a judge would throw out that as evidence as opposed to, for instance, just an arrest, using the word "substantial," you would be guiding the judge to look at in a different way. And obviously that would be presumed to be more - have more weight than merely an arrest.

And I don't have to tell you, Senator, that this language also will

probably, if it ever becomes law -- and I think it will eventually -- probably be the subject of appeals. And I think that will limit how this language is used.

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

SENATOR VOLKER: Sure.

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

SENATOR VOLKER: I will yield, yes.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Senator, the other question I have with respect to Molineaux is as I read this bill, even if the defendant were acquitted of the other bad act -- in other words, there's a -- let's say, using a common example, 2½ years before the indicted offense there's a similar offense that occurs, they're indicted, they're tried, they're found not guilty.

Is it -- under this bill, is it possible that an offense for which someone had

been previously indicted and found not guilty might nonetheless be admissible at the time of trial under the second indicted offense?

SENATOR VOLKER: Senator, it is possible.

And you and I are aware of the fact that under the law when you are found not guilty, you are presumed to be innocent. But on many occasions, some of the DNA cases, for instance, that are involved in murder cases now, where people say, Well, that person was totally innocent because of the DNA, the person almost certainly committed the act, but because the DNA evidence -- that is, the evidence involved that linked this person - did not specifically refer to this person and in that case involves multiple murders in particular -- multiple killers, I mean -- it is very possible that the person actually committed the act even though they've been found innocent.

And therefore, I mean, I don't know how many times I've talked to a prosecutor and I say, Well, are you looking for somebody else? And they've said, No, we're not looking

for anybody else. We know the guy did it. That's not the point. We just can't prove it. And I think that is kind of -- and especially in sex cases.

And I've had some experience, by the way, way back when, in another life, with these kinds of cases where we tried to prosecute a serial rapist. And what a time we had. Because the evidence is difficult and witnesses are very, you know, off the -- so that the fact that the fellow probably committed a hundred rapes and that he had this whole line of people who were waiting, none of that could be, you know, entered into evidence in his case.

And, frankly, by the time he was eventually killed by the mob -- because he'd killed a mobster's son -- we had convicted him three times and it was overturned three times. And I only mention that because it points up the difficulty in sex cases.

SENATOR DOLLINGER: Through you, Madam President, if Senator Volker will yield just for a couple of questions on another portion of the bill.

THE PRESIDENT: Senator Volker, will you yield?

SENATOR VOLKER: Sure.

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

SENATOR DOLLINGER: Senator, in the section that deals with the unduly lenient sentences, I note that there is no -- at least the way I read it, and maybe I could be wrong. I'll stand corrected -- but there's no standard for the judicial review.

Under the section that deals with orders of recognizance and bail set by the lower courts, there is a standard of review in which we say that it shall be -- it will be reviewed by the higher court under an abuse of discretion standard.

I assume that the fact that you've left it out or that it's not in the review of unduly lenient sentences, that there would be some other standard -

SENATOR VOLKER: Right.

SENATOR DOLLINGER: -- under which the appellate court will view unduly lenient. Is that going to be a de novo

review?

SENATOR VOLKER: The present standard, I believe, would be the same standard as it is now. Which would be, I believe, the standard that you just delineated.

And when it's appealed now, the only difference is that here you could - under this bill, you have more authority -- I mean, actually you could technically make an appeal now for lenient bail.

What this really does is gives you statutory authority to do it; that is, a more -- I don't want to say a more organized authority. I mean, it's possible, as you well know, to appeal bail decisions now. Except that it's -- first of all, the person probably, while you're appealing the bail decision, could well be out on the streets.

What this bill would say is that while you're appealing the bail decisions, you have, what is it, 72 hours -- the person has to remain incarcerated and you have a direct line to make an appeal.

But the standard would remain. And

it seems to me the standard is already in the law for appeal of bail in any case.

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

SENATOR VOLKER: Sure.

THE PRESIDENT: Senator Volker, you will yield.

You may proceed.

SENATOR DOLLINGER: Senator, I have no doubt that you're familiar with a practice that oftentimes goes on in this state of lawyers, friends, relatives of a convicted person writing a letter to the trial judge and, while perhaps not begging for leniency, nonetheless trying to highlight to the trial judge at the time of sentencing the appropriateness of a determination.

I can recall a letter that actually I wrote in a federal court case, a man who had been convicted and pled guilty to a felony who had a long history of charitable involvement in the community, who was a very, very unusual defendant. He had been found guilty of misrepresenting certain loan documents to the

federal government.

I'm not aware -- and, I mean, I believe that that's a very common practice. I believe that it's done all the time, at least in my community, to try to give the court a sense -- sometimes maybe not in a public way, but in a way to give them a sense of who the person is.

If that happens, Senator Volker, and if we allow the appeal of unduly lenient sentences, is all that material going to have to be incorporated into the public record so that the court above will be able to understand what influenced the trial judge?

SENATOR VOLKER: The answer to that is yes. And it's probably public record now.

One of the problems is -- and I've been in that situation also, Senator, and found that I was in the newspaper for having supported that person. I think it's probably, as my counsel says, technically a public record now.

But I would guess that it would be part of the record, and therefore the

appellate court, whoever would be looking at it, would be looking at those letters also.

SENATOR DOLLINGER: Thank you, Madam President. On the bill just briefly.

I appreciate, as always, Senator Volker's candor and insight.

I'm going to vote against this bill. I voted in favor of the -- I think the bigger bill last year, but I'm going to vote against this one for two reasons.

One, I really think that the Molineaux provision really needs more analysis. I think that to allow evidence of bad acts should have some very tight restrictions on it. I think that the court should be required to establish the similarity in pattern or the existence of the crime or the modus operandi of the crime.

I think we should attempt to put some restrictions on the timing of other bad acts, that we shouldn't allow the trial judges to include bad acts that have occurred after a significant period of time.

I also believe that there should be a very strict restriction on the use of any

bad act for which the defendant has been previously indicted or charged with an offense and then found innocent -- or found, excuse me, found not guilty.

Because I think in these highly publicized cases, a district attorney simply stands before the jury and says: Oh, by the way, this is the defendant, he's charged with this crime, we may not have good proof about this crime, but boy, we've got great proof about two other bad acts, about two other similar offenses, neither of which he stands indicted for today but which are similar to the crime for which he is indicted now.

I think that while I have a lot of faith in the discretion of trial judges in this state, I think to allow them a broad-scope discretion without articulating, as a public policy, restrictions on that discretion in this case is a mistake.

I also believe -- and I understand Senator Volker's defense of this, and I appreciate it -- that what we've done is we've tilted the balance in the burden of proof by saying that in essence these crimes -- these

other bad acts will all be admitted into the trial unless the court determines that its probative value is substantially outweighed by the danger of undue prejudice to the defendant.

That means the defendant has to show that the prejudice to him will substantially outweigh -- not just outweigh, in the balance of fifty-fifty, but substantially outweigh. It becomes somewhat similar to almost that clear and convincing evidence test, that it's not just 51 percent, but the defendant will have to show by some very high standard that the damage to him at the time of trial is outweighed by the probative value.

For that reason, I would vote against the Molineaux change in and of itself. But I also am concerned about the lack of an articulated standard for discretion in the appellate courts in dealing with the unduly lenient test for appeals. We put tremendous faith in our trial judges in the sentencing phase of cases.

I point out to Senator Volker -

and I have no doubt that he has at least been approached by people, if not already done it, where people come and say to public officials: This is my father, this is my husband, this is my child, they have been found guilty of an offense, we clearly understand that they have to pay a penalty, but would you intervene?

It's happened to me a number of times. It's one of the most difficult things for any public official to do. I have done it.

And I think that to try to ask the appellate courts to look at that unduly lenient test, I think we may end up with a tremendous number of new appeals by prosecutors who believe that a sentence has been unduly lenient. I also think that we need to put more restrictions on how much discretion we're giving our trial judges in this area.

So with that in mind, Madam President, I'm going to vote no on this bill. I would say to Senator Volker, if this bill passes, I think it's worthy of a good discussion with the Assembly. I don't believe

that my objections or my limitations on this bill are anything that couldn't be hammered out in a joint conference committee or in further negotiations with this bill.

I appreciate, and I think we all do, that we need to tighten up our sexual assault laws. They are enormously difficult cases, given often that they are one-on-one cases where the victim is the sole witness against the defendant.

But I really believe that in this instance, without broader discretion on the Molineaux principle and some more limitations on the discretion about review of lenient sentences, this bill is not ready to become law. I'll vote no.

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

Then the debate is closed.

Read the last section.

THE SECRETARY: Section 11. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator

DeFrancisco, to explain your vote.

SENATOR DeFRANCISCO: Yes, I'm going to vote no.

And the reason for that vote is very simple. We all want to make sure that people committing sexual assault-type crimes are put in jail and put in jail for a long time. On the other hand, we don't want anybody put in jail because they did something or are suspected of doing something in the past for which they were not convicted.

And to allow evidence in a case dealing with a serious offense such as a sexual assault that can be used for any purpose, including to show the propensity of a defendant to commit a crime, is just basically unfair and should not be part of our jurisprudence.

I vote no.

THE PRESIDENT: Senator DeFrancisco, you will be recorded as voting in the negative on this bill.

The Secretary will announce the results.

THE SECRETARY: Those recorded in

the negative on Calendar Number 847 are Senators Breslin, Brown, DeFrancisco, Dollinger, Duane, Hassell-Thompson, Montgomery, and M. Smith. Also Senator Marchi. Ayes, 45. Nays, 9.

THE PRESIDENT: The bill is passed.

Senator Velella.

SENATOR VELELLA: Madam President, may we return to motions and resolutions.

THE PRESIDENT: Motions and resolutions.

SENATOR VELELLA: Madam President, on page 29, I offer the following amendments, on behalf of Senator Skelos, to Calendar Number 559, Senate Print Number 3655, and ask that said bill retain its place on the Third Reading Calendar.

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

Thank you.

SENATOR DUANE: Madam President.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President.

I was wondering if I could, without objection, be recorded as changing my vote to no on Calendar Number 847.

THE PRESIDENT: You will be so recorded, Senator Duane, as changing your vote to be recorded in the negative. And you were already so recorded as voting in the negative.

SENATOR DUANE: I mean 558, Madam President, excuse me.

Final answer.

THE PRESIDENT: You will be recorded as changing your vote to the negative on Calendar 558.

THE PRESIDENT: Senator Farley.

SENATOR FARLEY: I'm keeping my vote positive.

Madam President, on behalf of Senator Larkin, on page 48, I offer the following amendments to Calendar Number 807, Senate Print 3682, and I ask that that bill retain its place on the Third Reading Calendar.

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

SENATOR VELELLA: Madam President.

THE PRESIDENT: Senator Velella.

SENATOR VELELLA: May we return to the controversial calendar, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 876, by Senator Wright, Senate Print 4869, an act to amend the Public Service Law, in relation to billing.

SENATOR PATERSON: Explanation.

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

SENATOR WRIGHT: Thank you, Madam President.

The bill before us this morning amends the Public Service Law and essentially has three components to it. The first, it shortens the time period when a property owner must correct a shared metering problem. And this reduces the time period from 120 days to

60 days, thereby more quickly remedying the problem.

The second aspect is that when we have a situation where shared metering exists, it requires that the overcharge be reimbursed to the shared metering customer.

And then the third provision eliminates the billing penalties that are derived from a shared metering situation.

THE PRESIDENT: Senator Paterson.

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

SENATOR WRIGHT: I will, Madam President.

SENATOR PATERSON: Senator, this bill frankly confuses me. When we reduce the time by which there is a violation where the landlord is held in noncompliance with the regulations that are set forth by the commission from 120 days to 60 days, I would assume that that would act as a benefit to the consumer or to all concerned.

Then when we look at the penalty stage and we eliminate it generally, my

question is if the 60-day period now elapses, the landlord is now in violation, the landlord is in violation at the 60th day, the landlord is also in violation at the 120th day, but what is the difference, because the landlord is not being penalized.

So things are not always as they seem. What we did by reducing the amount of time that the landlord has to make this correction has not really solved the problem at all and is in a sense a veil, because inevitably the landlord doesn't suffer any kind of penalty. And it could go on ad nauseam without any correction made to the meter.

So I'm wondering, Senator, what is the benefit of reducing the time if there is no penalty or there can be an elongated period of violation even going beyond 120 days where there is no redress?

SENATOR WRIGHT: Well, Senator, you are correct in that by tightening the time frame from 120 to 60 days we more effectively accomplish the correction of the problem. And that's really the motivation, to correct the

situation.

In the vast majority of these cases that we've reviewed, we're dealing not with large tenant-landlord relationships but generally a prior single residence that has been subdivided to two or three, and we have inadvertent errors that are resulting from common hallways, basements, things of that nature.

They are quickly remedied, and rather than have an onerous penalty, we have ensured that there is a response in terms of the bills are corrected. And that responsibility is taken care of in this legislation.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Wright would yield for another question.

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

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: I would assume

that a great deal of research went into what the time frame is and that Senator Wright has set forth a time frame that is seasonable to the landlords addressing the situation. And that is that somewhere between 60 and 120 days, these problems can be corrected, as opposed to within 60 days.

So I accept that. But my contention is that there was no reason to change the penalty phase coming after 120 days, or even if it got extended to perhaps 180 days. There has to be some point where there is motivation for the landlord to correct the situation, thus that the commission, the utility company, and even the residents who are affected by the fact that the meter is now being shared are not having additional problems because we have someone who is renting out space that is not acting in compliance with the regulations.

And this is why I don't understand why the third phase of the legislation is being changed at all. And I was wondering if the Senator could specifically address to me why we have to eliminate the penalty.

SENATOR WRIGHT: Well, the intent was to ensure that any cost that was being incurred by the customer would be reimbursed. And that in fact is taken care of in this bill.

And so ultimately, if addressed, the landlord avoids that cost, the customer is held harmless, so you have an equity and a fairness that is accomplished in the legislation.

SENATOR PATERSON: Mr. President, would Senator Wright yield for a question?

SENATOR WRIGHT: I will, Mr. President.

ACTING PRESIDENT MEIER: Senator Wright will yield.

SENATOR PATERSON: Senator, I'm just not sure how of eliminating the penalty absolves the customer of cost that was not the customer's fault in the first place.

SENATOR WRIGHT: Well, because the bill requires that the owner reimburse the cost of the inaccurate billing. So that provides for a reimbursement to the customer of the cost, thereby making the customer

whole.

SENATOR PATERSON: Well, my understanding is that the utility refunds the tenant. And therefore, I don't know how the landlord and the tenant interact on this particular issue. Might the Senator explain that for me?

SENATOR WRIGHT: Well, it reimburses the customer. And the obligation, once resolved by the utility and/or the Public Service Commission, is for the landlord to correct that situation. And certainly it's in the interest of the landlord to correct it.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Paterson, on the bill.

SENATOR PATERSON: I guess maybe at some point off the floor Senator Wright can explain this to me. But I just don't understand how the reimbursement of the tenant through the utility, if there's an overcharge, is involved with the penalty that is vested to

the landlord if there isn't a change in the first place.

In other words, I don't see how the two situations are actually analogous and how removing the penalty is going to enhance the position of the user. Because the user, as I see it, is protected under regulations now.

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

Read the last section.

THE SECRETARY: Section 2. This act shall take effect in 60 days.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52. Nays, 2. Senators Duane and Paterson recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 909, by Senator Stafford, Senate Print 3557A, an act to amend the Alcoholic Beverage Control Law, in relation to consumer tastings.

SENATOR PATERSON: Explanation.

SENATOR STAFFORD: Madam President, in the wine industry -- oh, excuse me, Mr. President.

ACTING PRESIDENT MEIER: That's quite all right.

SENATOR STAFFORD: Mr. President, in the wine industry we have made it possible for -- in the wine industry we give people who are purchasing a product the opportunity, when you have an agent from the producer there, we give them an opportunity to taste the product.

This now goes for distilled spirits. You have to have somebody from the company who produces a product there, but they have an opportunity -- or they give the opportunity at these establishments for people to taste the various products, thereby making it easier for people to make decisions. And possibly they will have an opportunity to purchase something they wouldn't have purchased otherwise.

We're just extending what we're doing in the wine industry.

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

Read the last section.

THE SECRETARY: Section 2. This act shall take effect in 90 days.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

SENATOR BALBONI: Thank you, Mr. President.

I am very nervous about voting against any bill of Senator Stafford's, because he is a champion of the little guy, he has such a distinguished career.

However, in this particular instance, I am moved by the Governor's veto message of the legislation last year. I believe that there is a distinction between wine, in the alcohol content, and the content involved in hard liquor.

And I think that the Governor's concern is that this could possibly contribute to a situation when there might be, unfortunately, a drunk driving incident. Or at least there should be an opportunity to

examine the issue from a task force, which I know the Governor in his veto message suggested that there be prepared and established.

And frankly, Senator, I'd like to just see what that recommendation would be. So at this time, until the time when we do the task force, I'm going to vote in the negative on the bill.

Thank you.

ACTING PRESIDENT MEIER: Senator Balboni, how do you vote? I simply didn't hear, I'm sorry.

SENATOR BALBONI: I'd like to be recorded in the negative.

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

The Secretary will announce the results.

THE SECRETARY: Ayes, 52. Nays, 2. Senators Balboni and Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number

941, by Senator LaValle, Senate Print 5092 -

SENATOR VELELLA: Mr. President.

ACTING PRESIDENT MEIER: Senator Velella.

SENATOR VELELLA: May we proceed to Calendar Number 989.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 989.

THE SECRETARY: Calendar Number 989, by Senator Velella, Senate Print 3408, an act to amend the Penal Law, in relation to multiple convictions.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Velella, an explanation has been requested of Calendar 989.

SENATOR VELELLA: Yes, Mr. President.

Under the present law in New York, an individual who sells marijuana may only be charged with a misdemeanor unless that amount in question is in excess of 25 grams. As a result, we have drug dealers who have been arrested and convicted as many as 30 and 40 times for sale of smaller amounts of

marijuana, 25 grams or less.

It does little to deter criminal activity. And the police department of the City of New York has requested this legislation, which is also supported by the mayor.

The legislation elevates the charge for marijuana sales in amounts of 25 grams or less when the individual charged has previously been convicted of any controlled substance or marijuana offense -- with the exception of unlawful possession of marijuana -- at least three times within five years, in which case it would be elevated to an E felony, or has been convicted five times within five years, in which case it would be elevated to second degree, which is a D felony, or ten times within five years, which would bring it up to a C felony.

We have to take a stand to say that we are not going to allow the law to be flaunted 30 and 40 times. One, two, three, four, five chances is enough.

ACTING PRESIDENT MEIER: Senator Dollinger.

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

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

SENATOR VELELLA: Certainly, Senator Dollinger.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Does this bill apply to the users of marijuana, to what extent small-time users may also be small-time sellers of marijuana?

SENATOR VELELLA: Small-time offenders of the law will not be in any way affected by this change. This is people who are selling, selling -- not using, selling - marijuana and have been convicted at least four times within five years of selling it to someone else.

On the fifth time, we're saying we're going to treat you a little more seriously. You've had four bites on the apple. Usually it's three strikes and you're out. We're going to give them an extra shot.

SENATOR DOLLINGER: Through you, Mr. President, if sponsor will yield for a question.

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

SENATOR VELELLA: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Senator Velella, giving them four strikes -

SENATOR VELELLA: I'm sorry, let me be correct. We're going with the baseball rule. It's three strikes and you're out.

SENATOR DOLLINGER: In giving them the three strikes, do any of those strikes include treatment, any of those pitches include treatment?

SENATOR VELELLA: To the degree and to the amount that we now have programs in place.

And if in fact, Senator, as you indicated, these are just minor, casual users, I don't know what kind of program we would have in place. But whatever programs are there they will be able to avail themselves

of.

And the court system is sensitized to the fact that when we have repeated drug offenders or marijuana users, the opportunities to participate in drug and court-related programs is always there. We have always appropriated the monies for those programs, and those certainly will not be hurt by this legislation.

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

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

SENATOR VELELLA: Yes, I will.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: How does this bill differ from the proposals with respect to the repeal of the Rockefeller Drug Laws?

As you know, Senator Velella, there's been a lot of discussion. There are several competing versions of the Rockefeller Drug Laws repeal that are not necessarily before this house yet but certainly are in the

hopper in legislative discussions. How does this proposal differ from those, if at all?

SENATOR VELELLA: I don't know all of the provisions of the various proposals to change the Rockefeller Drug Laws. I think we'll be seeing some legislation out here on the floor in the very near future to deal with that, and we'll deal with it at that time.

But this focuses on the other end of it, the very low end of the drug problem. The laws that we will be talking about in reforming the Rockefeller Drug Laws deal with much more serious offenses, the felonies, people using felony weights, people being multiply convicted, large sales. Those types of things will be addressed, I believe, in any reform of the Rockefeller Drug Laws.

No one has addressed this problem, and I'm sure -- I don't know in your district, but I know for those of us who are in the City, we keep hearing from people how is it that these people have 30, 40, 50 arrests and we still treat them as mere violations. Aren't we getting the message when they're arrested that many times? For sale, not for

use. Not for casual, personal use. Selling it to another person.

So I think this deals with that lower end that is frustrating a lot of people.

SENATOR DOLLINGER: Through you, Mr. President, on the bill.

I appreciate Senator Velella's honesty and candor in assessing this problem.

I'm really torn on this bill. I agree with Senator Velella that to allow someone to continue to break even our most minor laws without some sense that there are repercussions, and repercussions in increasing magnitudes, I think is a bad idea. We should be sending a message that whatever our laws are, that failure to comply with them is going to involve some penalties.

I'm going to vote -- I guess I've decided I'm going to vote in favor of this bill. But I do believe that we have to continue to focus on drug treatment, that continuing use of marijuana is a symptom of addiction. And that is what, in essence, minor drug users are doing. Minor street sellers of marijuana are oftentimes using the

sale of marijuana to generate enough money to support themselves.

That's a regrettable addiction and a regrettable problem. But the solution lies not with putting people in jail, it lies with giving them drug treatment, giving them access to drug treatment and making it affordable.

And so as we increase the scope of penalties, Senator Velella, I would hope that in this budget, if we ever get to it, that we will be in a position where we will look carefully at exactly what we're doing for these types of relatively low-level drug offenders who are smoking marijuana and selling it to others, and that what we would do is we would look to establishing actual treatment on demand for these individuals so that they can kick their addiction and not end up with a more severe prison sentence as a consequence of their addiction.

With some reluctance, Mr. President, I'm going to vote in favor. But I hope when we get to the budget we'll look at the drug treatment issue in more detail.

ACTING PRESIDENT MEIER: Senator

Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, just a question for -

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

The sponsor yields.

SENATOR VELELLA: Certainly.

SENATOR MONTGOMERY: Yes. Senator Velella, I'm just wondering, how does the 25 grams compare with the amount required for conviction under the Rockefeller Drug Laws for the drugs?

SENATOR VELELLA: Well, that's the standard that we're using now to give people misdemeanors -- yeah, misdemeanor offenses.

SENATOR MONTGOMERY: Right.

SENATOR VELELLA: So it would still be the same. What's going to happen is the Rockefeller Drug Laws I believe will deal with much more substantial, over 25 grams. If it's over 25, then we're talking about serious weights.

The problem is, as related in the New York Times and in the Daily News, what

drug dealers are doing, particularly in Washington Square Park, they are arriving on the scene with less than 25 grams of marijuana, they make their sale, run back to their stash, take another load, and keep running back and forth. So if they're ever caught, they always have that misdemeanor weight.

We're saying if you're caught and you have that misdemeanor weight the first time, okay. The second time, okay. The third time. But the fourth time, you're not just casually using it, you didn't just casually happen to give some marijuana to somebody and they gave you money back. After four times, you're selling the stuff.

ACTING PRESIDENT LIBOUS: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, if I could continue my question for Senator Velella.

ACTING PRESIDENT LIBOUS: Senator Velella, will you continue to yield?

SENATOR VELELLA: Yes, Senator Libous.

ACTING PRESIDENT LIBOUS: Senator Velella will continue to yield.

SENATOR MONTGOMERY: So under current law, Senator Velella, is this correct, that if you are caught with four ounces of marijuana it is a Class D felony? Is that correct?

SENATOR VELELLA: Senator, my math and my conversion from the metric system to our system is not that good. But if you tell me that that is a felony weight, I would believe you and say yes.

SENATOR MONTGOMERY: Okay. And under your bill, then, what -- is there any change in that? Does your bill now classify that as a C felony for four ounces? Is that what you're -

SENATOR VELELLA: No. The only thing that we deal with are those misdemeanor weights under 25 grams. And we allow it to exist as it is for the first three times. Just after the fourth time, we now elevate it to a felony. Because we don't think you're casually using, we think you're selling.

And that's within a five-year

period.

SENATOR MONTGOMERY: Okay. So -

ACTING PRESIDENT LIBOUS: Senator Montgomery, are you asking another question?

SENATOR MONTGOMERY: Yes, I want to continue, please.

ACTING PRESIDENT LIBOUS: Senator Velella, will you continue to yield to another question?

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

ACTING PRESIDENT LIBOUS: Senator Montgomery, he will yield.

SENATOR MONTGOMERY: Right.

So, Senator Velella, in other words, if you are carrying 25 grams or less, if you are arrested and charged with a misdemeanor for -- how many times, three times?

SENATOR VELELLA: Senator, let me correct you. Our bill does not deal with the issue of possession. If you have 25 grams on your person, this bill doesn't deal with you.

It's only when you get convicted of selling it to someone else, selling 25 grams

or less, that we now say after the fourth sale -- not possession, sale -- that we would now raise it to a felony.

So the person who happens to get caught five times, six times, seven times with 25 grams or less in their pocket for their own personal use is not going to be affected by this bill.

SENATOR MONTGOMERY: All right. Thank you, Mr. President.

ACTING PRESIDENT LIBOUS: Senator Montgomery.

Do any other Senators wish to speak on the bill?

Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the first day of November.

ACTING PRESIDENT LIBOUS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52. Nays, 2. Senators Duane and Montgomery recorded in the negative.

ACTING PRESIDENT LIBOUS: The

bill is passed.

Senator Velella.

SENATOR VELELLA: Mr. President, may we return to the controversial calendar in the regular order now.

ACTING PRESIDENT LIBOUS: Regular order on the controversial calendar.

The Secretary will read.

THE SECRETARY: Calendar Number 941, by Senator LaValle, Senate Print 5092, an act to amend the Education Law, in relation to establishing.

SENATOR DUANE: Explanation, please.

ACTING PRESIDENT LIBOUS: Senator LaValle, Senator Duane asked for an explanation, sir.

SENATOR LAVALLE: Thank you, Mr. President.

This legislation would amend Section 8207 of the Education Law to add a sixth subdivision, which is an exemption for students in meeting their master's requirement. And as part of the master's requirement, they must do a practicum. It

would allow that they be engaged in the clinical practice under the supervision of a licensed audiologist or a licensed speech-language pathologist as part of that practicum.

And, Senator, as you know, there are other exemptions, for postgraduate students and so forth, as part of Section 8207. So we're just adding a sixth section.

ACTING PRESIDENT LIBOUS: Senator Duane.

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

SENATOR LAVALLE: Yes.

ACTING PRESIDENT LIBOUS: Yes, Senator Duane, the sponsor will yield.

SENATOR DUANE: Do the speech pathologists, the licensed speech pathologists have a position on this bill, do you know?

SENATOR LAVALLE: Senator, to the best of my knowledge -- I don't have the file here. But as I recall, when the bill was reported from committee, I don't believe there were any memos in opposition on this.

SENATOR DUANE: And through you,

Mr. President, if the sponsor would yield for just one final question.

SENATOR LAVALLE: Yes.

ACTING PRESIDENT LIBOUS: Senator LaValle will continue to yield, sir.

SENATOR DUANE: If the sponsor could just describe why this hasn't been done before, if there was something holding it up or it was just a quirk in the law, in the administrative law.

SENATOR LAVALLE: Senator, as you know, many times things happen as part of the customary practices in our society that are done where it's not spelled out in law. One day, and I don't know how or who said, You know, students who are doing their practicum are engaged in the clinical practice, and the law actually doesn't provide for it.

So what we are doing is now spelling this out very, very clearly, that as long as they're under the supervision of the audiologist or the speech-language pathologist, that they can do their practicum and what they're doing, being engaged in the practice, will not be in violation of the law.

SENATOR DUANE: Thank you. Thank you, Mr. President.

ACTING PRESIDENT LIBOUS: Senator Stavisky.

SENATOR STAVISKY: Mr. President, for purpose of clarification, there is a memorandum of support from the New York State Speech-Language Hearing Association.

ACTING PRESIDENT LIBOUS: Thank you, Senator.

Are there any other Senators who wish to speak on the bill?

If not, please read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT LIBOUS: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT LIBOUS: The bill is passed.

THE SECRETARY: Calendar Number 961, by Senator Kuhl, Senate Print 1963, an act to amend the Alcoholic Beverage Control

Law, in relation to authorizing.

ACTING PRESIDENT LIBOUS: Senator Balboni.

SENATOR BALBONI: Yes, would you please lay that bill aside for the day.

ACTING PRESIDENT LIBOUS: We'll lay that bill aside for the day at the request of Senator Balboni.

SENATOR BALBONI: Thank you.

THE SECRETARY: Calendar Number 988, by Senator Padavan, Senate Print 2711, an act to amend the Penal Law, in relation to making citizenship document fraud.

SENATOR LACHMAN: Explanation, please.

ACTING PRESIDENT LIBOUS: Senator Padavan, an explanation, sir.

SENATOR PADAVAN: Thank you, Mr. President.

This is a bill we have dealt with on prior occasions. Basically, what we're trying to do is provide a deterrent to the manufacture, sale and use of illegal documents by illegal aliens, obviously for purposes that are illegal, anything from voting to entry

into a social services system.

And what we're trying to do here is to go to the heart of the problem by targeting those who sell and manufacture these documents as well as those who use them.

ACTING PRESIDENT LIBOUS: Senator Lachman.

SENATOR LACHMAN: Through you, Mr. President, will Senator Padavan answer a question?

ACTING PRESIDENT LIBOUS: Senator Padavan, will you yield?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT LIBOUS: Senator, he will yield.

SENATOR LACHMAN: Senator Padavan, neither you nor I, as yet, are members of the U.S. Senate. We are members of the New York State Senate. And as you and I know, under the Constitution the federal government has domain over immigration and naturalization.

There are federal laws already on the statutes to seek proof of citizenship or authority to work in the United States. It is

already a federal crime to possess or manufacture false citizenship or resident alien documentation.

Now, I am not against the substance of the bill. As you know, I questioned you last year and the year before, but voted for it. But my question this year is the same as the question last year: If this is under the domain of the federal government, why is the State of New York getting involved when there have been tough federal laws in this area for several years?

SENATOR PADAVAN: Well, Senator, let me give you an analogy. Last year we passed one of the toughest weapons control laws in any state in the nation. One of the parts of that bill -- that I sponsored, you may recall -- dealt with assault weapons.

We paralleled the federal law. We made it New York State law. And why? So that our prosecutors could deal with that issue without having to refer the matter to a federal law enforcement agent or prosecutor to facilitate it.

Now, in this case -- and that's

just one analogy. I could give you many others -- civil, criminal forfeiture, which is a federal law and it's a state law, one we adopted in 1984 for the very same reasons, so that we could do those things to protect our institutions, our issues in this state.

Now, I'm sure you have read, as we all have from time to time, of arrests in the Motor Vehicle Bureau where people were selling driver's licenses, registration cards for vehicles. Why were they doing that, to help people drive? No, because they are often a means of identification when one seeks to vote, one seeks social services, whatever else.

Now, when those situations are identified and we arrest those people, do we want to now have to call upon the federal offices, both prosecutors, federal agents, FBI, to deal with that problem which affects us very directly, or do we want to be able to deal with it ourselves?

I think both, obviously, is the way to go. And that's what this bill will provide.

SENATOR LACHMAN: Mr. President.

ACTING PRESIDENT LIBOUS: Senator Lachman, why do you rise?

SENATOR LACHMAN: Will the Senator yield for another question.

ACTING PRESIDENT LIBOUS: Senator Padavan, will you continue to yield?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT LIBOUS: Yes, he will.

SENATOR LACHMAN: Under your law, Senator Padavan, can a person be prosecuted within our state legal system under -- with the state courts, or will that person have to be prosecuted in the federal courts of the United States?

SENATOR PADAVAN: To be prosecuted in our courts, there are D and E felonies provided for in this proposal, and they could be sought in terms of convictions in our state courts.

That's the thrust of the bill.

SENATOR LACHMAN: On the bill, Mr. President.

ACTING PRESIDENT LIBOUS: Senator

Lachman will speak on the bill.

SENATOR LACHMAN: I will reluctantly vote for this bill this year, as I have last year. But I have one problem that keeps coming to the surface, and I know that this is not the intent of the distinguished Senator from Queens.

And that is, passage of this bill or legislation when such legislation already exists on the federal level, would this not cause both legal and illegal immigrants who have not done anything illegal additional fear in their status in the United States? That is my concern. But I know that you would not in any way bait this particular group.

I think the substance of the state legislation, very similar to the federal legislation, is good. Therefore, I can't vote against it. But I have this fear that if we continue to do this year after year after year, there are people in our society who will be afraid to speak out and afraid to act as American citizens who are legal citizens in this nation.

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 number of.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 991, substituted earlier today by Member of the Assembly Luster, Assembly Print Number 933B, an act to amend the Criminal Procedure Law, in relation to designating as peace officers.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MAZIARZ: Read the last section.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MAZIARZ: Senator Seward, Senator Paterson has requested an explanation of Senate Calendar Number 991.

SENATOR SEWARD: Thank you, Mr. President.

This bill would designate Ithaca College security officers as peace officers only if they have been designated as special deputy sheriffs by the sheriff of Tompkins County, to provide that layer of oversight over their activities.

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

Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MAZIARZ: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 197, by Senator Libous, Senate Print 2533B, an act to amend the Real Property Tax Law, in relation to the real property tax exemption.

SENATOR DUANE: Explanation, please.

ACTING PRESIDENT MAZIARZ: Senator Libous, an explanation of Calendar Number 197 has been requested by Senator Duane.

SENATOR LIBOUS: Thank you, Mr. President.

What we have here is a piece of legislation that will aid our men and women who serve in volunteer fire and emergency squads. The County of Broome, through its wisdom and its legislature, has sent us a home rule message that has asked us to provide legislation to give a 10 percent real property tax exemption to those men and women who volunteer their time and serve as volunteer firefighters and emergency ambulance personnel.

ACTING PRESIDENT MAZIARZ: Senator Duane.

SENATOR DUANE: Thank you, Mr. President. Would the sponsor yield for a question?

ACTING PRESIDENT MAZIARZ:

Senator Libous, would you yield for a question from Senator Duane?

SENATOR LIBOUS: Mr. President, I'd be happy to yield to Senator Duane.

ACTING PRESIDENT MAZIARZ: Senator Duane, the sponsor yields.

SENATOR DUANE: Can the sponsor tell me how many other counties have this type of real estate property exemption in place?

SENATOR LIBOUS: Mr. President, I don't really know, to be very candid with Senator Duane.

But I do know that this is a local home rule message that came up through our county and that it was designed specifically, because of its nature, to address Broome County only.

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

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

SENATOR LIBOUS: I'd be happy to continue to yield.

ACTING PRESIDENT MAZIARZ: Senator Duane.

SENATOR DUANE: In Broome County, are there any other people who are being - with the exception of senior citizens and veterans, any other employees who are being exempted from property tax?

SENATOR LIBOUS: Oh, I'm sure there are, Mr. President. I don't have a list in front of me, but I'm sure that there may be some special exemptions that either the county legislature or other bodies may have passed.

But at this point in time, this particular bill deals only with those who are volunteer emergency and firefighters.

SENATOR DUANE: Thank you, Mr. President. Thank you.

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

Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MAZIARZ: The bill is passed.

Senator Balboni, motions and resolutions.

Senator Rath.

SENATOR RATH: Thank you, Mr. President. On page 21, I offer the following amendment to Calendar 427, Senate Print 3645, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MAZIARZ: The amendment is received, and the bill will retain its place on Third Reading Calendar.

Senator Balboni.

SENATOR BALBONI: Mr. President, may we please return to reports of standing committees. I believe there is a report of the Rules Committee at the desk.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bills:

Senate Print 1450, by Senator Rath, an act to amend the Penal Law.

1534, by Senator Johnson, an act to amend the Penal Law.

2164, by Senator Lack, an act to amend the Correction Law.

2740, by Senator Santiago, an act to amend the Penal Law.

2950, by Senator Wright, an act to amend the County Law.

3309, by Senator Volker, an act to amend the Education Law.

3478, by Senator Hassell-Thompson, an act in relation to permitting.

3899, by Senator LaValle, an act to amend the Public Authorities Law.

4278, by Senator Velella, an act to amend the Alcoholic Beverage Control Law.

4280, by Senator Velella, an act to amend the Vehicle and Traffic Law.

4490, by Senator Hannon, an act to amend Chapter 293 of the Laws of 1999.

4895, by Senator Saland, an act to amend Chapter 566 of the Laws of 1967.

And Senate Print 5326, by Senator

Rath, an act to amend the General Municipal Law.

All bills ordered direct to third reading.

ACTING PRESIDENT MAZIARZ: Senator Balboni, do you move to accept the report of the Rules Committee?

SENATOR BALBONI: Mr. President, I move to accept the report of the Rules Committee. Thank you.

ACTING PRESIDENT MAZIARZ: All in favor of accepting the report of the Rules Committee signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MAZIARZ: Opposed, nay.

(No response.)

ACTING PRESIDENT MAZIARZ: The report is accepted.

Senator Balboni.

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

ACTING PRESIDENT MAZIARZ: No.

SENATOR BALBONI: Mr. President, for the information of the members of the

house, we are currently awaiting the arrival of a message of necessity on Calendar Number 559. It is a one-week extender of the ticket scalping law.

The action on that bill, should the message of necessity arrive today, and we anticipate it will, will conclude the business of the house for the afternoon.

You may conduct yourselves accordingly.

ACTING PRESIDENT MAZIARZ: Thank you, Senator Balboni.

The Senate will stand at ease pending the arrival of the message of necessity on Calendar Number 559.

Thank you.

(Whereupon, the Senate stood at ease at 12:40 p.m.)

(Whereupon, the Senate reconvened at 1:00 p.m.)

ACTING PRESIDENT KUHL: The Senate will come to order. I ask the members to take their places.

Senator Morahan.

SENATOR MORAHAN: Yes, Mr.

President. Will you please call up Calendar 559.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 559, by Senator Skelos, Senate Print 3655A, an act to amend Chapter 704 of the Laws of 1991.

ACTING PRESIDENT KUHL: Senator Morahan.

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

ACTING PRESIDENT KUHL: There is.

SENATOR MORAHAN: Move to accept.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity which is at the desk on Calendar Number 559. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

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

The Secretary will read the last

section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Morahan.

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

ACTING PRESIDENT KUHL: Yes, there is.

SENATOR RATH: Mr. President.

ACTING PRESIDENT KUHL: We'll return to motions and resolutions.

The chair recognizes Senator Rath.

SENATOR RATH: Mr. President, I wish to call up my bill, Print Number 2567, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number

803, by Senator DeFrancisco, Senate Print 2567, an act in relation to authorizing.

ACTING PRESIDENT KUHL: Senator Rath.

SENATOR RATH: Mr. President, I now move to reconsider the vote by which the bill was passed.

ACTING PRESIDENT KUHL: The Secretary will call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT KUHL: Senator Rath.

SENATOR RATH: Mr. President, I now offer the following amendment.

ACTING PRESIDENT KUHL: The amendments are received and adopted.

Senator Morahan.

SENATOR MORAHAN: Yes, Mr. President, there being no further business, I move we adjourn until Monday, June 4th, at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT KUHL: Without

objection, the Senate stands adjourned until Monday, June 4th, at 3:00 p.m., intervening days to be legislative days.

(Whereupon, at 1:03 p.m., the Senate adjourned.)