NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

June 5, 2001

11:12 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MORAHAN: 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 MORAHAN: In the absence of clergy, I ask that we bow our heads in silent prayer.

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

ACTING PRESIDENT MORAHAN: Reading of the Journal.

THE SECRETARY: In Senate, Monday, June 4, the Senate met pursuant to adjournment. The Journal of Sunday, June 3, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President.

On behalf of Senator Velella, on page number 41, I offer the following amendments to Calendar Number 749, Senate Print Number 4272, and ask that said bill will retain its place on Third Reading Calendar.

ACTING PRESIDENT MORAHAN: The amendments are received and adopted and will retain their standing on the Third Reading Calendar.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, on behalf of Senator Skelos, I wish to call up Senate Print Number 3357, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MORAHAN: The Secretary will read.

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

ACTING PRESIDENT MORAHAN: Senator Fuschillo.

SENATOR FUSCHILLO: I now move to reconsider the vote by which the bill was passed.

ACTING PRESIDENT MORAHAN: The Secretary will call the roll upon reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

ACTING PRESIDENT MORAHAN: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, I now offer the following amendments.

ACTING PRESIDENT MORAHAN: The amendments are received.

SENATOR FUSCHILLO: Thank you.

ACTING PRESIDENT MORAHAN: Senator Skelos.

SENATOR SKELOS: Mr. President, are there substitutions at the desk?

ACTING PRESIDENT MORAHAN: Yes.

SENATOR SKELOS: I ask that they be made at this time.

ACTING PRESIDENT MORAHAN: The Secretary will read the substitutions.

THE SECRETARY: On page 4, Senator Morahan moves to discharge, from the Committee on Rules, Assembly Bill Number 1449 and substitute it for the identical Senate Bill Number 500, Third Reading Calendar 49.

On page 8, Senator Farley moves to discharge, from the Committee on Rules, Assembly Bill Number 2057 and substitute it for the identical Senate Bill Number 1357, Third Reading Calendar 151.

On page 11, Senator Kuhl moves to discharge, from the Committee on Rules, Assembly Bill Number 5822B and substitute it for the identical Senate Bill Number 2905B, Third Reading Calendar 221.

On page 12, Senator Lack moves to discharge, from the Committee on Rules, Assembly Bill Number 7753 and substitute it for the identical Senate Bill Number 2935, Third Reading Calendar 248.

And on page 56, Senator Volker moves to discharge, from the Committee on Rules, Assembly Bill Number 6597 and substitute it for the identical Senate Bill Number 3309, Third Reading Calendar 1005.

ACTING PRESIDENT MORAHAN: Substitutions are ordered.

Senator Skelos.

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

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 2299, honoring Elizabeth Gallagher upon the occasion of her designation as recipient of the Bishop Howard J. Hubbard Award for distinguished community service by Living Resources on June 6, 2001.

ACTING PRESIDENT MORAHAN: On the resolution, all in favor say aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed say nay.

(No response.)

ACTING PRESIDENT MORAHAN: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: May we please adopt the Resolution Calendar, with the exception of Resolution 2203.

ACTING PRESIDENT MORAHAN: All in favor of adopting the Resolution Calendar, with the exception of 2203, say aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed.

(No response.)

ACTING PRESIDENT MORAHAN: The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: If we could take up Resolution 2203, by Senator Alesi, have the title read, and move for its immediate adoption.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: By Senator Alesi, Legislative Resolution Number 2203 honoring

Andrew P. Meloni, Jr., upon the occasion of his retirement after more than 21 years of distinguished service as Sheriff of Monroe County.

ACTING PRESIDENT MORAHAN: Senator Alesi.

SENATOR ALESI: Thank you, Mr. President.

I take this opportunity to speak briefly on behalf of someone who has been not only a very close personal friend of mine but a very close personal friend of just about everybody in Monroe County, and that is our retiring sheriff, Andy Meloni.

This is one of those bittersweet moments when we say goodbye to someone who has been the sheriff in Monroe County and has done so much for everyone in the town we live in, and at the same time welcome our new sheriff, Patrick O'Flynn.

But in saying goodbye to Andy I know that we're only saying goodbye to him in his capacity as sheriff, because he has been more than a sheriff to the people in this county. Andy, as I said, has been a personal

friend of so many people. And his efforts have gone beyond his professional capacity, whether it is work with Compeer, whether it is his personal tutoring and mentoring of so many other people.

His sense of humor has carried us through so many trying times in our community, whether it was the terrible crime of a young woman who was killed to times when he has just inspired people who have been challenged.

I'd say the measure of Andy Meloni can be shown by the affection that our community has for him. And in that measurement I know, without any disrespect intended to any of the efforts and qualities and attributes of anyone else in Monroe County, that there is no one who has done more for our county and the people of Monroe County than my good friend, Sheriff Andy Meloni.

I wish him the absolute very best at his retirement. He is an inspiration to me, whether it's through his sense of humor, whether it is in his capacity as the sheriff, an elected official, a good Republican who turned around the Republican machine in Monroe

County, and, probably most importantly, as a father, a husband, and a grandfather. I wish him the absolute very best, and I know that God will bless him.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Alesi.

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President. I just want to echo the words of my colleague from Monroe County about the retiring sheriff, Andy Meloni.

Andy Meloni has set the bar for all public officials in Monroe County, and he's set it at a height that I'm afraid most of us will never be able to jump over. He has done it through a combination of certain political invincibility.

I'm someone who at one time actually campaigned to try to beat him in a race. He proved to be unbeatable. And I think that was a testament to not only the fact that he was a good Republican but that he was a good public servant, and that the people of the community recognized, both Democrat and

Republican, that Andy Meloni was there to do a job and that he brought a lot to that job.

I wish Andy the best in his retirement. I know his family and his family members, and I wish them well in the future. But I want to emphasize that I think what Andy Meloni has done for all of us is he has demonstrated that public life can have an honorable quality to it and that public life means that you are a public servant, that you not only work the world of politics but you work the world of community service as well.

Andy Meloni has established a high standard for us all. I will miss him in public life. But as Senator Alesi properly points out, he will not be gone, he will continue to be a fixture in our community, and we'll be better served by it.

I'll vote in favor, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Dollinger.

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

(Response of "Aye.")

ACTING PRESIDENT MORAHAN:

Opposed, nay.

(No response.)

ACTING PRESIDENT MORAHAN: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please recognize Senator Fuschillo.

ACTING PRESIDENT MORAHAN: Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President.

On behalf of Senator DeFrancisco, I wish to call up Calendar Number 669, Assembly Print Number 4917.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 669, by Member of the Assembly Morelle, Assembly Print Number 4917, an act to amend the Economic Development Law.

ACTING PRESIDENT MORAHAN: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, I now move to reconsider the vote by which this Assembly Bill was substituted

for Senate Print Number 4427 on May 2nd.

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 39.

ACTING PRESIDENT MORAHAN: Senator Fuschillo.

SENATOR FUSCHILLO: I now move that Assembly Bill Number 4917 be committed to the Committee on Rules and the Senate bill number be restored to the order of 669 Calendar.

ACTING PRESIDENT MORAHAN: So ordered.

Senator Fuschillo.

SENATOR FUSCHILLO: I now offer the following amendments, Mr. President.

ACTING PRESIDENT MORAHAN: Amendments received.

Senator Skelos.

SENATOR SKELOS: If we could go to the noncontroversial calendar at this time.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 20, by Senator Volker, Senate Print 368, an act to amend the Civil Practice Law and Rules, in relation to confidential communications.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 96, by Senator DeFrancisco, Senate Print 512A, an act to amend the Navigation Law, in relation to the towing.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 39.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 114, by Senator Maziarz, Senate Print 2118A, an act to amend the Criminal Procedure Law, in

relation to period of limitation.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 39.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 145, by Senator Saland, Senate Print 396A, an act to amend the Social Services Law, in relation to training requirements.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 39.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 288, by Member of the Assembly Magnarelli, Assembly Print Number 5831, an act to amend the Vehicle and Traffic Law, in relation to certain technical corrections.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 39.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 319, by Member of the Assembly Weinstein, Assembly Print Number 7923, an act to amend Chapter 706 of the Laws of 1996.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 325, by Senator Saland, Senate Print 3613, an act to amend Chapter 81 of the Laws of 1995.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 387, by Senator LaValle, Senate Print 3225B -

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT MORAHAN: Lay it aside for the day.

THE SECRETARY: Calendar Number 423, by Member of the Assembly Sweeney,

Assembly Print Number 5992, an act to amend the Real Property Tax Law, in relation to exempting.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 424, by Member of the Assembly Levy, Assembly Print Number 6433, an act to amend Chapter 151 of the Laws of 2000.

ACTING PRESIDENT MORAHAN: Read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MORAHAN: Lay it aside.

THE SECRETARY: Calendar Number 474, by Member of the Assembly Gordon, Assembly Print Number 7804, an act to amend the Alcoholic Beverage Control Law, in relation to completion.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 487, by Senator Rath, Senate Print 2392, an act to amend the Executive Law, in relation to the statewide computerized registry.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 498, by Senator Johnson, Senate Print 3346A, an act to amend the Criminal Procedure Law, in relation to issuance of orders of protection.

ACTING PRESIDENT MORAHAN: Read

the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MORAHAN: Lay it aside.

THE SECRETARY: Calendar Number 500, by Senator Saland, Senate Print 3734, an act to amend the Criminal Procedure Law, in relation to orders of protection.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 514, by Senator Marchi, Senate Print 1763, an act to amend the Vehicle and Traffic Law, in relation to authorizing.

SENATOR HEVESI: Lay it aside, please.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 521, by Senator Nozzolio, Senate Print 3703, an act to amend the Executive Law and others -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 598, by Senator Johnson, Senate Print 3731, an act to amend the Real Property Tax Law, in relation to establishing.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Senator Dollinger.

SENATOR DOLLINGER: To explain my vote, Mr. President, if I could.

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

SENATOR DOLLINGER: Mr. President, I'm going to vote against this bill. I voted against it previously.

I frankly don't see why we have to establish special assessments for the values of lands that are attached to marinas. These

lands are generally assessed properly at their best and -- highest fair market value. That's the standard we use every other place in this state.

And I refuse to make a special exemption for marina properties. I don't think there's a sufficient justification for it in the memorandum. I voted against it last year, and I'll continue to vote against it.

Marina property, waterfront property should be treated the same as every other property in this state. It should be assessed consistent with our Constitution and with our state laws at the highest and best use. That's the fairest way to do it, to treat them the same way we treat everybody else, Mr. President.

I vote no.

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 42. Nays, 1. Senator Dollinger recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 607, by Member of the Assembly Magee, Assembly Print Number 4909, an act to amend the Soil and Water Conservation Districts Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 614, by Senator Johnson, Senate Print 3796A, an act to amend the Vehicle and Traffic Law, in relation to proof of effectiveness.

SENATOR HEVESI: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 616, by Senator Trunzo, Senate Print 4675, an act to amend the Highway Law, in relation to cooperative.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 43.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 638, by Senator Morahan, Senate Print 357B, an act to amend the Penal Law, in relation to placing.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 43.

ACTING PRESIDENT MORAHAN: This bill is passed.

THE SECRETARY: Calendar Number 641, by Senator Maziarz, Senate Print 1227, an act to amend the Penal Law, in relation to arson.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MORAHAN: The

bill is laid aside.

THE SECRETARY: Calendar Number 651, by Senator Volker, Senate Print 3794, an act to amend the Banking Law and others, in relation to civil forfeiture proceedings.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 1 -

SENATOR PATERSON: Lay it aside, Mr. President.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 655, by Senator Skelos -

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

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

THE SECRETARY: Calendar Number 656, by Senator Skelos, Senate Print 4341, an act to amend the Civil Practice Law and Rules, in relation to the revival.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 657, by the Assembly Committee on Rules, Assembly Print Number 8433, an act to amend the Criminal Procedure Law, the New York City Health and Hospitals Corporation Act, in relation to performance.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 684, by Senator Leibell, Senate Print 5085, an

act to authorize the reopening.

ACTING PRESIDENT MORAHAN: Read the last section.

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

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 713, by Senator LaValle, Senate Print 3752, an act to amend the Education Law, in relation to teacher accreditation.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 3. This act shall take effect in 30 days.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 731, by Senator Hoffmann, Senate Print 3763, an act to amend the Agriculture and Markets

Law, in relation to the New York State Veterinary Diagnostic Laboratory.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 758, by Senator Hoffmann, Senate Print 2564, an act to amend the Real Property Tax Law, in relation to allowing.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT MORAHAN: The

bill is passed.

THE SECRETARY: Calendar Number 761, by Senator Balboni, Senate Print 2981, an act to amend Chapter 602 of the Laws of 1993.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 763, by Member of the Assembly Little, Assembly Print Number 5983, an act to authorize the County of Warren.

ACTING PRESIDENT MORAHAN: 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 MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 824, by Senator DeFrancisco, Senate Print 4264, an act to amend the Public Authorities Law, in relation to contracts.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 835, by Senator Rath, Senate Print 3413, an act to amend the Penal Law, in relation to civil liability.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect on the same date as a chapter of the Laws of 2001.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 836, by Senator Wright, Senate Print 3499A, an act to amend the Criminal Procedure Law, in relation to statements.

SENATOR PATERSON: Lay that aside, please.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 839, by Senator Volker, Senate Print 3583, an act to amend the Penal Law, in relation to loitering.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MORAHAN: Lay it aside.

THE SECRETARY: Calendar Number

869, by Senator Saland, Senate Print 5199, an act to amend the Family Court Act and the Executive Law, in relation to orders of protection.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 90th day.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 970, by Senator Hoffmann, Senate Print 84, an act to amend the Penal Law, in relation to inciting.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 975, by Senator Kuhl, Senate Print 2519, an act to amend the Environmental Conservation

Law, in relation to the definition.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 990, by Senator Volker, Senate Print 4327, an act to amend the Criminal Procedure Law, in relation to waiver.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1000, by Senator Rath, Senate Print 1450, an act to amend the Penal Law, in relation to falsely reporting.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 1002, by Senator Lack, Senate Print 2164, an act to amend the Correction Law, in relation to information.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 1013, by Senator Hoffmann, Senate Print 541, an act to authorize the County of Onondaga.

ACTING PRESIDENT MORAHAN: There is a home-rule message at the desk.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1016, by Senator Volker, Senate Print 3679, an act to amend the Criminal Procedure Law, in relation to disclosure.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1017, by Senator Stafford, Senate Print 3757, an act to authorize participation in the optional twenty-year retirement plan.

ACTING PRESIDENT MORAHAN: There is a home-rule message at the desk.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1018, by Senator Nozzolio, Senate Print 3775, an act to amend the Executive Law, in relation to personal interviews.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1019, by Senator Volker, Senate Print 3865, an act to amend the Criminal Procedure Law and

the Family Court Act, in relation to the duration.

ACTING PRESIDENT MORAHAN: Read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 1020, by Senator McGee, Senate Print 3965, an act to amend the Real Property Tax Law, in relation to the tax exemption.

SENATOR HEVESI: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 1022, by Senator Hannon, Senate Print 4489, an act in relation to permitting.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48. Nays,

1. Senator Dollinger recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1023, by Senator Stafford, Senate Print 4838, an act to amend the General Municipal Law and others, in relation to certain actions.

SENATOR HEVESI: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 1024, by Senator Balboni, Senate Print 5249, an act to amend the Environmental Conservation Law and others, in relation to establishing.

ACTING PRESIDENT MORAHAN: Read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 1025, by Senator Balboni, Senate Print 5303, an act in relation to allowing.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MORAHAN: Did I hear a "lay aside"?

Lay the bill aside.

THE SECRETARY: Calendar Number 1026, by Senator Volker, Senate Print 5385, an act to amend the Mental Hygiene Law, the Correction Law, and the Criminal Procedure Law, in relation to the civil commitment.

ACTING PRESIDENT MORAHAN: Read the last section.

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

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

SENATOR McGEE: Mr. President, will you continue with the reading of the controversial calendar, please.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 20, by Senator Volker, Senate Print 368, an act to amend the Civil Practice Law and Rules, in relation to confidential communications.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MORAHAN: Senator Volker, an explanation has been requested.

SENATOR VOLKER: Mr. President, this is a bill that has passed this house on a number of occasions.

ACTING PRESIDENT MORAHAN: Excuse me, Senator Volker.

SENATOR VOLKER: Sure.

ACTING PRESIDENT MORAHAN: Could we have a little less noise in the chamber. Take your conversations outside.

Thank you, Senator Volker.

SENATOR VOLKER: This is a bill that we've been trying to work out for some years. And, frankly, in most years it has not been that controversial.

The initial bill was a larger bill that included more potential for allowing privileged communications between a law

enforcement bargaining unit and an elected union official.

What this bill really does is to allow some flexibility for union officials in dealing with law enforcement people giving them advice and so forth, so that a member of a law enforcement organization is able to discuss situations with a union official without the ability for that union official to be called up before a grand jury or whatever it is.

And I think that some people interpret this as interfering with the law enforcement process. I think the difficulty here is they don't quite understand how this all works. Evidence is evidence. If somebody committed a crime or did something illegal and if, for instance, a union official happens to be a commanding officer, of course, as I have pointed out on a number of occasions, it sets up a whole different kind of situation whereby that this privileged communication presumably wouldn't hold.

ACTING PRESIDENT MORAHAN: Excuse me, Senator.

Senator McGee.

SENATOR McGEE: Excuse me, Senator Volker.

SENATOR VOLKER: Go ahead. Go ahead.

SENATOR McGEE: I call for an immediate meeting of the Finance Committee in the Majority Conference Room, please.

ACTING PRESIDENT MORAHAN: Immediate meeting of the Finance Committee in the Majority Conference Room.

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

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48. Nays, 3. Senators Paterson, Hevesi, and Malcolm Smith recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator McGee.

SENATOR McGEE: Mr. President, will you please call up Calendar Number 1025.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 1025, by Senator Balboni, Senate Print 5303, an act in relation to allowing the St. Basil Orthodox Church.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator McGee.

SENATOR McGEE: Mr. President, will you please call Calendar Number 1024, please.

ACTING PRESIDENT MORAHAN: The

Secretary will read.

THE SECRETARY: Calendar Number 1024, by Senator Balboni, Senate Print 5249, an act to amend the Environmental Conservation Law and others, in relation to establishing.

ACTING PRESIDENT MORAHAN: The Secretary will read the last section.

THE SECRETARY: Section 16. This act shall take effect on the 180th day.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator McGee.

SENATOR McGEE: Mr. President, please return to the regular order of the reading of the calendar.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 423, by Member of the Assembly Sweeney, Assembly Print Number 5992, an act to amend the Real Property Tax Law.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MORAHAN: Senator LaValle, an explanation has been requested.

SENATOR LAVALLE: Thank you, Mr. President.

This legislation would give real property tax exemptions to first-time homebuyers. This legislation, in a very, very similar form, was passed last year and was vetoed by the Governor. But the Governor indicated that we needed to meet with the Office of Real Property Services to make some amendments and some changes that we did, Mr. President.

And that's why this bill now is before our house, having passed the Assembly.

ACTING PRESIDENT MORAHAN: Thank you, Senator LaValle.

Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator LaValle would yield for a few questions.

ACTING PRESIDENT MORAHAN: Senator LaValle, will you yield?

SENATOR LAVALLE: Yes.

SENATOR PATERSON: Senator, are we encouraging sprawl by giving this special consideration to new developments, to new buildings, in other words, that are going to be outside of the regular catchment area?

SENATOR LAVALLE: Senator, I'm glad you raised that question. Because this legislation also allows for a real property tax abatement. If a person buys an existing house and makes new changes to that, they would receive the 50 percent abatement over - would receive the abatement.

The work has to be over $3,000. And it cannot be work that is done where you're putting on a new roof or dealing with cosmetic kinds of things. It is something that actually increases the property assessment.

So we are certainly encouraging, you know, first-time ownership of new homes. But this legislation allows for people to come in, buy a $100,000 home, make a $50,000 investment by making those changes, and receive a property tax abatement on the

$50,000, the enhancement to their property.

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

ACTING PRESIDENT MORAHAN: Senator LaValle, do you continue to yield?

SENATOR LAVALLE: Yes.

SENATOR PATERSON: Well explained, Senator, and certainly to my satisfaction.

There's a different issue, and it relates to the property tax by creating a whole new structure of enhancements and rewards for new housing that's being built. Are we shifting the property tax to seniors who have been living in the community and have stayed there for a long period of time in those old facilities that we're not renovating?

SENATOR LAVALLE: Yes. Senator, whenever we -- with the exception of the STAR program, whenever we give property tax abatements -- that the localities, by the way, must opt in for. That's a village, a town, school district, a county, or even a city must opt into the program -- you certainly do shift

a burden from the -- onto the existing homeowners.

But, Senator, what we are also doing is at the same time, with a new structure, we are adding that to the tax rolls so that it becomes almost a wash. Because if you think about it, you had zero on the assessment rolls, you had no rateables. You now put a house on there. And if that house does not have any abatement, let's say you get $100 in taxes.

Here, we're going from zero to $50 in taxes. So you're really not moving the burden onto other taxpayers, because there was no existing structure.

In the case of the individual that takes a present home, an existing home, and adds value to it, here again, you have the same situation. You had a $100,000 of assessment, you now put $50,000 on the rolls. You would get 25,000 as your abatement for a five-year period of time.

It doesn't exist in perpetuity, as does the program that we have for senior citizens or for veterans. That is an ongoing

program. This program exists for five years.

ACTING PRESIDENT MORAHAN: Senator Paterson.

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

SENATOR LAVALLE: Yes, I'd be delighted.

ACTING PRESIDENT MORAHAN: Senator LaValle, will you yield?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR PATERSON: Senator, basically have I covered some of the concerns that were forthcoming in the Governor's veto last year? And if not, have you covered those concerns in this legislation?

SENATOR LAVALLE: Yes. Yes, we have. Those concerns were that in the legislation we needed to define a spouse as being a person who also did not own a home prior to the purchase of this new home or the enhanced property.

What we also did is we selected for

in the income level and the cost of the housing. Last year we had both targeted and nontargeted under the SONYMA program. This year we specifically chose nontargeting.

And we also pick what is the value within that program as of January 1 of the year when this program goes into effect, 2001, as what is the value of the property or the income.

So as I had indicated, we went through this with the Governor's Office of Real Property Tax Services. And I know that in our weekly -- in our daily newspaper, Newsday, one of the spokespersons indicated that they intend to be supportive of this particular bill.

So as this bill goes to the Governor, barring anything that comes out of left field, the Governor should sign this bill as his spokesperson indicated.

ACTING PRESIDENT MORAHAN: Any other Senator wish to be heard?

Senator Onorato.

SENATOR ONORATO: Mr. President, will the sponsor yield?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MORAHAN: Senator, will you yield?

SENATOR ONORATO: Senator LaValle, I'd just like a little clarification. I'm supportive of your bill. I just need a little information.

SENATOR LAVALLE: Sure.

SENATOR ONORATO: Is there a limit on the value of the house for a first-time homebuyer? In other words, we're not talking about a million-dollar home.

SENATOR LAVALLE: No.

SENATOR ONORATO: And the other part of the question is, how does it affect Nassau or Suffolk? Where there is a school tax involved, how does it affect the school-tax portion of the exemption?

ACTING PRESIDENT MORAHAN: Senator LaValle.

SENATOR LAVALLE: Okay. Let us take Nassau and Suffolk County. We use the SONYMA program, the limitations for nontargeting, nontarget. And the income level would be $73,300. The cost of the home would

be $200,000.

The locality, under this legislation, is allowed to increase, on their own resolution, the cost of the home by 25 percent. But they would do that locally, and that would change from jurisdiction to jurisdiction.

Lastly, each locality, each municipality, including the school district, would make a decision on whether they would opt into the program.

So in Nassau and Suffolk County, the taxes -- when you look at the tax bill, there's a county tax, there's a town tax, there could be a village tax, there's a school district tax, that being -- the largest school district being about 65 to 68 percent of the entire bill.

The school district would have to make a decision whether it wanted to opt into this provision as provided by the legislation, as we do with our senior citizen programs and other real property tax benefits.

As I had indicated, it would probably not really affect any of the

localities, since we are adding new value to the tax rolls that the school district never had on their tax rolls before.

And it would really be for only a five-year period, as opposed to the other real property exemptions that we have that are permanent in nature. So this would end in the fifth year -- after the fifth year of benefit to the first-time homebuyer.

ACTING PRESIDENT MORAHAN: Senator Onorato.

SENATOR ONORATO: Just one follow-up on this.

SENATOR LAVALLE: Yes.

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

SENATOR ONORATO: I'm not quite familiar with the tax bases of Nassau and Suffolk. But you indicated they're kind of layered, school, village -

SENATOR LAVALLE: Right.

SENATOR ONORATO: Do each and every one of them have the option of -

SENATOR LAVALLE: That is correct.

SENATOR ONORATO: So a village can say, No, I'm not going to -

SENATOR LAVALLE: That is correct.

SENATOR ONORATO: And someone else can?

SENATOR LAVALLE: That is correct.

SENATOR ONORATO: Thank you.

ACTING PRESIDENT MORAHAN: Senator Malcolm Smith.

SENATOR MALCOLM SMITH: Yes, thank you, Mr. President. I just had one question, maybe two questions.

I noted in the -

ACTING PRESIDENT MORAHAN: Senator LaValle, do you yield?

SENATOR LAVALLE: Yes, I do.

Senator Smith, could you speak up? I'm having problems hearing.

SENATOR MALCOLM SMITH: Sure.

Through you, Mr. President, I noted on the memo the mayor of New York City was opposed to this. Could you tell me why that is?

SENATOR LAVALLE: Senator, I believe that the memo is in error that was submitted.

SENATOR MALCOLM SMITH: Mr. President, through you, if the sponsor would yield for another question.

ACTING PRESIDENT MORAHAN: Do you wish the Senator to continue to yield?

SENATOR MALCOLM SMITH: Yes, I do.

ACTING PRESIDENT MORAHAN: Senator LaValle, will you continue to yield?

SENATOR LAVALLE: Yes, I do.

SENATOR MALCOLM SMITH: Just one other question, Mr. President, through you.

Could you tell me how this particular program is integrated or if it is in fact not integrated with the 421 program in the City of New York in terms of tax exemption for new construction? Does it have any impact whatsoever?

SENATOR LAVALLE: Senator, I'm not familiar with that program.

This program would be for one-and-two-family -- also three and four -

one-and-two-family homes. This program would apply to one-and-two-family homes.

SENATOR MALCOLM SMITH: Through you, Mr. President.

ACTING PRESIDENT MORAHAN: Senator LaValle, do you continue to yield?

SENATOR LAVALLE: Yes, I yield.

SENATOR MALCOLM SMITH: Within the City of New York, Senator LaValle, there's a program run under the New York City Partnership. Within that program there is a tax abatement, a ten-year program that does exist.

And I'm just wondering if, given this bill provides the locale to adopt this particular bill or to allow that locale to have a five-year tax exemption, is there any impact whatsoever that this particular bill would have -

SENATOR LAVALLE: Senator, one of the things -- and I have the memo here. It says, "If enacted by the City Council, this legislation will require." The City Council does not have to pass the resolution to opt into this legislation. They are not -- this

is not mandatory. This is optional to the locality.

SENATOR MALCOLM SMITH: Mr. President, on the bill.

ACTING PRESIDENT MORAHAN: Senator Smith, on the bill.

SENATOR MALCOLM SMITH: Yeah, I think the bill is -- it warrants support. I just was curious as to whether or not the sponsor had done further research as to how it would impact that particular program within the city. I understand the option to do so.

My only question is assuming the City Council opted in, would this then override the existing program where there are a number of homeowners who now enjoy the luxury of a ten-year abatement program and opting into this one would now provide them with a five-year program?

So I was just curious as to whether or not that kind of concern was given during the research for this bill.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Smith.

Any other Senator wish to be heard?

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 424, by Member of the Assembly Levy, Assembly Print Number 6433, an act to amend Chapter 151 of the Laws of 2000.

ACTING PRESIDENT MORAHAN: Read the last section.

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

SENATOR PATERSON: Explanation.

SENATOR STAVISKY: Explanation, please.

ACTING PRESIDENT MORAHAN: Senator Trunzo, an explanation has been requested.

SENATOR McGEE: Lay that aside

temporarily, Mr. President.

ACTING PRESIDENT MORAHAN: Lay it aside temporarily.

THE SECRETARY: Calendar Number 498, by Senator Johnson, Senate Print 3346A, an act to amend the Criminal Procedure Law.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT MORAHAN: Senator Johnson, an explanation has been requested.

SENATOR JOHNSON: Mr. President, this bill provides that an order of protection be issued against a person who had been found not responsible by reason of mental disease or defect.

Right now, if a person commits a crime or a violation against somebody and he's found to be mentally incompetent and is committed to a mental hospital for a period of time or whatever, if he's released, there's no way to get a further order of protection against that person, because he hasn't been convicted of a crime, he's just been confined to a mental hospital and not found guilty

because of mental incompetence.

But the fact is he could still be returning, which is what happened in the case of a constituent of mine, returned there, and there's no way to get an order of protection against him because he hasn't qualified because he didn't commit a crime, a misdemeanor or a felony.

And this way you can keep a person who's mentally incompetent -- at least try to prohibit them from revisiting and harassing the person they'd been stalking or bothering by getting an order of protection against them, which is not possible under the present law.

SENATOR PATERSON: Mr. President, if Senator Johnson would yield for a question.

SENATOR JOHNSON: Yes.

SENATOR PATERSON: Senator, if a person is found to be suffering from mental disease or defect, they are then remanded to the care of the Office of Mental Health for a period, in this type of case, for up to 90 days; is that correct?

SENATOR JOHNSON: That's

possible, yes.

SENATOR PATERSON: Well, if there's a statutory limit on the period in which they can be held by the state, it's not particularly clear whether or not the person would know the difference between right and wrong at the time that they're no longer under the care of the office. Is that correct?

SENATOR JOHNSON: I suppose that's true, yes.

SENATOR PATERSON: Then, Mr. President, if Senator Johnson would yield for a question.

SENATOR JOHNSON: Are you asking me a question, Senator?

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

SENATOR JOHNSON: Yes.

SENATOR PATERSON: Senator, I don't understand how we would need an additional order of protection against an individual who we now know is suffering from a mental disease or defect and may actually not be competent enough to understand the order.

So while technically I don't really

have a problem with this bill, functionally, can you explain to me how this is actually going to impact? Because the whole premise of an order of protection is to let the person know that we don't want them disturbing or in any way interfering with the activities of another individual.

And if we have concluded that we may not even -- that the individual who we've served may not understand, has already been in the care of the Office of Mental Health and may not even know the nature of their actions, then how does the order of protection serve our purpose in a situation even such as in the one that you described?

SENATOR JOHNSON: I think your questions are very interesting, Senator. And I'm not saying we do or do not have an answer.

All I can say is this. That if there's an order of protection out, which you cannot get presently against a person in this mental state, this order of protection will permit the person to complain to the police and they will apprehend the person immediately for violating the order of protection.

Otherwise, you have to have a whole new procedure -- what did he do, when did he do, how did he do it.

This pertains to a particular stalking situation, and my district attorney recommended this as a resolution of the problem that they could immediately take action without going through a formal procedure. Because he already violated this order. That's the reason they could apprehend him and prevent him from doing that for some period of time until they had to decide how to dispose of this situation.

SENATOR PATERSON: Okay. Thank you, Mr. President.

On the bill.

ACTING PRESIDENT MORAHAN: On the bill, Senator Paterson.

SENATOR PATERSON: I recognize what Senator Johnson is trying to do. But I think that people in the court system will tell you that the order of protection is not regarded by our criminal justice system as seriously as I think it should be.

There are cases where one party has

an order of protection, the other party calls up the police and says that the person bothered them. And even with the order of protection sitting on the person, they go over and arrest the other party anyway.

In other words, I don't think the orders of protection are really followed as scrupulously as they could be. So what I would not want to do is to diminish the value or the teeth that an order of protection has.

And I think in this type of - piece of legislation, to charge a person who has committed a crime who has been found previously to be suffering from a mental disease or defect, what you would first have to determine, before you even get to the violation of the order of protection, is to conduct, I guess, a hearing under Section 730 of the Criminal Procedure Law to determine whether or not the individual is fit for trial.

And if they are found not to be the case, the violation of the order of protection is really kind of nominal compared to the crime they may have committed.

I think the real purpose of orders of protection are for the competent, for people who understand the nature of the charges against them and understand what the impact is of violating the order, of going within the -- of going in the parameters that were set by the order of protection.

And I think the problem here is that we're actually, in a way, in trying to help a situation we're diminishing the value of the order of protection by making the order seem not to be as important, because we're now going to apply it against an individual who likely didn't understand the charges against them.

For the technical correction, I guess I can live with it, Senator. But I'm just saying I think it actually continues what I think is a lack of attention that orders of protection are paid in our criminal justice system.

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

Read the last section.

THE SECRETARY: Section 5. This

act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 500, by Senator Saland, Senate Print 3734, an act to amend the Criminal Procedure Law, in relation to orders of protection.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MORAHAN: Senator Saland, an explanation has been requested.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, this bill amends the CPL, Criminal Procedure Law, dealing both with the sections that provide for orders of protection in matters involving family members and in matters involving, under 530.13, persons who are not family members.

And what it basically does is it attempts to address a fairly recent case. The

problem seems to be that upon conviction or plea, the temporary order of protection that might be outstanding in a given case effectively terminates with that conviction or plea.

And what this bill would do would be to require the court, at such time as there was the taking of a plea or a conviction, to effectively either state on the record why it wasn't making a permanent order or enter a permanent order.

Again, it's a response to, I think it's People v. Bleau, in which a contempt proceeding was overturned after a person who had been convicted upon release harassed and entered without permission, broke into the home of the person who had the order of protection.

And the court, while upholding the trespass, I believe, said that that portion of the order that held them in contempt, the defendant in contempt in that case had to fail, because the conviction effectively wiped out the temporary order.

SENATOR PATERSON: Mr. President,

if Senator Saland would yield for a question.

SENATOR SALAND: Yes, Mr. President.

SENATOR PATERSON: Senator Saland, if I have this right, had they had the order of protection operable, had it been permanent -- I did not use the word "permanentize," I said had it been permanent -- what would have happened is that the prosecutors in that particular case would have had more than just the trespass, which would actually have been the appropriate relief had this been the first time this whole thing had ever happened, totally dismissing the fact that this person had already been convicted for a previous offense?

SENATOR SALAND: Well, you would have had not only the new offense, but you would have also had the contempt of court for the failure to have abided by the terms of the order of protection. Which in this case was terminated or, in a manner of speaking, I guess you could say merged with the conviction.

This is certainly an unintended

consequence of what we would hope would be accomplished by orders of protection. And what we're merely doing is making it clear that the court either has to provide the protection through that order of protection being extended on the record or statewide.

The court is not doing so. I can think of far more horrible cases. Fortunately, this particular case, People v. Bleau, as far as I know didn't result in serious injury to anybody, but it certainly could have been far worse.

SENATOR PATERSON: Mr. President, on the bill.

This is good research, because we would never want for -

ACTING PRESIDENT FUSCHILLO: Senator Paterson, on the bill.

SENATOR PATERSON: We would never want for an action taken by a court to actually be extinguished by a conviction. So once the period of time in the penalty stage of the previous conviction had elapsed, the former defendant was in a sense now in a situation as he or she would have been before

the first offense.

And so therefore, the merger between the conviction and the continuation of the order of protection does seem appropriate.

ACTING PRESIDENT FUSCHILLO: Read the last section.

THE SECRETARY: Section 5. This act shall take effect November 1.

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

Senator Paterson.

SENATOR PATERSON: Mr. President, upon further review, with unanimous consent I'd like to be recorded in the negative on Calendar Numbers 498 and 598.

ACTING PRESIDENT FUSCHILLO: So ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 514, by Senator Marchi, Senate Print 1763, an act to amend the Vehicle and Traffic Law.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT FUSCHILLO: Senator McGee.

SENATOR McGEE: Mr. President, will you lay the bill aside temporarily.

And I'd like to announce the fact that there will be an immediate meeting of the Education Committee in the Senate Majority Conference Room.

ACTING PRESIDENT FUSCHILLO: The bill is laid aside temporarily.

There will be an immediate meeting of the Education Committee in the Majority Conference Room, Room 332.

Senator McGee.

SENATOR McGEE: Would you continue in regular order, please.

ACTING PRESIDENT FUSCHILLO: The Secretary will read.

THE SECRETARY: Calendar Number 521, by Senator Nozzolio, Senate Print 3703, an act to amend the Executive Law, the Criminal Procedure Law, the Family Court Act, and the Social Services Law.

SENATOR PATERSON: Explanation.

SENATOR McGEE: Lay the bill aside temporarily, please.

ACTING PRESIDENT FUSCHILLO: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 607, by Member of the Assembly Magee, Assembly Print Number 4909, an act to amend the Soil and Water Conservation Districts Law.

ACTING PRESIDENT FUSCHILLO: Read the last section.

SENATOR PATERSON: Explanation.

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

SENATOR HOFFMANN: Thank you, Mr. President.

This bill is at the request of Farm Bureau. It is not uncommon in our state for a farm to straddle a county line, and frequently the resident of one county is actually farming in two counties. This would allow the representative who fits the Farm Bureau requirement to live in one county while serving on the soil and water district board for the adjoining county.

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

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

SENATOR HOFFMANN: I'd be pleased to.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR PATERSON: I guess, Senator, since you're farming in one county and you may not actually live in the county, but it's an extension of your property because it straddles the lines of two counties, you really have an interest in that other county, and therefore serving on the board would be appropriate in that situation. Is that right?

SENATOR HOFFMANN: Yes, Senator Paterson.

Mr. President, Senator Paterson's question I think correctly identifies the issue, and the answer would be an affirmative.

ACTING PRESIDENT FUSCHILLO: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

THE SECRETARY: Calendar Number 614, by Senator Johnson, Senate Print 3796A, an act to amend the Vehicle and Traffic Law.

SENATOR PATERSON: Explanation.

SENATOR McGEE: Would you temporarily lay the bill aside, please.

Mr. President, please call up Bill 651.

ACTING PRESIDENT FUSCHILLO: The Secretary will read.

THE SECRETARY: Calendar Number 651, by Senator Volker, Senate Print 3794, an act to amend the Banking Law and others, in relation to civil forfeiture proceedings.

SENATOR PATERSON: Explanation.

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

SENATOR VOLKER: This is a little bill that's only about 70 pages long.

Actually, in all honesty, most of this bill is changes in -- this is a complete revision or renumbering of sentence laws, and most of the renumbering is not -- well, most of it is not changed.

There are three essential changes to this bill. The first change that I'll mention is what we discussed I think on this floor here just last week, I believe, and I said that I thought there was a bill coming that would have some of the same provisions in it.

This bill, by the way, is almost identical to the Sentencing Reform Act of 2000. This is the Sentencing Reform Act of 2001.

There are three main provisions. The first provision says that, as we talked about last week in another bill, that you can appeal, the district attorneys can appeal lenient sentences that they feel are unduly lenient.

The second thing is that the

prosecution can appeal bail decisions that are felt to be unjust. And that, by the way, is in all cases.

The third thing is that -- and the most important thing probably about this bill -- is that this is the determinate sentencing bill. This bill would provide for determinate sentencing essentially for all felonies.

In other words, it has been publicly stated to be a no-parole bill, but in reality it provides that instead of the Parole Board making a decision, a felon, a convicted felon must serve 6/7ths of the term that is established by the statute. And then, after that, the felon could be subject to parole.

And it also provides for a period of post-release supervision, which has been discussed on this floor, by the way, on a number of occasions.

The final main part of this bill deals with asset forfeiture. And this bill would change the way asset forfeiture statutes are set up in this state. This particularly would be involved in those who abscond and

cannot be convicted.

And there was a rather famous case, if I remember right, on the federal level fairly recently. I think a former president had a person who absconded, and I believe he gave him a pardon, if I'm not mistaken. And New York is still, in fact, seeking that person for various reasons.

Although this bill wouldn't apply to him, because obviously that case occurred many years ago and the -- this would not apply, because the acts involved occurred before this bill had passed. But technically speaking, this bill would involve some of the issues that are involved in that rather famous case involving somebody who has escaped to Europe and hasn't been -- the government hasn't been able to reach him.

The bill would also broaden the definition of assets which may be seized, including electronic equipment, computers and other technology which were not really thought of at the time that we passed the asset forfeiture bill here I believe about ten, twelve years ago. In fact, if my recollection

is right, the chairman of Codes in the Assembly at the time was one Sheldon Silver. And I was chairman of Codes here in the Senate.

There are a number of other procedural reforms that would govern forfeiture actions. And as I said, probably the main parts of this bill relate to the fact that this is an determinate sentencing bill, 6/7ths for all felons.

And, secondly, it involves a complete revamping of asset forfeiture, particularly in regards to those criminals who would abscond from justice and they are out of the reach of the New York courts for a considerable period of time.

ACTING PRESIDENT FUSCHILLO: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Volker would yield for a question.

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

SENATOR VOLKER: I certainly would.

ACTING PRESIDENT FUSCHILLO: The

Senator yields.

SENATOR PATERSON: Senator, considering the heavy penalty of determinate sentencing for felons as set forth in this legislation, how do you, from the perspective of the policy-making in correctional institutions, how do you separate the convicted felon who is trying perhaps to work their way back into society and uphold the rules of the institution with those who know that it doesn't particularly make a difference and then create further antisocial problems even when they're being incarcerated?

SENATOR VOLKER: I think what you're referring to is the fact that if this bill passed, then we would have felons in prison who would be subject to the 6/7ths at the same time felons who would be under the old law would still be able to be subject to parole and would be able to get out under the parole system.

Is that correct? Is that what you're saying?

SENATOR PATERSON: Yes.

SENATOR VOLKER: Yeah. That is

always a difficulty. And it's one of the reasons why the discipline system has been set up in the prison system, the so-called SHUs. And these secure facilities would take away some of the rights of the inmates should they not conform to the conduct that they're supposed to conform to.

And there are various incentives for which inmates are asked to comply with today, so that there is a discipline in the prison system that would avoid some of these kinds of conflicts.

But you are right, and initially there probably would be the potential for some extra problems between those inmates who are subject to the old rules and those who are subject to the new.

Of course, I guess what the argument would be is that when you make changes that ultimately all the inmates in a prison would then be subject to the new rules and you wouldn't have that problem.

ACTING PRESIDENT FUSCHILLO: Senator Paterson.

SENATOR PATERSON: Mr. President,

there's a real quandary for me on this bill. There's a lot of good work in this bill, particularly in terms of -

ACTING PRESIDENT FUSCHILLO: Senator, are you on the bill or do you have another question?

SENATOR PATERSON: I'm on the bill, Mr. President.

ACTING PRESIDENT FUSCHILLO: Senator Paterson, on the bill. Thank you.

SENATOR PATERSON: Particularly in light of some of the purposes in the legislation that address people who are away from the country or somewhere in parts unknown and maintain some type of control over what happens should they return.

I haven't the slightest idea who Senator Volker was referring to. Maybe he'll tell me sometime outside the chamber.

But my real problem with this bill involves the determinate sentencing. When you sentence someone and they will likely serve nearly 86 percent of the time for which they are sentenced, I don't think that you're going to have that type of incentive system actually

existing.

I would like the record to reflect that Senators Duane, Schneiderman, Malcolm Smith, Montgomery, and Sampson voted in the negative last year.

ACTING PRESIDENT FUSCHILLO: The Secretary will read the last section.

Oh, I'm sorry, Senator Gentile.

SENATOR GENTILE: Thank you, Mr. President. If the sponsor would yield.

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR GENTILE: Thank you.

Senator, I am correct in stating that even though we are changing, under this bill, the determinate sentencing to 6/7ths of a sentence, there is still that discretion not to allow someone to be released at the point of 6/7ths, serving 6/7ths of their sentence? Am I correct about that?

SENATOR VOLKER: That is correct. That's where you get into the definite

sentencing. The idea is that the person knows.

And of course, that's one of the holds over that person also, that if they don't conform, obviously they could be kept in jail after that. And then you have your - the post-parole period afterwards.

So you're absolutely right, that 6/7ths is only assuming that that inmate conforms to the standards that he's supposed to conform -- that he or she is supposed to conform to in prison, and otherwise they could serve the entire term and actually more.

SENATOR GENTILE: If the Senator would continue to yield for one final question.

SENATOR VOLKER: Yes, I yield.

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

SENATOR VOLKER: Yes.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR GENTILE: Thank you.

Through you, Mr. President. So,

Senator, then the incentive to which Senator Paterson was referring is not completely obliterated?

SENATOR VOLKER: Right. Exactly. That's absolutely true. The incentive is not entirely obliterated, because they would still be able to get out earlier if they conform to the standards of the prison system and were able to get what amounts to, I suppose you could say, good time. And they could still get out early.

SENATOR GENTILE: Thank you, Senator.

On the bill, Mr. President.

ACTING PRESIDENT FUSCHILLO: Senator Gentile, on the bill.

SENATOR GENTILE: Thank you.

Certainly I believe that the determinate sentencing with no parole for all felony convictions reduces the likelihood or possibility of disparate or irrational parole decisions on the part of the Parole Board. And I think it sets in law a very set sentence not only for the benefit of the victim but also the benefit of those or -- to those who

are serving the sentence.

And the 6/7ths still provides that small window of opportunity for those who do conform to the rules to be released after 6/7ths of their sentence.

And I think the real key in this determinate sentencing provision is the post-release supervision. Because that post-release supervision is extremely important, particularly if someone is getting out after serving 6/7ths of their sentence. To have that post-release supervision is critical to making sure that we have done the right thing in releasing someone after 6/7ths of their sentence has been served.

I said it last week, and I'll say it again, I think judicial review of low-bail decisions and lenient sentences is something that prosecutors have been asking for for many, many years. It's done on the federal level. Federal prosecutors can appeal those types of sentences or low-bail decisions.

I have seen many instances where bail has been set at levels that are inexplicable, at times, given the

circumstances of the case.

Now, obviously, defense attorneys will say that bail is set for the purpose of determining whether someone will return to court. I believe, as a prosecutor -- and as a court and as a state -- we also have to evaluate the type of person standing before the judge and the severity of the danger that that person poses to the community.

So I believe that in the situation where a prosecutor disagrees with the bail decision, you should at least have the opportunity to have judicial review of that as well as for judicial review of lenient sentences.

So I think, Senator Volker, you have put this all together in one package. Certainly I think it's a good bill, a bill that will strengthen the message that we send in this state that if you're convicted of a crime, then we're not going to be easy on you. And certainly, certainly in a situation where judicial review is warranted, now judicial review will be granted.

So, Mr. President, I am certainly

in favor of this bill and will be voting in the affirmative.

ACTING PRESIDENT FUSCHILLO: Senator Paterson, were you raising your hand to be recognized?

SENATOR PATERSON: No, Mr. President. I was just a little ahead of the proceedings.

ACTING PRESIDENT FUSCHILLO: Read the last section.

THE SECRETARY: Section 107. This act shall take effect on January 1, 2002.

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 651 are Senators Hassell-Thompson, Paterson, Santiago, Schneiderman, A. Smith, and M. Smith. Ayes, 48. Nays, 6.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

Senator Hassell-Thompson, why do you rise?

SENATOR HASSELL-THOMPSON: Yes,

Mr. President. Out of courtesy, I would like to request permission to have my congressman, Congressman Eliot Engel, recognized, who is here in the chamber, who is a former Assemblyman here in New York State.

ACTING PRESIDENT FUSCHILLO: Thank you, Senator.

Congressman Engel, we welcome you to the chambers and we hope you enjoy your day at the Capitol today.

(Applause.)

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

SENATOR SCHNEIDERMAN: Mr. President, I request unanimous consent to be recorded in the negative on Calendar Number 20, Senate Bill 368.

ACTING PRESIDENT FUSCHILLO: Without objection.

The Secretary will read.

THE SECRETARY: Calendar Number 684, by Senator Leibell, Senate Print 5085, an act to authorize the reopening of the optional twenty-year retirement plan.

SENATOR PATERSON: Explanation.

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

Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, we withdraw the explanation.

ACTING PRESIDENT FUSCHILLO: There is a home-rule message at the desk.

Read the last section.

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

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

Senator McGee, why do you rise?

SENATOR McGEE: I ask that you call Calendar Number 424, please.

ACTING PRESIDENT FUSCHILLO: The Secretary will read.

SENATOR McGEE: Thank you.

THE SECRETARY: Calendar Number 424, by Member of the Assembly Levy, Assembly

Print Number 6433, an act to amend Chapter 151 of the Laws of 2000.

ACTING PRESIDENT FUSCHILLO: Read the last section.

THE SECRETARY: Section 2. This act -

SENATOR PATERSON: Explanation.

ACTING PRESIDENT FUSCHILLO: Senator Trunzo, Senator Paterson has requested an explanation.

SENATOR TRUNZO: Mr. President, this bill makes technical amendments to Chapter 151 of the Laws of 2000 by eliminating certain language from the bill.

Specifically, the language being the "acquired title to the property for which it seeks exemption subsequent to the taxable status date established for such roll and prior to the taxable status date for the next ensuing roll." We've eliminated that from the bill that we did in the year 2000.

SENATOR DOLLINGER: Explanation satisfactory.

ACTING PRESIDENT FUSCHILLO: Read the last section.

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

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT FUSCHILLO: The bill is passed.

Senator McGee.

SENATOR McGEE: Please call Calendar 836, by Senator Wright.

ACTING PRESIDENT FUSCHILLO: The Secretary will read.

THE SECRETARY: Calendar Number 836, by Senator Wright, Senate Print 3499A, an act to amend the Criminal Procedure Law, in relation to statements.

SENATOR PATERSON: Explanation.

SENATOR McGEE: Just one moment.

ACTING PRESIDENT FUSCHILLO: Senator Wright, an explanation has been requested of your bill before the house.

SENATOR WRIGHT: Thank you, Mr.

President.

We too are dealing with an amendment to the Criminal Procedure Law. And this relates to statements at the time of sentencing. Very similar -- in fact, what I would consider a complementary bill to the discussion we have had previously, to Senator Saland's bill, working off of the same case, which happens to be a constituent in my district and was referred to my office by the -- actually, the constituent was referred to my office by the district attorney, based on the Appellate Division's overturn and decision and a recognition that there was really a void in the law here resulting in the temporary orders of protection expiring with a guilty plea.

So our remedy, as suggested here, is to do two things. Number one, specifically require the court to inquire of the prosecutor relative to whether or not the order of protection would be made permanent. In turn, that the prosecutor would actually respond on the record so that we have a dialogue as to the prosecutor's intention and, more

importantly, that in the case of sentencing that that also be explained to the victim at the time.

ACTING PRESIDENT FUSCHILLO: Senator Paterson.

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

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

SENATOR WRIGHT: I will, Mr. President.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR PATERSON: Senator, with the distinct advantage of the legislation that we've just passed earlier today offered by Senator Saland, I wonder if this legislation is not a moot point.

Because in a situation particularly involving a case such as People v. Bleau, when you have a sentencing, the desire to have a continuation of the order of protection at the end of the sentencing period would be something almost automatic that the prosecutor would ask for. But even if it was not, it is

certainly the responsibility of the prosecutor to actually ask for that.

Now, the omission or misfeasance of duty on the part of one branch in the courtroom, I don't know that that vests the responsibility in another. In other words, I find this to be superfluous to now then require judicial intervention to remind one of the law enforcement parties -- in this case, the prosecutor -- that we'd like to know what their position is on the order of protection, speaking in a period in the future after the sentencing.

My question to you is, how is this not cured by the legislation Senator Saland offered which really now corrects the misapplication of the law, not necessarily the actions of the parties? The problem in this case was that the law didn't provide for it. Even though the prosecutor may have forgotten, that was really secondary to the real issue, which I think was covered in the legislation Senator Saland offered.

SENATOR WRIGHT: Thank you, Mr. President.

From my perspective, as I stated earlier, Senator, I don't see the bills as being in conflict or duplicating one another, but in fact see them as complementing one another. And I look at it from the perspective of a layman, as opposed to that of an attorney.

And, frankly, the individual involved in the case, you know, is looking for some recourse and some remedy that in fact there is an obligation for the parties to state their intention that someone is looking out for their interest and that there is a formal procedure that says: You will do the following things, and you will make the victim aware of that.

I think from a layman's perspective, all of that is appropriate. From the victim's perspective, that's appropriate. And that's the genesis of this legislation.

ACTING PRESIDENT FUSCHILLO: Senator Paterson.

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

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

SENATOR WRIGHT: I will, Mr. President.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR PATERSON: Senator, I don't want to belabor this, but does the Office of -

SENATOR WRIGHT: Nor I, Senator.

(Laughter.)

SENATOR PATERSON: Does the Office of Court Administration have a position on this?

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

SENATOR PATERSON: Are they aware of the legislation?

SENATOR WRIGHT: We have not sent it to them for their comment, no.

SENATOR PATERSON: Thank you, Mr. President.

SENATOR WRIGHT: Thank you.

ACTING PRESIDENT FUSCHILLO: Read the last section.

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

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT FUSCHILLO: The bill is passed.

Senator McGee.

SENATOR McGEE: Mr. President, will you please call Calendar Number 614, by Senator Johnson.

ACTING PRESIDENT FUSCHILLO: The Secretary will read.

THE SECRETARY: Calendar Number 614, by Senator Johnson, Senate Print 3796A, an act to amend the Vehicle and Traffic Law.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT FUSCHILLO: Senator Johnson, Senator Paterson has requested an explanation.

SENATOR JOHNSON: Many years ago, Senator, I established the defensive driver

course in the state of New York which provided insurance discounts for people who took the course in order to improve their safe driving habits. And that provides, as I say, an insurance discount and also point reduction on your license as well.

Now, when these courses were approved, there had to be documentation showing that they had been given previously somewhere, and a certain amount of records had to be provided in order to justify their efficacy at that time.

Now the department is going to reevaluate these courses which are presently being given, and the standard was 3,000 records for a new course be given. But because these courses have already been given, we know the operators of these courses. And we found out that these records for reevaluation cost about $5 each from the Motor Vehicle Bureau, and it's quite an expense to reevaluate and prepare it in the proper form.

To justify its efficacy to the department, we have introduced this bill which says a maximum of 1,000 can be required for a

reevaluation, these records to be provided randomly by the department based on persons who took their particular course.

And that's all we're really doing, is making it more economic to get this reevaluation done and see if it demonstrates these courses are still effective. If they're not, of course the department could decertify these courses or not renew these courses to be given in the state if they're not effective.

And that's what this bill does, essentially.

SENATOR DOLLINGER: Explanation satisfactory.

ACTING PRESIDENT FUSCHILLO: Read the last section.

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

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

Senator McGee.

SENATOR McGEE: Mr. President, will you call Calendar Number 839, by Senator Volker.

ACTING PRESIDENT FUSCHILLO: The Secretary will read.

THE SECRETARY: Calendar Number 839, by Senator Volker, Senate Print 3583, an act to amend the Penal Law, in relation to loitering.

SENATOR McGEE: Mr. President.

ACTING PRESIDENT FUSCHILLO: Senator McGee.

SENATOR McGEE: Will you suffer an interruption now? We'll have an immediate meeting of the Aging Committee in the Senate Majority Conference Room, please.

Thank you.

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

Read the last section.

SENATOR DOLLINGER: Explanation, Mr. President.

ACTING PRESIDENT FUSCHILLO:

Senator Volker, Senator Dollinger has requested an explanation.

SENATOR VOLKER: Yeah. This bill actually -- the technical nature of this bill is that under the present law, a person who is convicted of prostitution is subject to a Class B misdemeanor. And since it is a misdemeanor, a person under 16 can be charged as a juvenile delinquent and therefore go to Family Court.

However, because loitering for the purpose of engaging in prostitution is merely an offense, then if a person is under 16 years old, they cannot be charged with juvenile delinquency, because it is not a crime and therefore not subject to juvenile delinquency, and therefore that person cannot be referred to Family Court.

Simply, what this bill would do is to say that a person under 16 who is charged with loitering for the purpose of prostitution can be charged as a juvenile delinquent and therefore could be subject to the jurisdiction of Family Court. It does not actually raise any penalties, but it actually says that that

person could be charged with juvenile delinquency and be subject to Family Court.

ACTING PRESIDENT FUSCHILLO: Senator Dollinger.

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

SENATOR VOLKER: Certainly.

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

SENATOR VOLKER: Yes.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DOLLINGER: Senator, this bill also includes an amendment to include the phrase "passers-by." Which again, as we so often do, we add these terms to our -- as you know, well know, our strictly construed Penal Law.

And my question to you, and we've been through this a number of times during this session, is there a definition of what we mean by that? Do we have any explicit other uses of that term that we give some indication to the courts as to what that phrase means?

I think you and I have a pretty good idea of what it means. The question is when some lawyer someday looks at this thing, are we going to run into that problem?

SENATOR VOLKER: I think it's another one of those terms that is probably not specifically defined in the Penal Law. It is frankly a term of art, and I assume would mean that people who are moving by a person on the sidewalk and so forth, which is normally what would happen.

And I don't think there is any definition, I'll be honest with you, and therefore I guess it would have to be interpreted under the same kind of terms that I think you and I would consider it under the circumstances.

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

ACTING PRESIDENT FUSCHILLO: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I'm going to support this. I think this bill is a good idea.

What we're in essence doing is

taking people who are loitering for the purpose of prostitution and putting them into the juvenile justice system, which is, quite frankly, where teenagers under the age of 16 belong, especially when the offense is, as Senator Volker properly points out, really a misdemeanor.

This is the proper place to send them, where we can bring together social services, family support, and other relief, which probably is far more appropriate for someone under the age of 16 engaged in this conduct than a strict criminal prosecution as an adult.

So I think this is a wise bill. I'll vote in favor.

ACTING PRESIDENT FUSCHILLO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT FUSCHILLO: The

bill is passed.

Senator McGee.

SENATOR McGEE: Mr. President, may we please return to the reports of standing committees. I believe there's a report of the Finance Committee at the desk.

ACTING PRESIDENT FUSCHILLO: The Secretary will read.

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

As a member of the State Civil Service Commission, Margaret Dadd, of Attica.

SENATOR McGEE: Move the nomination.

ACTING PRESIDENT FUSCHILLO: Senator Volker.

SENATOR VOLKER: Thank you, Mr. President.

I want to quickly say that Maggie Dadd is a reappointment to the Civil Service Commission. She is one of the most distinguished -- and I mean this very sincerely, one of the most distinguished citizens of Wyoming County and, frankly, of

the state of New York. A long-time friend. Her husband is one of the finest judges in the state of New York.

She's frankly been a tribute to the Civil Service Commission. And the Governor certainly should be commended for reappointing her. And I highly recommend her for the position that she's been renominated for.

ACTING PRESIDENT FUSCHILLO: The question is on the confirmation of Margaret Dadd. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT FUSCHILLO: Opposed, nay.

(No response.)

ACTING PRESIDENT FUSCHILLO: Margaret Dadd is hereby confirmed as a member of the Civil Service Commission.

She is joined by her husband, Mark.

I wish you congratulations and all the courtesies extended on behalf of the Senate.

(Applause.)

ACTING PRESIDENT FUSCHILLO: The

Secretary will read.

THE SECRETARY: As a member of the Rochester-Genesee Transportation Authority, William R. Nojay, of Pittsford.

SENATOR McGEE: Move the nomination.

ACTING PRESIDENT FUSCHILLO: Senator McGee.

SENATOR McGEE: Mr. President, would you recognize Senator Alesi, please.

ACTING PRESIDENT FUSCHILLO: Senator Alesi.

SENATOR ALESI: Mr. President, this is an honor indeed for all of us in the Rochester area, especially for me, since Mr. Nojay lives in the town of Pittsford - also a personal friend, but someone who is exceptionally well qualified, whether it's been in corporate practice, international business investments and acquisitions. He spent time with the International Monetary Fund in his younger days, and the U.S. Senate.

He is a graduate of Columbia Law School and also has an M.B.A. from Columbia. And he is also a Thomas J. Watson fellow,

having served years ago -- fortunately, I suppose -- in Nepal.

More importantly, I think Bill Nojay is known around our community as someone who is active in so many numerous community activities that they would be very hard to list, but his presence is surely felt in Monroe County. And I am honored to have the opportunity to say just a few words on his behalf.

His contributions to Rochester and Monroe County have been immeasurable. And his service on the RGRTA to this point has been stellar. And I wholeheartedly support his reappointment.

ACTING PRESIDENT FUSCHILLO: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President and my colleagues, I rise to echo the comments of Senator Alesi in supporting this excellent nomination. A nomination, as Senator Alesi well indicated, that would in and of itself, based on the criteria of the qualifications -- the

experience level of the nominee in and of itself would warrant renomination.

But I also wish to speak, as Senator Alesi mentioned, about the fine record of Bill Nojay in service to the greater Genesee Regional Transportation Authority. The GRTA has been an institution existing for many, many years. But under the leadership of Bill Nojay and the direction of the great staff that has been put together there, most particularly Don Reilly, that we have seen a renaissance of transportation-related services in the greater Rochester area.

And that Bill should be thanked, congratulated, and frankly looked at as a model for other regional transportation authorities across the state. They have not only enhanced ridership, they've reduced the deficits so now they're running at surplus and working aggressively to do so.

They're also engaged in a number of dynamic projects that will enhance the quality of life in our community. That most particularly the regional transit center that would serve, in my view, as a showcase of

transit centers, not just here in New York State but all across the United States. The plans are ambitious. But it takes a very qualified, aggressive individual to lead us in those plans.

And I just wish to take this opportunity to thank Bill for his service and to urge my colleagues to join Senator Alesi, myself, and Senator Maziarz in supporting this great nomination.

ACTING PRESIDENT FUSCHILLO: Senator Maziarz.

SENATOR MAZIARZ: Thank you, Mr. President.

I rise in support of the nomination of William Nojay as a member of the Rochester-Genesee Transportation Authority. I represent the rural/suburban area of Monroe County on the west side. And the individuals that I represent of course use public transportation a great deal to get in and out of the city of Rochester. And I've worked very closely with Mr. Nojay and with the administration of the transportation authority, and I think they've done an

excellent job. And certainly Mr. Nojay warrants reappointment.

So I congratulate you, Bill, I thank you on behalf of my constituency, and congratulate Governor Pataki on another fine nomination.

Thank you.

ACTING PRESIDENT FUSCHILLO: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I rise to vote in favor of Bill Nojay for reappointment to the regional transit authority in Rochester. I interviewed Bill in the Finance Committee. And, Bill, once again -- Bill and I have met on a number of different venues in our other capacities outside public life and private lives. Bill Nojay gives you straight answers and is not afraid of tough questions.

I disagree with him, perhaps, on some of the answers, and I assume that that disagreement may continue. But I don't believe that that's a sufficient basis, Mr. President, to not cast my vote in favor of

him.

I think that there have been beneficial changes in the organization and certainly the spirit and the enthusiasm in the transit authority. I agree with Senator Nozzolio and Senator Alesi and Senator Maziarz that many of those changes have been for the better.

I still think that there are critical issues that we face in Rochester, whether it's the construction of the transit mall, which the City of Rochester is now on board and putting forward -- I think that's an idea that I believe will be in the betterment of our community, and I'm willing to put aside my skepticism and move down that road.

The question of the fast ferry, which we also talked about, I'm one of those who at least at this point is not completely convinced that the fast ferry will become a reality. But nonetheless, I believe that the renewed attention on the port, both on behalf of the City of Rochester and the transit authority, is a good thing. I would encourage the transit authority, through its chair, to

continue those negotiations, continue to move down that path. Because Rochester has never been able to quite unlock the treasure that the Genesee River should be.

And, lastly, we talked about the park-and-ride program. I'm encouraged to hear that in this time of energy conservation that that seems to be moving forward.

And with respect to the other issue I raised -- that is, the purchase of homes in the East Main section, which I actually share in close proximity with Senator Alesi -- I think the idea of combining the fleet services and providing liquid natural gas and other forms of alternative fuels for the fleets, not only of the city buses, not only potentially of the police department of the City of Rochester, but county vehicles. And, frankly, my hope would be that at some point we could even get to the point of doing it for school buses as well.

So I would encourage you with those efforts. I think that despite our occasional differences on the big policy issues, I think Bill Nojay has done a job as the chairman of

the transit authority that merits my vote and the vote of my constituents. And although we may have disagreements in the future, I think a principled disagreement between people trying to do the right thing for a community is the foundation of our government and actually produces, in the long run, the best result.

So wherever we meet again, I wish you well. And whether it's in agreement or disagreement, it's good to have someone there who has intelligence, skill, and vision. And I welcome your appointment.

ACTING PRESIDENT FUSCHILLO: The question is on the confirmation of William Nojay as a member of the board of the Rochester-Genesee Regional Transportation Authority. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT FUSCHILLO: Opposed, nay.

(No response.)

ACTING PRESIDENT FUSCHILLO: The nominee is hereby confirmed.

Mr. Nojay, I wish you the best of luck and congratulations and extend all the courtesies of the Senate to you. Congratulations.

(Applause.)

ACTING PRESIDENT FUSCHILLO: Senator McGee.

SENATOR McGEE: Mr. President, there will be an immediate meeting of the Transportation Committee in the Senate Majority Room, please.

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

Senator McGee.

SENATOR McGEE: Mr. President, can we continue with the report of the Finance Committee.

ACTING PRESIDENT FUSCHILLO: The Secretary will read.

THE SECRETARY: As a member of the Adirondack Park Agency, Katherine Osborn Roberts, of Garrison.

As a director of the Municipal Bond

Bank Agency, Michael J. Townsend, of Fairport.

As a member of the New York State Project Finance Agency, John B. Mannix, of New York City.

As a member of the Port Authority of New York and New Jersey, Bruce A. Blakeman, of New York City.

As a member of the Administrative Review Board for Professional Medical Conduct, Stanley L. Grossman, M.D., of Newburgh.

As a member of the State Harness Racing Commission, Mark A. Edelman, of Monticello.

As a member of the Veterans Affairs Commission, Harold Roy Andersen, of Jamestown.

As a member of the Medical Advisory Committee, Ellen M. Vossler, D.D.S., of Eggertsville.

As directors of the Municipal Assistance Corporation for the City of New York, Martin S. Berger, of New York City, and Ann Daly Printon, of New York City.

As a member of the Board of Directors of the New York Convention Center Operating Corporation, Gregory F. Holcombe, of

Bronxville.

As members of the Board of Trustees of the New York State Higher Education Services Corporation, Jason R. Clum, of Germantown, and Frank Macchiarola, of Rockaway Point.

As members of the Board of Visitors of the New York State Home for Veterans and Their Dependents at St. Albans, Donald H. Haber, of Douglaston, and Denis J. McEneaney, of Broad Channel.

ACTING PRESIDENT KUHL: The question is on the nominees. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Just to explain my vote on one of the nominees, Mr. President.

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

SENATOR DOLLINGER: Michael J. Townsend is the attorney who's been the

counsel for the Monroe County Industrial Development Agency. I know Mike well. I think that he's extremely well qualified.

And I simply speak because even though I know him well, I'm going to vote for him. He would appreciate that comment. And I wish him well in his new endeavor with the mortgage agency.

ACTING PRESIDENT KUHL: The nominees are confirmed.

Senator McGee.

SENATOR McGEE: Mr. President, would you please call Calendar Number 514, Senator Marchi's bill.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 514, by Senator Marchi, Senate Print 1763, an act to amend the Vehicle and Traffic Law, in relation to authorizing right on red in Richmond County.

SENATOR DOLLINGER: Explanation, Mr. President.

ACTING PRESIDENT KUHL: Senator Marchi, an explanation has been requested by

the Acting Minority Leader, Senator Dollinger.

SENATOR MARCHI: Mr. President, this is an old-timer. We've passed it several times before. It would allow a turn on a red light going with the stoplight, as we have here and throughout the rest of the state.

However, there is a problem with the City of New York. The City of New York, unless it's posted specifically that you can turn right, then you can't do it. So for the purposes of uniformity, the city has opposed the passage of this bill.

Nevertheless, the people of Staten Island and my cosponsors have been -- have been Democrats -- well, the entire membership of the Staten Island Assembly delegation is in favor of this bill to match us up with the rest of the state. And it would accelerate the movement of traffic, which everybody recognizes, except for the difference it presents with the rest of the city.

The City is in opposition, I will state that for the record, and they have made that known to me. City Council lately has made a move in Staten Island's favor, but that

is the present picture.

But I would suggest that we go ahead with it. Perhaps we may get a definitive disposition that carefully considers the equities that are involved and the depressing effects that it has on the movement of traffic in Staten Island. Because we are like the rest of the state. Our size is almost equal to that of Manhattan and the Bronx put together. But our population is at 400 -- I think, in the last census, 443,000 persons.

So I would request again -- and hopefully something may happen in the Assembly. But I would appreciate an affirmative vote on this measure as we have done repetitively in the past.

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

Senator Gentile, why do you rise?

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

ACTING PRESIDENT KUHL: Senator Gentile, on the bill.

SENATOR GENTILE: Thank you, Mr.

President.

Certainly on this piece of legislation introduced by Senator Marchi, I come at this in a unique perspective, because I not only come to this bill as a legislative representative from Staten Island but also a legislative representative from Brooklyn.

And certainly from that perspective, Senator, I can see the difference between the boroughs of the situation which you try to address here in this bill with the right on red in Staten Island. Certainly Staten Island is unique, it is unique among the five boroughs of the City of New York. Indeed, Staten Island now has 440,000 people. Brooklyn has 3 million plus.

So certainly those who are not attuned to the special situation in Staten Island might view it in terms of the other four boroughs, which are far more populated than the borough of Staten Island.

So I would agree that in a community of 3 million, maybe right on red is not such a great idea. But certainly in the island, on Staten Island, I believe that it's

worth a try, an opportunity. Those, yourself included, who have looked at this issue for many, many years have concluded that this is something that should be done on Staten Island to help the traffic flow. And anybody who has traveled on Staten Island understands what traffic flow can be sometimes on the roads that we have available to us in Staten Island.

So, Senator, being the veteran that you are in Staten Island, and my other colleagues in Staten Island who will all support this bill, I too will stand in support of the right on red and urge my other colleagues who might not understand the special situation of Staten Island to concede this one to us, that this is the right thing for Staten Island.

ACTING PRESIDENT KUHL: Senator Hevesi, why do you rise?

SENATOR HEVESI: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Hevesi, on the bill.

SENATOR HEVESI: Thank you.

Mr. President, the residents of

Staten Island are represented by two of the most outstanding legislators in all of New York in Senator Marchi and Senator Gentile. They have ably represented their constituents for a long time collectively and do a wonderful job.

I must, however, disagree with them on this particular piece of legislation as it pertains to the overall public policy of whether or not permitting right on red as public policy in Staten Island is the appropriate and smart thing to do.

I should like to point out that the City of New York is opposed to this bill. And specifically, the New York City Department of Transportation does not believe that this is a good idea and have submitted a memorandum in opposition to this legislation, based simply on the grounds that although there are many differences between Staten Island and the other boroughs in terms of population density and some other areas that pertain to traffic and traffic flow and the geometric shape of the streets, that many signalized intersections in Staten Island currently have

right-on-red provisions but, DOT points out, and I find this a most compelling argument, that in all the locations where this is currently permissible -- and in some areas it does, in fact, reduce traffic flow and it is appropriate -- in every single instance where that was installed by the City DOT, it came only after an extensive engineering and traffic assessment by that agency. And that should be the practice, I believe, that continues.

And I have a little bit of a more serious issue here. If we did decide to do right on red throughout the entire city of New York or anywhere else (a) it should only come after the City does a study and determines that that's appropriate. And (b) I really don't think we should ever do it piecemeal, because I don't want a situation where drivers in one county drive into another county.

In the case of Staten Island, the counties are pretty well separated. But in Brooklyn and Queens they're not. Sometimes I actually have thought I was in Queens and it

turns out I was in Brooklyn, because the border is jagged.

And when that happens, if the regulations have suddenly changed and somebody makes a right on red or somebody doesn't realize that cars may be turning that way because they are from a different borough or what have you, the lack of uniformity can create a potential hazard there.

So I don't think it's appropriate to do it piecemeal if it is appropriate, and it might be. And I would support a study by City DOT in order to determine the viability and feasibility of doing this on a broader scale. But if you're going to do it, do it in a uniform way.

Until that time, I'm going to oppose this legislation, notwithstanding the fact that I very much appreciate the expression and amplification of the voices of Staten Island residents by both Senator Gentile and Senator Marchi. They are doing the best advocating for their constituents.

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

Hearing none, the Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT KUHL: The bill is passed.

Senator McGee.

SENATOR McGEE: Mr. President, will you please call Calendar Number 970, by Senator Hoffmann.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 970, by Senator Hoffmann, Senate Print 84, an act to amend the Penal Law, in relation to inciting to rite in the first degree.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

November.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Paterson did you ask for an explanation?

SENATOR PATERSON: Yes, Mr. President. Thank you.

ACTING PRESIDENT KUHL: Senator Hoffmann, an explanation of Calendar Number 970 has been requested by Senator Paterson, the Acting Minority Leader.

SENATOR HOFFMANN: Thank you, Mr. President. And I would be happy to explain this bill.

This is at the request of the correction officers at the Mohawk Correctional Facility, following a riot which involved 300 prisoners on July 18, 1997, in which ten correction officers were injured, a couple of them quite seriously.

This piece of legislation would create two new felonies, riot in the first degree and riot in the second degree. Riot in the first degree may not be plea bargained below a Class E felony under this piece of legislation. The reason for the plea

bargaining restriction would be so that those who actually engage in a riot while in prison walls would face additional time should they be convicted, time beyond their current sentence.

It might be a surprise to some people to know, but currently the statute on the books that deals with riot states that the law around riot does not -- would not apply to a prison because there must be conduct creating, and I quote, a grave risk of causing public alarm. So if a riot takes place now within prison walls, the only impact is on the staff and the other inmates of that facility, because there is no, quote, public alarm.

So this particular legislation would address two significant problems: One that presently allows no severe penalties to be enacted in the event of a riot; and, two, to create a clear definition of riot, to expand the definition to include a riot within a correctional facility in New York State, both which are very, very necessary.

I spent some time with the officers at Mohawk Correctional Facility immediately

after that riot. I was in contact with them and with our very, very capable Commissioner of Corrections, Glenn Goord, during the riot itself. And these men and women, and the other employees at Mohawk Correctional, demonstrated the most exemplary conduct. They were patient, they were cautious. They did what their training prepares them to do and demonstrated remarkable restraint in the face of a situation that was life-threatening to them.

Following that riot, however, they were dismayed to discover that the inmates who were responsible for the riot faced virtually no kind of justice. There were no sanctions imposed upon them other than the transfer to a few other facilities. The instigators were broken up, they were moved into other correctional areas. But the reality was that the very, very difficult job of law enforcement in that prison situation was not recognized by an appropriate penalty upon the individuals who were responsible for instigating that riot.

And I think it's significant that

the men and women at Mohawk Correctional Facility have asked for this bill. They've been joined by their fellow officers in law enforcement, under NYSCOBA, their union, across the state in requesting that we correct this inaccuracy, this inadequacy in our statute.

So I'm happy to carry this bill. I'm proud to tell you that it passed this house the last two years overwhelmingly.

There is a bill in the other house right now that's not identical, but I'm confident that upon passage of this one that we can reconcile those two bills.

Because I think we need to send a message to our correctional officers in New York State that we respect them, we value their service, we applaud them for showing restraint in the face of life-threatening danger to themselves and other prison employees and to other inmates, and we want them to know that we will correct the law that now did not permit the individuals who perpetrated that riot at Mohawk Correctional Facility on July 18th to be brought to justice

appropriately.

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

SENATOR PATERSON: Mr. President, I voted for the bill in the past. And the reason is because I think that the riot charge in the law exists in its form now not because we specifically wanted to exclude the prisons from what the classification of a public alarm would be as much as it was an omission.

So it's good to see that it's expanded to include these types of situations. These are public employees, and it is in a sense a public alarm. Particularly if a riot in this type of facility got out of hand enough, it would be the fear of individuals escaping from the facility.

I would like the record to reflect that Senator Duane was recorded in the negative last year, along with Senator Montgomery. Senator Duane is excused today and would want the record to reflect his vote.

Thank you.

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

The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negative votes. Announce the results.

THE SECRETARY: Ayes, 55. Nays, 1. Senator Montgomery recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator McGee.

SENATOR McGEE: Mr. President, will you please call Calendar 1000, Senator Rath's bill.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 1000, by Senator Rath, Senate Print 1450, an act to amend the Penal Law, in relation to falsely reporting.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Rath, an explanation of Calendar Number 1000 has been requested by the Acting Minority Leader, Senator Paterson.

SENATOR RATH: Mr. President, this bill adds six new sections relating to falsely reporting an incident of use of a weapon of mass destruction and placing a false weapon of mass destruction. It really points at and deals with the idea of chemical and biological terrorism.

The law presently does not have any provisions to deal with this exactly. I mean, we keep hearing about placing a bomb or a bomb threat. Well, there was a threat at one time in a school fairly recently about an anthrax threat. Well, it was a false threat. But of course the local government showed up with the full regalia, as they're required to do.

And fortunately, no one was hurt. It was a false threat. It was a cost to the local government. Had anyone been injured in the process of responding, there would have been additional costs and certainly some loss

of work time and threat to life and limb.

So I feel at this point it's time to place this in the correct context and urge passage.

SENATOR PATERSON: Explanation satisfactory.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect in 90 days.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT KUHL: The bill is passed.

Senator McGee.

SENATOR McGEE: Will you please call Bill 1002, by Senator Lack.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 1002, by Senator Lack, Senate Print 2164, an act to amend the Correction Law, in relation to information.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Lack, an explanation of Calendar Number 1002 has been requested by the Acting Minority Leader, Senator Paterson.

SENATOR LACK: Thank you, Mr. President.

This bill would amend the Megan's Law enactment we passed to change a "may" to "shall" when it pertains to third level - Level 3 sexually violent predators, that would require local police departments, instead of having the ability to disseminate information with respect to the sexual offender's address and photograph, to requiring them to disseminate such information. As well as the only other change would add "alias."

This bill passed the Senate last year 59 to 1.

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

SENATOR PATERSON: Mr. President, if Senator Lack would yield for a question.

SENATOR RATH: Senator Lack, do you yield to a question from Senator Paterson?

SENATOR LACK: Sure.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator, would you clarify something for us? Is Level 3 the most serious or the least serious offense covered in the act?

SENATOR LACK: Most.

SENATOR PATERSON: The most.

Thank you.

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

The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT KUHL: The bill is passed.

Senator McGee.

SENATOR McGEE: Mr. President, will you call Bill 1020, by Senator McGee.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 1020, by Senator McGee, Senate Print 3965, an act to amend the Real Property Tax Law, in relation to the tax exemption.

SENATOR HEVESI: Explanation.

ACTING PRESIDENT KUHL: Senator McGee, an explanation has been requested by Senator Hevesi.

SENATOR McGEE: Thank you very much.

This bill is a technical amendment to Chapter 609 of the Laws of the year 2000. Due to an oversight, the word "city" was omitted from three appropriate places of Chapter 609, line 00. This bill corrects that oversight.

ACTING PRESIDENT KUHL: Senator Hevesi, why do you rise?

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

ACTING PRESIDENT KUHL: Senator McGee, do you yield to a question from Senator Hevesi?

SENATOR McGEE: Yes, I will.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR HEVESI: Thank you, Mr. President.

Just so I'm clear on this, this is a technical correction to a bill we passed last year, it became a chapter, which provides this one county the ability to provide for any locality within the county -- and now we're going to include cities -- the ability to provide a property tax exemption for anyone who is a member of a volunteer fire-fighting company or ambulance company; is that correct?

SENATOR McGEE: That's correct.

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

ACTING PRESIDENT KUHL: Senator McGee, do you yield to another question?

SENATOR McGEE: Absolutely. Yes, I will.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR HEVESI: Thank you. My

concern -- and I very much appreciate making that type of technical correction. Because if it was a good idea to do it for everybody in the county, it should include cities.

My question to you, and it is germane to this discussion on this bill, is my understanding is that the City of New York is not able in its discretion to provide a property tax exemption to the same individuals who are covered under the existing chapter and obviously, by extension, this bill.

Is that your understanding also?

SENATOR McGEE: I'm not sure what happens with the City of New York. You represent the City of New York, sir.

This was a request made by Chautauqua County, several legislators in Chautauqua County, in view of the fact that there is a decreasing number of volunteers in volunteer fire-fighting units throughout Chautauqua County. They have taken appropriate steps and asked to have this done.

It's been done. This bill merely makes a technical correction to the chapter that's already in place.

SENATOR HEVESI: Thank you.

Mr. President, would the sponsor continue to yield?

ACTING PRESIDENT KUHL: Senator McGee, do you yield to another question from Senator Hevesi?

SENATOR McGEE: Before I yield, Mr. President, I'd like to announce an immediate meeting of the Transportation Committee in Room 328.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Transportation Committee, immediate -

SENATOR McGEE: I'm sorry, may I correct myself. It was the Committee on Labor.

Thank you very much.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Committee on Labor, immediate meeting of the Committee on Labor in Room 328.

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

Yes, Senator Hevesi.

ACTING PRESIDENT KUHL: And

Senator McGee yields to a question from you, Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President.

Senator McGee, the original chapter that was passed provided this exemption without naming the county, but did it by delineating the population requirements of those who would be included under the law. And the original chapter included any locality with a population of more than 133,000 and less than 141,000.

My question to you is, since we have seen other bills of this nature with those very specific population delineations intended to include in the catchment of the provisions of this bill very specific areas, would you have any objection to voting in favor of a piece of legislation that also provided it to anybody else, any county in the state of New York, not excluding anybody?

SENATOR McGEE: In answer to a question such as that, Senator Hevesi, let me say this. I always say to the individual who asks a question on any proposed legislation

which I have not seen, I certainly would keep that in mind when I read the bill.

SENATOR HEVESI: Okay. Thank you. Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Hevesi, on the bill.

SENATOR HEVESI: Thank you.

I'm going to vote for this bill, Mr. President, but only because this bill is a technical correction to a chapter that we passed last year that was obviously deficient.

But I would like to point out, Mr. President, that if this legislation was the initial enabling legislation such as we saw last year, I would vote against it. And I'm going to vote against any other bill that comes before us that on a piecemeal basis seeks to provide an obviously prudent benefit to members of volunteer fire-fighting and ambulance companies throughout the state, for the simple reason that the exclusion of everyone else is unfair, flat out unfair.

And I don't understand why, as policy in New York State, we don't provide the discretion to every single county within the

State of New York the ability, based presumably on the local finances and the ability of each local county to finance this type of a tax break, why don't we give them the discretion to go ahead and do it, instead of saying, We'll give it to this county or that county, and by definition exclude everybody else.

And I just want to point out, because we had -- Senator Rath had a bill on this last year, and I raised the exact same objections. In New York City, despite the perception that's out there, and I think we went a long way to correcting it last year, we have volunteer ambulance companies in New York City, many of them. And we have, shockingly, volunteer fire-fighting companies, despite the fact that in New York City we have a professional fire-fighting and a professional ambulance corps and now the ambulance system is within the FDNY. It was merged a number of years ago. It used to be a separate EMS service.

But let me repeat for the record, New York City has volunteer fire-fighting

companies, New York City has volunteer ambulance companies. And if it's good enough to provide a benefit to counties throughout New York State such as the county represented so ably by Senator McGee and the one represented by Senator Rath last year, then I certainly think it's fair to allow New York City, in its discretion, with the City Council voting and the advice and consent of the mayor of New York City, if they so chose, to give this benefit to individuals who are performing this terrific service for the residents of New York City -- and, by the way, of Nassau County and Suffolk and Orange and Rockland and Putnam and every other county in the state.

So I'm going to vote for this bill because the technical amendment, the correction that we're making, is prudent. Last year's chapter, irrespective of whether I would have voted for that, last year's chapter should have included cities, because that's just an oversight. So I'm going to vote for this.

But in the future, I will vote against any bill that does this on a piecemeal

basis. Every single person in New York State should have the potential benefit, if the municipality in which they reside chooses to bestow that benefit upon anybody serving all the residents of that constituency, that community, by being a volunteer ambulance employee or a volunteer firefighter.

Thank you, Mr. President.

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

The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date as Chapter 609 of the Laws of 2000.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT KUHL: The bill is passed.

Senator McGee.

SENATOR McGEE: Mr. President, would you please call up Calendar 521, by Senator Nozzolio.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 521, by Senator Nozzolio, Senate Print 3703, an act to amend the Executive Law and others, in relation to access to records.

SENATOR MONTGOMERY: Explanation.

ACTING PRESIDENT KUHL: Senator Nozzolio, an explanation of Calendar Number 521 has been requested by the Acting Minority Leader, Senator Montgomery.

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

Mr. President and my colleagues, Calendar Number 521 is an act to amend the Executive Law, the Criminal Procedure Law, the Family Court Act, and the Social Services Law, in relation to the access of records.

This measure was introduced at the request of the Crime Victims Board. And I, as chairman of the Crime Victims, Crime and Corrections Committee, offer this measure to provide the Crime Victims Board access to sealed records -- that's Family Court records, records maintained by the statewide central

registry of child abuse and maltreatment - for the sole purpose of enabling the Crime Victims Board to investigate claims for crime victims' compensation.

The current law provides the board with the power to request assistance from data to DCJS and others. But there are victims across our state who are not eligible for compensation from the Crime Victims Fund because, because of the particular nature of the crime involved, their identities are understandably, and by actions of this Legislature, in records which are sealed.

This opens that seal for verification by the Crime Victims Board for compensation purposes only, provides the recipient, provides the victim the opportunity to be a recipient of funds from the Crime Victims Compensation Board.

ACTING PRESIDENT KUHL: Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Mr. President, I would like to ask a question for clarification.

ACTING PRESIDENT KUHL: Senator

Nozzolio, do you yield to a question from Senator Montgomery?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MONTGOMERY: Yes. Senator Nozzolio -- through you, Mr. President -- are we unsealing the records of noncriminal activities that have been sealed?

SENATOR NOZZOLIO: Yes, Mr. President.

SENATOR MONTGOMERY: And again through you, Mr. President, if I can -

ACTING PRESIDENT KUHL: Senator Nozzolio, do you continue to yield to a question from Senator Montgomery?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MONTGOMERY: And are we now going into the records of Family Court as well? Is this a new level of exposure for unsealed records?

SENATOR NOZZOLIO: Mr. President, to answer Senator Montgomery's question, the answer is yes.

And the reason for that, Senator Montgomery, is that often the victims of individuals who are adjudicated through the Family Court are victims that would be qualified otherwise for compensation by the Crime Victims Compensation Fund but in many cases are denied that compensation, in effect because verification of that victimization could not take place.

That Family Court has a specific purpose. Certainly the purpose is to adjudicate matters of individuals who have not reached a certain age, who are not under the normal criminal justice system.

The fact of the matter is, though, that the victims are victims regardless of how old the perpetrator of that crime was. And a loophole existed in the law, in a sense, by having records sealed at the Family Court level. Those who are victimized by individuals who are adjudicated by the Family Court are out of luck in the sense of getting

any type of compensation.

That's why we believe it necessary here to open up those Family Court records for this specific purpose only.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Yes. Mr. President, I would like to continue, if you would allow me to ask another question.

ACTING PRESIDENT KUHL: Senator Nozzolio, do you continue to yield to a question from Senator Montgomery?

SENATOR NOZZOLIO: Yes, Mr. President, I continue to yield.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MONTGOMERY: Thank you.

So, Senator Nozzolio, we seem to be saying here, with your legislation, the intent that you have is to, no matter what the consequences of the court action for a juvenile at some age -- maybe 12, 13, 14 - and we now have a victim, quote, unquote, who wants to be compensated for whatever happened, that person will be able to approach the Crime

Victims Board and the board will be allowed to unseal the records of that person who was maybe, twenty years ago, 13 when something happened and had the records seal in court.

Is that where we're going with this legislation?

SENATOR NOZZOLIO: Madam President, through you.

Let me clarify that this legislation opens the window of those previously sealed records for the sole, exclusive purpose of ascertaining who is victimized in this particular circumstance so that victim could receive compensation from the Crime Victims Compensation Fund.

Victims don't have the choice of being victimized. They may be victimized by someone who is older and subjected to the normal court procedures, or they may be a victim of a younger criminal who is not under such jurisdiction, is under the jurisdiction of Family Court.

It should not matter for the victim's purposes what court they are -- the matter their perpetrator is adjudicated under.

It should only matter that their victimization should be recorded and transferred to the Crime Victims Board so that compensation can be achieved.

It is not a blanket opening of that record, Madam President. It is not a opening of the record for any other purpose but to ascertain who is victimized so that the Crime Victims Board can apply the proper, appropriate compensation under the statute.

SENATOR MONTGOMERY: Madam President, just one last question.

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

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Montgomery.

SENATOR MONTGOMERY: Senator Nozzolio, is there -- I may have overlooked it. Is there any statute of limitations in your legislation? In other words, is there any point beyond which the Victims Board absolutely will not have access to this information based on a limitation, time

limitation?

SENATOR NOZZOLIO: Madam President, the Crime Victims Compensation Board has certain limitations in and of itself. I cannot indicate any additional statute of limitations placed on this statute. The Crime Victims Board, though, itself has limitations that it must be guided under.

SENATOR MONTGOMERY: Okay. Thank you.

Madam President, just briefly on the legislation.

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

SENATOR MONTGOMERY: Yes, I see that the legislation has been before us a number of times. And we certainly -- many of us have voted no in the past, at least some of us. And I will continue to vote no on this legislation.

I think that there is a specific reason for the state having the Family Court proceedings be allowed to be sealed, in addition to some other kinds of activities, where there is an agreement that in certain

cases records of young people can be sealed.

And it is, I think, a very dangerous opening of this sacred agreement between the state criminal justice system and people that it serves to begin to open this up for any reason, at any time, which this bill does.

Anyone who comes before the Crime Victims Board vis-a-vis this legislation would be able to request that a person's records, juvenile records, Family Court records could be unsealed for what may or may not be a purpose related to that victim's claim. And I just think that we should not be doing this. I am going to continue to vote no.

And I would like to remind my colleagues who have voted no in the past - well, myself and Senator Duane, who is not here today. I'm sure that were he here today, he would continue to vote no as well.

Thank you, Madam President.

THE PRESIDENT: Senator Malcolm Smith.

SENATOR MALCOLM SMITH: Yes, thank you, Madam President. Through you,

Madam President, if the Senator would yield just for quick question.

THE PRESIDENT: Senator McGee.

Excuse me, Senator Smith.

SENATOR McGEE: Please pardon the interruption, but I would like to call an immediate meeting of the Corporations, Authorities and Commissions Committee in Room 328.

THE PRESIDENT: There will be an immediate meeting of the Corporations, Authorities and Commissions Committee in Room 328.

SENATOR McGEE: Thank you.

THE PRESIDENT: You're welcome.

Senator Nozzolio, will you yield for a question?

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Smith.

SENATOR MALCOLM SMITH: Thank you, Madam President.

Through you, Madam President, just some clarity. Do I understand the bill as the

sponsor has offered it that the Crime Victims Board can petition the court on its own to unseal the records, thereby no longer needing judicial intervention for this?

SENATOR NOZZOLIO: Thank you for your indulgence, Senator.

Madam President, that the process is no different than the Crime Victims Board now must exert in obtaining a particular record. There is no additional sanction that this unseals those records upon application of the Crime Victims Board.

SENATOR MALCOLM SMITH: Just one final question, Madam President, through you.

THE PRESIDENT: Senator Nozzolio, will you yield?

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Smith.

SENATOR MALCOLM SMITH: Just my colleague Senator Montgomery asked the question; I believe there was an answer offered. However, you stated that the Crime Victims Board has its own limitations on it

when she asked the question about the statute of limitations as relates to the unsealing of these records, which I think is a viable question.

The concern that she has is the same as I have, which is there shouldn't be some infinite number as to the number of years in which the Crime Victims Board can actually unseal these records. And then you stated that there is the normal limitations that the Crime Victims Board has. My only question is, what limitations are those?

SENATOR NOZZOLIO: Madam President, the Senator's question is extremely appropriate. And let me answer it this way.

That, Senator, the limitations of the Crime Victims Board are primarily limitations of financial circumstance, in the sense that the funds of the Crime Victims Board are all too limited.

That those limitations in effect drive the Crime Victims Board to try to deal with those most immediate and egregious circumstances. They don't have the resources to engage in long-term reviews in terms of

retrospective reviews. They need most priority to focus on those current applications before them. And they deal with those in a timely fashion.

I do not have the exact amount of time that you may be seeking. However, that's likely to be in statute that we are amending. And that, frankly, the board is most limited by the amount of resources available to them and thus available to crime victims.

SENATOR MALCOLM SMITH: Thank you very much.

Madam President, on the bill.

THE PRESIDENT: Yes, Senator Smith, please proceed on the bill.

SENATOR MALCOLM SMITH: I thank Senator Nozzolio for what is normally his very astute explanation on legislation that he's putting forward.

The concern that I do have, though, is the same as Senator Montgomery raised. And that is, is there a fixed statute of limitations as to how long these -- I should say the particular individual's background can be offered up by petitioners through the Crime

Victims Board?

I understand his explanation as it relates to the Crime Victims Board's limitations around the finances available to handle the matter. The unfortunate thing is the way the legislation reads now -- and I haven't seen the amendment -- is that it seems that there's an infinite amount of time in which one's background can be unsealed by virtue of being petitioned by the Crime Victims Board.

And I think that is a problem inherent and that it would cause some difficulty for youngsters. Just as my colleague pointed out, 12 years old today, 20 years old eight years from now, and their records are unsealed for something that occurred when they were at a minor age and unclear about what it is they were doing and why.

So with that, I'm going to have to vote no on the bill this year, because I just think not being able to have a limitation as to when one's records can be unsealed is just a little bit too much discretion for me.

Thank you.

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

Then the debate is closed.

Read the last section.

THE SECRETARY: Section 9. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in negative on Calendar Number 521 are Senators Brown, Hassell-Thompson, Montgomery, and M. Smith. Ayes, 52. Nays, 4.

THE PRESIDENT: The bill is passed.

Senator McGee.

SENATOR McGEE: Madam President, would you kindly lay aside for the day Calendar Number 651, by Senator Maziarz.

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

SENATOR McGEE: And would you kindly call Calendar Number 1019, by Senator Volker.

THE PRESIDENT: The Secretary

will read Calendar 1019.

THE SECRETARY: Calendar Number 1019, by Senator Volker, Senate Print 3865, an act to amend the Criminal Procedure Law and the Family Court Act, in relation to the duration of orders of protection.

SENATOR MONTGOMERY: Explanation.

SENATOR VOLKER: Madam President.

THE PRESIDENT: An explanation has been requested, Senator Volker. Thank you for your promptness.

SENATOR VOLKER: Thank you.

Madam President, this bill, which is introduced at the request of various organizations, and I believe also by the City of New York -- yes, it's the City of New York, and I think backed by a number of activist organizations, and relates to the duration of orders of protection.

One of the things that's been occurring, and I don't think anybody in this chamber has to be told, is that there has been considerable violence in certain cases as orders of protection are expiring. And the rules on orders of protection are somewhat

limited.

And what this bill would do is provide for aggravating circumstances; that is, circumstances where orders of protection are not allowed to lapse in the way in which the law now states -- I think it's something like one to five years, generally speaking - and would allow in certain cases for extended orders of protection to protect, well, primarily women from people who are particularly worrisome people.

One of the things that apparently has happened is that the spouses or people who are part of the household go to jail, and the order of protection in the meantime expires. The person leaves jail -- without the knowledge, in fact, of the person who has the order of protection -- and immediately assaults or confronts the person who was the subject of the order of protection. That person tries to again get an order of protection, but in many cases is unable to do so or it's too late or whatever, they can't go through the process.

So what this would attempt to do is

provide the courts with the maximum discretion in appropriate cases to issue orders of protection for a fixed period of time, and beyond that which was currently authorized for a permanent order of protection.

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

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President, just one question or clarification for me.

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

SENATOR VOLKER: Yes.

THE PRESIDENT: You may proceed.

SENATOR MONTGOMERY: Senator Volker, I'm trying to understand what actually a permanent order of protection means. Does that mean for the rest of your life, or how does that work?

SENATOR VOLKER: You know, Senator, it could mean that. Because it depends on the type of order, now that these records are unlimited. And remember that, with certain people who have a history of

violence and have made -- in some cases done multiple assaults or multiple attempts.

The problem is that if you set up a limited order of protection, you'd have to keep checking to find out, for instance, if they're out of jail, in some cases, or if they're in the area or whatever.

And what this bill attempts to do -- and the City of New York, as I say, has suggested this, as well as, I think, a bar group, if I'm not mistaken, and some of the activist groups -- is give this flexibility to judges in certain cases to provide longer-term orders of protection, so that the dangers of when the orders of protection are lapsing don't occur in certain very, very serious cases.

Now, you know, clearly, if there's an abuse here, you could appeal to the court to have it relieved. But what this does is give more flexibility to judges to make those decisions.

SENATOR MONTGOMERY: Another question to Senator Volker, Madam President.

THE PRESIDENT: Senator Volker,

will you yield?

SENATOR VOLKER: Sure.

THE PRESIDENT: You may proceed, Senator.

SENATOR MONTGOMERY: Senator Volker, on a related issue, in addition to providing a permanent order of protection, which I certainly agree in some instances may be warranted based on the threat to a person, is there any other protection that goes along with the order of protection? Which in many instances has very little meaning, especially in cases of domestic violence where people seem to violate them no matter how long they are or how severe.

SENATOR VOLKER: Not in this bill, Senator. But you make a good point.

And I think what we've been trying to do is with the mandatory arrest provisions and with a number of the provisions that this house has been passing -- and some of them have been passed in the other house -- is an attempt to protect people from particularly vicious people who seem at times to take advantage of the law, so to speak.

This bill doesn't provide any more, although it sets out the circumstances in the -- I think it's Article 8 of the Family Court Act, which is already there, but specifies that it gives the judge more authority to make these decisions.

But you're absolutely correct, this bill does not in itself provide any more protection other than the protection of the law itself and that you can use this statute to provide protection.

But the criminal law in many cases is the only alternative. And I think probably we will have to continue to look at increasing some of those standards to protect people from people who would attack them.

SENATOR MONTGOMERY: Thank you, Senator Volker.

Madam President, just briefly on the bill.

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

SENATOR MONTGOMERY: I think that this is certainly a very good bill. We need to provide for judges, in instances where it's

necessary, the option of permanent or longer extended orders of protection.

I do, however, caution -- and certainly I'm happy that Senator Volker agrees that we need to consider measures which give more than just a false sense of protection and security, which very often is the case with orders of protection. They do not protect women, especially in cases of domestic violence where the person who seeks to injure or abuse a spouse or a person that they want to injure violates the order of protection and injures, severely injures or kills another person.

So I'm certainly agreeing with this legislation, and I would look forward to working with Senator Volker on seeing in what ways we can provide even more genuine protection for women, especially in domestic violence cases.

Thank you, Madam President.

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

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank

you, Madam President. On the bill.

THE PRESIDENT: You may proceed.

SENATOR HASSELL-THOMPSON: Just to support and echo the concerns addressed by Senator Montgomery, that while certainly I support the efforts of Senator Volker and this bill, I think that there are more things that we need to look at and investigate in terms of how do we ensure true protection for women beyond just the order of protection.

And so that at such time as the Senator begins that dialogue, I too would like to volunteer to be supportive of helping with language that would better incorporate some of the concerns that need to be addressed around domestic violence.

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

Then the debate is closed.

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, 56.

THE PRESIDENT: The bill is passed.

Senator McGee.

SENATOR McGEE: Will you please recognize Senator Montgomery.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. I would like unanimous consent to be recorded in the negative on the following bills: Calendar Number 114 and Calendar Number 651.

THE PRESIDENT: Hearing no objection, Senator, you will be so recorded as voting in the negative.

SENATOR MONTGOMERY: Thank you.

THE PRESIDENT: Senator McGee.

SENATOR McGEE: Madam President, will you please call Calendar Number 1023.

THE PRESIDENT: The Secretary will read Calendar 1023.

THE SECRETARY: Calendar Number 1023, by Senator Stafford, Senate Print 4838, an act to amend the General Municipal Law and others, in relation to certain actions.

SENATOR McGEE: Please lay the bill aside for the day.

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

SENATOR McGEE: Madam President, will you please call Calendar Number 1026, by Senator Volker.

THE PRESIDENT: The Secretary will read Calendar 1026.

THE SECRETARY: Calendar Number 1026, by Senator Volker, Senate Print 5385, an act to amend the Mental Hygiene Law, the Correction Law, and the Criminal Procedure Law, in relation to the civil commitment.

SENATOR DOLLINGER: Explanation.

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

SENATOR VOLKER: Well, I can start out by saying this is a very simple bill, but I would not be telling the truth. It is not a very simple bill.

This is a Governor's program bill that has passed this house, I believe, several times before. And as far as I can determine, it is the same bill as passed this house I

believe last year or the year before. I haven't got the papers here, but I know it did pass once before.

The Governor has proposed several civil commitment bills. By that I mean that he initially proposed one I think about four years ago, after our committee, the Codes Committee and myself, had proposed a bill of our own. These bills came after the Supreme Court of the United States upheld a process called civil commitment for the state of - one of the states, I can't remember whether it was Wisconsin or -- I don't remember anymore.

And this bill -- the bill that we had had, and this bill, is based on the civil commitment statute that the state -- I believe it was -- Kansas? Kansas, thank you. State of Kansas. The bills are beginning to move together, as the saying goes -- the state of Kansas.

And there is another Senator in this house who's not here right now who had bet that another state statute would be upheld, and she was wrong. So I was right. We had determined at one point, we looked it

over and we decided that we thought the Kansas statute would be upheld.

And actually, my former counsel, now counsel to DCJS, Ken Connolly, originally drafted a bill for me before he left to go to the Governor's office. And the ironic twist is he also drafted this bill, now that he is, of course, counsel to DCJS.

But in any case, this is the bill that has passed this house on several occasions. It sets up a process when you're dealing with so-called sexually violent predators, people who have for the most part been repetitive sexually violent people. And the way the process works, there is a set process in the bill that follows down 120 days before a person is to be released who is considered under -- if that person was committed under Article 7030 of Criminal Procedure Law, then a petition would be filed which would designate that this person could be considered to be a sexually violent predator.

That would trip, then, a process whereby the person would be evaluated by a

psychiatrist, would then be submitted to the evidence, and the person himself could be submitted to a multidisciplinary panel established by Commissioner of Corrections, in consultation with the Commissioner of Mental Health and Mental Retardation.

And they would set up a panel to determine a recommendation as to whether this person should be referred, and I think it's within 30 days -- they make a recommendation to whether the person is to be considered a sexually violent predator. Their recommendation would go a prosecutor's review committee.

And if that review committee decides that that person should be held, then the person would be recommended or would be assigned for what in effect is a trial or a hearing to determine whether that person should be held in custody after the termination of that term.

The person would be allowed an evaluation again if he should so desire, he or she, and would also be allowed counsel, would have the right to counsel. And there would be

a hearing which would determine, I believe it's by probable cause, initially, whether this person should be brought before the panel and should be tried.

But then this bill does what was not necessarily -- the Supreme Court did not say that at the trial it would have to be proven beyond a reasonable doubt that the respondent or the defendant is a sexually violent predator. But the Governor agreed with our committee's determination that because of the seriousness of this sort of situation that the trial should be beyond a reasonable doubt.

So a determination after a trial or a hearing that a person is a sexually violent predator and therefore should be kept in custody must be made by reasonable doubt, just as, in effect, it is in a standard trial. If that is so, the person is then referred to the Commissioner of Mental Hygiene and would be held by Mental Hygiene.

And there have already been plans, should that happen, as to where these people would be held, in a separate part of a

facility, of several facilities. They're secured facilities; that is, highly secured facilities.

Their civil commitment would be reviewed each year to determine whether they continue to be a danger to society. And they have the rights to counsel, as I say. They have the rights to mental health counseling and so forth. And it's assumed, and I -- more than assumed, they would get whatever treatment is necessary at a mental health facility.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Through you, Madam President, if the sponsor will yield for just a couple of questions.

THE PRESIDENT: Senator Volker, do you yield?

SENATOR VOLKER: Certainly.

THE PRESIDENT: You may proceed.

SENATOR DOLLINGER: Senator, first of all, I appreciate that explanation. I listened carefully, and I think you hit just about every high point in this bill.

My question is, does this bill differ in any detail from the prior bills that we've passed that deal with civil confinement? I know this is the Governor's program bill. And we've done a number of comparable bills.

SENATOR VOLKER: Right.

SENATOR DOLLINGER: But my question is, how does this bill differ from the other versions of civil confinement that we've done?

SENATOR VOLKER: In all honesty, it is -- I would have to say that the Governor's people should be complimented for improving this bill from the standpoint of protections and filling in some of the blanks, as I call it, from the times when we initially drafted civil commitment laws.

This really is -- is it different, for instance, from the last one we passed here? No, essentially it is the same, with possibly some rereferenced sections and so forth.

But it is different from the original bills that we sponsored, because actually it provides more protection, I think,

for the respondents -- not the defendants, necessarily, because these people are already convicted, and they're respondents -- and actually clarifies in many ways how the process would work, who is supposed to take care of certain aspects of it, and further clarifies -- I believe the initial bills talked about rules and regulations set by the Corrections Department and also by Mental Health. And what this does basically is lay it right out as to exactly how the process would go.

So the answer is it is essentially the initial process that we set up, but with clarification as to exactly how the process would occur.

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

THE PRESIDENT: You may proceed, Senator.

SENATOR DOLLINGER: I actually think Senator Volker is absolutely correct about the drafting of this bill. We have dealt with other versions of this concept previously. But at least in my reading of

this bill quickly here, this is the best and I think the fairest draft of a civil confinement bill that I've seen.

There are some minor objections to it, but they're more systemic objections than they are anything else. One is I think we should do this with a firm understanding, Senator Volker, as I'm sure you can appreciate as an attorney, that this could be potentially very expensive, from the point of view not only of providing counsel for the sexually violent predator -- and I think it's always important, Senator Volker, as I'm sure you agree, this is someone who has already been sentenced and completely fulfilled whatever sentence obligation has been imposed on them by a court.

This is someone who we are civilly confining who has really done nothing wrong for which they have not already paid the price that society extracts on them. These are people who, based on our social science, we are convinced are sexually violent predators, and that that state alone makes them a risk to society for which we have the power to confine

them. That means that they are not accused of doing anything specific. They are, in essence, being determined to be a danger to society because of who they are.

That is a concept, as I know, Senator Volker, you're well aware, that is new to our law. We have generally not allowed people to be confined simply because of who they are. We have in some instances allowed civil confinement because people are a danger to themselves or a danger to others, most often in the mental health area in the past.

So this is a new thing that we're doing, and I think we should recognize that it will be expensive. The procedure that we set up here, in order to be fair, these are people who will not have access to private counsel, these will not be appealing respondents or defendants. But nonetheless, these are people who have the right to a fair and honest examination of their psychology and their personal predilections, not only as a prelude to being confined, but at any time during their confinement.

So I would suspect that this bill

will have a significant price tag in terms of additional resources that the courts need to put to bear, district attorneys will need to put it to bear, and the Attorney General will put it to bear.

And the other flaw that I mentioned, Senator Volker, and I know it's one that you're very well aware of, and perhaps at this stage is unavoidable, is that we have to rely on the 18B reimbursement rates to allow individuals to have the assistance of counsel in these determinations.

Senator Volker, I think you agree with us, and we've been working on trying to cure that. The rate of reimbursement under Section 18B of the Judiciary Law is, in my opinion, grossly inadequate. $25 an hour for out-of-court time, $40 an hour for in-court time is not enough to get a competent attorney.

And, Senator Volker, this bill talks about establishing beyond a reasonable doubt certain psychiatric testimony which will require the preparation of experts, the cross-examination of experts, the

cross-examination of representatives of the Attorney General's office and those who have been involved in the criminal confinement of sexually violent predators, all of which I believe is a high level of legal skill.

To reimburse that at the rate of $25 an hour for out-of-court time and $40 for in-court time means that we will, in essence, not be able to attract, in my opinion, any type of quality legal talent to represent these individuals in these cases. And if we can't get quality legal representation, we in essence make civil confinement even more onerous, because those who are confined will not have the access to the legal skill and expertise to present their case in the best fashion.

Madam President, I've voted for the civil commitment of sexually violent predators before. I'm going to vote for it again. But I do think that we need a fair examination of the overall cost, and we've got to be prepared to pay it. And, even more importantly, in order to balance the scales of justice, we have to look during this budget cycle at the

18B problem. Because if we don't, we are in essence allowing extended confinement of people who have committed no crime.

And while I understand the need to protect society from sexually violent predators, it seems to me that every American ought to recoil and be very, very cautious before we confine anyone for who they are and not what they did. And that's the danger in this. I'm willing to tolerate that with the protections built in here.

But my hope would be that when we cure the 18B problem, we'll do it and make this civil confinement fair, justifiable, one that will protect society and balance a protection for individual rights as well.

Thank you, Madam President.

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

Senator Gentile.

SENATOR GENTILE: Yes, thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR GENTILE: On the bill.

THE PRESIDENT: You may proceed

on the bill.

SENATOR GENTILE: Thank you, Madam President.

My colleague Senator Dollinger's concerns are certainly well taken, particularly concerning the 18B reimbursement rates. In a situation like this, I agree, Senator Dollinger, that we need the best representation possible in these situations.

However, I have to say that from the perspective of a former prosecutor, I think I have lost count -- during the time that I prosecuted sex crimes, I think I lost count over the number of times I have encountered a defendant in a sex crime that, when you looked at his or her criminal record, the so-called New York State rap sheet, how many times that person would have had other sexual arrests and convictions on that rap sheet.

And that is a common occurrence among those in the State of New York and, in my case, the City of New York who have prosecuted sex crimes and have run into defendants who have been repeat offenders in

this area.

So this civil commitment bill is certainly something that is a step in protecting those future victims of those people who will continue to commit these types of crimes.

We only have to look to last weekend in the Staten Island newspapers. The Staten Island newspapers on Saturday had a headline that said "Sex Offender Back in Jail." And this was a Staten Islander who is -- a 30-year-old Staten Islander who was convicted of sodomizing a 6-year-old on Staten Island, served his sentence, and then was released and failed to comply with Megan's Law and absconded from the period of January through last weekend. He could not be found.

And when they did find him, where did they find this person? They found him near a school and near an athletic field on Staten Island. And he was arrested at that point based on some tips that were given.

Luckily, nothing has occurred that we know of in the time that he absconded and violated his provisions under Megan's Law.

However, had we Senator Volker's bill in effect at the time that this Staten Islander, this pedophile who was about to be released upon the completion of his sentence, had we Senator's Volker statute in law, this person would have been evaluated under the civil commitment provisions under this bill and, if found to be a continuing danger to the people of Staten Island or the people anywhere in the state of New York, he would have been given -- he would have served possibly a civil commitment, and he would not have been on the streets of Staten Island, he would not have been in the schoolyard, the playground where he was ultimately found.

And so I think that is an example of the types of protections that Senator Volker's bill seeks to provide future victims of individuals like this that may indeed have that kind of history of continually committing these crimes.

This is a good bill. This is a bill that the people of the state of New York need for protection against individuals of this type. And up to now, the district

attorneys of this state have not been able to do more than ultimately ask for a most severe sentence in these cases. Now, given these provisions, they will be allowed to then seek that civil commitment.

Senator Volker, this is a step in the right direction for the protection of the people of the state of New York. And certainly I believe that the due process provisions that you put in here also protects those who are sought to be civilly committed. So it works on both ends. And I think this is a magnificent bill, something that not only should this house pass but the other house too.

Thank you.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Madam President, if I might just speak briefly on the bill.

You know, I very honestly confess that it did not dawn on me until Senator Dollinger brought up the 18B provision that he's absolutely right. And by not dawning on me, I mean in relation just directly to this bill. But it would be very difficult.

The 18B issue is something we really must deal with. For those of you that are not aware, it's an issue of assigned counsels. Now, in this area it would be especially a problem because of the complexity that would be involved.

And I will commit to Senator Dollinger and everybody here that if this bill should be on its way to becoming law -- and we've had some difficulty in the other house -- we will find a way, and although I can't officially speak for the Governor, I think I can speak for the Governor in saying we will find a way to make sure that people are paid -- just as we did, very honestly, under the death penalty, where we were concerned and we set up a process for that - we'll find a way to make sure that the lawyers for the people involved here who could have their liberties taken away from them are properly paid.

Even if we are not able to deal with the 18B issue this year, if this should become law I can assure everybody that we will find a way to make sure that these people are

properly represented and that the lawyers that represent them are properly paid.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, just a second time on the bill.

I greatly appreciate Senator Volker's comments. I think he clearly understands how difficult it will be to recruit counsel at those rates.

And I've said this before, I voted against the death penalty. I'd do it again. But I will say one thing about Senator Volker, the death penalty statute that we passed, at least in the experience in Monroe County, where we've had three death prosecutions, in my opinion as an observer, they have been provided with quality representation because we are paying a market rate for that representation.

And it seems to me that if we want to make sure that the pendulum, which I'm sure, as Senator Volker knows, when you're an accused looks so massive against you -- when you have the district attorney, the attorney

general, all the prior records, all the evidence, the police, the psychiatrists looming against your individual right -- it's somewhat comforting to know you've got a lawyer who's going to be paid at a reasonable rate to be your advocate to defend your right to oppose the government imposing, in this instance, a sanction against you because of who you are and not what you've done.

And it seems to me that because we are doing something in this instance that represents noncriminal activity that we owe it to people to make sure that they get that fair representation.

And, Senator Volker, you're absolutely right, that I think these will be ugly, difficult, complicated, terribly complex cases. And only by giving fair reimbursement for the attorneys that are hired to represent these individuals can we make sure that the power of government does not overstep its bounds.

This bill as drafted I think is a fair balance. But we won't get to a complete balance until we have proper representation

for those who are not accused of a crime but simply accused of a thinking process or an inclination or a predilection that would be dangerous to others. I think we have to be extremely careful. With fair market counsel rates, I think we can get there.

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 12. This act shall take effect on the first day of January.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

THE PRESIDENT: The bill is passed.

Senator McGee.

SENATOR McGEE: Madam President, I would ask that the Senate stand at ease for a moment.

THE PRESIDENT: The Senate stands at ease.

(Whereupon, the Senate stood at

ease at 2:13 p.m.)

(Whereupon, the Senate reconvened at 2:15 p.m.)

SENATOR McGEE: Madam President.

THE PRESIDENT: Senator McGee.

SENATOR McGEE: Would you recognize Senator Volker for a moment, please.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Madam President, just for one second. I would like to remind everybody that tomorrow morning at 8 o'clock the annual memorial service for deceased members of both the Senate and Assembly will be held at St. Mary's Church at Lodge and Pine Streets, if any of you can get there.

For those of you that are new, there's been a tradition here for a memorial service. It is an ecumenical service. We have a rabbi, we have the bishop of -- the Catholic bishop of Albany, and also a Protestant -- the executive director of the Capital Area Council of Churches will be there. And it has become a tradition here.

And we'd appreciate anybody that could arrive there. And also afterwards we

would then have a short breakfast at the Albany Room in the LOB.

Thank you.

SENATOR McGEE: Mr. President, would you recognize Senator Morahan, please.

ACTING PRESIDENT MEIER: Yes, I will.

Senator Morahan.

SENATOR MORAHAN: Yes, Mr. President. I wish to call up my bill, Print 2878A, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MEIER: The Secretary will read.

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

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

ACTING PRESIDENT MEIER: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

SENATOR MORAHAN: Mr. President,

I now offer the following amendments.

ACTING PRESIDENT MEIER: The amendments are received and adopted.

Senator Morahan.

SENATOR MORAHAN: Mr. President, on page 21, I offer the following amendments to Calendar 459, Senate Print 2830, and I ask that this retain its place on the Third Reading Calendar. And that's on behalf of Senator Volker.

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

Senator Morahan.

SENATOR MORAHAN: Mr. President, on behalf of Senator Goodman, on page 27, I offer the following amendments to Calendar 563, Senate Print Number 3972, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR MORAHAN: Thank you so much, Mr. President.

ACTING PRESIDENT MEIER: Senator McGee.

SENATOR McGEE: Mr. President, would you please recognize Senator M. Smith.

ACTING PRESIDENT MEIER: Senator Malcolm Smith.

SENATOR MALCOLM SMITH: Yes, thank you, Mr. President. I'd like to request unanimous consent to be recorded in the negative on Calendar Number 114.

ACTING PRESIDENT MEIER: Without objection, Senator Malcolm Smith will be recorded in the negative on Calendar 114.

SENATOR MALCOLM SMITH: Thank you.

SENATOR McGEE: Mr. President.

ACTING PRESIDENT MEIER: Senator McGee.

SENATOR McGEE: Would you recognize Senator Hassell-Thompson, please.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank

you. Mr. President, I wish to request unanimous consent to be recorded in the negative on Calendar 114 and Calendar 651.

ACTING PRESIDENT MEIER: Without objection, Senator Hassell-Thompson will be recorded in the negative with regard to Calendar Numbers 114 and 651.

SENATOR HASSELL-THOMPSON: Thank you.

ACTING PRESIDENT MEIER: Senator McGee.

SENATOR McGEE: Could we please return to the controversial calendar. And could we call up Senator Stafford's bill, 1023, please.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 1023.

THE SECRETARY: Calendar Number 1023, by Senator Stafford, Senate Print 4838, an act to amend the General Municipal Law and others, in relation to certain actions.

SENATOR DOLLINGER: Explanation.

SENATOR PATERSON: Explanation.

SENATOR McGEE: One moment, please.

ACTING PRESIDENT MEIER: Senator Stafford, an explanation has been requested of Calendar 1023 by Senator Dollinger.

SENATOR STAFFORD: Thank you, Mr. President.

It's not very often that I walk in and walk right on stage. It's a bit difficult for me, being rather shy and retiring. I'm collecting myself here.

I see the bill. This involves communities in the Adirondack Park. Now, just to say that word, or those three words -- it's two words, isn't it -- that sort of -- that causes a debate right there. But what this does -- and it's legislation that our municipalities are interested in.

And this would be if they bond and they have 30 percent of their taxable land owned by the State, they would have to have the permission of the Comptroller. At the present time, if they have 10 percent of their land owned by the State, they need the Comptroller.

Now, you know, very often these issues are more than just numbers and more

than just words. You're talking about people who live in the community, were born there, they lived there all their lives, they believe in the area, it's home to them. And don't forget, they live on land, private land, just like all of you people do, those who don't live in the Adirondack Park.

I myself don't want to get into the debate today on, you know, who's right and who's wrong. I'm getting old enough to know that sometimes we don't know who is right and who's wrong. Of course, I know I'm right on this issue. But I won't get into that.

I see some of my friends ready to stand up already, so what I'll do is sit down. And I'm sure they're not going to ask any questions, so I'll let them . . .

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Strangely enough, Mr. President, I do have a question.

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

SENATOR STAFFORD: Mr. President, I don't find that strange at all.

ACTING PRESIDENT MEIER: I think he yields.

SENATOR PATERSON: Mr. President, is there any evidence that the Comptroller's office, either in its current leadership or in the past, has acted in a way that has been detrimental to these towns by the reviews of these capital expenditures before they've been made?

SENATOR STAFFORD: Well, as always, I get very good advice from my counsel. And once again, he just said something that I was going to share with you. This is a departmental bill from the Department of Audit and Control, otherwise known as the Comptroller's office.

ACTING PRESIDENT MEIER: Senator Paterson.

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

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

SENATOR STAFFORD: Mr. President, it's part of a bill that was a departmental bill. So we just took this part of the bill.

SENATOR PATERSON: Mr. President, my understanding is -- and perhaps Senator Stafford's counsel would like to respond, or Senator Stafford would -- is that the Comptroller's office is currently reviewing this bill to see how they feel about it.

So if the bill came from the Department of Audit and Control, I don't know what they would be reviewing. Because -

SENATOR STAFFORD: Well, Mr. President, I think I could help here. If they have this as part of a departmental bill, I would think that probably they would say that on this specific issue there would be no problem. That would be my analysis here.

And of course, I went to school right down here in your area, and that's where I picked up my reasoning ability.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, we'll be happy to check again. We checked this morning, and the Comptroller's office told us that they weren't familiar with the bill. Perhaps the individual wasn't familiar

with the fact that it was an Audit and Control bill. Obviously, if it's an Audit and Control bill, we would want to support it.

But what I'll do is I'll just ask this general question on the issue, and maybe that will suffice.

First of all, the amendment from 10 percent of the overall land value -- and the reason that when the land value exceeds 10 percent that the Comptroller's office takes jurisdiction is that there's a feeling that there's a compelling state interest. In other words, taxpayers around the state would have to become involved if these decisions turned out to be in some way irrational or even irresponsible.

My understanding is that when the Comptroller's office has reviewed these decisions in the past, they've actually been quite sound, and that the Comptroller's office has rarely ever had to make any comment that was providing any direction in those situations.

My question to Senator Stafford is simply this. To enlarge the territory from

10 percent to 30 percent seems to me like a very great change, to triple the amount of territory that would come within compliance of the review by the Comptroller's office, when in this particular area it was just that their land was starting to exceed 10 percent.

Why such a large disparity between the old threshold and the new one, Senator?

SENATOR STAFFORD: Well, Mr. President, I'd say back in the days when Frank Moore was Comptroller -- of course, he lived in Indian Lake. And then J. Raymond McGovern was Comptroller; he lived in Westchester. And then he was followed by Arthur Levitt, who was Comptroller, who did a fine job, and then followed by the present Comptroller, who there has been no problem. So I want to explain that it is not anything like that.

It's hard for me to really explain, but I will try. This original bill was passed in 1948. And this is now 19 -- no, this is 2001, 2001. And when the communities have to go back and do this, the municipalities, it is a burden on them. And these people like to feel that they are the same as a citizen in

any other part of the state, rather than have to do these things.

Now, if it gets up to 30 percent, maybe we can argue that this should be done. But with 10 percent, I would suggest that that really is not necessary, and up to 30 percent. We didn't pick 30. We picked this figure out of the bill that the Comptroller's office suggested in their bill.

And you know, whenever we get on this issue, it's so difficult. Because, yes, the Adirondacks, it's a -- the area is just tremendous. We all want to make sure that we have a great area in our state. But I explained to you that people live there. We have towns, villages. And really, the issue of fairness comes up.

And if you lived there, I'm sure you'd agree with me. And why should this be for areas in the Adirondack Park when we don't have this type of a law for other areas?

ACTING PRESIDENT MEIER: Senator Farley -- we've got a list. Senator Farley, and then Senator Dollinger.

Senator Farley.

SENATOR FARLEY: I'd just like to rise in support of Senator Stafford's bill. I have a few communities -- I used to have more, before the last reapportionment -- towns that are in the Adirondack Park.

And what you're looking at -- and I don't think you have to be a rocket scientist to see that the Department of Audit and Control doesn't want to have to be involved in reviewing all these bond issues where there's only a minuscule part of the community that is covered by the Adirondack Park Agency.

As a matter of fact, some of my towns do have 10 or 12 percent of their community covered by the agency. No one lives in that part, usually; it's state land. And it's really not part of the issue.

And it would seem very much to me that Audit and Control says if you've got more than a third or 30 percent of your town that is covered by state land, we will review whether it is prudent to review a bond issue. But for 10 percent, you're not talking about an awful lot. And the time has really changed. In some of these communities it's

just burdensome getting the agreement back and sending it down and so forth.

And it seems rather strange to me that Audit and Control says they don't know anything about the bill when this was very much a part of an Audit and Control legislation. And it sounds like Audit and Control, in my judgment, somebody just didn't get the word that was reviewing this particular piece of legislation.

Because it sounds like Audit and Control doesn't want to be bothered or feels it's unnecessary to review a bond issue that is where a community has slightly more than 10 percent.

ACTING PRESIDENT MEIER: Senator Dollinger.

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

I think I'm going to vote against this bill, Mr. President. Let me tell you why.

What this bill says is that -- this is an unusual circumstance, as I understand it. This is an instance in which the State of

New York, which is otherwise exempt from paying real property taxes, this says that there are certain cases where in the Adirondack Park the State of New York does pay taxes on its land.

So we are doing something that we usually don't do any other place in the state. In the buildings that are state-owned buildings and state-owned property in my community, the State of New York doesn't pay taxes, and rightfully so. One level of government should not be obligated to pay real property taxes to another.

But apparently in the Adirondack Park we do do that. We changed our policy and said that because we're preserving state land, we're going to allow it to be assessed by the local communities and we will pay taxes on it as though it were owned by a private citizen.

Under those circumstances, because we're paying the tax voluntarily that we're not obligated to pay, apparently a prior Legislature said, Well, if you're paying more than 10 percent of the taxes for the community you should be in a position where the State

Comptroller, whose job it is to protect our money, that you should be in a position in which you have control over the towns or the villages' expenditures.

Since we don't have a vote -- we're not like a regular property owner that has a vote -- the State Comptroller, to protect the public fisc, would be in a position where their approval was required before there's an expenditure from one of the number of funds that is listed here.

What this bill seeks to do, apparently, without any evidence that that power has been abused by the Comptroller -- I think Senator Paterson asked whether there's any evidence that the Comptroller hasn't gone along with appropriations for highway equipment and salt and needed expenditures out of these repair, maintenance and other funds. Under those circumstances, there's no evidence the Comptroller has been obstructionist in denying his consent.

And even more so, it seems to me, that to protect our money, the State of New York's money, we're now saying, Well,

we're going to jump it from 10 percent to 30 percent. Which means that the Comptroller will have very few instances in which he will actually be able to exercise a control over how the state's contribution to tax -- to these villages and towns to have any control over how they're spent.

I think that's a bad idea, and I think without a justification that says that the Comptroller has not been a good public citizen, that he has not granted approvals in a timely fashion -- or if he has failed to approve them at all, then, Senator Stafford, I would stand here and say if he's being an obstructionist and doing something unreasonable, I would look at changing this bill.

But at this point it seems to me that the State of New York, when it pays property taxes on property that we would otherwise not have to pay, we are giving these communities a very significant benefit that other communities outside the Park do not get. And under those circumstances, it seems to me it's reasonable to require that the

Comptroller approve the expenditure of those funds in certain instances.

And for that reason, Mr. President, I'm going to vote against this bill. And perhaps if there's a justification in the future that the Comptroller is not being a good citizen for these communities or that his approval has been denied in an unreasonable fashion, then I would reconsider my vote. But in the concept at this point, Mr. President, I vote no.

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

Debate is closed.

Read the last section.

THE SECRETARY: Section 14. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1023 are Senators Dollinger, Hassell-Thompson, Hevesi, and Paterson. Ayes, 52. Nays, 4.

ACTING PRESIDENT MEIER: The bill

is passed.

Senator McGee.

SENATOR McGEE: Mr. President, I would ask that you make a notation that the Social Services Committee meeting that was scheduled for 2:30 will be held at the conclusion of this session in Room 124.

And I would ask that you presently stand at ease.

ACTING PRESIDENT MEIER: The Social Services Committee meeting will be held at the end of session in Room 124.

Senator McGee.

SENATOR McGEE: I would ask that we return to motions.

ACTING PRESIDENT MEIER: Motions and resolutions.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. On behalf of Senator DeFrancisco, I wish to call his bill up, Senate Print 581, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MEIER: The Secretary will read.

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

ACTING PRESIDENT MEIER: Senator Kuhl.

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

ACTING PRESIDENT MEIER: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MEIER: Senator Kuhl.

SENATOR KUHL: I offer up the following amendments, Mr. President.

ACTING PRESIDENT MEIER: The amendments are received and adopted.

Senator McGee.

SENATOR McGEE: Thank you, Mr. President. I would ask that we stand at ease for a moment, please.

ACTING PRESIDENT MEIER: The Senate will stand at ease.

SENATOR McGEE: Thank you.

(Whereupon, the Senate stood at ease at 2:36 p.m.)

(Whereupon, the Senate reconvened at 2:37 p.m.)

SENATOR McGEE: Mr. President, I'd like to call an immediate meeting of the Rules Committee in the Majority Conference Room, please.

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

SENATOR McGEE: The Senate will stand at ease pending the outcome of the Rules Committee meeting.

ACTING PRESIDENT MEIER: The Senate will stand at ease awaiting the report of the Rules Committee.

(Whereupon, the Senate stood at ease at 2:38 p.m.)

(Whereupon, the Senate reconvened at 2:51 p.m.)

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing

committees, I believe there's a report of the Rules Committee at the desk. I ask that it be read.

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

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

Senate Print 801, by Senator Alesi, an act to amend the General Business Law.

917, by Senator Kruger, an act authorizing the City of New York.

1452, by Senator Rath, an act to amend the General Business Law.

1636, by Senator Padavan, an act to amend the Vehicle and Traffic Law.

2342, by Senator M. Smith, an act authorizing the City of New York.

2558, by Senator Stachowski, an act to amend the General Municipal Law.

2597A, by Senator Velella, an act to authorize the Village of Pelham.

2598, by Senator Velella, an act to reopen the special retirement plan.

3213, by Senator Lack, an act to provide.

3768A, by Senator Seward, an act to amend the Insurance Law.

4028, by Senator Velella, an act to amend the Education Law.

4030, by Senator Wright, an act to amend the General Municipal Law.

4597, by Senator Trunzo, an act to amend the Vehicle and Traffic Law.

4631, by Senator Farley, an act to enact the Privacy of Financial Information Act.

4726B, by Senator Lack, an act to authorize the Town of Huntington.

4754, by Senator Marcellino, an act to amend the Navigation Law.

4760A, by Senator Hannon, an act to amend the Executive Law.

5134, by Senator Saland, an act to amend the Family Court Act.

5161, by Senator Bonacic, an at to amend the Public Authorities Law.

5183, by Senator Wright, an act to amend the Vehicle and Traffic Law.

5261, by Senator Trunzo, an act to amend the Highway Law.

5328, by Senator Meier, an act to amend the Education Law.

5337, by Senator McGee, an act to amend the Local Finance Law.

5342, by Senator Seward, an act to amend the Executive Law.

And 5370, by Senator Bonacic, an act to amend the Vehicle and Traffic Law.

All bills ordered direct to third reading.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Move to accept the report of the Rules Committee.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The report of the Rules Committee is accepted.

All bills directly to third reading.

Senator Skelos.

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

ACTING PRESIDENT MEIER: Senator Farley has a motion, I believe.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of Senator Balboni, on page 29, I offer the following amendments to Calendar Number 591, Senate Print 3025, and I ask that the bill retain its place on the Third Reading Calendar.

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

Senator Skelos.

SENATOR SKELOS: Mr. President, there being no further business, I move we adjourn until Wednesday, June 6th, at 11:00 a.m.

ACTING PRESIDENT MEIER: On

motion, the Senate stands adjourned until Wednesday, June 6th, at 11:00 a.m.

(Whereupon, at 2:55 p.m., the Senate adjourned.)