NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

June 13, 2001

11:21 a.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, June 12, the Senate met pursuant to adjournment. The Journal of Monday, June 11, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Meier.

SENATOR MEIER: Thank you, Madam President.

Madam President, amendments are offered to the following Third Reading Calendar bills.

By Senator Goodman, page 14, Calendar 326, Senate Print 733.

By Senator Stafford, page 16, Calendar 392, Senate Print 3918.

By Senator Marchi, page 29, Calendar 668, Senate Print 3382.

By Senator Johnson, page 37, Calendar 777, Senate Print 4604.

Also by Senator Johnson, page 38, Calendar 791, Senate Print 3257.

By Senator Trunzo, at page 48, Calendar 1097, Senate Print 5401.

By Senator Velella, page 15,

Calendar 371, Senate Print 3209.

By Senator Seward, at page 34, Calendar 723, Senate Print 3795A.

Also by Senator Seward, page 34, Calendar 728, Senate Print 5213.

By Senator Balboni, page 47, Calendar 999, Senate Print 5377.

By Senator Goodman, at page 24, Calendar 561, Senate Print 3903.

And by Senator Morahan, at page 23, Calendar 544, Senate Print 3146A.

Madam President, I now move that these bills retain their place on the Third Reading Calendar.

THE PRESIDENT: The amendments are received, and the bills will retain their place on the Third Reading Calendar, Senator Meier.

Senator Skelos.

SENATOR SKELOS: Madam President, are there any substitutions to be made?

THE PRESIDENT: Yes, there are, Senator.

SENATOR SKELOS: Thank you.

THE PRESIDENT: The Secretary

will read.

THE SECRETARY: On page 50, Senator Oppenheimer moves to discharge, from the Committee on Rules, Assembly Bill Number 8343 and substitute it for the identical Senate Bill Number 4815A, Third Reading Calendar 1118.

THE PRESIDENT: The substitution is ordered.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

On behalf of Senator Maziarz, I wish to call up Senate Print Number 4057, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 822, by Senator Maziarz, Senate Print 4057, an act to amend the Not-For-Profit Corporation Law.

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

THE PRESIDENT: The Secretary will call the roll upon reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

SENATOR FUSCHILLO: I now offer the following amendments.

THE PRESIDENT: The amendments are received, Senator.

SENATOR FUSCHILLO: Madam President, on behalf of Senator Wright, I wish to call up Senate Print Number 3525, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 674, by Senator Wright, Senate Print 3525, an act to amend the Environmental Conservation Law.

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

THE PRESIDENT: The Secretary will call the roll upon reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

SENATOR FUSCHILLO: I now offer the following amendments.

THE PRESIDENT: The amendments are received, Senator.

SENATOR FUSCHILLO: Madam President, on behalf of Senator Farley, on page number 32 I offer the following amendments to Calendar Number 702, Senate Print Number 3792, and ask that said bill retain its place on Third Reading Calendar.

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

Senator Skelos.

SENATOR SKELOS: Madam President, if we could go to the noncontroversial calendar at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 123, by Senator Goodman, Senate Print 1729, an act to amend the Real Property Tax Law and the Administrative Code of the City of New York, in relation to the mailing requirements for documents.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 52. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 221, by Member of the Assembly Canestrari, Assembly Print Number 5822B, an act to amend the Education Law, in relation to instruction in motorcycle safety.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 245, by Senator Lack, Senate Print 1916, an

act to amend the Real Property Law, in relation to requiring.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 442, by Senator Skelos, Senate Print 420A, an act to amend the Correction Law, in relation to the registration of sex offenders.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 23. This act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 443, by Senator Skelos, Senate Print 1264, an act to amend the Correction Law, in relation to requiring.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 446, by Senator LaValle, Senate Print 3368A, an act to amend the Correction Law, in relation to additional crimes.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 522, by Senator Skelos, Senate Print 3946, an act to amend the Correction Law, in relation to the registration of sex offenders.

THE PRESIDENT: Read the last section.

SENATOR PATERSON: Lay that aside, Madam President.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 530, by Member of the Assembly Schimminger, Assembly Print Number 7710, an act to amend the Retirement and Social Security Law -

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 555, by Senator Maziarz, Senate Print 2166A, an act to amend the Tax Law, in relation to the distribution.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect December 1, 2001.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 644, by Senator Volker, Senate Print 2305, an act to amend the Penal Law, in relation to assaults against transit employees.

SENATOR HEVESI: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 733, by Senator Larkin, Senate Print 4251, an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law, in relation to authorizing.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 782, by Member of the Assembly Rivera,

Assembly Print Number 7699A, an act to amend the Estates, Powers and Trusts Law, in relation to the authority.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 828, by Senator Bonacic, Senate Print 5118A, an act to amend Chapter 555 of the Laws of 1989.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 829, by Senator Bonacic, Senate Print 5119A, an act to amend Chapter 915 of the Laws of 1982.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 866, by Senator Trunzo, Senate Print 5202, an act to amend the Canal Law, in relation to the jurisdictional transfer.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 74. This act shall take effect in 90 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 926, by Senator McGee, Senate Print 3065A, an act to amend the Election Law, in relation to the declination of designations.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1068, by the Assembly Committee on Rules, Assembly Print Number 8503A, an act to amend the Labor Law and the Public Officers Law, in relation to public access.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 7. This act shall take effect on the 60th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1111, by Senator Gentile, Senate Print 1615, an act to amend the Penal Law, in relation to disseminating indecent material.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1112, by Senator Alesi, Senate Print 2193A, an act to amend the Alcoholic Beverage Control Law, in relation to certain violations.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1113, by Senator Meier, Senate Print 2723 -

SENATOR SAMPSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1114, by Senator Volker, Senate Print 3093A, an act to amend the Real Property Tax Law, in relation to providing a tax exemption.

SENATOR HEVESI: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1117, by Senator Trunzo, Senate Print 4720, an act in relation to authorizing the inclusion.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This

act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1118, substituted earlier today by the Assembly Committee on Rules, Assembly Print Number 8343, an act to amend the Town Law and the Public Officers Law, in relation to removing.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1119, by Senator Spano, Senate Print 5253, an act to amend the Workers' Compensation Law and Chapter 729 of the Laws of 1993.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1120, by Senator Padavan, Senate Print 5318, an act in relation to establishing the calendar flexibility pilot program.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Malcolm Smith, to explain your vote.

SENATOR MALCOLM SMITH: Thank you, Madam President.

Just very briefly on the bill, 1120, I just wanted to give kudos to my

colleague Senator Padavan. What this bill would do for many schools in the borough which I have been fortunate to be a part of and represent is actually open up close to 8,000 slots for additional students.

It will have a year-round educational program which will be very supportive and very helpful to many of the youngsters throughout Queens -- and hopefully eventually throughout the state, if it so chooses -- to keep them off the street, keep them busy, keep them active, give them additional educational incentives to be involved in different programs that are going on.

I think this is a bright day for the borough of Queens. And again, to Senator Padavan, who is always pointed and has the right issues for schools, kudos to him. Thank you very much, Senator.

THE PRESIDENT: Senator Hevesi, to explain your vote.

SENATOR HEVESI: Thank you, Madam President.

I want to echo the comments of the

Senator who just referred to the need that we have in New York City, the acute need for additional space. And we always focus on capital school construction. And unfortunately, that's not going to solve our problem.

We have an influx of immigrants coming into the borough over the next five or ten years that will far outpace the massive capital school construction program that we currently have underway. So we have to start looking at new and innovative approaches.

And I do commend Senator Padavan on bringing this legislation. I also commend Terri Thomson, the Queens representative on the Board of Education, for pushing through what is a complicated proposal here that's going to create additional school space without building any additional school space.

This is the kind of innovative approach that we need to look to in the future, because we're just not going to be able to build the number of seats required to ensure that every child in New York City has a desk in a classroom in a school building that

is in good condition.

So this is smart government, and I commend the sponsor for bringing it. I hope everyone supports it.

THE PRESIDENT: Senator Smith and Senator Hevesi, you will both be recorded as voting in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1121, by Senator Bruno, Senate Print -

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

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

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

SENATOR SKELOS: Madam President, if we could go to the controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number

522, by Senator Skelos, Senate Print 3946, an act to amend the Correction Law, in relation to the registration of sex offenders.

SENATOR PATERSON: Explanation.

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

Senator Paterson.

SENATOR PATERSON: Madam President, that was a reflex response. I actually understand this bill. I don't need an explanation.

And actually, I thank Senator Skelos for the legislation.

THE PRESIDENT: Do you wish to be heard on the bill, Senator Paterson?

SENATOR PATERSON: I was just heard. Thank you, Madam President.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 13. This act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 644, by Senator Volker, Senate Print 2305, an act to amend the Penal Law, in relation to assaults against transit employees.

SENATOR PATERSON: Explanation.

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

SENATOR VOLKER: Madam President, this is a bill that frankly has been around for a couple of years in different forms - more than a couple of years, in fact. And I'll be very honest with you, it results from a problem that many of us believe, that the penalties for assault is grossly undermanaged, as we call it.

Presently, a D felony is provided only for assaults against police officers, firefighters, paramedics, and emergency medical service technicians. This would increase the penalty for attacks on transit workers, which we are told are happening at a quite decidedly and unfortunately quite a rapid and -- quite a rapid increase.

This bill is a little broader than some of the bills that we've had in the past, and I think points up my personal opinion as to the problem here. And this is particularly true in New York City, because the penalty in most cases for such assaults is an A misdemeanor.

If you know anything about the New York City criminal justice system these days, a misdemeanor is about the same as a traffic offense or less in upstate New York, where they hand you a notice to come into court at some point. The problem is I think that the district attorneys really pay little attention to any of these unless it's at least an E felony.

So this bill -- what this bill would do would be to increase the penalty for what amounts to a serious attack on transit workers to a Class D felony, for which the maximum sentence would be seven years in prison.

And, you know, the retort to that is, Well, why don't you just pass a bill that would generally raise the assault penalties?

Well, we've done that in this house a number of times. And what we tend to find is that in all candor, with the Assembly, that the way that you can eventually pass increases in assault penalties is to specify certain groups.

And I've done that over the years, and others have done it, and that's the way we've increased the penalty in the assault area.

THE PRESIDENT: Senator Hevesi.

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

THE PRESIDENT: Senator Volker, will you yield?

SENATOR VOLKER: Why, certainly.

THE PRESIDENT: You may proceed.

SENATOR HEVESI: Thank you.

Am I understanding correctly, we're moving from the potential from an A misdemeanor to a D felony?

SENATOR VOLKER: Yeah. For serious assaults. The ordinary assaults would probably be more like harassment.

But what we're doing is we're

saying assault second, which is a serious assault, as you know, would be punishable by a D felony with a maximum term of seven years in prison. And as you know, it's not a mandatory sentence, it's an indeterminate sentence of up to seven years in prison.

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

SENATOR VOLKER: Sure.

THE PRESIDENT: Senator Volker yields.

You may proceed, Senator.

SENATOR HEVESI: Thank you.

So we're talking about assault in the second degree that we're elevating from an A misdemeanor to a D felony?

SENATOR VOLKER: Right. Right.

SENATOR HEVESI: I guess my first question here is, why are we moving to a D felony as opposed to an E felony? That's the first question.

SENATOR VOLKER: Well, that's a good question. I think the reason is is because the assault seconds that we have already done in the areas of police officers,

firefighters, and so forth have been in the D felony area. So we're just moving these people, these names, into that section.

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

THE PRESIDENT: Senator Volker, will you yield?

SENATOR VOLKER: Why, certainly.

THE PRESIDENT: You may proceed, Senator Hevesi.

SENATOR HEVESI: I'm not clear. If the maximum penalty for assault in the second degree is an A misdemeanor, why are we jumping two levels to provide additional protections to this classification of people?

SENATOR VOLKER: Because essentially that's what we did, virtually did with police officers, firefighters, and emergency personnel.

Might I say -- and I probably hesitate to say this on the floor, but I will -- of course, there's always the possibility that we can get a compromise with the Assembly for an E felony.

(Laughter.)

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

THE PRESIDENT: Senator Volker, will you yield?

SENATOR VOLKER: Yes, certainly.

THE PRESIDENT: You may proceed.

SENATOR HEVESI: I thank the sponsor for his subtle candor.

Can you define for us what assault -- what would constitute an assault in the second degree?

SENATOR VOLKER: Well, assault in the second degree is basically where there is a fairly severe injury.

And the reason I say fairly severe, the courts have really limited assault second over the years, which is one reason why we increased the penalty, to what amounts to either a broken bone or a -- in some cases broken cheekbones. I mean, fairly serious injuries. It says serious injury.

Now what, you know, is a serious injury is a determination that is made - someone, you know, hits somebody, uses a club

or something of that nature. Otherwise, it would be what we would call an ordinary assault, which would still be a misdemeanor is what it would be. And that's an ordinary assault third, which is a misdemeanor generally. And that's what it would be.

So it has to have a serious injury in order to be classified as an assault second.

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

THE PRESIDENT: Senator Volker, will you yield?

SENATOR VOLKER: Yes, certainly.

THE PRESIDENT: You may proceed, Senator.

SENATOR HEVESI: Thank you.

Just for my edification, assault in the first degree, what is the additional element that has to be present?

SENATOR VOLKER: Assault in the first degree, you have intent to commit an assault with a serious injury where a person is seriously injured. And it adds the element of intent to seriously injure.

And in other words, in that case you virtually have to have a weapon. And so in other words, it isn't just a matter of punching someone or hitting them, you have to have clear intent to commit a serious injury and can actually seriously injure them.

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

THE PRESIDENT: Senator Volker, will you yield?

SENATOR VOLKER: Yes.

THE PRESIDENT: You may proceed, Senator Hevesi.

SENATOR HEVESI: It seems to me that if we are going to recognize that assaults on certain individuals -- and I guess I'll address that in a moment -- where there is serious bodily damage inflicted, that that should be a -- that additional penalties should be a protection afforded to everybody in the citizenry.

So why don't we elevate second-degree assault to a felony-level offense? I'm not suggesting a D, maybe an

E felony. Is there an argument against doing that?

SENATOR VOLKER: No. I think you're absolutely right.

SENATOR HEVESI: Thank you.

Madam President -- Mr. President, would the sponsor continue to yield?

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

SENATOR VOLKER: I certainly do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you.

Let me just for a minute -- because I am somewhat troubled about the prospect, the notion of providing additional penalties for this particular class of people. Let me state at the outset this is quite different than what we did with hate crimes legislation or the like.

And I have always supported additional penalties, both as a deterrent and as an a justifiable punitive measure, for individuals who assault police officers or peace officers or anybody else who is engaged

in some type of law enforcement activity.

My question to you -- and I believe you mentioned this in your opening comments about this bill -- aside from police officers, firefighters or EMS workers, ambulance workers, all of whom must put themselves in a position of physically being present in tension-filled situations where there is conflict occurring, where the danger that is present to them is greater than the danger of an assault being inflicted on the average person, is there any other type of government worker in New York State who enjoys the protections that would be afforded under this bill?

SENATOR VOLKER: No. But I guess I would ask the question -- you know New York City better than I do. And I guess the question is, do you think that train operators and bus dispatchers and ticket inspectors are not in a pretty tough situation in many cases?

I think unfortunately they are, and they've been assaulted at a fairly increasing rate. And I think that's why they have looked for an additional penalty, because there have

been some pretty serious assaults that apparently have ended up with almost no penalties or extremely minor penalties.

And by the way, I just want to say that I wasn't trying to be a wise guy when I said I think you're right about the fact we should upgrade the total penalties. That has been my argument. And we've passed bills here that would upgrade the penalties in general. We have been unsuccessful for a decade in the other house.

So I guess what I'm saying to you is that this is an alternative. I'm not saying it's the best alternative, but I'm saying that it is an alternative that has been asked of us and asked of me by people who feel that they've been attacked and assaulted. And so we feel that it's something that we should move.

If the Assembly -- and I'll be perfectly honest -- said how about if we make it an E felony, that bill would be printed by this evening and we'd probably get it on the floor as soon as possible and we'd send it over. I mean -- but in all honesty, we

haven't got that breakthrough yet.

SENATOR HEVESI: Thank you.

Mr. President, would the sponsor continue to yield?

ACTING PRESIDENT MEIER: Senator Volker, do you yield?

SENATOR VOLKER: Why, certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Is there any statistical or anecdotal evidence that shows that -- and I'm not disputing that transit workers are sometimes assaulted. And if they're being assaulted and there's serious bodily damage being inflicted upon them and the perpetrators are not being prosecuted sufficiently, that may not be a problem with New York State law, that may be a problem with whatever prosecutor has jurisdiction there. That's the first point I want to make.

The second point I'd like to make here is, is there any evidence to show that transit workers -- who of course, by definition, they are going to come into contact with more people than the average

person would. But is their level of assault, their percentage of assault any higher than, for example, parks workers who, during the summer, may be dealing with people who are intoxicated or what have you, or any other municipal worker? Why this group, is my question.

SENATOR VOLKER: And the answer to that one is, the transit workers union -- I can assure you a few years ago that question was asked of us when we did a bill similar to this. And they brought in all sorts of statistics that showed, particularly in New York City and in Buffalo and I think in Rochester, that they had an increasing number -- I think in New York City it was - my recollection is, and I'd have to go back - and I'll be very honest with you, I didn't bring that material. But I know they brought in statistics that showed like a hundred percent increase in assaults.

This was years ago. I mean, New York City now is a calmer place, thankfully, and there aren't as many violent felonies and as much crime. But it's still -

you know, we know, and you know as well as I do, that there's still a lot of confrontations, and in the city of Buffalo also.

And I would say to you this, that I think there is evidence -- and by the way, I'll look for it, now that you've brought it up. But I think there is evidence that these types of individuals, in the crowded situations that they are, are much more likely to be in assaultive situations than, for instance, parks people and so forth. Who, by the way, may well be peace officers and therefore would be covered also under a higher standard. That's one of the things about it.

These are people that are not covered under any of those categories unless the person who's there -- for instance, a police officer standing right next to, say, a ticket inspector or a conductor would be covered by assault second, and the same person right next to him, who is in the same situation, would not.

SENATOR HEVESI: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Hevesi, on the bill.

SENATOR HEVESI: Thank you, Mr. President. I want to thank the sponsor for his thorough explanation and responsiveness to my questions.

I'm going to vote against this bill. And I want to be clear about why I'm voting against it, notwithstanding the fact that I recognize, because I know, that the unions that represent these very able and dedicated workers have a real concern about the safety of their employees.

Having said that, I don't think that this is the remedy that we should be implementing in order to address that situation. And I'm very concerned that this will throw completely out of whack our system of equity, of justice in the penal code.

I don't know why it is that a cleaner or a porter or a station maintainer is more likely to be assaulted, the victim of an assault than anybody else in the general public, save the fact that they are in contact with more people. I don't understand why

that's true.

I fully support any additional penalties in order to (a) provide a deterrence and (b) to provide the appropriate punishment for anybody who assaults a police officer or an EMS worker or a corrections officer or the protection that we afford to individuals in New York City who give tickets out, parking tickets, who have frequently come under assault.

All of these individuals are a target because of what they do, not as a consequence of the fact that they are in a situation and may happen to be assaulted.

I may be walking down the street and happen to be assaulted. And if I was walking down crowded streets with greater frequency and regularity than noncrowded streets, I would be more likely to be assaulted too. But nothing inherent about Dan Hevesi, I don't think, makes me more likely to be assaulted -- except some of my political positions sometimes, maybe.

So I don't think we should be providing these extra additional penalties

just for this category of worker, because then we would have to do this for anybody who came and said that we want additional punishment for people who assault those clerks in New York State, maybe, who are at a ticket window and deal with people who are coming to protest moving violations, for example. That's a dangerous road to go down.

But I will suggest the following. I don't understand why it is in our penal code -- and Senator Volker kind of intimated the reason why this is, and I respect what he said, and it's a problem. If a second-degree assault is only a misdemeanor offense and because of that situation we're not adequately deterring people, that's a real problem.

And if I'm assaulted and my arm is broken, or somebody else's, be they a transit worker or anybody else in society, an A misdemeanor seems to me grossly insufficient to (a) deter and (b) punish. So I would support any effort that Senator Volker or anybody else would make to make a felony offense out of a second-degree assault.

In addition, if the transit workers

who would come under the protections of this legislation want to do additional things to ensure the safety of their employees, without doing a twofold increase -- I shouldn't say twofold -- by jumping two levels in a felony offense, not to an E but to a D, there are other things that can be done.

They should request additional protection by the police department in New York City. They can have more stringent work rules. They can provide greater on-the-job protection for their employees by having better lighting, by having two employees together at once instead of one employee, all these other things. I'd be amenable to all of them.

But going in and saying that transit workers should be -- the assaulters of transit workers should be eligible for D-felony-level penalties, or even E-level-felony penalties, when nobody else in society is eligible for them is just not the right thing to do.

And, you know, we had a whole debate when hate crimes was passed here, and

there were a whole bunch of people who didn't want to provide additional penalties for people who were assaulted just because they were elderly, disabled, gay, because of their race or ethnicity or anything else. And a lot of people said even if somebody is assaulted based on those intangible characteristics, we shouldn't provide additional protection. A person is a person is a person.

And I fought against them strenuously, along with Senator Duane and most of my colleagues on this side of the aisle, saying no, we have to protect individuals if they're assaulted based on that characteristic.

And I fully support any penalties to protect individuals who are by definition working in a situation where they are more likely than the average person to be assaulted. That is not true of transit workers, and therefore I oppose this bill.

And I would ask that my colleagues oppose this bill, and would commend Senator Volker for his work in the criminal justice area and urge him, instead of this, let's move

forward and criminalize second-degree assault as an E felony and provide everybody with the protections that the transit workers are now calling for, because everybody could benefit from those protections.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. On the bill.

I find myself in a very awkward position to my colleague here. I very rarely, as you know, in this chamber have supported any or many of Senator Volker's bills. However, today I have -- I find myself, as I said, in a very peculiar situation because of having a husband who was a transit worker for 21 years and remembering the numbers of incidences where he felt he was in danger, where he personally was put in danger and his colleagues and workers were put in danger.

It is interesting that because the term "transit workers" includes not only bus drivers but also people who work for the Transit Authority, it seems to give rise to a

concern that maybe people who clean stations and whatever are not in danger or may not be deserving of the same protections that everybody else is entitled to. I find that a strange -- I found that a strange argument.

One of the things that concerns me about this bill, which is the real horns of my dilemma, is, again, why are we jumping from a misdemeanor to a D felony as opposed to an E felony?

I have argued many, many times that the way in which sometimes we look to remedy situations may be a little bit drastic. And I'm not sure that perhaps I'm not contradicting myself when I say that I'm in support of the intent of the bill but I still have problems with increasing penalties that don't seem to be the appropriate response and answer to how to come to a conclusion.

I am in support of this bill because I know that there are transit workers in the broadest definition, and perhaps not as the porters and whatever, but certainly those who drive buses and trains who find themselves in situations that we might not think of as

being dangerous, but they are.

And so, Senator Volker, I find myself supporting you in this bill, and the unions, because I have had firsthand experience as to the kind of dangers that transit workers and other public workers may find themselves in.

But I do have a dilemma about your increasing it from a misdemeanor to a D felony, and I wish we could address that piece of the bill.

ACTING PRESIDENT MEIER: Senator Volker.

SENATOR VOLKER: I just want to say, Senator Hevesi, Senator Hassell-Thompson, I happen to agree with Senator Hevesi. I mean that in a way, having served with your father, having been here so long, I was just thinking about the fact that virtually every one of these people who are in the Class D felonies already, the assault second, that it took a lot of years to do this.

I hesitate to tell you, but under the system that we are in now, unfortunately sometimes you have to do things that are

not -- that on its surface are things that we would prefer we didn't have to do it in that way.

By that I mean we've had bills before this house, and I think we passed one this year, that would upgrade the penalties generally for assault second. And you are absolutely right, that is the best way to do it. The only unfortunate part of it, we haven't been successful.

So what we've found is that eventually the way that we have been able to do things here is to continue to put pressure on and pass what you could term special bills or whatever. And frankly, the reason there is the number of people in here, as long as we're going to do a bill for transit workers, we might as well put all the people listed in there.

I would be willing to bet you - and that's probably a bad term. I would not be surprised if next year, which happens to be an even year, we may well do a bill here, and frankly it will probably be a Class E felony, although I don't know, and probably will be a

little more limited in that area, that may well deal with this issue. That's just a thought of mine.

But I don't say -- I don't disagree with you. I guess my problem is sometimes the philosophy of criminal justice and the practicality of it tend to merge together. And that's really the reason that this bill is here.

ACTING PRESIDENT MEIER: Senator Paterson.

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

ACTING PRESIDENT MEIER: Senator Volker, do you yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Senator, what is the point of view of the uniformed services regarding these types of bills?

Because my fear is what will happen, after we finish adding to the protected classes, is that the police will come back and say, Listen, we're the ones who

are really under attack, and they'll be right.

And they'll say, We need to upgrade this further, because we want to be set apart from these other municipal employees, or employees of an entity, because we're the ones who are really at risk and we're the ones who annually endure casualties and even death. And they will be absolutely right.

So in an attempt to maintain this kind of sliding scale of who is preferred to who in terms of the victimization of crime, what we're actually doing is just upgrading criminal penalties. And I thought what we wanted to do was to set aside those who have a special duty, like the police or perhaps firefighters.

But we're getting to a point now where it's so broad that I would, if I were a police officer, I think I might resent the idea that others who, you know, are not merely in the danger that I'm in, don't nearly go to protect the public in the form that I do, get the same treatment under the law.

It would be better, then, to just have a uniform standard for everybody if we're

going to be too inclusive.

SENATOR VOLKER: Senator, you are right. And I think there probably would be some police officers who might be a little upset over it, except for one thing.

As a former police officer myself, I do talk to some law enforcement people. They're happy, and they are happy when the present statute is upheld. And by that I mean they'll be happy to have other people in the same category as long as they feel that the assault-second process is done in a proper way.

They still feel that a police officer is in a different position from ordinary people. That is, that they -- I know of judges who say, Well, you're a police officer and you're expected to get beat up. I mean, I've heard that. I heard that with myself. That really bothers law enforcement people.

I don't really think that they - I've never heard them oppose any bill that would extend the penalties as long as the penalties are upheld and as long as the judges

and the prosecutors are willing to enforce the penalties against the people who assault them.

So while there might be some people who would feel that way -- and I understand what you're saying. But I think you will find that -- most of the law enforcement people that I know totally agree that assault is grossly underdone and that the penalties need to be increased. Because remember, there's assault on themselves and assault on people whose crimes they investigate. And they feel very strongly that there has been a laxity by many judges and sometimes prosecutors.

And, Senator, that's what brought on mandatory minimum sentences in this state. The gross inequities between downstate New York and upstate New York in sentencing is what brought on the minimum sentences.

So I only point that out to you because I think that I have never heard law enforcement groups rail against extending this statute. But I think there are some that would probably say, Well, maybe you should increase it some more. But we know that you can only do so much.

And I think if this statute is upheld -- that is, the present law against police officers and law enforcement people, they'll be very happy.

ACTING PRESIDENT MEIER: Senator Montgomery.

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

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

SENATOR VOLKER: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Yes, Senator Volker, I just want to be sure I understand exactly what we're doing here.

It is that an assault in the second degree currently is classed as an A misdemeanor, which carries a maximum penalty of one year -

SENATOR VOLKER: Essentially, that's what it is.

SENATOR MONTGOMERY: -- up to one year in prison.

SENATOR VOLKER: Essentially,

that's what it is.

SENATOR MONTGOMERY: And we're changing it, but your bill would change that to be a Class D felony with a maximum of seven years.

SENATOR VOLKER: Up to seven years, that's correct.

SENATOR MONTGOMERY: Up to seven years. Thank you very much.

SENATOR VOLKER: You're welcome.

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

Debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55. Nays, 2. Senators Hevesi and Montgomery recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 733, by Senator Larkin, Senate Print 4251, an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law.

SENATOR LACHMAN: Explanation.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Larkin, an explanation has been requested of Calendar 733 by Senator Paterson.

SENATOR LARKIN: Thank you, Mr. President.

Senator Paterson, this is a Racing and Wagering bill that creates a new Article 11 to the Racing and Wagering Law to authorize New York to enter interstate compacts on licensures in live racing, and permits a simple application to satisfy all member states' requirements for licensing.

The compact is responsible for investigating license applications, license renewals, entering into agreements with government agencies to provide these services, and charge and collection of fees.

Once a license is issued, the licensee can participate in horse racing in

all of the member states. New York will still issue its own license to those that want to race just in the state of New York.

For information, the member states now include Delaware, Louisiana, Florida, Virginia, West Virginia, Kentucky, Nebraska, and Washington. States that are in the process of application, such as New York, include California, Texas, and New Jersey. And the states that automatically today accept the compact's license are Pennsylvania, Maryland, Iowa, Colorado, and Ontario.

Under the compact, New York could accept either the compact license or the New-York-issued license for the following positions: owners of horses, trainers of horses, jockeys in thoroughbred, and drivers on the harness tracks.

In issuing licenses, the compact will use the strictest standard combined from all of the member states. The compact, in issuing a license, will look at the character, competence, financial backgrounds, criminal histories, all past violations of the racing law, all of the items that are used now by

New York to issue a license.

As an additional protection, this legislation provides that if any state within the compact objects to the issuance of a license to an individual, that such license shall become null and void. The compact states have agreed to amend the compact agreements to include this New York provision.

This compact has worked. It's endorsed by the international organization.

Now, what are the benefits to New York when you look at it? Member states will be able to share financial and criminal information to ensure that only qualified persons of unquestionable integrity will be permitted to participate in the horse racing industry. It will reduce New York's annual financial outlays to regulate this industry, since it will share its expenses with other states.

For the racing industry, it will reduce overhead costs that are entailed for licensing separately in each state that a person races in.

Now, the question, Senator

Paterson, comes up with the trial lawyers' opposition. Well, let's look at what they state in their opposition. They oppose the bill because it would immunize compact actions if they were done in good faith instead of using the negligence standard of care.

The good-faith standard is commonly used for all activities conducted by public officials. Changing the standard now would expose these specific racing officials to a higher standard of care than is used against all other state employees.

ACTING PRESIDENT MEIER: Senator Paterson.

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

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

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Well, I didn't know that we were talking about state and federal employees. I thought we were talking

about employees of the compact. So they're not, in a sense, public servants. They would be the equivalent of what I think other workers would be.

And the negligence standard is one that presumes that the individual is going to act reasonably to protect the public from foreseeable harm.

The good-faith standard is a very hard standard to disprove. You have to prove that the person acted in bad faith, which means that you have to really convince a court of what's going on in the individual's mind. Which is a whole lot harder than to say what the reasonable person would have done in a similar situation.

And all I'm asking is even if we do apply the standard of what public servants are, there's a wide range of individuals who are going to be working for the compact -- the party states, different areas -- and are going to have a wide range of responsibilities.

I probably could accept this legislation if it was more narrow and was specific about those individuals who take

action that is analogous to what would be the public-servant standard.

But here we have individuals who are not going to be public servants. They are, at the same time, going to be making decision on contracts and a lot of other decisions.

The compact itself I have absolutely no problem with. I think it's a great step in the right direction, and I certainly want to compliment you for your work on that.

But it's just this one issue of why all of these employees are going to be considered to be public servants and, secondly, why we are going to use a standard in an area where we certainly are going to recruit the best employees and the ones who evidence the greatest integrity, but similarly, as we find even at the highest levels of government, or at least so they say, that there are misfeasances of duty to that regard.

So it's sometimes hard to judge integrity. And what I'm saying is that there

are people who are victimized by these actions -- people who don't come from other planets, they're people who you and I know. And I don't know what right they're going to have when it's so hard to disprove a good-faith standard.

SENATOR LARKIN: Well, Senator Paterson, we're only using the standards that are used now when we have the NAIC compact. We'll be doing the same -

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: I'm sorry, was the Senator finished?

SENATOR LARKIN: No, I didn't want to interrupt you, you were -- I didn't want to finish. You were talking.

SENATOR PATERSON: Oh, thank you.

SENATOR LARKIN: We have this on NAIC compacts. We'll be doing it on NCOL [ph] compacts. And we have a lot of other compacts.

And don't forget, these are employees of our states. And what higher standard are we leveling them to? These are

state employees. Are we saying now that -

SENATOR PATERSON: Mr. President, maybe -

SENATOR LARKIN: -- we're going to change the rule and, just because the compact has to do with the racing industry, we're going to have a new standard?

SENATOR PATERSON: Then, Mr. President, perhaps a clarification is in order. If Senator Larkin would yield for a question.

ACTING PRESIDENT MEIER: Senator Larkin, do you yield?

SENATOR LARKIN: Yes, sir.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: So you're saying, Senator, that the coverage is restricted to state employees and employees of the compact?

SENATOR LARKIN: Yes.

SENATOR PATERSON: No one else had asked privately, or just who's employed by the pari-mutuel, these -

SENATOR LARKIN: David, these are

the people that are going to work on the issuance of licenses.

The biggest thing we did in New York was they had some things in there, as I mentioned before, that we didn't agree with. They have taken it out and they've inserted New York laws, which as far as I'm concerned were more strict.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Well, Mr. President, if it is only the employees, if it's not, you know, the jockeys that work for the racetrack and that type of thing getting the coverage, then I think that Senator Larkin is correct, that the standard of care that's used there is a good-faith standard, because of the wide range of responsibility that we understand that state public servants have.

I would -- I guess that persuades me to vote for the bill. I will do it in good faith of my own, assuming that that's actually the case. And I will rely on the assurance that Senator Larkin has given me that it only applies to that strict standard of

employment-employee relationship as it's transversed through the states.

I would assume that anyone else employed in different fashion would not be eligible for this -- what I think it would be in those cases extreme coverage, to the detriment of the plaintiff in a prospective lawsuit.

SENATOR LARKIN: Thank you.

ACTING PRESIDENT MEIER: Senator Dollinger.

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

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

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Senator, I'm concerned about the voting strength of the various parties in this bill. Could you tell me the names of the states that are currently in the compact?

SENATOR LARKIN: Yes. Member

states include Delaware, Louisiana, Florida, Virginia, West Virginia, Kentucky, Nebraska, and Washington.

And other states right now in the process, similar to New York, include California, Texas, and New Jersey. And the states right now that automatically accept the license include Pennsylvania, Maryland, Iowa, Colorado, and Ontario, British Columbia.

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

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

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: If we did not join this compact and simply passed a bill that said if you get a license from the compact you can then race in New York, would we have the same effect? Would the practical effect be the same?

SENATOR LARKIN: No. What this

compact is trying to do, it's something, Richard, like they're trying to do in the milk compact or what they're doing at the federal level with the Gram-Leach-Bliley, that if you don't do it, the feds are going to take it over.

What this allows us to do is cooperate with the states sharing information. And as David pointed out, these are public employees that we're going to have that are going to be working on this.

I'm convinced, having talked to Mr. Hoblock and having talked to some of the people in the industry, the sharing of the information is going to save a lot of time, computerized, it's going to be cost-effective, and it's going to benefit all of the tracks. It's going to benefit the states specifically.

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

ACTING PRESIDENT MEIER: Senator Larkin, do you yield?

The sponsor yields.

SENATOR DOLLINGER: We could get

that benefit of -

SENATOR LARKIN: We could not do that today, Richard, unless we join the compact.

If you're in Pennsylvania, you're a part of the compact, and I want to know about the X,Y,Z branch of horse breeders or what, and I need that information because they're coming to New York, you will not transfer that to me because I'm not a member of the compact.

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

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

SENATOR LARKIN: Yes, Mr. President.

SENATOR SAMPSON: The sponsor yields.

SENATOR DOLLINGER: Then I need a clarification. I thought you suggested that Pennsylvania was not in the compact, but yet -

SENATOR LARKIN: No, I was giving you a -- Richard, I made an explanation to you

of what could happen. If we have a state that is in the compact and we're not in the compact, they're not required to share any information with us.

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

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

SENATOR LARKIN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: But if we passed a law that said if you have a license from the compact you can come here without further licensure in New York, wouldn't we get the benefit of the compact without belonging? In other words, we could recognize a license granted by the compact.

SENATOR LARKIN: You know, there's a thing called the Privacy Act. We could not share that, nor could they share it with us.

SENATOR DOLLINGER: Okay.

Through you, Mr. President, if

Senator Larkin will continue to yield.

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

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Let me tell you my concern about this compact. And I had the same concern with the milk compact for another reason, but I voted against that too.

The reason I'm concerned is that we would end up, New York will end up with one vote on the compact; is that correct?

SENATOR LARKIN: Yes.

SENATOR DOLLINGER: And Delaware will end up with one vote on the compact. And West Virginia will end up with one vote on the compact.

And I would just -- Senator, through the President, we're going to end up in a compact where we have a huge, a very significant racing industry, and we're going to end up with one vote. And much smaller states -- and I know Kentucky is in the

compact, which has a very large industry. But nonetheless, we're going to end up in a compact with a bunch of very small states.

And I would suggest, Senator Larkin, don't we really have that Madisonian problem? We're in essence going into a body which is governed like a senate, and, instead, shouldn't we be in a body in which the compact is governed like a house? In other words, the people who bring the most to the table should have greater strength inside the compact?

SENATOR LARKIN: Richard, to change the rules of the compact you need a two-thirds vote. That I think gives us the protection that we need.

SENATOR DOLLINGER: But through you, Mr. President, isn't it more difficult to get the two-thirds vote if we only have one vote and Delaware and West Virginia and Louisiana, much smaller states -- which I assume have much smaller track handlers and much smaller racing industries -- they're going to each have a vote? We've only got one too.

We're a big state with a -- as you

well know, Senator; you've been one of its biggest advocates, as have other members of the Majority, about our horse racing industry, the importance of this industry to the state, the importance to the tourism, the importance of our state breeding programs. Are we going to be in a compact where we only get one vote with Delaware?

SENATOR LARKIN: Well, Richard, I've discussed this not just with Racing and Wagering, who submitted it, but I've talked at length to the track owners, I've talked to the breeders, I've talked to every entity of the racing industry. And they believe that this is in the best interest of New York.

New York racing is not at its peak, as it was 25 or 30 years ago. We're on the decline. What we need now is to join something that can be of benefit to us. If we're going to be able to exchange information and still comply with all of the privacy acts, we believe that we will be in the best position.

In the state of Pennsylvania, for example, the question arose just like you did,

Richard: You know, we're doing more track work than West Virginia is. But when they looked at what it could do for them, what it would bring to the track, what it would do to make sure that people want to race in your state, it was deemed to be in the best interest of the state of Pennsylvania.

SENATOR DOLLINGER: Senator Larkin, I greatly appreciate that explanation.

I agree with you in concept. The problem is I think that the governance system of the compact is tilted in favor of small states.

We're about to join a compact in which we're going to bring a very significant industry to the table. We have, as you know, Senator Larkin, a century-long scheme of organized state involvement in the race program, very careful controls of the stewards and of our entire racing program, which we've spent a hundred years setting up rules that work, to try to keep the tracks alive, to make the industry work.

And yet we're going to join a compact in which, when we go into a room and

someone says "Let's vote on this," we're going to say, We're the State of New York, we're going to cast our vote in favor of X, and Delaware is going to show up with a little tiny -- which I assume, I don't know a lot about the Delaware racing industry -- but they're going to show up and say, Well, guess what, New York? I'm sorry, but we're going to cast our vote against you.

And we just wiped out, we just neutralized the vote of New York State.

I know that these compacts are becoming enormously fashionable. I mean, we've come to the conclusion we're not going to have the federal government control racing programs, so we're going to have the states get together and do it. We're going to recreate this image of the United States of America. We're going to govern these things by compacts between the states.

I don't mind those compacts except for one thing. And that is that when a big state like New York shows up at the table and Delaware says to us, Guess what, we'll let you in, but you only get one vote. All those

people, all that industry that you have there, you only end up with one vote.

I would just strongly suggest that the compact formulators go back to the theory of a bicameral governance system in which the big states have more oomph and more power in these contracts because they bring more to the table. And if there were a weighted voting system in this, if there were a size of the handle or size of the tracks or size of the industry handle, I might be willing to go along.

But at least as it's drafted currently -- I agree with you, Senator Larkin, it's advantageous to New York to join this compact. I don't think it's advantageous for us to join it when we get the same vote as Delaware or the same vote as West Virginia.

I would suggest the compact thinkers go back and come up with a solution that says if you bring more to the table, you get a bigger weighted vote. Until we get that, I think it's a mistake for us to join.

ACTING PRESIDENT MEIER: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, there will be an immediate meeting of the Rules Committee in the Majority Conference Room.

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

Any other Senator wish to be heard on the bill?

Hearing none, debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 733 are Senators Brown, Dollinger, and M. Smith. Ayes, 54. Nays, 3.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Yes, Mr.

President, I would like unanimous consent to be recorded in the negative on Calendars 446 and 522.

ACTING PRESIDENT MEIER: Without objection, Senator Montgomery will be recorded in the negative with regard to Calendars 446 and 522.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 1114, by Senator Volker, Senate Print 3093A, an act to amend the Real Property Tax Law, in relation to providing.

SENATOR PATERSON: Explanation.

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

SENATOR VOLKER: Yeah, Mr. President, this is a bill that is on the floor because of the problem we're having all over upstate New York with volunteer firefighters and volunteer ambulance workers. We're having a great deal of difficulty in finding enough people.

Essentially, what this bill would

do, very quickly -- and if you read it, it may not be -- it's a little difficult sometimes to read. It says that in Erie County, the County of Erie, the towns and villages in Erie could provide -- could provide, it's not that they must -- could provide up to a 10 percent assessment reduction for volunteer firefighters and ambulance workers who comply with certain rules that are written into the bill. Which the maximum, however, of the assessed valuation that they would be granted a reduction in would be $3,000.

It's a fairly modest, I think, bill designed to provide an incentive for volunteer firefighters and volunteer ambulance people in the towns of Erie County.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: If the sponsor would yield.

ACTING PRESIDENT MEIER: Senator Volker?

SENATOR VOLKER: Sure, I do.

ACTING PRESIDENT MEIER: He yields.

SENATOR OPPENHEIMER: This is a valuable bill. And I would like to see it also in Westchester County. Since it's up to local option, it really is the municipal government's call on the issue.

I seem to recall that we had a bill similar to this that affected the state. Or is my recollection wrong?

SENATOR VOLKER: You mean a statewide bill?

SENATOR OPPENHEIMER: Yeah. You don't recall?

SENATOR VOLKER: I don't know if there's a statewide bill or not. But the difficulty, I guess, has been that -- there may have been a bill. It may not have been local option.

I think the problem here relates to the question of mandates. I understand there's a number of other bills that provide for local -- the possibility of local counties that could provide this. But I don't know of an overall bill.

Personally, I think it might be a good idea. I think the NYCOM would probably

oppose it. Because even though there's an option, they would probably say it's one of those indirect mandates, if you know what I mean. In other words, if you offer it, it's pretty tough for them not to accept it.

And I'll be frank with you, the County of Erie is not excited about this bill. In fact, I was told today by their lobbyist they don't like it.

SENATOR OPPENHEIMER: Thank you, Senator.

On the bill.

ACTING PRESIDENT McGEE: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: While Senator Volker says this is an upstate issue, I guess, I guess we are now calling Westchester County upstate. Because we have many departments, including the village I live in, which are a hundred percent volunteer.

And the problem is that we are having a lot of difficulty attracting younger members to the department. And I think that if a community option, at the municipal government's option, they offer a 10 percent

discount on the property tax, I think that might attract some additional people.

It's a serious consideration. We feel that our volunteer fire department in the village of Mamaroneck probably saves us probably $1.5 million to $2 million a year. So for us, it's big bucks, as it is for most of the communities that have volunteer firefighters. And I think anything we can do to attract a younger cadre would be great.

So I'm supporting this. I'd like to see it statewide.

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

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill

is passed.

Senator Marcellino.

SENATOR MARCELLINO: Would you just continue in the regular order, please, Madam President.

ACTING PRESIDENT McGEE: The chair recognizes Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President. I rise to request unanimous consent to be recorded in the negative on Calendar Number 733, Senate Print 4251.

ACTING PRESIDENT McGEE: So noted. Thank you, Senator.

SENATOR HASSELL-THOMPSON: Thank you.

ACTING PRESIDENT McGEE: Senator Sampson.

SENATOR SAMPSON: Yes, Madam President. I rise to ask for unanimous consent to be recorded in the negative on Calendar Number 733.

ACTING PRESIDENT McGEE: The Secretary will so note.

The Secretary will read.

THE SECRETARY: Calendar Number 1113, by Senator Meier, Senate Print 2723, an act to amend the Vehicle and Traffic Law, in relation to authorizing.

SENATOR SAMPSON: Explanation.

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

SENATOR MEIER: Thank you, Madam President.

This bill amends the Vehicle and Traffic Law to permit the Commissioner of Motor Vehicles to establish a program that would either deny a license upon application or suspend an existing driver's license where someone is the subject of a warrant for arrest.

It provides for a minimum of 90 days' notification. It provides that the suspension would be pulled back upon proof that the warrant had been vacated or upon proof that the warrant doesn't exist.

The principle behind the bill is a simple one. A driver's license is a privilege granted by this state. And citizens who don't take care of one of the most fundamental

obligations that there is, which is to respond in court to a warrant of arrest, should not be accorded privileges.

ACTING PRESIDENT McGEE: Senator Sampson.

SENATOR SAMPSON: Yes, Madam President. Through you, would the sponsor yield for a few questions?

ACTING PRESIDENT McGEE: Senator Meier, will you yield?

SENATOR MEIER: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR SAMPSON: Yes, through you, Madam President, how would the DMV be linked up or how would the DMV be notified if a bench warrant or whatever warrant was outstanding?

SENATOR MEIER: Well, Madam President, that information is contained in a database maintained by the Division of Criminal Justice Services. And the bill does provide for cooperation between the Department of Motor Vehicles and the Division of Criminal

Justice Services to have access to that database.

SENATOR SAMPSON: Through you, Madam President, will the sponsor continue to yield for a question?

ACTING PRESIDENT McGEE: Senator Meier, do you continue to yield?

SENATOR MEIER: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR SAMPSON: And through you, Madam President. Once the driver is notified that his license may be suspended for an outstanding warrant, he subsequently then goes to the court and has that warrant vacated, how soon thereafter does DMV -- is DMV notified by the court system, or the individual himself has to present such documentation to DMV?

SENATOR MEIER: Madam President, actually the requirement to prove that either the warrant has been vacated or never existed to begin with could be satisfied either way, by submission of satisfactory proof from

either the individual concerned or by the court itself.

I might note, parenthetically, as a practitioner my experience in the past has always been that it's best to secure a document from the court and to transmit it oneself.

SENATOR SAMPSON: Through you, Madam President, will the sponsor continue to yield?

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

SENATOR MEIER: Gladly, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR SAMPSON: Through you, Madam President. Once that document is submitted to the DMV, how long would it take DMV to make that correction within its system?

SENATOR MEIER: Well, Madam President, that is -- I don't know if I can give a definitive answer to that. But again, understanding that this is anecdotal, based on personal experience, my own experience has

been that that doesn't take that long, a matter of days.

SENATOR SAMPSON: Through you, Madam President, would the sponsor continue to yield?

ACTING PRESIDENT McGEE: Senator Meier, do you continue to yield?

SENATOR MEIER: Certainly, Madam President.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR SAMPSON: Through you, Madam President. My concern is that once you submit that notification to DMV and DMV fails to put it in the system, then a person's license is therefore suspended. And, say, while driving in town or driving in his village, he is then stopped by the police on a routine check, and it comes up that this gentleman's license is suspended. Subsequently, the individual is arrested. But for a mistake, by failing to put such a notification in the system, the person is arrested.

So through you, Madam President, so

how can that be prevented?

SENATOR MEIER: Well, Madam President, how can that be prevented? I mean, obviously that can be prevented by the department putting together a program that ensures the efficient processing of these kinds of -- of this kind of information and these kinds of documents.

And I understand, Madam President, that human frailty being what it is, that mistakes occur sometimes and there's no guarantee that we can ever do that. We in point of fact do have some parallels to this in other portions of our law. For example, a similar suspension can take place if someone is delinquent in the payment of child support and so forth.

And so I would be being disingenuous if I said that a mistake can't happen. But the fact that there are any number of scenarios where a mistake might happen doesn't necessarily argue against the bill. I don't think we can let the perfect be the enemy of the good.

SENATOR SAMPSON: Through you,

Madam President.

ACTING PRESIDENT McGEE: Senator Sampson.

SENATOR SAMPSON: Would the sponsor continue to yield?

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

SENATOR MEIER: Certainly, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR SAMPSON: Looking at the bill, it seems that there really is -- no fiscal impact would be placed on the Department of Motor Vehicles if such a bill was to pass.

And my question is, if we're asking that a program be created, we're asking that certain mechanisms be put in place so situations can be prevented where a person who has, one, a warrant has been vacated, notification has been sent to the DMV, and, but for human frailty, an incident, it happens, a mistake is made, shouldn't there be additional monies so we can prevent such a

thing from occurring?

SENATOR MEIER: Well, Madam President, the implementation of this bill requires the use of existing information technology resources, computers, existing personnel. The fiscal impact, if there is any, I think would be exceedingly limited.

And I'm not -- I don't really believe it would require anything additional in the way of appropriation. I think it would most probably be absorbed.

ACTING PRESIDENT McGEE: Senator Sampson.

SENATOR SAMPSON: Through you, Madam President, if the sponsor would yield for just one more question.

ACTING PRESIDENT McGEE: Senator Meier, will you yield for one more question?

SENATOR MEIER: Certainly, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR SAMPSON: In the memo it talks about how Massachusetts puts out over a thousand letters per day. I think if that was

to occur in New York State, we would be putting out more than 1,000 notices per day.

And where is the money that's going to be necessary for us to fulfill our commitment under such legislation?

SENATOR MEIER: Well, first of all, Madam President, the number would not - probably not be greater than what's contained in Massachusetts. Because under New York law, the Department of Motor Vehicles will currently issue suspensions where there's failure to respond to a traffic ticket under the existing scofflaw statute. Massachusetts folds all of that into their statute which deals with other criminal law offenses.

So what we're talking about here are probably, for the most part, some fairly minor or local-criminal-court grades of offenses. So the number probably would not be greater than, it would be somewhat less than the Massachusetts number, probably in the range of 300,000 or so.

And so you're looking at postage, you're looking at the ability to print this stuff out, which is done by computer. And far

be it from me to be critical to the fine people who do business in the various departments of state government, but I think you're looking at a couple of hundred thousand bucks. And I think anybody with a sharp pencil can find that in most places in New York State government.

ACTING PRESIDENT McGEE: Senator Sampson.

SENATOR SAMPSON: Thank you, Madam President.

ACTING PRESIDENT McGEE: Is there any other Senator that wishes 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 January.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 55. Nays,

2. Senators Montgomery and Sampson recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

SENATOR OPPENHEIMER: Madam President.

ACTING PRESIDENT McGEE: Senator Oppenheimer.

SENATOR OPPENHEIMER: If you would, I'd like unanimous consent to be recorded in the negative on Calendar 733.

ACTING PRESIDENT McGEE: The Secretary will note, please.

Senator Stavisky.

SENATOR STAVISKY: Madam President, I too request unanimous consent to be recorded in the negative on Calendar 733, Senate Bill 4251.

ACTING PRESIDENT McGEE: The Secretary will note.

SENATOR STAVISKY: Thank you.

ACTING PRESIDENT McGEE: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President, I would also like to be recorded in

the negative on Calendar 733, with unanimous consent.

ACTING PRESIDENT McGEE: The Secretary will note.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT McGEE: Senator Ada Smith.

SENATOR ADA SMITH: Thank you, Madam President. I was in the Rules Committee, and I would like to have unanimous consent to be recorded in the negative on Calendar Number 733.

ACTING PRESIDENT McGEE: The Secretary will note.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, can we return to the reports of standing committees. I believe you have a report of the Rules Committee, and we'd ask that it be read.

ACTING PRESIDENT McGEE: Reports of standing committees.

The Secretary will read.

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

following bills:

Senate Print 114, by Senator Marcellino, an act to amend the Labor Law.

2360, by Senator Leibell, an act to amend the Public Authorities Law.

2736, by Senator Padavan, an act to amend the Education Law.

3013, by Senator Spano, an act to amend the General Municipal Law.

3316, by Senator Velella, an act to amend the Administrative Code of the City of New York.

3546, by Senator Hoffmann, an act to amend the Agriculture and Markets Law.

3562, by Senator Seward, an act to amend the Education Law.

4011, by Senator Spano, an act to amend the Labor Law.

4390, by Senator Hannon, an act to amend Chapter 483 of the Laws of 1978.

4525, by Senator Nozzolio, an act to amend the Correction Law.

4600, by Senator Trunzo, an act to amend the Vehicle and Traffic Law.

4909, by Senator Velella, an act to

amend the Correction Law.

5036, by Senator Hannon, an act to amend Chapter 535 of the Laws of 1983.

5329A, by Senator Stachowski, an act to amend Chapter 276 of the Laws of 1993.

5339A, by Senator Libous, an act to amend the Real Property Law.

5402, by Senator Trunzo, an act to amend the Public Authorities Law.

5462, by Senator Marcellino, an act to amend Chapter 203 of the Laws of 1999.

5478, by Senator Padavan, an act to amend the Criminal Procedure Law.

And 5482, by the Senate Committee on Rules, an act to amend the Education Law.

All bills ordered direct to third reading.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: Madam President, I move to accept the report of the Rules Committee.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The report is accepted.

Senator Marcellino.

SENATOR MARCELLINO: At this time can we take up Calendar 1123, please.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1123, by Senator Libous, Senate Print 5339A, an act to amend the Real Property Law.

SENATOR MARCELLINO: Madam President, is there a message of necessity at the desk?

ACTING PRESIDENT McGEE: Yes, Senator Marcellino, there is a message of necessity at the desk.

SENATOR MARCELLINO: Move to accept the message of necessity.

ACTING PRESIDENT McGEE: All in favor of accepting the message of necessity say aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The message is accepted.

The Secretary will read.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President. I rise to request unanimous consent to be recorded in the negative on Senate Calendar 733, please.

ACTING PRESIDENT McGEE: The Secretary will note.

SENATOR HEVESI: Thank you.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: Madam President, can we now take up the supplemental calendar.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 673, by Senator Bonacic, Senate Print 2283A, an act to amend the Environmental Conservation Law, in relation to mining exploration.

SENATOR OPPENHEIMER: Explanation, please.

SENATOR MARCELLINO: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

The Secretary will read.

THE SECRETARY: Calendar Number 675, by the Assembly Committee on Rules, Assembly Print Number 8973, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 693, by Senator Meier, Senate Print 4865A, an act to amend the Social Services Law, in relation to receipt.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number

969, by the Assembly Committee on Rules, Assembly Print Number 8974A, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, in regard to Senator Bonacic's bill, which has been laid aside, he's on his way, and we'll hold for that.

But in the meantime, is there any housekeeping at the desk? And if there is, let us take that up now.

ACTING PRESIDENT McGEE: Yes, there is housekeeping.

Senator Meier.

SENATOR MEIER: Thank you, Madam President.

On behalf of Senator Nozzolio, I wish to call up his bill, Print Number 3239, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 445, by Senator Nozzolio, Senate Print 3239, an act to amend the Executive Law.

ACTING PRESIDENT McGEE: Senator Meier.

SENATOR MEIER: Madam President, I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT McGEE: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

SENATOR MEIER: I now offer the following amendments.

ACTING PRESIDENT McGEE: Amendments received.

SENATOR MEIER: Madam President, I wish to call up Senator Goodman's bill, Print Number 729, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 800, by Senator Goodman, Senate Print 729, an act to amend the State Finance Law.

ACTING PRESIDENT McGEE: Senator Meier.

SENATOR MEIER: Madam President, I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT McGEE: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

SENATOR MEIER: I now offer the following amendments.

ACTING PRESIDENT McGEE: Amendments received.

Senator Meier.

SENATOR MEIER: Thank you, Madam President. I wish to call up Senator

Maziarz's bill, Print Number 1899A, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

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

ACTING PRESIDENT McGEE: Senator Meier.

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

ACTING PRESIDENT McGEE: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: Senator Meier.

SENATOR MEIER: I now offer the following amendments.

ACTING PRESIDENT McGEE: Amendments received.

SENATOR MEIER: Madam President, I wish to call up Senator Volker's bill, Print Number 204, recalled from the Assembly, which

is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 228, by Senator Volker, Senate Print 204, an act to amend the Penal Law.

ACTING PRESIDENT McGEE: Senator Meier.

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

ACTING PRESIDENT McGEE: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: Senator Meier.

SENATOR MEIER: Madam President, I now offer the following amendments.

ACTING PRESIDENT McGEE: Amendments received.

Senator Meier.

SENATOR MEIER: Thank you, Madam President.

Amendments are offered to the

following Third Reading Calendar bills:

By Senator Nozzolio, at page 4, Calendar 55, Senate Print 218A.

By Senator Spano, page 24, Calendar 551, Senate Print 4385.

And I now move that these bills retain their place on the Third Reading Calendar.

ACTING PRESIDENT McGEE: The amendments are received and adopted, and the bills will retain their place on the Third Reading Calendar.

Thank you, Senator Meier.

SENATOR MEIER: Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: At this time, Madam President, can we take up Calendar Number 673.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 673, by Senator Bonacic, Senate Print 2283A, an act to amend the Environmental Conservation

Law, in relation to mining exploration.

SENATOR OPPENHEIMER: Explanation.

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

SENATOR BONACIC: Thank you, Madam President.

This is a piece of legislation that will amend the Environmental Conservation Law in relation to mining exploration. It's aimed specifically to help the bluestone mining industry while also protecting the integrity of the environment.

Right now the way it works is we have so many small bluestone miners in, basically, Delaware County. That's where most of the bluestone is located in the state of New York.

In order to get a permit, the requirements are such that you have to hire an engineer, you have to spend quite a bit of money on engineering services. You also prepare surveys outlining the area that you're going to explore. You then have to post a bond. And then it may run you $5,000, $6,000,

$7,000 just to put a shovel in the ground.

And what happens is when they start to explore, there's no bluestone there. They have to close the hole, let -

ACTING PRESIDENT McGEE: Excuse me, Senator Bonacic. Would you suffer an interruption.

Senator Marcellino.

SENATOR MARCELLINO: Excuse me, Senator Bonacic.

We have a couple of members that I'd like to have recognized for purposes of voting. If you can call the roll.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: The chair recognizes Senator Dollinger.

SENATOR DOLLINGER: I'd just ask that I be recorded in the negative, Madam President.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: I ask to be recorded in the negative.

Thank Senator Bonacic for his courtesy.

ACTING PRESIDENT McGEE: So recorded.

Roll call is withdrawn.

Senator Bonacic.

SENATOR BONACIC: So as I started to say, they could spend anywhere from $5,000 to $10,000, start to explore the ground, and there's no bluestone. So they close the ground, reclamation, and walk away, having suffered a terrible financial loss.

A lot of these mom-and-pop bluestone miners have been in the business three, four generations. They don't have the financial means to do these test explorations.

So we worked with the DEC to come up with a plan that would allow a minimum investment, a minimum amount of land to put a shovel in to see if there's bluestone there. And that's what the purpose of this bill is.

These are the safeguards. It's a one-acre piece of land. The permit is only good for a year. There must be an application made 45 days before you put a shovel in the ground. The DEC still can require a bond if they deem it suitable. But at the same time, if they don't think they have to put up any financial security, the DEC can make that decision.

We're trying to be friendly to the small business in the bluestone industry, recognizing that there are a lot of small operations with minimum capital. It's a vital industry in the state of New York. Much of the bluestone goes throughout New York City for a lot of their exhibits.

And this will allow the little guy to stay in the bluestone industry who doesn't have the means to keep putting up $5,000 to $10,000 every time he wants to go dig a hole. That's the purpose of the legislation.

ACTING PRESIDENT McGEE: Senator Oppenheimer.

SENATOR OPPENHEIMER: If the good Senator would yield for some questions.

ACTING PRESIDENT McGEE: Would the good Senator Bonacic yield?

SENATOR BONACIC: I would. Of course.

ACTING PRESIDENT McGEE: The good Senator yields.

SENATOR OPPENHEIMER: I mean, it sounds like Passover.

But why is this mining operation different from all other mining operations?

SENATOR BONACIC: I think that's a great question. And I'm going to answer that question.

Back in 1991, the State of New York wanted to get tough on people involved in mining with gravel operations and construction. People used to go in, dig these big holes, use the materials for construction, and never fill them up.

It was never intended -- when we passed that Omnibus Mining Law with strict regulations to protect the environment, we should never have allowed it to apply to bluestone. Bluestone is not in the same category as those deep, extensive excavations

of the ground that -- and those rules were good for the mining industry, for gravel and stone quarries, but not bluestone.

Bluestone is totally different. When you go in the ground, you never know what you're going to find. And you're really looking for a particular bluestone that's located in a rock. And when you find it, then you go and you get the bluestone, to the extent that it's there.

It's not that when you find it you're digging up -- for example, if a permit was for 26 acres, you never find 26 acres of bluestone. You may find 3 acres. And therefore, you're only extracting that particular product out of the ground.

So what we're trying to do is to say we're not going to allow, even for the bluestone industry, we're not going to allow this huge digging. We're going to confine it to one acre. We're going to let you go dig your holes to see if it's there. If it's not there, reclaim it, fix the one acre, and go on to another site. That's all we're doing.

SENATOR OPPENHEIMER: If the

Senator would yield again.

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

SENATOR BONACIC: I yield to the other good Senator.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR OPPENHEIMER: You know, I would like to be able to do something to help these small mining operations. But you said something that I don't agree with. And that is that they're only extracting bluestone.

So here's the question. There is, as you and I know, something called overburden. It's that amount of additional stone taken out that is not bluestone. And the -- what do you feel the ratio of this overburden is to the bluestone? Because I have been told the ratio of the overburden, which is the stone that is taken out that is not bluestone, is seven times the amount of bluestone.

That is an enormous amount of tonnage. If the bluestone can go up to 999 tons, staying under the 1,000 limit, if

you figure seven times that amount is what's called the overburden -- it's the other stone that's taken out that is not bluestone -- we are talking about a huge environmental impact.

SENATOR BONACIC: Well, first of all, the bluestone is ingrained with larger stone. And there's no process they can do while it's in the ground to separate the bluestone from the rest of the stone. So from that point of view, they have to take the stone out which contains bluestone.

And I'm not sure if the figures are right, but let's stay with your 7-to-1 ratio. They're still going to fill the hole with proper materials. So when you were to drive by or walk by that one-acre hole, you'll never know that that stone is missing. It will still be level, it will not be unsightly to the eye, and you haven't really ruined the environment.

Because you've taken some stone out of the ground, I don't see how that hurts the environment. What hurts the environment is if there's no reclamation. Under this bill, there's reclamation for the one acre.

ACTING PRESIDENT McGEE: Senator Oppenheimer.

SENATOR OPPENHEIMER: If the Senator would yield again.

SENATOR BONACIC: I do yield to the good Senator.

ACTING PRESIDENT McGEE: Senator Bonacic yields again.

SENATOR OPPENHEIMER: The question is -- and I don't know the answer to this -- the overburden, is that ever really removed from the site? Isn't that what is utilized to reclaim the area? Is it ever removed from the site? Why would anyone remove that huge tonnage?

SENATOR BONACIC: I would say to you to keep their expenses down, they put it back in, they put it back into the ground.

SENATOR OPPENHEIMER: Okay. Well, that's what I was thinking as far as all mining operations, that it would not make sense to remove the excess amount that would be utilized in order to refurbish the area.

I think the question is, do you perceive, which I do, that there is a good

deal of serious potential environmental damage in potential soil erosion, in potential runoff from the site into waterways? That happens while the digging is occurring.

SENATOR BONACIC: First of all, we're talking about a very small industry that's in Delaware County. It's about -- it provides about 600 jobs. The DEC has agreed to this arrangement. Mining of bluestone has been going on in this state for, I would think, close to fifty years. And then it started in Sullivan and they found all the bluestone and took it out. Now it's just moved up to Delaware.

And so all of the local municipalities don't have a problem with it. I don't know of any DEC violations that's polluting our waters, or else the DEC would never allow this to go forward.

And Assemblyman Gunther from Sullivan County is carrying the bill in the other house.

ACTING PRESIDENT McGEE: Senator Oppenheimer.

SENATOR OPPENHEIMER: Then I

guess the last question would be what we're trying to do here is to overturn a recent Supreme Court, New York Supreme Court decision that found that the thousand-ton threshold would count the overburden, as I was talking earlier about, as well as the bluestone in the 999-ton total amount. In other words, what would happen then would be that the overburden amount as well as the bluestone amount would be counted in the just under 1,000-ton limit.

The bill before us would remove the overburden and say the bluestone can be up to a thousand tons.

SENATOR BONACIC: Up to.

SENATOR OPPENHEIMER: Now, since the Supreme Court has spoken, you are putting this bill before us which would overturn that decision.

I guess there's nothing more that really can be said on the subject. And so I guess that's not so much of a question, Senator Bonacic, as a statement.

And the statement is that the courts have found that when they said under a thousand tons, they were referring to the

total amount of stone that is removed, the overburden as well as the bluestone. And what this bill would say is that it is just the bluestone that should be that amount of tonnage.

I have difficulty with that. The Sierra Club also has difficulty with that. And as much as I would like to help the small businessman, I feel that the potential for environmental damage is substantial and that soil erosion does occur and that we are talking about a very large quantity of material here.

So I'll be voting no, and I hope I've convinced some of my colleagues.

ACTING PRESIDENT McGEE: Senator Stavisky, why do you rise?

SENATOR STAVISKY: On the bill, Madam President.

ACTING PRESIDENT McGEE: Senator Stavisky, on the bill.

SENATOR STAVISKY: I too will be voting no. The legislation states that the - let me just find it -- the material that's left in the excavated area is to remain there,

it's not going to removed. It seems to me that this is going to be damaging to the environment, which is a very fragile environment.

The legislation, I see, very clearly defines what bluestone is and what they may take and what they may not take. But the residue still remains there. And because of the environmental hazards, Madam President, I wish to be recorded in the negative.

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

Read the last section.

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

ACTING PRESIDENT McGEE: Senator Bonacic.

SENATOR BONACIC: Thank you, Madam President. To explain my vote.

ACTING PRESIDENT McGEE: The Secretary will call the roll first.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator Bonacic.

SENATOR BONACIC: There is a body

of thought out there that whenever you want to do anything to the environment, they don't want you to touch it. They don't want you to remove a leaf from a tree, they don't want you to put a shovel in the ground, they don't want you to create a speck of dust in the area.

When we have these concerns about the environment and runoff, I don't know of any violations that have been cited where they have concerns of overburden with this particular industry.

As I said, this industry has worked with the DEC as a partner in trying to balance the integrity of the environment and keeping it clean, as well as the cost of doing business in the State of New York in providing jobs. And I think it's important that we try to keep that balance as legislators.

I'll be voting in the affirmative.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Bonacic will be recorded in the affirmative.

Senator Paterson.

SENATOR PATERSON: Madam President, it appears to me that there is a

great deal more debris and rocks and just territory that is going to be unearthed to accommodate this 999 tons of bluestone. So it could be as much as 6,994 tons of whatever else comes up with the bluestone.

And as Senator Bonacic pointed out, you have to separate the bluestone out from other rock, which you can't do on the site. So we're not talking about a little digging around the garden, we're talking about quite a lengthy and complicated procedure that's going to take place. That's going to be a lot of moving of land.

And in my opinion, without a permit, if that's the permit limitation, then, you know, really at what point do we start to establish a permit? A thousand tons, in my opinion, is too much.

I vote no.

ACTING PRESIDENT McGEE: How do you vote, Senator Paterson?

SENATOR PATERSON: I vote no, Madam President.

ACTING PRESIDENT McGEE: Senator Paterson will be recorded in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 673 are Senators Connor, Dollinger, Gentile, Hassell-Thompson, Onorato, Oppenheimer, Paterson, Schneiderman, and Stavisky. Ayes, 48. Nays, 9.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, is there any housekeeping at the desk?

ACTING PRESIDENT McGEE: Yes.

Senator Alesi.

SENATOR ALESI: Thank you, Madam President.

On page 50 I offer the following amendments to Calendar Number 1121, Senate Print Number 5359A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT McGEE: Amendments received, and the bill will retain its place on the Third Reading Calendar.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, there being no further business, I move we adjourn until Monday, June 18, at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT McGEE: On motion, the Senate stands adjourned until Monday, June 18th, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 1:14 p.m., the Senate adjourned.)