NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

June 20, 2001

11:26 a.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

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

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

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, June 19, the Senate met pursuant to adjournment. The Journal of Monday, June 18, 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.

The Secretary will read.

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

As a justice of the Supreme Court of the Ninth Judicial District, Edward D. Carni, of Syracuse.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Thank you, Mr. President. Good morning.

THE PRESIDENT: Good morning.

SENATOR LACK: I rise to move the nomination of Edward D. Carni, of Syracuse, as a justice of the Supreme Court for the Ninth Judicial District.

We received the nomination of this fine candidate from the Governor. The committee has examined the credentials of Judge Carni. They have been found to be eminently satisfactory. He appeared before the committee earlier this morning and by unanimous vote was moved to the floor for consideration at this time.

And I would most respectfully yield to my colleague Senator DeFrancisco for purposes of a second.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: Madam President, I really like this job. I enjoy doing what I'm doing. But there are certain occasions when it's very, very satisfying, more than most of the time, and that's an occasion such as today, when a good friend, an outstanding attorney, a good judge -- and basically the best compliment I can give him is a good man -- Ed Carni is going to ascend to the Supreme Court judgeship.

I've known Ed for a very long time, and I've known his family, his wife Sula, who's here, his children, Joe, Alex, and Gabriel, budding politicians, all of them, his parents, Mr. and Mrs. Carni, his mother and father-in-law, Mr. and Mrs. Masouras. They're all here. It's a strong, strong family, strong background, and maybe that's why his character is what it is.

I try a lot of cases, and there's

no question that as a judge you have to know the law, as a judge you have to have certain decorum, you have to make sure that fairness is the result. There's no question in my mind that Ed Carni has all of those qualities to provide a fair trial and justice to all those who go before him.

So as I started at the outset, it's a wonderful pleasure for me to second the nomination and to congratulate the Governor for having the good judgment of appointing judicial candidates like Ed Carni and all of the rest that are before us today.

So I second the nomination.

THE PRESIDENT: The question is on the confirmation of Edward D. Carni, of Syracuse, as a justice of the Supreme Court of the Ninth Judicial District. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

And on behalf of the Senate, as its

President, I want to congratulate Justice Carni and his family on this wonderful elevation and wish you the best of luck.

(Applause.)

THE PRESIDENT: The Secretary will read.

THE SECRETARY: As a judge of the Court of Claims, Dora L. Irizarry, of New York.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Thank you, Madam President.

I rise once again to move the nomination of Dora L. Irizarry as a judge of the Court of Claims. Her credentials have been examined by the committee, have been found to be eminently satisfactory. She appeared before the full Judiciary Committee meeting earlier this morning, was unanimously moved to the floor for consideration at this time.

And I would most respectfully yield to my colleague Senator Goodman for purposes of a second.

THE PRESIDENT: Senator Goodman.

SENATOR GOODMAN: Madam President, it is a privilege and a pleasure for me to second this nomination. Judge Irizarry is presently seated on the Court of Claims, where she's had a very distinguished record indeed. She has presided over felony hearings and trials in the New York County Supreme Court. Prior to this, she's managed a caseload of over a thousand cases annually in the Kings County Supreme Court, Criminal Term, from arraignment to disposition or until ready for trial.

She managed weekly caseloads of over a thousand cases in criminal court, presided over criminal hearings and trials in the State Supreme Court of Kings County and New York City Criminal Court.

At a time when the court system is exceedingly crowded and jammed in many areas, it's very refreshing to know that we have a judge of high administrative skill who will be able to break these logjams and move the cases expeditiously but thoughtfully through the system.

Her employment background is very

substantial, and I will not be able to touch upon all of her distinguished record. But let it be said that she was an assistant district attorney in the office of Robert Morgenthau, she was a special assistant district attorney prior to that in the office of the special narcotics prosecutor, an assistant district attorney in the office of the Honorable Mario Merola in Bronx County.

She was educated at Columbia University Law School and is an alumna of Yale University, from which she received her B.A. degree. She was admitted to the bar of course in various jurisdictions, including the federal court in the Southern and Eastern Districts. She is fluent in English and Spanish, with a command of French.

So here we have a citizen of the world, someone of great skill and capacity whose demonstrated record surely warrants our immediate approval of her nomination.

Thank you very much.

THE PRESIDENT: The question is on the confirmation of Dora L. Irizarry, of New York, as a judge of the Court of Claims.

All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Judge Irizarry is hereby confirmed. And congratulations on behalf of the Senate, and best wishes to you in your new term.

(Applause.)

THE PRESIDENT: The Secretary will read.

THE SECRETARY: As a judge of the Court of Claims, S. Michael Nadel, of New York.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Thank you, Madam President.

I rise once again to move the nomination of S. Michael Nadel, of New York, as a judge of the Court of Claims, to succeed himself.

Judge Nadel's credentials have been examined by the committee, they have been found to be exceedingly in order. He appeared before the committee earlier this morning, was

unanimously moved from the committee to the floor for consideration at this time.

For many members of this chamber, Mike Nadel's past is well known. He was a first assistant counsel to Governor Hugh Carey, deputy chief administrator of the Unified Court System under Chief Judge Lawrence Cooke, a judge of the New York City Criminal Court, counsel to the district attorney of Kings County, and of course now, currently for the last few years, a judge of the Court of Claims, an exceedingly varied, well-known legal career and an excellent, excellent reappointment to the Court of Claims.

And I would respectfully move the nomination, Madam President.

THE PRESIDENT: The question is on the confirmation of S. Michael Nadel, of New York, as a judge of the Court of Claims. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is

hereby confirmed.

And on behalf of the Senate, I'd like to congratulate Judge Nadel on this wonderful achievement. Best wishes.

(Applause.)

THE PRESIDENT: The Secretary will continue to read.

THE SECRETARY: As a judge of the Court of Claims, Mario J. Rossetti, of Williamsville.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Thank you, Madam President.

I respectfully rise to move the nomination of Mario J. Rossetti, of Williamsville, to succeed himself as a judge of the Court of Claims.

We've examined the judge's record, it was found exemplary. He appeared before the committee earlier this morning, was unanimously moved from the committee to the floor for consideration at this time.

And I most happily relinquish the floor to my colleague Senator Rath for purposes of a second.

THE PRESIDENT: Senator Rath.

SENATOR RATH: Thank you, Senator Lack, Madam President.

Judge Rossetti, I'm happy to welcome you here on this wonderful day with your wife, Helen, and your family who have come down from Western New York for a very auspicious occasion.

You were first, of course, appointed in 1987 by Governor Cuomo, reappointed in 1991 for a nine-year term to the Court of Claims. Your experience and your credentials, as Senator Lack has indicated, have been examined; you are more than qualified, with your 26 years of experience in general practice of law, civil court, criminal court, in front of the Port Authority general counsel -- I should say not in front of, but as assistant general counsel to the Niagara-Frontier Port Authority.

And I say that because Judge Rossetti is a man of our community, not only has legal and professional credentials but, when you look at his civil credentials, his activities throughout our community for so

many long years.

And as so many of you, as you've stood up and recognized the judges in your community, I am proud to be able to second the nomination for Judge Rossetti, because he is a friend, he has worked in the trenches with us before he was in the courts, he has been a follower, he has been a leader, and he has indeed raised the opinion and the stature of all judges in the state of New York.

And I'm proud to be able to second you, Judge, welcome you to a new term and say thank you for being here today and thank you to your family for joining you.

Thank you, Madam President.

THE PRESIDENT: Senator Maziarz.

SENATOR MAZIARZ: Thank you, Madam President.

I too rise and second this nomination of Judge Mario J. Rossetti. And as Senator Rath pointed out, Judge Rossetti has been a member of the court now for many years, and I remember him from another life a long time ago. And I just can't think of a finer person or a more fair person to act as a

member of the judiciary in the state of New York, and it's an honor for me to also second his nomination.

And, Madam President, I will now yield to Senator Volker, the senior Senator from Western New York, who was probably up before I was.

SENATOR VOLKER: Senator Maziarz, I'm used to being disregarded. I know you're powerful -

No, anyways, I just want to say that I've known Mario Rossetti, Judge Rossetti for a long, long time. He was first appointed under former Governor Mario Cuomo. He served -- frankly, I think he could have been appointed by any governor in my time in the Legislature because of his stature.

He's a good friend. He's also the father of six children, which is probably enough in itself to take people's time. But he's one of the most respected judges in Erie County, and I think it's an excellent choice, and I know he'll continue to serve as he has in the past.

And I wish him good luck.

THE PRESIDENT: Senator Stachowski.

SENATOR STACHOWSKI: I too would like to rise and second the nomination of Judge Rossetti.

He's been a long-time friend of my family's, and he's done a great job, obviously, with the reappointments, and he'll continue to do a good job. And as proud as we are of the job he does, I'm more proud to say he's my friend.

Thank you.

THE PRESIDENT: The question is on the confirmation of Mario J. Rossetti, of Williamsville, as a judge of the Court of Claims. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

As President of the Senate, I want to congratulate you, Judge. I had the opportunity to work with your son when I was a district attorney, and apparently his

excellence is only a reflection on the excellence he inherited from you.

Best wishes to you.

(Applause.)

THE PRESIDENT: The Secretary will read.

THE SECRETARY: As a judge of the Court of Claims, Edward A. Sheridan, of Clifton Park.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Thank you, Madam President.

I rise to move the nomination of Edward A. Sheridan, of Clifton Park, as a judge of the Court of Claims. We have examined Judge Sheridan's record; it is exemplary. He appeared before the committee earlier this morning, was unanimously moved to the floor for consideration at this time.

And I most respectfully yield to my colleague Senator Hannon for purposes of a second.

THE PRESIDENT: Senator Hannon.

SENATOR HANNON: Yes, Madam President.

In speaking on behalf of Senator Bruno, who on this last scheduled day of session is trying to do several different things at once and can't come out, I simply want to commend to this body the confirmation of Judge Sheridan.

I had a chance to work with Judge Sheridan before he ascended to the bench, and I want to tell you that he is one of the finest lawyers I've ever had a chance to work with.

He had toiled in the Department of Motor Vehicles as their counsel, and even had served for a couple of years as their executive deputy, a truly thankless job, but he was there at a time when that agency really, truly turned around.

Before that, he had been the chief law assistant at the Court of Appeals, preceded by being a law secretary to Matthew Jason, coming out of the Notre Dame School of Law.

And besides all that, not just bringing service on the bench, service in the executive branch, but also service as a

private practitioner, something I think is very essential to our bench.

I want to commend a highly qualified candidate who has done a good job in ten years as Court of Claims and acting Supreme Court justice, Edward Sheridan, to this body.

Thank you, Madam President.

THE PRESIDENT: Senator Breslin.

SENATOR BRESLIN: Thank you, Madam President.

I would echo the remarks of Senator Hannon. As a practicing member of the bar in the Capital District, I've interacted with Judge Sheridan and many people who appear in front of Judge Sheridan, and he is really a lawyer's lawyer. He's very, very bright, as evidenced by the remarks of Senator Hannon, hardworking, fair, and compassionate. And he's really someone we can all be proud of.

And I join with the rest of this chamber to reconfirm Judge Sheridan.

Thank you, Madam President.

THE PRESIDENT: The question is on the confirmation of Edward A. Sheridan, of

Clifton Park, as a judge of the Court of Claims. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Judge Sheridan is hereby confirmed.

As President of the Senate and former Rensselaer County district attorney in particular, I want to congratulate Judge Sheridan as my friend and former colleague. I had the opportunity to work with Judge Sheridan, who reviewed my record frequently as acting county judge in Rensselaer County.

I know personally of his fairness, his compassion, his diligence, his fine intellect. And in all other qualities that would go into making an able judge, he is stellar.

So I wish you the very best, Judge Sheridan, in your reappointment, and continued diligence and service in the Capital Region.

(Applause.)

THE PRESIDENT: The Secretary will continue to read.

THE SECRETARY: As a judge of the Court of Claims, Rena K. Uviller, of New York.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Thank you, Madam President.

I rise once again to move the nomination of Rena K. Uviller as a judge of the Court of Claims, to succeed herself.

Judge Uviller's credentials have been examined by the committee. She is actually very well known to the committee. We were very happy to move her nomination earlier this morning before the full committee, which was done so unanimously, for consideration on the floor at this time.

Judge Uviller has been a very well known judge for over 20 years in Manhattan, first elected to the Civil Court in November of 1978, assigned a couple of years thereafter to the Criminal Court, appointed by the Governor to the Court of Claims, and has been an acting Supreme Court justice for 20 years in New York, handling some very noteworthy cases -- at the same time, always staying in touch with the community and doing exactly

what we expect of well-known, well-regarded acting Supreme Court justices, handling her caseload and staying actively involved as a member in the community, and, quite frankly, with some of the highest known credentials of any judge in the State of New York.

It is a pleasure, Madam President, to move once again the nomination of Rena K. Uviller to succeed herself as a judge of the Court of Claims.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Madam President, I started to say that Judge Uviller and I go way back, but it's not way, we just -- we go back. But we attended a certain law school in Manhattan. And we knew at the time that the judge was going to do well, and she certainly has.

And she's a credit to the bench, and we're so pleased to join in moving her confirmation.

THE PRESIDENT: The question is on the confirmation of Rena K. Uviller, of New York, as a judge of the Court of Claims. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

And on behalf of the Senate, Judge Uviller, I wish you the very best continued success.

(Applause.)

THE PRESIDENT: The Secretary will continue to read.

THE SECRETARY: As a judge of the Court of Claims, William A. Wetzel, of Briarcliff Manor.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Thank you, Madam President.

I rise to move the nomination of William A. Wetzel, of Briarcliff Manor, as a judge of the Court of Claims, to succeed himself.

Judge Wetzel has appeared before the committee before, and again earlier this morning. His credentials were examined and found to be perfectly in order. He appeared

before the committee, which unanimously has moved him to the floor for consideration at this time.

Judge Wetzel has had a long and extraordinary background in public service, as a village trustee, deputy mayor and mayor of Briarcliff Manor, then as a village justice of Briarcliff Manor. He was appointed to the Court of Claims in 1995. Before that, he was a founding partner of the firm of Plunkett, Wetzel, and Jaffe, and has performed admirably as a member of the Court of Claims.

And I am most happy to move his nomination for consideration by the full Senate at this time.

THE PRESIDENT: The question is on the confirmation of William A. Wetzel, of Briarcliff Manor, as a judge of the Court of Claims. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

And on behalf of the Senate, Judge

Wetzel, congratulations and best wishes for continued success.

(Applause.)

THE PRESIDENT: The Secretary will read.

THE SECRETARY: As a judge of the Court of Claims, Michael A. Corriero, of Brooklyn.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Thank you, Madam President. I rise for the last time to move the nomination of Michael A. Corriero, of Brooklyn, to succeed himself as a judge of the Court of Claims. We have reviewed his record, which is exemplary. He appeared before the committee this morning, was unanimously moved to the floor for consideration at this time.

And I would most respectfully yield to my colleague Senator Connor for purposes of a second.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Thank you, Madam President.

First of all, I should disclose to the house and to my colleagues any potential

conflict. I intend to vote on this, but I think it's only fair to disclose that my sons, Brian and Marty, have a dog-walking business, and their very best customer is Judge Corriero, for his dog Cicero. And these past three or four years, my boys have done quite well, as well as a 10- or a 12-year-old can do walking a dog, thanks to Judge Corriero and his lovely wife Mary Ellen.

But I first spoke ten years ago in favor of the judge's confirmation to the Court of Claims. He came to that position at the time with extensive judicial experience. And since 1980, he had served as a Criminal Court judge of the City of New York, and since 1983 had been an acting Supreme Court justice.

He presided even then over special youth parts in criminal courts and had been appointed an acting Supreme Court judge. He served a brief term as a Supreme Court justice on the appointment of the Governor, and then was appointed to the Court of Claims.

He has served in Manhattan with distinction in the Supreme Court. He generally presides in a youth part, which is a

court set aside to try 13- and 14- and 15-year-olds who are being tried as adults for crimes. He has handled some of the most sensitive -- some notorious cases, in fact, from the standpoint of the press coverage and interest in them. Regrettably so, that those cases were so covered, because they were in many cases shocking to the public's conscience.

He has a wonderful reputation as a jurist. He has published, he has taught. He has been a credit to the bench. I am proud to say he is not only my neighbor, he is the resident of the apartment across the hall from mine.

And I'm proud to second his nomination because of his excellent record as a judge. I know he will continue to serve the people of New York in this next term of office.

So, Madam President, I move the confirmation of Judge Corriero's nomination.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, in my long friendship with Senator

Connor it never came up that we had this mutual friend in Judge Corriero.

I was in the Queens DA's office when he moved from the criminal court to acting Supreme Court. I remember him also in Brooklyn. And I've been in the courtroom when he was presiding over the special youth parts.

And, you know, sometimes when you are speaking in those environments you don't know who's actually hearing you. But all of you should have gotten the opportunity to hear some of the things that Judge Corriero said to some of the young people who had run afoul of the law: his encouragement, at the same time admonishment.

Some of those statements were things that I kind of borrowed or repeated in some of the opportunities that we get as legislators to go and speak to younger people, and even to go and speak in some of the correctional institutions.

He's a person who not only has outstanding ability, but the reason I think they gave him the sensitive cases is because he does have this personal sensitivity.

And I guess that you meet people in life sometimes who are that special, and I think we are really very well off as a state to have him on the Court of Claims, to reappoint him, and perhaps in some other service. And I'm very proud to be voting for him.

I would wish that my colleague Senator Connor would reconsider what he said about his 10- and 12-year-old sons and their dog-walking business, that they're doing as well as a 10- or 12-year-old can do. I think they're doing a little better than you and I are right now, Marty.

But we join in our admiration, our respect, and our regale of the efforts and the achievements of Judge Corriero.

THE PRESIDENT: The question is on the confirmation of Michael A. Corriero, of Brooklyn, as a judge of the Court of Claims. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is

hereby confirmed.

And on behalf of the Senate, I wish Judge Corriero every success.

Congratulations.

(Applause.)

THE PRESIDENT: Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator McGee.

SENATOR McGEE: Thank you, Madam President.

On behalf of Senator Marchi, on page number 24 I offer the following amendments to Calendar Number 668, Senate Print Number 3382A, 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 McGEE: Thank you, Madam President.

THE PRESIDENT: Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President. There will be an immediate meeting of the Higher Education Committee in Room 332.

THE PRESIDENT: There will be an immediate meeting of the Higher Education Committee in Room 332.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, may we now take up the noncontroversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 255, by Member of the Assembly Weinstein, Assembly Print Number 4203, an act to amend the Domestic Relations Law.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect 180 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 371, by Senator Velella, Senate Print 3209A, an act to authorize the Village of Pelham Manor.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 417, by Senator Volker, Senate Print 2980, an act to amend the General Business Law, in relation to providing.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 525, by Member of the Assembly Vitaliano, Assembly Print Number 4379, an act to amend the Civil Service Law, in relation to the authority.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 544, by Senator Morahan, Senate Print 3146B, an act to amend the Vehicle and Traffic Law, in relation to the registration fee.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 8. This act shall take effect on the 120th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

571, by the Assembly Committee on Rules, Assembly Print Number 8566, an act to amend the Insurance Law, in relation to clarifying.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 680, by Senator Morahan, Senate Print 3981A, an act authorizing Rita C. Kelly to apply.

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

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, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 754, by Senator Goodman, Senate Print 4777, an act to amend the Real Property Tax Law, in relation to extending.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 789, by Member of the Assembly Gottfried, Assembly Print Number 5522, an act to amend the Public Health Law, in relation to prohibiting.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect 120 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 817, by Senator McGee, Senate Print 4878A, an act to amend the Education Law, in relation to developing.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 879, by Senator Kuhl, Senate Print 3947, an act to amend the Education Law, in relation to the total salary.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 921, by Senator Goodman, Senate Print 4086A, an act to amend the Real Property Tax Law, in relation to income eligibility.

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, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1069, by Senator Spano, Senate Print 5355A, an act to amend the Labor Law, in relation to granting.

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, 48. Nays, 2. Senators Libous and Nozzolio recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1105, by Senator M. Smith, Senate Print 5442, an act authorizing the City of New York to reconvey its interest.

THE PRESIDENT: Read the last section.

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

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

Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1122, by Senator Volker, Senate Print 5469, an act to permit the reopening of the optional twenty-year retirement plan.

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

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, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1131, by Senator Spano, Senate Print 4011, an act to amend the Labor Law, in relation to the reclassification.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1149, by the Senate Committee on Rules, Senate

Print 3761A, an act in relation to authorizing the City of New York.

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

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1166, by Senator Padavan, Senate Print 5556, an act to amend the Real Property Tax Law, in relation to the determination.

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, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1167, by Senator Goodman, Senate Print 5565, an act to amend -

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1201, by Senator Lack, Senate Print 3959B, an act to amend the Judiciary Law and others, in relation to judges of the city courts.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1209, by Senator Saland, Senate Print 5042A, an act to amend the Real Property Tax Law, in relation to providing.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid

aside.

THE SECRETARY: Calendar Number 1237, by Member of the Assembly Nolan, Assembly Print Number 7458, an act to amend the Labor Law, in relation to prevailing wage supplements.

THE PRESIDENT: Read the last section.

SENATOR DOLLINGER: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1247, by Senator Trunzo, Senate Print 4672, an act to amend the Vehicle and Traffic Law, in relation to the length of semitrailers.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 1252, by Senator Trunzo, Senate Print 5271, an act to amend the Vehicle and Traffic Law, in relation to school-zone speed limits.

SENATOR DOLLINGER: Lay that bill aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1257, by Senator Libous, Senate Print 5486, an act to amend the Mental Hygiene Law and the State Finance Law, in relation to enacting.

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, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1264, by Senator Fuschillo, Senate Print 5589, an act in relation to state intervention.

SENATOR HASSELL-THOMPSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1266, by Senator Farley, Senate Print 5592, an act to amend the Banking Law, in relation to the powers.

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, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1267, by Senator Morahan, Senate Print 5595, an act to amend the Penal Law, in relation to authorized dispositions.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number

1268, by Senator Morahan -

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1269, by Senator Meier, Senate Print 5610, an act to amend Chapter 953 of the Laws of 1983.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1270, by Senator Volker, Senate Print 5612, an act to amend the Penal Law, in relation to excluding.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

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

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1271, by the Senate Committee on Rules, Senate Print Number 5616, an act to amend the Education Law, in relation to the distribution.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1272, by the Senate Committee on Rules, Senate Print 5622 -

SENATOR FUSCHILLO: Lay it aside temporarily.

THE PRESIDENT: The bill is laid aside temporarily.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, may we now have the reading of the controversial calendar.

THE PRESIDENT: Controversial reading of the calendar.

The Secretary will read.

THE SECRETARY: Calendar Number 525, by Member of the Assembly Vitaliano, Assembly Print Number 4379, an act to amend the Civil Service Law, in relation to the authority.

SENATOR DUANE: Explanation, please.

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

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, upon consent we'd like to call the roll on that bill.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

Senator Duane, why do you rise?

SENATOR DUANE: Madam President, I'm a little confused. Is there a revised active list?

THE PRESIDENT: No, there is not, Senator. The bills that are high, that haven't aged to be read, are not being read.

SENATOR DUANE: Thank you, Madam President.

THE PRESIDENT: You're welcome.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 1167, by Senator Goodman, Senate Print 5565, an act to amend the Tax Law, in relation to authorizing.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 26. This act shall take effect immediately.

SENATOR PATERSON: Explanation, please.

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

SENATOR GOODMAN: This bill is a

$100 million tax package, and it's sponsored by the City of New York. It is divided into various component parts which I'll be glad to take you through quickly.

The first is a mortgage recording tax, first-time homeowners' exclusion of $150,000 of the first $300,000 in mortgages from the 1 percent city recording mortgage tax, and from the half-percent state mortgage recording tax that produces revenues dedicated to the city's general fund. This would affect 10,000 -- or, excuse me -- yes, this appears to be a typo in this note, 10,000 homebuyers.

Going on to the next facet of this, it relates to an earned income tax credit, a refundable credit equal to up to 5 percent of the federal tax credit against the city's personal income. It would benefit 600,000 households with an average credit of $80.

Third is sales tax on clothing and footwear. The sales tax exemption on clothing and footwear with a value of $110 or more for all cities and counties, including New York City, at local option, to eliminate the state sales tax also.

Dependent care credit of up to 40 percent of the state credit through 2003, after which it becomes 32 percent of the state credit. It affects 124,000 tax filers with an average credit of $185.

Fifth is the hotel tax, an elimination of the $2 flat tax on hotel rooms costing $40 or more. Also an exemption of small bed-and-breakfasts from the hotel tax totally. There are 29 of these in New York City. This would save travelers approximately $40 million.

And let me remind you that the previous reduction in the hotel tax had a very salutary benefit on the city's economy, and it is believed by the hotel industry and those in charge of tourism in New York that it had a very salutary stimulative effect.

Next is the co-op/condo abatement, extension, and enhancement. It continues the co-op/condo abatement program at current levels and allows for an enhancement at local option. An abatement program was implemented in 1997 to reduce the disparity in property tax burdens between co-ops and condos, Class

2, and single-family homes of Class 1.

The abatement is currently 17½ percent of the tax for residential units with an average assessed value of over $15,000 and 25 percent of the tax-free units with an assessed value of less than $15,000. This would benefit 300,000 households, providing an average benefit of $730 per household.

Finally, 1 percent of the green buildings -- 1 percent of eligible property for five years, capped at $5 per square foot for buildings, which meet "green standards" for major components.

And that's the overview of the bill.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, will the sponsor yield to a question?

SENATOR GOODMAN: Yes, I will, Senator.

THE PRESIDENT: Senator Goodman does yield.

You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Senator, what's the overall financial or fiscal impact? Once these tax cuts accumulate and are phased in, what's the final reduction in revenue that the City of New York would see?

SENATOR GOODMAN: $200 million in city fiscal year 2003.

SENATOR DOLLINGER: 200 million?

SENATOR GOODMAN: 200 million, yes.

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

THE PRESIDENT: Senator Goodman, will you yield?

SENATOR GOODMAN: Yes, I will, Madam President.

THE PRESIDENT: You may proceed.

SENATOR DOLLINGER: What I need to understand, Senator Goodman, is why, at a time when the City of New York is claiming that it can't afford to pay a teacher raise in its teacher contract, when there's a serious question about the funding for schools in New York, which I know you're well aware of

under the CFE litigation, why is the City of New York asking us to drop its revenue by $235 million each year when it appears, from an outsider, a nonresident of the city, that the city is crying for additional resources for education?

SENATOR GOODMAN: As I've indicated to you, this emanates from the Mayor of the City of New York, who has requested that the bill be passed expeditiously. It is his judgment, obviously, that the city's economy will derive a net benefit from this approach.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Well, again, through you, Madam President, is it the Mayor's position that by passing this tax cut we'll actually get more revenue into the City of New York and therefore be more likely to put money to work for education?

SENATOR GOODMAN: This is believed to be beneficial to the city's economy and presumably, if that were the case, it would be beneficial to the education

budget, which is obviously an issue that's pending.

SENATOR DOLLINGER: Madam President, thank you. I thank Senator Goodman.

I know, Senator Goodman, you've carried the Mayor's bills in this house before, and I appreciate your advocacy on behalf of the City of New York and on behalf of its Mayor in this house.

Madam President, I stand here today as a nonresident of the city of New York. I'm from 300 miles away. But seems to me it becomes more difficult for everyone in this state to look at the problem of financing education in the city of New York, the problem that was so graphically described in Judge DeGrasse's decision in the CFE case, in which he talked about the fact that there weren't sufficient resources in the city of New York to provide the quality of education that our constitution requires we provide to every single student.

Now, when we're faced with the consequences of that decision, up on appeal,

which could require that we spend billions of dollars in additional resources for education in our urban areas and in our nonperforming school districts, the City of New York says: We're willing to give away $235 million in additional annual revenue that could go into education.

I'm struck by what seems to be the paradox of those two movements, one in favor of more money for education, of which the city would have to contribute and we may have to contribute, and now a tax cut that says we can give away large sums of money and -

THE PRESIDENT: Excuse me, Senator Dollinger. I think you can be heard better now. Hopefully you can be heard better now. Go ahead.

SENATOR DOLLINGER: Thank you very much, Madam President.

THE PRESIDENT: You're welcome.

SENATOR DOLLINGER: And I'll conclude briefly, Madam President. It seems to me that there's an irony that just as the City of New York needs more money for education, we're about to bless a $230 million

annual tax cut which will take more money away from education and, in my opinion, will lead to the inevitable argument that the City of New York is not doing its fair share to help produce quality education.

It seems to me that this tax cut, while I've voted for lots of tax cuts, is going to create a problem for this institution, for this government, for state government in the future time, and may in the long run be ill-advised for the City of New York as well.

I would caution the Mayor to reconsider. This is not a time, when we need more funds for education, to be giving away $235 million on the if-come of some greater economic benefit in the future. I disagree with the Mayor on this one. I think this money ought to go into education and not in the form of a tax cut.

I'll vote no.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. I just have a question for Senator

Goodman.

SENATOR GOODMAN: Yes, Senator.

THE PRESIDENT: You may proceed.

SENATOR MONTGOMERY: Yes, thank you, Senator. Thank you, Madam President.

Senator Goodman, this budget that New York City just passed, the Governor cut education by approximately $130 million. So my question is, should we be concerned that education funding has been cut despite the fact that we need additional funding, based on the Chancellor's plea to us and to the Mayor and the City Council that we need more money, but we're now giving away $250 million?

Is this a wise idea, do you think, or -- I'm just wondering, how do we support giving a $250 million tax cut, tax break to citizens in New York City when in fact we need an additional $130 million, at least, in order to make the Board of Ed whole?

SENATOR GOODMAN: Senator, I share your concern, as does, I think, every citizen who's alert and following this action here in the Legislature and at the Governor's level and at the city budget level. Obviously

we want to be assured that we're going to maximize the available funds for various crucial purposes in the city, none more crucial perhaps than that in the area of education.

As you know, my colleagues and I on this side, such as Senator Padavan, Senator Velella, Senator Maltese, et cetera, are all of the view that we want to do everything we can to increase available funding for secondary education. And you are familiar, I think, with the package that has been probably a bipartisan one for some time.

The DeGrasse decision relates to the question of available state aid. This does not directly relate to state aid, this matter. This is a matter of city tax policy which is designed for the purpose of enhancing the city's economy by virtue of the basic principle that a tax cut can at times produce more money than it loses for the entity doing the cutting.

So that's the premise on which this is based, and it's an arguable premise but one which I think history suggests has great

merit. I would cite to you the federal experience under President Reagan when he proposed tax cuts. The fact was that we did net more revenue. Unfortunately, certain of his cabinet secretaries got out of control on the expenditure side, which undermined the long-range effort.

But fundamentally, the notion of tax cutting being productive of increased revenues is a valid one. And that's what I think underlies this idea as well.

SENATOR MONTGOMERY: Thank you, Senator Goodman, for that explanation.

Madam President, briefly on this legislation.

THE PRESIDENT: You may proceed, Senator.

SENATOR MONTGOMERY: We in New York City have, as I understand it, a surplus. And I certainly agree that we want to in every way possible do whatever we can to stimulate the economy. We want to give citizens a tax break.

But I think that in this instance it is clearly a contradiction that the system

in New York City is in crisis, and a major part of the crisis is that we are not funding education in New York City to the extent that we need to.

I know that we are doing as much as we can in New York State, but New York City also has a responsibility to fund education to the maximum possible. And I think that the citizens of New York City would prefer to have us use the option of surplus to fund education in New York City so that we can begin to see the kind of improvement that we have all been waiting for and working for at both the state and city board of ed levels.

So I'm going to vote no on this because I think that the children in New York City should come first, must come first. And we now have -- the teachers in the City of New York are paid less than their counterparts in other counties around the state. They're waiting for a settlement on their negotiations for an increase in salary. I think we need to do that. The Board of Ed needs more money.

So for us to be giving a tax cut which will in fact deplete and make it more

impossible for our city to be able to meet the demands of the teachers and the Board of Ed for other reasons, I think it is unconscionable. So I will be voting against this bill.

And hopefully we will be able to ourselves do a budget in some reasonable time so that we can help to offset the cut that the Mayor has already and the City Council have already done for the Board of Ed and the City of New York.

I'm voting no, Madam President.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 26. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Duane, to explain your vote.

SENATOR DUANE: Thank you, Madam President.

Let me first preface what I'm going to say by saying that I believe cities should have the right of creating their own budgets

and should have autonomy in what they are doing.

This particular tax reduction program has some good things and some not so good things in it. Allowing the city to create an earned income tax credit is actually a very good thing and will help the working poor in the City of New York.

But, for instance, I think it's a big mistake for the city to repeal the hotel occupancy tax. You know, it's easy enough to eliminate taxes; it's very hard to reinstate them. And I think that particularly with the booming tourism that's going on in New York City, this is a tax which we could ill afford to get rid of.

There are other good things in the bill. Certainly continuing to help co-op and condo owners and moving towards equalizing the rates they pay as compared to one-and-two family homes is good, although institutionally there are still problems in the way that we levy the property taxes on that class of property.

But again, to come back full

circle, I think because it's important that we allow New York City the autonomy to do what they want to do, I'm going to vote yes on this. But I also think that I'm going to have some difficulty making it so that we don't have a shortfall or continue to have such a shortfall in what would be fair funding for our city's school system.

Thank you, Madam President. I'm voting yes.

THE PRESIDENT: You will be recorded as voting in the affirmative, Senator Duane.

SENATOR MARCELLINO: Madam President, if I could just -- before you - there will be an immediate -

THE PRESIDENT: Senator Marcellino first, and then Senator Stachowski.

SENATOR MARCELLINO: Thank you very much.

There will be an immediate meeting of the Rules Committee in Room 332.

THE PRESIDENT: There will be an immediate meeting of the Rules Committee in Room 332.

SENATOR MARCELLINO: Excuse me, gentlemen.

THE PRESIDENT: Senator Stachowski.

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

I'd just like to say that I'm going to vote for this bill because I always let a locality cut their own taxes.

But I'd like to comment particularly that the Mayor of New York obviously was paying attention to a lot of the things coming out of this side of the aisle as he picked up on the childcare tax credit, the mortgage recording tax, first-time homeowners idea that came out of this side, and the elimination of the sales tax on clothing and footwear that we've long supported, particularly Senator Gentile.

I do have a little problem with taking the $2 hotel tax off. I could understand that we did that once when the hotels were in trouble. But they're all running at full capacity. The $2 probably won't be reduced. And I think most of the

tourists could afford it, and the City of New York needs that particular money.

But in spite of that, I'm going to support the bill. Thank you.

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

Senator DeFrancisco.

SENATOR DeFRANCISCO: To explain my vote.

A couple of mentions have been made of the hotel tax. I just wanted to mention that when we did allow the reduction in the New York City hotel tax, there was an exponential growth in the use of the hotels. There were other reasons as well, but it was one of the reasons cited for an increase in the activity of tourism in the New York City area.

So I agree with Senator Goodman that this part is a good part as well, in view of the fact that more revenues ultimately come in by reason of people coming into the city and being tourists in the city and spending money. So I think that aspect of the bill is

as good as all the rest.

I vote aye.

THE PRESIDENT: You will be recorded as voting in the affirmative, Senator DeFrancisco.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1167 are Senators Hassell-Thompson, Montgomery, and Paterson. Ayes, 49. Nays, 3.

THE PRESIDENT: The bill is passed.

Senator DeFrancisco.

SENATOR DeFRANCISCO: I would request unanimous consent to be recorded in the negative on Calendar 1069, Senate Print Number 5355A.

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

Senator Malcolm Smith.

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

THE PRESIDENT: To explain your

vote?

SENATOR MALCOLM SMITH: To explain my vote, yes.

Let me just say on behalf of some of my other colleagues down in the City of New York, while these tax cuts are clearly an incentive for many in the city to do more business, obviously it will also provide an incentive for additional revenue for the city in some shape or form.

What I do have to admonish, and I have explained this to many of my colleagues in the city as well, I do have to admonish my City Council members. Because at the same time that they have voted for these tax cuts, the problem that we have is at the same time we have this issue of education. And based on these tax cuts, we're talking about almost $3 billion within five years.

And the problem for us is that we are now -- within this package, there is a tax cut -- or not even the tax cut, but there is a cut for the Board of Education somewhere to the tune of $130 million, which actually works out to about $5 million per district.

So in retrospect, what it does for us is we offer tax cuts of close to $3 billion or $4 billion -- 200-and-some million one year, 300 million the next year, 400-something million the next year. By 2005, $707 million. But at the same time, we are cutting support for our education.

We're going to look bad up here as we run and appeal to the Governor not to appeal the CFE decision but at the same time our City Council members are cutting the Board of Education down in the city. I have to go on the record as admonishing my City Council members for not having the insight or at least not conferring with us in the Legislature here so that we wouldn't find ourselves in such a position where we have to support a tax cut but at the same time we've got to argue for putting for more money in the Board of Education.

I'm recorded in the positive on this bill because I believe it is worthwhile for us. But I do want to be on the record as telling our City Council members that there is need for more communication on their part with

us, as this does not put us in a good position to negotiate more money for the Board of Education with the state.

Thank you.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 1209, by Senator Saland, Senate Print 5042A, an act to amend the Real Property Tax Law, in relation to providing.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, Senator Dollinger is in the Rules Committee meeting. Could we lay that aside temporarily until he returns?

SENATOR MARCELLINO: Lay it aside temporarily.

THE PRESIDENT: The bill is laid aside temporarily, Senator.

THE SECRETARY: Calendar Number 1237, by Member of the Assembly Nolan, Assembly Print Number 7458, an act to amend the Labor Law, in relation to prevailing wage supplements.

THE PRESIDENT: Read the last

section.

SENATOR MARCELLINO: Lay it aside temporarily, please.

THE PRESIDENT: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 1252, by Senator Trunzo, Senate Print 5271, an act to amend the Vehicle and Traffic Law, in relation to school-zone speed limits.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 8. This act shall take effect in one year.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1264, by Senator Fuschillo, Senate Print 5589, an act in relation to state intervention.

SENATOR PATERSON: Explanation, please.

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

SENATOR FUSCHILLO: Thank you, Madam President.

The legislation would provide for a state takeover and removal of the board of education in an effort to improve the education provided to the children in the school district. The Commissioner of Education will assume all of the powers and duties of the board of education until the initial interim board of education is put in place with the transition to the community.

Originally the Commissioner of Education, in a proposal to the body, had requested that there be five members of the interim board, with the first being elected in May of 2002. We revised that legislation to have it elected in May of 2003, with a quicker turnaround to get the community more involved.

The interim board will be responsible for the fiscal and educational oversights, description of the measures to be taken of the district to involve and obtain, which is very important in this situation, parental and community involvement.

This year an SED audit, which was

issued on March 8th of 2001 -- and I'm just going to brief it, the background about the Roosevelt Union Free School District is responsible for providing the educational services to approximately 3,000 children in the six schools.

Only 30 percent, 37 percent of the district's students -- 91 students -- met the state's standards for the Grade 4 English Language Arts examination, compared to a statewide average of close to 50 percent. Only 3 percent of the district's students, four, met the state's standards for the Grade 8 Mathematics examination, compared to a statewide average of approximately 40 percent. And only 3 percent of the district's students, four students, graduated with a Regents diploma, compared to a statewide average of approximately 45 percent.

Below-average student performance has been achieved even though the district spends approximately $11,500 per student to provide educational services.

Prior audits and reviews over the past decade by the State Education Department

and the Office of the State Comptroller, the district's independent auditors, educational consultants, and others have identified the need for additional management controls and improvement in district operations.

In July of '95, the State Legislature required the district to develop a corrective action plan to address student achievement and performance, the maintenance of school facilities, fiscal and administrative practices, accountability, and internal controls. It also required the establishment of a state review panel to oversee the actions of the district and implementing the goals of the corrective action plan. The department established the Roosevelt Task Force in 1996 to help address the district's needs for improvement.

However, despite these efforts, improvements have been minimal at best. In November of 2000, the department's commissioner provided the district with specific student performance targets. Failure to meet these targets by June 30th of this year will result in further action from the

commissioner.

About a year ago -- actually, a report was issued on March 13th of 2001, this year. Approximately a year ago, Dr. Shelley Drazen -- which is commonly known now as the Drazen report -- was selected through a bidding process through the State Education Department to evaluate the Roosevelt Union Free School District for the past five years, from 1995 to the year 2000.

There is an executive summary which I am going to try to brief, just to provide you with some more information to the ongoings of what's happening in the district. And this is a brief of the executive summary of the Drazen Report.

Throughout the district's history, some of the board members have been viewed by district staff and residents as trying to further their political careers or enrich themselves and their families through the positions of the board. After many years of low levels of student achievement, the district was first placed on the Schools Under Registration Review -- SURR -- list in 1989.

In May of '95, the legislative body here passed Chapter 145 of the Laws of 1995, after student achievement failed to improve and visits by SED-appointed teams found ill-maintained and potentially unsafe facilities. The legislation established several means of effecting change in the district. First, several advisory and governing groups to be appointed by the Board of Regents were established.

A district review panel of three and later five experts in education was set up. It was charged with developing a corrective action plan, known as CAP, in consultation with the community. The panel was to advise the Roosevelt Board of Education's implementation of the plan and monitor all the board's activities. If the board failed to fully implement the plan, the legislation authorized the removal of the school board and the panel would assume the duties until the next general election.

Chapter 145 also created another advisory group called the Citizens Advisory Council, composed of 11 members from the

Roosevelt community appointed by the Regents. The legislation was later amended to add two more members.

Chapter 121, also passed in 1996, specified action relief to the district's financial situation to allow the district to sell serial bonds and receive $4 million in a state advance which has yet to be repaid.

In view of nearly all sources interviewed for the report, the legislation was flawed in that it didn't specify clear and separate roles and responsibilities for the panel, the board, and the CAC, so control over the educational decisions was diffusive, leaving no one accountable for the results.

Although the intervention was aimed at improving student achievement and improving the facilities, no assessment need was conducted in order to determine the underlying cause of the problems.

The intervention was met with hostility and resistance by many in the local community, especially the board of education. Most of the original panel members were perceived as overly ambitious to further their

own careers or financial situations through their service. Certain actions by the panel members were viewed as particularly objectionable and the appearance of conflict was quite evident.

Most panel members have resigned their positions within a year or two, voicing frustration at their lack of authority over board decisions and a lack of effect on the educational process in the district. Both panel and board members complained that the panel-board relationship had often been problematic due to a lack of communication, resentment, and personal conflicts.

The Citizens Action Committee was also viewed with suspicion. Its chair was reportedly viewed as interested in only furthering his own interests and his associates' financial gains, and his apparent hold over board members was also reported to be a matter of concern by those who were interviewed for the report.

The board of education at the time of the intervention not only resisted the intervention but it was also reported to have

engaged in inappropriate and irresponsible behavior in their management of the district. An SED audit report in '94 and '95 cited mismanagement of district funds, including payment for personal expenses such as limousines and flowers. The audit report also cited irregular procedures such as paying employees not entitled to money, excessive spending, and lack of financial controls, leading to a deficit in the district funds.

The board was also found to have failed to carry out a corrective action plan and was removed in January of 1996, according to the procedures established in Chapter 145 of the laws.

The panel then ran the district until May of '96, when a new board was held to assist daily operations. The first panel chair appointed an executive administrative team. The superintendent remained in his position, but many of his roles were taken over by the executive administrator, creating an awkward situation. The first executive administrator left for a permanent position elsewhere after only a few months. The second

administrator's tenure only lasted a few months, after he found another job.

The panel also requested from SED the creation of a task force composed of SED experts in a particular subject or other educational areas. The task force was viewed as a generally positive influence in the district. However, a continued lack of administrative support and follow-through and high rates of teacher turnover reportedly prevented the task force from a substantial impact on the educational process.

Between 1996 and the fall of 2000, the board ran the district with an intimate involvement by the panel and little or no input from the Citizens Action Committee. There were five superintendents or acting superintendents during this time, two high school principals, two middle school principals, several treasurers and assistant superintendents of curriculum, instruction, and business. Many questions were raised about the qualifications or the job performance of these individuals, particularly regarding those hired by the board over SED

and panel objections.

One superintendent, who had been the first administrator, fired the high school principal in January of '99, and the police department had to be called to escort her out. Superintendents and other administrators at all levels reportedly became discouraged and soon left the district.

The board elected in 1996, like the earlier one, was removed, having been accused of mismanaging funds, lack of attention to educational issues, and micromanagement of the district operations, and their actions have been viewed as obstacles towards progress.

An audit report of 1999 and 2000 cited irregular procedures such as not using competitive bidding when required by law, hiring consultants without contracts, inappropriate spending of grant money, and hiring staff and consultants who were unqualified for their position.

One board member was reported to have called one administrator 28 times in a single day and has reportedly used district personnel to repair her car and perform other

non-school-related duties. She and two others reportedly opposed most spending which would benefit educational process in the district.

This impression was reportedly heightened when one of the board members of the board of directors joined a charter school which was recently enacted in the Roosevelt School District, thereby draining much-needed funds to the school district of approximately $1.8 million.

There were also some questions about some of the newer board members. One currently has a pending lawsuit against the district after he was not hired for a job he applied for.

High levels of turnover in teaching and administrative staff were also attributed to a chronic lack of money for salaries as well as reported inappropriate actions by board members. Many of those interviewed for the Drazen report reported that unfavorable information about the intervention was kept from the Board of Regents and the Commissioner.

Voters have defeated the budget,

leading to austerity budgets, in four of the last six years of the intervention. The recent opening of the Roosevelt Charter School has further left a strain on the school by draining more than $1.8 million from it.

District achievement through all of this has improved somewhat in certain areas. Early elementary achievement in math and reading has been near-average level for the state and continues to be near the state average. There are now more students taking the Regents course and taking and passing certain Regents examinations such as English, math, and social studies.

However, very low achievement continues on Regents examinations in science and foreign language and on the junior high school level.

Most of the areas of improvement continue to experience academic levels far below those of other state districts. Very few students receive Regents diplomas, as the percentage of students taking and passing sufficient numbers of Regents examinations and taking Regents courses remains far below other

districts in the state.

The district now has a new superintendent that came from Yonkers that has been there approximately one year. He has initiated a series of meetings of community forums which have been met with a tremendous amount of success. Approximately 80 people from the community are now attending his meetings.

However, the fear of further instability reportedly remains. The intensive media coverage of this school district has caused significant problems. Many teachers have left and have sought outside employment.

The Drazen Report makes certain recommendations. One is to increase state funding for the district operations, which is provided under this legislation in the form of a grant. The second recommendation is the charter of the Roosevelt School District should not be renewed after its five-year period. The third recommendation, in order to ensure that additional state aid will not be misspent, removal of the current board is recommended. Mismanagement of money,

micromanagement by the board of education remains to be a serious problem in the district. Three to five years should elapse before the replacement of the board with all its powers in order to allow time for change to occur.

The Commissioner should appoint an administrator experienced in improving failed schools to run this district or who has shown promise in the position to carry out a corrective action plan. The current superintendent and his team, including the assistant superintendents of business and curriculum and instruction, are likely candidates, given their success in managing the district finances and operations over a short period of time.

The board could be reconstructed several years later. It might be more effective to have only one or two board members transitioned on the team. A panel model is not recommended, as it has been in the past.

A campaign to raise community support and interest in the district is also

recommended. A thorough needs assessment should be done, which is ongoing right now by the new superintendent. A comprehensive and adequate attendance and discipline policy is badly needed. More attention to the curricular issues is warranted. Quality of instructional leadership, teaching and learning is also required for improvement. Accountability at all levels of intervention should be assured. Guidance and placement of needs should also be considered.

The Roosevelt School District is probably one of the most problematic and troubled school districts in this state. I've spent a lot of time in the community meeting with the clergy, the NAACP, parents, and just last week, as I have been doing throughout my term, in speaking at the classes there. The parents tell me they want the state to take over the school.

One focus has been lost with the almost 3,000 kids there. It's educating the children. My sole purpose for this legislation -- and Earlene Hooper in the Assembly is considering it as well -- is to

get back to the fundamental rights that these kids have, and that's having a quality education throughout their tenure for school.

Thank you.

SENATOR CONNOR: Madam President.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Thank you, Madam President. Madam President, if Senator Fuschillo would yield for a question.

THE PRESIDENT: Senator Fuschillo, will you yield?

SENATOR FUSCHILLO: Yes.

THE PRESIDENT: You may proceed, Senator Connor.

SENATOR CONNOR: Thank you.

Senator, I read in the bill it says -- in Section 5 it amends Section 11, subdivision 11, and in Part B it says: "To the Roosevelt Union Free School District there shall be paid $4 million."

My question, Senator, is this an appropriation to the Roosevelt Union District?

SENATOR FUSCHILLO: No. No, it isn't, Senator.

SENATOR CONNOR: So that by

virtue of this bill they're not getting $4 million; is that correct?

SENATOR FUSCHILLO: That's correct, Senator. It's just setting up the method for a grant process.

SENATOR CONNOR: And, Madam President, if the Senator would continue to yield for a question.

SENATOR FUSCHILLO: Yes, Madam President.

THE PRESIDENT: Senator Fuschillo does yield.

You may proceed, Senator Connor.

SENATOR CONNOR: So is it fair to say, then, Madam President, if Senator Fuschillo would comment, is it fair to say that his bill would provide that the State Education Department takes over the Roosevelt School District but it does not ensure that they give any money to that district?

SENATOR FUSCHILLO: As of now, yes, Senator.

SENATOR CONNOR: Thank you.

On the bill, Madam President.

THE PRESIDENT: You may proceed

on the bill, Senator Connor.

SENATOR CONNOR: I certainly am aware of the problems that the Roosevelt School District has had. Clearly it has had management problems.

It's not the only school district in the state that's had management problems. We have a long tradition, as old as this state has provided for public education, of local control of public education. And that in fact means very often well-meaning people - occasionally, regrettably, in a lot of school districts, sometimes not-so-well-meaning people -- run for school board and get elected.

I in my experience have seen people who were really concerned about the schools, many times parents, get on school boards and suddenly realize they have to deal with the budget, for example. And in their trade or enterprise or professions outside of this part-time office of school board member, they've never had to deal with a budget before. They either fall under the sway of a superintendent -- sometimes that's good, and

sometimes it's bad. But they're not equipped, they're not equipped with the kind of skills or background to deal with the management questions that a school board has to deal with.

In fact, I believe, Madam President, that Senator Stavisky has had a bill to actually provide for a state program to give rather intensive training and advice and counsel to school board members in some of the intricacies of managing a district.

Probably about 12 years ago, in a task force of the Democratic Conference headed or cochaired by the late Senator Joseph Galiber -- I'm not sure, I think Senator Perry was the other cochair -- an extensive study of Long Island school districts was done. And the conclusion was -- and anybody familiar with Long Island knows there are many, many, many school districts.

The conclusion of it was there were too many school districts. There are school districts on Long Island that have as few as seven or eight schools in them, yet they have to maintain the overhead of a superintendent

and a whole bureaucracy to run a school district, at great expense, for really a few schools.

So I suggest that what has gone on in Roosevelt exemplifies what can happen with a small school district that's underfunded. Because the fact is that school district has virtually no commercial property tax base. The per-pupil property tax valuation in Roosevelt is $116,000. That's the valuation per pupil. It's the lowest in Nassau County, and it compares with, for example -- I'll pick a few others. The number for the Baldwin School District is $293,000. For Bellmore, it's 370,000. Bethpage, 468,000. Carle Place, 599,000 in valuation per pupil. And on and on and on.

Great Neck, $904,000 per pupil in a property tax base. Herricks, 467,000. Hicksville, 544,000. Island Park, 815,000. And on and on and on, school district after school district where the per-pupil tax base is -- Oyster Bay, 990,000, for example -- is six, seven, eight hundred thousand. In some of the poorer districts in Nassau, nonetheless

it's $350,000 a pupil, $300,000 a pupil. Here is Roosevelt, per-pupil property tax base, $116,000 in valuation.

Leaving aside all the other problems, is it any wonder that year after year after year, for a couple of decades, that the Roosevelt School District has these problems, that it can't educate its students? It's a built-in formula for failure, Madam President.

And the inequities, the inequities in a school funding system relying on a local property tax base are proven by these numbers. Of course a district with a million dollars per pupil in valuation or $400,000 or $500,000 per pupil in valuation is going to provide a whole different level of support for public education than one that has a mere $116,000.

So I suggest, Madam President, there may have been management problems, but a state takeover isn't the answer here necessarily. I am very loath to supplant local control. Yes, oversight boards, perhaps. Other measures short of a total displacement of a local school board I could

support.

But really what we're looking at here is something that this Legislature has not come to grips with yet this year, and that's the implications of the court decision in the Fiscal Equity case. Which, as we know, apply to New York City, but now there are pending cases and motions to join other districts around the state. Because the problem isn't just New York City, it involves urban areas, it involves a lot of rural school districts that have special needs yet they don't have the local tax base to meet it.

And remember, that case was based on the New York State Constitution that guaranteed our children an adequate public education. And it found that the effort being made did not result in students who were educated to meet the minimum standards to serve on a jury or be a voter.

I.e., if we don't fulfill that obligation, we've failed to sustain our democracy. Because we need our citizens to have the level of education to at least participate in the process as voters, as

jurors, and otherwise take part in civic involvement, as well as, of course, to engage in gainful economic activity to support their families and their communities.

We have to deal with the education aid. We have to do that in the budget. We haven't done that yet. As Senator Fuschillo points out, while the language says the Roosevelt district gets $4 million, we can't appropriate $4 million to Roosevelt here today. The State Constitution says we cannot appropriate any money until we've passed the budget, unless the Governor provides us with a notice of appropriation, a message of appropriation. And there is none attached to this bill.

So this bill would supplant the local school board, provide no money - because when we get around to doing a budget, if the school aid formula doesn't -- well, let's not call it a formula, if the school aid deal doesn't result in more money going to Roosevelt -- because as we all know, Madam President, the formula was all myth, driven by dollars.

But I respectfully submit this is the wrong way to go. Roosevelt may be the worst-performing district in New York State, but there are others that could give it some real competition. And when you look at these funding factors -- and I'm not suggesting just throwing money is the answer always. But these are rather stark.

How, when it has one-eighth or one-ninth of the tax base of surrounding school districts, can we think that this district would perform the way -- and this is a district in the suburbs, and that's the real gravamen of the Fiscal Equity decision.

It's not just about New York City, it's about urban, rural, and suburban areas that find, for a variety of reasons, they can't sustain a quality school system that produces quality education for its students, because of accidents of history. They don't have the property tax base that other areas do.

And that's really something we as a State Legislature have to address. And we have to address it on a bigger scale, a

statewide scale. This conference proposed an amendment to the Majority's budget resolution that tried to address the needs of those underserved districts. And we had a little color map there.

And it's not just in New York City, it's not just in the big cities, it's -- these districts that are underfunded are spread throughout the state. Indeed, a large number of them are in rural areas that a lot of the members of the Majority represent.

So I appreciate Senator Fuschillo's desire to address the problem of Roosevelt, but at this time I'm not prepared to vote for this kind of takeover. Particularly when his bill can't even guarantee another nickel to that school district.

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

Senator Dollinger.

SENATOR DOLLINGER: Madam President, this bill is an echo for me. On June 29, 1995, I had about a twenty-minute debate with Senator Fuschillo's predecessor, my good friend Norman Levy, and he and I

talked about the implications of a bill that he was carrying at that time to do much the same thing that this bill does, to allow the Commissioner of Education, in the unique circumstances of the Roosevelt School District, to take the district over and run it as a State of New York project.

And I've thought long and hard about this bill today, and there are two things that strike me about it which I think are consistent with what I talked about in 1995.

And that is, there's one line in this bill on page 2, line 53, that says it all for me when it makes a reference to "the qualified voters of the Roosevelt Union Free School District." And what this bill seeks to do is to tell the qualified voters of the Roosevelt Union Free School District that they're wrong, that they've been wrong, and that they haven't done their job in voting.

I would suggest that it is unprecedented for this state to sit down and say to any group of voters anywhere: We're going to take away your power to elect the

people that will decide educational policy in your community.

We are taking away the power of people to vote for their school board. Just so everybody hears that clearly, we are taking away the power of people to vote for their school board. This is unprecedented. This is something that doesn't happen in New York State. And to the best of my knowledge, I don't know that it's happened in the United States of America.

We're telling them that we're going to take over the school district and we, the State of New York, even through the beneficial work of Richard Mills, despite the best of intentions, we're taking away your power to vote for who you want on your school board.

I cannot countenance that. I understand that there are terrible problems in Roosevelt. But I'll just read what I told Senator Levy in 1995. This is a quote from the debate of that day.

"What we're doing is we're saying we've got a way to change Roosevelt, and the change is going to come from the top down.

The long-term change for this school district, as I believe it is for every school district in this state, to improve the quality of education, is to have the parents in the community stand up and say, 'We don't need the Commissioner of Education to tell us to do this, we don't need anyone at the top to assist us in doing this. We can empower ourselves to do it. We can demand the change. We can demand that our children get educated.'

"Until that happens, we won't have fundamental growth in education, and at least -- and it is unfortunate, but at least in my judgment, based on what I have heard in the room today" -- that was in June of 1995, and I haven't heard anything different today -- "we will not have this change unless the people in this school district stand up and say: We want more accountability, we want a better school district, we want better education.

"No matter what we do today" - back in 1995, no matter what we do today in 2001, "we will not really change the quality of education in Roosevelt."

I said to Senator Levy, "This is an issue which for me is a very close one and a very difficult one, but I believe we send the wrong message throughout this state if we try to impose a solution from the top down rather than let it percolate up from the bottom through empowered parents who want to make necessary changes."

Senator Fuschillo, I understand your advocacy for this community. I appreciate it. But it seems to me that based on what I've heard, to take away the power of the people to change it themselves, to acknowledge that the community has failed and that we cannot rally them to bring about the necessary changes is an admission that I am unprepared to make.

I think this bill creates an enormous and dangerous precedent for our state. I have favored and supported the Commissioner's efforts to go in and deal with the SURR list, to provide additional resources, to require remediation plans in schools that are troubled, in school districts that are in trouble in our state. But

imposing a solution from Albany, when what we're doing is telling the school district that you have failed and you can never change it, is the wrong message to be sent in education.

I voted against this concept in 1995. I was the only member of the Senate to do so. I still believe, as I did then, that the solution lies with empowering a community and not taking away its fundamental power to vote for people of their own choosing. I believe that that is the most sacred power we give to everyone in this state, and especially to parents to demand quality education. This bill takes it away.

And I believed in 1995 it was wrong, I believe it is wrong today, and I believe it sends the wrong message to Roosevelt and to everyone else in this state about the importance of local control of school districts. I voted no then, Madam President. I will vote no again in 2001.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: Thank you,

Madam President.

I was here when that debate took place. I sat there and I watched and I listened to my colleague and good friend Norman Levy stand up and explain his reasons why he felt that he had to take a very drastic step, and that is to bring state aid and the State Education Department into the Roosevelt School District.

The reason why there wasn't a complete and total takeover then was because Norman believed, and we all hoped, that it could be done without the drastic and draconian methods that have to be taken at this point in time.

The system has failed, my colleagues. The system is broken in Roosevelt. The schools had to be closed down days ahead of time because the kids in the schools could not be controlled by the staff. Assaults, fights. Mayhem ruled. Not the authority, mayhem.

I suggest to you the parents of this district have voted, Senator. They have voted. They've been rejecting school budget

after school budget. Not because they don't want to fund their schools, not because they're bad parents. That was the only means they could voice. The system has been taken over in Roosevelt by a small group who for their own self-interest or political advantages have been using the system for their own gain and not for the kids.

The kids have suffered. The kids have gotten a mediocre and poor education at best. Is there a capability to educate in that system? Absolutely. It was proven by some of the statistics read by Senator Fuschillo earlier. There have been some marked improvements in the lower levels. But in the upper grades and in the high school and in the middle schools, nowhere. No good improvement. Parent after parent has been saying, Help us, help us. We can't do it alone. We need your help and need your assistance.

I commend Senator Fuschillo for taking this step, as I commended Senator Levy back then. As a teacher and a former educator, I know what makes a school work. I

was a school board member. I know what it takes to work on school boards and to make the system operate and to make it work. It's hard. It's not easy.

But when you don't have support and you have a group out there that is actively working in opposition for their own gain and they're well-organized and well-funded and they are working in opposition to everything that has been tried -- they wanted a disaster and, ladies and gentlemen, they got it. It's an educational horror in Roosevelt.

If you are a parent living in that community sending your kids to those schools, you fear, you fear every day that those young people are going to be hurt. You don't know if you send them that they're going to come home in one piece. It is a crime to do that. It is a crime to consider that we cannot and we should just leave it alone.

The comments I heard from my colleagues, I respect them. I don't want to take anybody's right to vote for any system. I think that is a last resort. We're there. We're at a last resort. Senator, if we just

let it go the way it is now, more young people will not get the education they have a right to have and that they deserve and that we have an obligation to provide.

We have a constitutional obligation to provide quality education to every child in New York State and every child in every district. Roosevelt, last time I looked, was in New York State.

I think we have to support this legislation. I know Senator Fuschillo doesn't put it up here easily. I know this is not what he would like to do. He would prefer, as we all would, that the system work to help itself. The system cannot. The people over there need our assistance. They're asking for it. They're begging for it.

If we turn a blind eye to them now, we do not assist. We do not help. And I state, ladies and gentlemen, we would be in dereliction of our constitutional duty. More important, we would be telling young people that you are condemned to a less-than-adequate education because we will not help you.

I urge my colleagues to vote

unanimously for this bill, because it sends a strong message that the State of New York supports quality education everywhere, everywhere, and will not tolerate those, will not tolerate those who would do anything or do things to disrupt it and to disturb and to prevent it from occurring.

I urge a yes vote, ladies and gentlemen.

ACTING PRESIDENT McGEE: Senator Balboni.

SENATOR BALBONI: Madam President, I rise in support of Senator Fuschillo's effort to bring stability to the school district.

What the irony is about this bill is that this will continue the educational process in Roosevelt. Now, why is that ironic? Because as we stand here today, we are talking about the amount of money that we have given to the school district and how they should have the right to their own destiny.

Ladies and gentlemen, the stories of this chapter have been written for years and years. This is about the sixth or seventh

time that this question has been put before this Legislature. And the question becomes, for all of us, do we engage in a process where we try to come in through this piece of legislation and provide guidance with a firm hand or no guidance at all? Do we relegate these students and families to a dysfunctional system, or do we try to continue to come in and provide relief that is extraordinary but it is extraordinary circumstances in this community?

Senator Connor read the amount of money that the different school districts have around it. And then he said, But we can't fix that with the school aid formula. And perhaps he's right. But what he's not taking into account is if you go back to the budgets and you take a look at Senator Norman Levy's efforts and Senator Fuschillo's efforts, you will see, year after year, whether it is bullet aid or extraordinary grants of aid, millions and millions of dollars on top of the school aid formula, recognizing that one size does not fit all, in an attempt to smooth over the inequities with the surrounding school

districts, aid that the other districts have not received but Roosevelt has.

But notwithstanding that infusion of money, it is still a system that is not working, that has not worked for many, many years. All of us around this community hope that the next step we take will be the one that shakes this system and says here's the road we should follow. Because in truth, as much as we may want to control the outcome - that is, that students are not left behind, they receive an education, graduate and have productive lives -- we realize that our own inabilities will leave us only to relegate ourselves to a small portion of their lives. It is always going to be up to their parents, to their community. That's the people -- that is the group of individuals we have to entrust the ultimate result that we all want.

This is not an easy bill. This is not an easy approach. But it is a bold approach, and it is taking a step. When, in this state right now, everyone is folding their arms and not moving on so many other issues, Senator Fuschillo is standing up and

saying, I'm going to put my name behind a process that at least will be able to move towards making this a better situation.

I would really ask all of you to take a look at this through a unique perspective. And as much as other people have said there are other districts that are challenged, I respectfully disagree. This is really unique. Please give your thoughts to supporting this.

ACTING PRESIDENT McGEE: Senator Hassell-Thompson.

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

I don't live in Roosevelt. And I have attempted, as I've sat here, to not make judgments about or try to second-guess the people who do live in those districts.

But it's very interesting that I heard in this chambers today exactly the same message that I heard in the city of Mount Vernon about Mount Vernon five years ago, that Mount Vernon children could not learn and that the state should take over the Mount Vernon school district.

But those of you who may have read the papers, the New York Times, two weeks ago may have read the monumental turnaround in reading scores and learning scores of the children in the city of Mount Vernon. The state did not do that. The people of Mount Vernon did. There was a recommitment by the Board of Regents.

There's a T-shirt that I had intended to wear today. I didn't want to break dress code, so I did not wear it, but I should have. Because what that T-shirt represents is a world-class group of students, through the aid of government, students on top and in the lower level, it showed government, parents and administrators, supported by children, going in both directions, we were able to turn our school district around.

Last Saturday we gave 160 bicycles to children in the school district who read more than fifty books. We gave special prizes to those who read 80 books. The state standard was 25. And they said that the city of Mount Vernon should be exempt from the standard, because those children cannot learn.

The board, the community, and the city is not committed to making those children learn.

Well, I want to tell you that we have three banners that hang on three of our elementary schools that shows an increase in 90 percent of the reading and learning scores of those students. And one of the lowest-achieving schools in the state, which was the Williams School, a feeder school for shelters, increased their reading scores by 53 percent.

Now, these are not things that I made up in my head. These are things -- this is information that you can read. I know that it took us a very long time. We lost a generation of children while we waited to turn our district around. But three years ago, we fired our board of education, every trustee. We fired our superintendent. And we gave the power to change those things that needed to be changed.

And believe me, if any of you have been following this school district, you know that we have fought tooth and nail. And even the people who were in support of us in the

beginning turned on us halfway through the process, because some of the changes that they made were very difficult for them to abide by. It meant moving teachers and people that a lot of people felt a great deal about, including myself.

But we gave the power to make that change to the superintendent and to the board, and we got out of their way and allowed them to make the changes that they need to change.

I had the opportunity to talk with many of the members who came up to visit from Roosevelt the other day. And I happened - there were three people in the group who knew me from Mount Vernon. One of them used to be the band leader, Mr. Abel, from our school district. And he recognized me, and we started a conversation. And I asked why they were there.

We talked about the need to talk with Senator Fuschillo, and I was disappointed that they did not take advantage of the opportunity to share with him some of the concerns that they had.

Because a part of what I think

needed to happen is that rather than have the state commissioner take over the school district, we may need to have an oversight committee to monitor that school district and put them on a very short leash.

But we need to allow that school district to make the determination for its children, with the appropriate and proper help. And we do not need to be the Mounties who ride in and think that we know better than they about what they need to do with their school district.

I will probably not be popular for voting no on this measure, but I have a belief in the people in Roosevelt in very much the manner that I do in the people in Mount Vernon. Because people, given the right opportunities, the right wherewithal and direction, can change their destiny. But other people have to get out of the way to allow that to happen.

I will vote no on this bill.

ACTING PRESIDENT McGEE: Senator Malcolm Smith.

SENATOR MALCOLM SMITH: Thank you

very much, Madam President.

I know this is a tough bill. It's a tough bill for Senator Fuschillo. It's a tough bill as I heard my colleague Senator Dollinger talk about local takeover and taking the responsibility away from individuals that have the right to select who is going to determine what happens in their communities.

However, you know, there are ten two-letter words in the dictionary that I kind of took my own personal oath for, and they're very powerful ten two-letter words. And the phrase simply says, "if it is to be, it is up to me." Ten words, two letters each. If it is to be, it is up to me.

And it is clear to me that if I am going to have any impact whatsoever on the children of this state -- and I took a personal oath to make sure that that would happen -- we've got to make some very, very hard decisions.

There's no doubt in my mind we know, we all feel, and we all want the Governor not to appeal the CFE decision. Clearly, doing one piecemeal project at a time

is not the way to go. There's no doubt about it, there are districts in Buffalo, Rochester, New York City, high-need districts. Everybody needs their fair share to better educate our children.

However, the problem that exists in the Roosevelt district is a unique problem. I personally have had parents come to me crying, saying to me, "I am not going to send my child to school in that district. I'm going to keep them at home."

And I respect what Ruth Hassell-Thompson said. However, there has been a series, just as Senator Marcellino said, of solutions that have tried to be employed to fix this system. In '95, there was a corrective measure, did not work. '96, there was the task force. But the bottom line is, nothing happened. Nothing happened.

We need to understand, there is a clear nexus with education and the bill we just passed, GE-NY-SIS. If we don't educate our kids, who is going to be dealing with the GE-NY-SIS of the year 2003?

There is a clear nexus between

education and the tax base. If the kids aren't educated, who is going to be supporting that tax base?

There is a clear nexus between our children and Social Security. If we don't educate them, who is going to be supporting that bailiwick of money to support us as we grow older?

There is a clear nexus between the State of New York maintaining its stature as a state in a global market. However, if we don't educate our children, all is lost.

It is clear to everybody, $30,000, $40,000 to incarcerate, $18,000 to educate. There is a system that we are not working fairly with and not doing the right thing.

This is not an easy bill, there is no question about it. But the bottom line is this Roosevelt system is just not working. We have to take some drastic measures. Drastic measures have to be taken for that district to send out a message that we are not going to tolerate not educating our kids anymore.

I understand what the problem is. There's politics, there's public interest,

there's unions. Sure, Malcolm, you just said some of the words that you shouldn't say. You may not be here a year from now. But the bottom line is, we got to get to that point someday where we take all of that out.

We have took an oath as public stewards to stand up for what is simply right. And the bottom line right now is the kids in this particular state. This is the number-one issue in the state of New York, educating our children. If we do not educate our children, all of this will fail.

Senator Fuschillo, you have taken the hard line, there is no question about it. But this is the right thing to do. And I'm telling all of my colleagues here as well, you have to search your heart. Search your heart. If you believe in your heart that what Senator Fuschillo is doing is passing this bill to hurt or to kill our children off, then don't vote for it. If you believe in your heart what he is actually standing here as a Senator taking an oath to correct this measure is to hurt our children, then don't vote for this bill.

The bottom line is, this is a message that has to be sent and it has to be sent today. I'm voting yes, and I'm asking everyone else to take that same stand, because this is the day that we have to take a stand.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, I have the highest respect for those who are voting for this bill, for a little different reason, perhaps, than some of us who may vote against it.

I advocated for this. From the time I got to the Senate in 1986, it was my opinion that when the dropout rate exceeded 30 percent in any district, it was almost a valid indicator of the mismanagement of the district. And I wanted those districts taken over by the state. And I said it just about every place that I went. It was almost like a mantra with me. I don't even think I thought about what the reality of that transference would actually mean.

The statements that Senator Malcolm Smith and Senator Marcellino made are

absolutely right. This is a school district that's under siege. This is a situation that has been brought on by some mismanagement, as Senator Connor pointed out, and a situation that does relate very much to the funding and also a lot of problems when a district starts to falter.

One of the reasons that the students in Roosevelt couldn't pass the Regents is in many instances they didn't have teachers, particularly in the foreign languages, that would even teach in that particular area. So it wasn't that the students couldn't always pass the Regents, they couldn't take the Regents. They didn't have the resources.

Because of that, I tried to look at alternative forms of education. And one thing that Senator Marcellino pointed out I think is exactly right. And it just amazes me the comfort zone that people have with failure. A school district is lowering its standards and its expectations of itself into the abyss, and when somebody comes along and suggests a different way to change it, people fight

harder to resist the change than they would have to try to improve the educational system in the first place.

I saw that happen in New York City when there was a proposal for some alternative ways of running some schools by, in a sense, farming them out to a private company. I don't know if this was the best idea. I don't know if the company's record was particularly stellar in some of its other ventures around the country. But I know this. People that never even stopped to think about the issue were carrying on around a school in my particular district, P.S. 161, and ever since they defeated the idea, they haven't been seen since. They haven't been seen in the vicinity of that district, and won't be.

But if someone tries to come along and bring an idea, there is certainly a resistance to it that absolutely amazes me.

I think that the intentions of Senator Marcellino and the sponsor of the bill, Senator Fuschillo, and the person who originally sponsored the bill, Senator Levy, God rest his soul, were certainly the best of

intentions. But what I could hear even in the conversation today is how distant we have become from the district and the people who live there, how the blame is being cast on individuals who are reacting to situations.

And now we've got scenarios where people were invited to come and talk to Senator Fuschillo, who is a very reasonable person, and they didn't do it. And at the same time, there's a castigation of some people who live and work in that district who oppose this, and they oppose it for valid reasons. And what we're really doing is casting aspersions on each other rather than really trying to solve the problem.

In the end, I think there's more that can actually be done. I think that we really owe a debt of gratitude to Senator Hassell-Thompson, who explained how in the district that she lives and now represents, how they were able to do that in Mount Vernon, in that Williams School, where they raised the performance of the students by 53 percent.

In the end, I think that we have to understand, living in a democracy, that it

would be easy to do what the American government did in Grenada, do what the Soviet government did in Afghanistan. It's maybe sincerely thinking that things aren't the way they should be and going in and trying to change them.

But in the end, what sets us apart, or what should set us apart as this democracy, is that we don't do that. We respect the fact that an election was held, a school board was elected. If we have rules about people who are elected to the school board while they're engaging in lawsuits against the district, then we should enforce those rules and maybe not allow the person to sit.

However, when we do hold an election, it has to mean something. If it doesn't mean anything, we're beginning to lose something, a little compromise, that in the end will take us all down. And that compromise is the value that we place on our electoral system.

I think that there are drastic changes -- we might even have to privatize the whole school district in Roosevelt. But we

cannot set aside the will of the people when it comes to the school board in terms of the management of that school. I think it's not a utopian concept, I think it's the one that we have to believe in or we're losing our value as the society that we purport ourselves to be.

So I'm going to vote no, Madam President, with absolutely no malice or negative feeling toward the people who are voting yes, because I not only understand that point of view, I have held that point of view. It's just that when we actually finally did it -- and I voted for the bill in 1995, and I saw what we did. I guess I would certainly invoke the right to be educated in public as an elected official, and I think that that was the wrong way to go. I think that there are actually some drastic measures we can take in that district, similar to what Senator Malcolm Smith was proposing, without setting aside the will of the people.

ACTING PRESIDENT McGEE: Senator Oppenheimer.

SENATOR OPPENHEIMER: I don't

want to belabor some of the points made, because I concur and I see both sides of this issue.

Certain salient points are influencing my decision to vote no. One is I'm very close to school boards, having been on them. And I feel that a school board is elected, it is the will of the people of that community. And I feel strongly about home rule for school districts.

The second point is I'm very familiar with what has happened in Mount Vernon, also in parts of Yonkers, where Mount Vernon went from only 33 percent of their student body passing the test -- this year, 75 percent passed. That's an enormous accomplishment. And it was an accomplishment made not only with the people of that community but with, I must admit, a very, very extraordinary superintendent of schools who stood his ground and took on everyone and accomplished.

This has also happened in many of our schools in Yonkers. So I know it can be done. These were some of the very hardest hit

schools as far as students passing the Regents exams.

I think our standards are showing, our new standards, the Regents standards are showing to be effective in some of our more difficult schools. It takes a while. Things don't improve overnight. But we do have the standards, and hopefully we will have the support of fiscal equity for schools.

And I certainly did not support the Governor's decision to question that decision and appeal it. I feel that if we are going to help thousands and thousands of our children in New York State, not just in Roosevelt -- we have many examples of really some deplorable conditions and results in many of our schools around the state. We have to make a commitment as a state to finance schools and to provide the additional assistance where it is needed. We need to put in Saturday school. We need to put in more summer school. We need to put in additional time after school ends. And that is going to cost us money.

And I think we as a state have to make that commitment. It is not just

Roosevelt that has enormous problems. We can name dozens and dozens of other schools with terrible problems where the children need our assistance. And we as a state have to make that commitment.

But I cannot overrule a school board's decision. I'll be voting no.

ACTING PRESIDENT McGEE: Senator Brown.

SENATOR BROWN: Thank you, Madam President. Would Senator Fuschillo yield for a few questions?

ACTING PRESIDENT McGEE: Senator Fuschillo, will you yield for some questions?

SENATOR FUSCHILLO: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR BROWN: Thank you.

Let me say during my short tenure I've come to appreciate Senator Fuschillo's thoughtful and fair approach to issues.

My question one would be, when was the last school board election in the district, Senator?

SENATOR FUSCHILLO: This past

month.

SENATOR BROWN: And would Senator Fuschillo continue to yield?

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

SENATOR FUSCHILLO: Yes.

ACTING PRESIDENT McGEE: He continues to yield.

SENATOR BROWN: So there was an election for the school board this past month. How many new school board members were elected?

SENATOR FUSCHILLO: Senator, to the best of my knowledge, one, maybe two.

SENATOR BROWN: Would the Senator continue to yield?

ACTING PRESIDENT McGEE: Senator Fuschillo?

SENATOR FUSCHILLO: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR BROWN: Out of how many, Senator?

SENATOR FUSCHILLO: There were three that ran. I believe there were three

members that were up this year.

SENATOR BROWN: And would the Senator continue to yield?

SENATOR FUSCHILLO: Yes.

SENATOR BROWN: How many members in total are there on the school board?

SENATOR FUSCHILLO: I'm sorry, Senator, I didn't hear your question.

SENATOR BROWN: How many school board members in total are there in Roosevelt?

SENATOR FUSCHILLO: There are four now. There are five positions.

The president resigned, I believe a month ago. The vice president became the president. There's no vice president of the board. I believe there's one vacancy.

SENATOR BROWN: And my final question is in the legislation, Senator, I gues an interim board would be selected. Would there be any residency requirements for the interim board members that would be selected?

SENATOR FUSCHILLO: No, there's not. There's nothing in the legislation to preclude any member from the Roosevelt

community from being selected to be put on that board.

SENATOR BROWN: Thank you, Senator.

SENATOR FUSCHILLO: Thank you.

ACTING PRESIDENT McGEE: Senator Stavisky.

SENATOR STAVISKY: On the bill, Madam President, very briefly.

I've been listening intently to what everyone has said, and I could almost argue either side. However, it seems to me that the solution involves the leadership in the district but, more specifically, in the schools, particularly the superintendent, the principals, and the assistant principals. I think that's where the accountability lies, where the oversight seems to be lacking.

I'm very troubled by what's happening in Roosevelt, and this is -- I get a feeling that nobody is really right on this situation. You can only hope that you're doing the proper -- taking the proper position. It must be terribly frustrating to be a parent in Roosevelt.

I'm going to vote no on this bill, because I do have confidence that -- at least I certainly hope the school board will finally get it right, select a superintendent who can put an end to the anarchy and the chaos that seems to be going on in the Roosevelt school system.

And if there is mismanagement, as Senator Fuschillo described, then it seems to me that the district attorney should come in and either prosecute or investigate, turn it over to a grand jury or whatever the law will provide.

Madam President, I don't think there are any winners on this or any -- and certainly the children seem to be the big losers. But I think we have to give it the best try that we can, and that's to err on the side of having confidence in the school system itself. And if the superintendent can't do the job, then it's certainly time -- perhaps the superintendent from Mount Vernon could give some help, or have some mentoring program or whatever.

But, Madam President, I will vote

no.

ACTING PRESIDENT McGEE: Senator LaValle.

SENATOR LAVALLE: Thank you, Madam President. On the bill.

I'd like to congratulate Senator Fuschillo for the action in bringing this legislation before us. Because, as witnessed by the debate, it is not an easy issue.

Local control is ingrained both in our constitution and in the laws that we pass. It is appropriate for this body to scrutinize decisions that will move away, even in the slightest, from that principle, to have those closest to the issues who are elected by people to control their own destiny.

This issue is not being debated for the first time. It has been debated before. Steps have been taken, and individuals who have -- the Board of Regents, the Commissioner, and others have tried to take steps to ensure that local control and decision-making is honored.

This is not unique. We in this body have allowed local processes to run its

full course. But when we felt that things have gotten away locally, we have intervened, by creating control boards, to get the ship running straight and steady.

We have in this state, through the Board of Regents, taken over a college, Adelphi University. And I must tell you, I was not happy with that. But I must admit that the appointees on the board of directors of the university put new life, new vision into that university and have stabilized what was once a great university to continue that.

It is appropriate for us to debate and scrutinize this, as we are here today. But we are talking about something that is so precious and so important. Senator Malcolm Smith talked about the nexus and the importance of taking our young people, which are the vitality and the hope and the future of this state and this nation, to make sure that they have all that they can have, through education, to meet their hopes and their expectations.

This is not a permanent solution, but this is a solution that will bring new

energy, new hope and, as we have seen in the past with cities and other municipalities and the university, to make a change and to bring the people in the community back into the process, to give them hope.

Senator Marcellino was right on point when he said, and Senator Malcolm Smith, that people had given up hope, they don't want to send their children to school. That's not fiction. That's fact. I have sat on panels and listened to the textbooks -- or nontextbooks -- that students in the Roosevelt School District have. It's shameful. The building conditions, it's shameful.

No student should lose that hope. We are not making this decision and this legislation was not brought before us lightly. It wasn't taken lightly. It was done through much thought, much deliberation. And so I hope that we could give the children and the parents of Roosevelt that hope. And I would hope we could support Senator Fuschillo.

ACTING PRESIDENT McGEE: Senator Dollinger was next.

SENATOR DOLLINGER: Thank you,

Madam President. I'll be very brief. I've already spoken on the bill.

Senator LaValle, I think you're absolutely correct when you describe the fact that the State of New York has imposed control boards. We have exercised our oversight function.

We have never, Senator LaValle, to my recollection, never said: You can't vote for your school board person. We've never taken away that power to vote for the mayor of the City of New York. We've never said: You can't vote for city council. We've never said you couldn't vote for the mayor of Troy when we bailed out Troy.

We're saying today that you can't vote to elect your school board president in the Roosevelt School District, that we're going to decide who sits in that chair. I would say that makes this bill very different from all its predecessors.

And I'll close with one other prophecy. I may be right, I may be wrong. But, Senator Marcellino, your strong advocacy for this bill struck a chord in me. There is

a judge in this state who has said to us, right here in this room, the 61 members of this room, that you have done to education for children in this state what we now claim the school board in Roosevelt has done to their children, that we have not given proper funding to allow them to meet the constitutional mandate of a quality education.

That judge has said -- he ordered this Legislature to produce a remedial plan by September 15th to ensure that our children would get their constitutional right. The Governor of this state has chosen, as is his right, to appeal that decision.

There may come a day when the Court of Appeals of this state agrees with that judge and says to this Legislature: You have failed to do the job. Just like this bill says to the Roosevelt School District: You failed to do the job.

We will have to submit a remedial plan. And when that judge says, Guess what, the remedial plan doesn't do the job and I'm going to take over the power to put money into public education in New York State -- and he's

going to take that power away from us -- I daresay that people in this chamber, including me, are going to stand up and say, That's wrong. That's wrong. It's our judgment. We were elected to decide how that constitutional right is enforced. We were given the power by the people of this state.

Even though the Majority in this house, even though the Majority in this house has been from one political party for the last 40 years, I would stand up and defend their prerogative to decide how much money goes into education. And I will not let a judge tell us, unless it's the absolute last thing we have to do, that we don't have the power to do it. We were elected to do it. Our judgment should control.

And all I would ask is that those who will vigorously defend the power of this chamber to decide the future of educational opportunity in this state, all I'm asking today is that you not take away that power from the Roosevelt School District. Because there's an argument that says we have failed too, and that in the near future we may face

the same command from someone who says: I know better than the New York State Senate who should get what money for education.

I will stand with my Republican colleagues and say, Do not take that power away from us. While we may have vast disagreements about how money should be spent and where it should go, and we may not -- I may not have the power that my vision for education be implemented because I'm not in the Majority in this house, but I will stand shoulder to shoulder with the members of this house and say, It's not right to take away our power as elected officials. We are stripping the people of this state of the power of their vote.

I will protest when a judge tells us to -- threatens to take it away from us. And I will stand up today when this bill takes it away from the elected officials in the Roosevelt School District. This is something that needs to be solved by them. It can't be solved from the outside by this bill.

I caution all of you, there may come a time when we have this debate and it's

us that's having its power taken away. I would be very careful with how you allow that power to be taken away anywhere in this state. It's going to come back to haunt us.

ACTING PRESIDENT McGEE: Senator Onorato.

SENATOR ONORATO: On the bill, Madam President.

ACTING PRESIDENT McGEE: Senator Onorato, on the bill.

SENATOR ONORATO: I've been listening to the debate on both sides of the issue here quite a bit, and I just want to point out a little story that I heard one time.

It had to do with a flash flood that was occurring in a town. And as the floodwaters were rising, there was a preacher in the center of town, where the church was flooding, and he went up to the higher level. And a boat passed by, and he says: "Reverend, would you please come in?" The water was rising. He says, "No, don't worry." He says, "The good Lord will provide."

The water kept rising. He went a

little higher. The state troopers came to try to rescue him. They said, "Reverend, please come in. The water is rising. You'll soon be overwhelmed." He says, "Don't worry, the good Lord will provide."

Finally the flood crest hit the roof, and a helicopter passed by: "Reverend, please get on. The water is rising, there's no further hope." He says, "Don't worry, I'm a good servant of the Lord, and the Lord will provide."

Well, to make a long story short, the reverend drowned. And he went up to heaven. And when he was there, he said, "I would like to speak to the Lord." So when they guided him before the Lord, he says, "I can't believe that You abandoned me in my hour of need. I asked for Your help, and You refused me."

The good Lord looked at him. He says, "Reverend," he says, "I sent the boat, I sent the state troopers, and I sent the helicopter. I can't help it if you can't read the signs."

This is what's happening now. We

sent help to the Roosevelt School District. We gave them additional funding. We took away some of their board members, we replaced them. The people themselves replaced them.

Now Senator Dollinger says that we have to worry about them taking some of our powers away. Well, they do that every two years. When they don't think we're doing the right job, they throw us out.

Well, this is what we're telling the people of Roosevelt: You're not doing the job that you were elected to do to provide quality education to your children. We have to send out that life raft, and we've got to make sure that all of the children of Roosevelt get into that boat and on to higher education.

I urge my colleagues to join me in throwing out that life raft to save the children of Roosevelt. I vote yes.

ACTING PRESIDENT McGEE: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Madam President.

I am going to talk out of both

sides of my mouth, if you will. I agree with everyone.

(Laughter.)

SENATOR MONTGOMERY: I agree with my colleagues who have raised these very important issues about the idea of throwing out the vote of the electorate in Roosevelt.

And I certainly am impressed to see the passion that has been exhibited in the debate. Senator Marcellino I certainly respect. He's been a teacher in the city of New York and knows firsthand, on the front lines. And certainly Senator Smith over here.

Let me say I've been thinking of myself here in this chamber and feeling sorry for myself, and I'm putting myself in the shoes of those young people in this Roosevelt School District. I really feel so frustrated that our system is not working. Certainly it's not working to my satisfaction as an elected official who represents the same number of people that every other Senator represents.

There are some Senators who have millions of dollars that they can bring to

their constituents. I can't do that. There are some Senators who have access to travel, to make decisions on legislation, to do the work that a Senator should be doing. I can't do that.

I'm terribly frustrated. And if there was anyone who could fix this place, I would be very happy. But I'm not the Majority Leader, I'm not the Speaker. I'm not in the Majority, I'm not a Republican, I'm not a white male. So there are many things operating against me. I'm -- I'm here. But at the same time, I believe in this system, I'm proud to be part of it. But I can tell you, I'm very frustrated.

Now, if I were a student in Roosevelt, stuck in a school where I was not likely to be able to graduate on time with the kind of background and foundation that would propel me into a successful college experience, career experience, I would be terribly frustrated. And those students in Roosevelt, the same as I am here, are not able to do for themselves, to make the kinds of decisions that will make a difference in their

school so that that school works.

So here we are. We are in a position to make a decision on their behalf. And I, similarly to Senator Smith, similarly to Senator Marcellino -- for once, we have the Republicans and Democrats weighing on my decision equally in this instance. A Republican and a Democrat, at least -- I want to represent the interests of those young people who are not in a position to represent themselves.

I rail all of the time against all kinds of legislation that I think will be unfairly disadvantageous to young people that I represent in my district. I think the same thing about those young people in Roosevelt. But if I'm not willing to make a decision that will help to improve their opportunities, then I can't stand up and complain about those issues that I think are to their detriment.

So I'm going to vote yes today. And I feel that I am voting on behalf of the young people, those students in Roosevelt who are crying out for some help from somewhere, somebody. And I think that we're that body

and we should do something on their behalf.

So I'll be voting yes, Madam President.

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

Senator Fuschillo, to close.

SENATOR FUSCHILLO: Just briefly, Madam President.

This is probably the best debate, full of compassion and passion for people. And I appreciate all the comments.

Senator Montgomery, I agree with everything that's been said too, in one fashion or another.

Senator Hassell-Thompson isn't here.

We've gone through it all in the last five years. Senator Stavisky, you talked about superintendents. We've had five in five years. Five. The one now is the one, in my opinion. He's the one who's reaching out to the community. He's the one who I believe is going to bring back what everybody is talking about.

And, Senator, I wish I could wear that shirt that you want to wear for the successes in Mount Vernon. It's been tried. Five years of failure.

Senator Hannon laughs when I say when is enough enough. It's going.

Senator Onorato, they're drowning. They're going down. I spoke last Friday at the sixth grade in Centennial, an elementary school in Roosevelt, 25 kids. And when these kids walk into the school, they should see a subliminal message that says "the land of opportunity, something that is going to enrich my life." They don't see that. They see failure. Because the school board, the Citizens Action Committee, the oversight committee by the state, the task force by the state can't get their act together.

Senator Onorato, I need that life preserver right now. And that's what this legislation does.

And Senator Marcellino, to Senator Balboni, to Senator Malcolm Smith, thank you.

And Senator Smith, it has to come from the heart. I have three children who go

to school, one not yet. I want the best education that we can give them.

And the kids from Roosevelt can learn. I want to emphasize that, they can learn. Two years ago I spoke at the graduation ceremony. The valedictorian got a full scholarship to an Ivy League school. Last year the captain of the football team got a scholarship to an Ivy League school. They can do it. But the teachers don't have the mechanism that the school board and the community as a whole and all these other things that we've done in the last five years -- they don't have it. It's not there.

So I need, they need that clear line of authority from that superintendent, who is from Yonkers, who is reaching out to the community -- and he's doing a terrific job. I talked to him this morning and I told him this bill was coming to the floor. And I told him that for one year they're going to be an interim school board and they can be from Roosevelt, but there's no requirement. And that after that, in 2003, we're going back to the elected body. And we're going to

transition it back to the community, because that's where it belongs.

I love what I do, and I love when my bills come to the floor. If you think this is easy for me, it's not. It's not. But the superintendent said to me, by having that transitional period, it's going to allow me to breathe life into that community that is choking.

I thank you for all your comments, and I urge a yes vote on this bill.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 10. This act shall take effect July 20, 2001.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator Gonzalez.

SENATOR GONZALEZ: Thank you, Madam President.

I think that I'm frustrated with the education of the city, I'm frustrated with

the education that's going on in the state, in various parts of the state. It's no different in Roosevelt as it is in New York City.

And I want everybody to take notice, that we got to do something about it. So I vote yes.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Gonzalez in the affirmative.

Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you, Madam President.

For the very same reason, I'm voting no. We have to do something about it in the state of New York. The difference now from five years ago, Senator Fuschillo, in my opinion, is that we have the courts talking to us now. And the courts are saying: New York State, get your act together, you're not doing the right thing and educating your students. They're not getting a sound, basic education.

And it's a statewide problem, in pockets. Even in pockets in my county, supposedly the wealthy county of Westchester. So we need help too, in certain areas. We

need leadership and we need money. And we need additional help for children in need.

And it has to come from us. And that's the difference. The difference is the Campaign for Fiscal Equity.

I'm voting no.

ACTING PRESIDENT McGEE: Senator Oppenheimer, in the negative.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. Briefly to explain my vote.

In 1995 I was one of the people that Senator Levy spoke with, along with the Commissioner of Education, along with Regent Adelaide Sanford, in an attempt to really examine for himself, with us, those of us that he thought would give him some opinion that he would integrate into his decision about what he was doing for the Roosevelt School District.

And I also remember the difficulty we had in coming to a conclusion for New York City governance reform. It was also painful, similarly to what we're doing today. But we had to do it. I'm very, very thankful that we

did it. I think we can all feel proud of ourselves because we have changed the environment for education in New York City.

And so I hope that today, by taking this step, that though it is drastic we will change the environment for education in Roosevelt. And by doing that, we can begin to see some significant improvements.

So I'm voting yes. And I certainly appreciate Senator Fuschillo and Assemblywoman Earlene Hill Hooper for their efforts to improve that district.

ACTING PRESIDENT McGEE: Senator Montgomery recorded in the affirmative.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

I am also going to vote yes on this, although I hear Senator Oppenheimer. You know, you can make the arguments either way.

My vote is based in part on the commitment that I sense from people in support of this legislation to actually intervene and do something about the most fundamental crisis

in our state, which is the failure to educate our children.

I hope that we are going to get that same level of commitment and passion as we undertake the task of saving all of the other children in this state who are getting educations just as lousy as the children in Roosevelt, just as bad.

And I have been in the courtroom in the Campaign for Fiscal Equity case and seen the evidence. And if you sat there for a couple of days and heard about kids who are basically treated like they're, you know, in prison, kids who can't read, who are reading three and four years behind their grade level, all over the state, then the question of what we're doing about that and the question of what this Governor is doing about that should be first and foremost in our minds.

And I hope that we will pass a resolution, if you're sincere about what you've said today, as the Assembly has done, calling on the Governor to drop the appeal. Let's comply with the Campaign for Fiscal Equity case. Let's save all the Roosevelt

districts. We can do it.

And this house is not moving forward on the big issue. I support you on this one. I hope you'll come around and echo the language and the arguments you've used today when we go to all the other districts in the state that have these same problems.

I vote yes.

ACTING PRESIDENT McGEE: Senator Schneiderman, in the affirmative.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President. Just to explain my vote.

I made the impassioned plea and did not try to persuade anybody else to vote the way I voted, because nobody else was in Mount Vernon to see the changes and to see structurally what happened and how we came to the point that we did.

My no vote does not mean that I do not believe, Senator Fuschillo, that you are doing the right thing as you see it for that school district. My concern becomes when the state takes the power away from school

districts and away from the voters to do what is their constitutional right to do. That is a major stroke that I cannot support.

I support every other aspect. I support your intent and your desire to give more power to the Commissioner that will allow him to intervene, to assist and support. But I cannot support the ousting of a school board that has been duly elected by the people of Roosevelt.

All of the assistance and support, all of the concerns, those are major. We experienced them in Mount Vernon. And people can tell me that Mount Vernon was different. It wasn't different. Because we had schools where we had metal detectors on our schools. We had parents who literally took their children out of the public school because they did not want them to be in that environment. Those parents are bringing their children back into the public schools today because of the commitment that the city of Mount Vernon has been able to make.

So my vote no is not against the children and the efforts of Roosevelt. But it

is no against the state taking a major step in taking away the power of the electorate in Roosevelt.

ACTING PRESIDENT McGEE: Senator, you vote in the -

SENATOR HASSELL-THOMPSON: No.

ACTING PRESIDENT McGEE: Senator Hassell-Thompson in the negative.

Senator Stavisky.

SENATOR STAVISKY: Madam President, to briefly explain my vote.

Last Friday I visited a school in my district in Flushing, downtown Flushing, in District 25, which is the most improved school district in the City of New York. And at P.S. 20, where 75 different languages are spoken, I saw a school that works. I saw a school where the children were doing very well. And I'm convinced it's because of the leadership in that particular school.

I'm delighted, Senator Fuschillo, that you have a superintendent -- you finally hit the right superintendent. And that convinces me to give him the opportunity, give him the resources and let us hope that he can

do the job without someone breathing down his neck.

And I very reluctantly vote no on this bill.

ACTING PRESIDENT McGEE: Senator Stavisky, how do you vote?

SENATOR STAVISKY: No.

ACTING PRESIDENT McGEE: In the negative.

Senator Paterson.

SENATOR PATERSON: Madam President, in spite of the prodding from Senator Schneiderman, I'm still going to vote no.

SENATOR MALCOLM SMITH: We'll see you later.

(Laughter.)

SENATOR PATERSON: And I'd like Senator Onorato to know that after the preacher drowned, I heard the state took over his church.

(Laughter.)

SENATOR PATERSON: But I wanted to add that to the discussion, because it's been a rather fierce discussion. And I really

think that -- I hope people come together. This is the vote that we've taken. The people have spoken through our elected officials. Obviously this bill is going to pass. The Assembly member in that district is a good friend of mine. She's in favor of it.

And I really hope that those who did oppose this, such as myself, will work with the people who are coming in to try to improve that district. Because it is really the best interests of the children that we're talking about.

And I think that the no votes in this case were needed, because we have to make sure that this doesn't open the door to rampant state takeovers. There are situations, such as in the civil rights movement, as Senator Schneiderman just told me, where, you know, sometimes governments do need to be taken over. And I guess maybe in this case that's the case.

I'm going to vote no, but I hope it will stand as an admonishment. I think what Senator Hassell-Thompson said about Mount Vernon is something that we might want

to look at before we have to go down this road the next time.

I wish all the people in Roosevelt well. I grew up very close to there. That school district had problems 30 years ago. And I hope that the great talent that is in that geographic area comes forth with the help of the state.

ACTING PRESIDENT McGEE: Senator Paterson in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1264 are Senators Connor, Dollinger, Hassell-Thompson, Oppenheimer, Paterson, Santiago, Stachowski, and Stavisky.

Ayes, 47. Nays, 8.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, can we return to reports of standing committees. I understand there's a report of the Rules Committee at the desk. May we have it read now.

ACTING PRESIDENT McGEE: The Secretary will read.

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

Senate Print 1048, by Senator Santiago, an act authorizing the City of New York.

3179, by Senator LaValle, an act to amend the Criminal Procedure Law.

3180, by Senator LaValle, an act to amend the Criminal Procedure Law.

3246, by Senator Leibell, an act to amend the Education Law.

3330A, by Senator Volker, an act to amend the Education Law.

5309A, by Senator Alesi, an act to authorize the Town of Henrietta.

5443, by Senator Wright, an act to amend the Public Service Law.

5463, by Senator Volker, an act to authorize.

5619, by the Senate Committee on Rules, an act to amend Chapter 141 of the Laws of 1994.

5626, by Senator Bruno, an act to amend the Insurance Law and the Public Health Law.

And 5627, by Senator LaValle, an act to amend the Insurance Law.

All bills ordered direct to third reading.

ACTING PRESIDENT McGEE: Senator Marcellino.

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

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Nay?

(No response.)

ACTING PRESIDENT McGEE: The report of the Rules Committee is accepted.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, may we return to the controversial calendar and take up Calendar Number 631 at this time, please.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 631, by Senator Kuhl, Senate Print 3230A, an act in relation to authorizing the Southern Tier.

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

ACTING PRESIDENT McGEE: Yes, there is.

SENATOR MARCELLINO: Move to accept.

ACTING PRESIDENT McGEE: The motion is to accept the message of necessity. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Those opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The motion is accepted.

The Secretary will 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, 55.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Yes, Madam President. May we continue in regular order with the controversial calendar.

ACTING PRESIDENT McGEE: The Secretary will read.

SENATOR MARCELLINO: Thank you.

THE SECRETARY: Calendar Number 1267, by Senator Morahan, Senate Print 5595, an act to amend the Penal Law, in relation to authorized dispositions.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR DOLLINGER: Explanation, Madam President.

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

SENATOR MORAHAN: Yes, Madam

President.

This bill adds another section, 5, to the Penal Law, for second-degree murder, which would allow a mandatory life-without-parole sentence for anyone who would be committing a murder on a child of 14 or under while engaged in another criminal act.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT McGEE: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 1209, by Senator Saland, Senate Print 5042A, an act to amend the Real Property Tax Law, in

relation to providing a tax exemption.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR DOLLINGER: Explanation.

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

SENATOR SALAND: Thank you, Madam President.

Madam President, this is a bill, not unlike others that we've seen in this house, which would permit Dutchess County to enact legislation or a local law whereby the county and any of its cities, towns, or villages would be authorized at local option to provide for a 10 percent real property tax exemption for volunteer firefighters and volunteer ambulance workers.

That would occur after a public hearing and would require, again, a vote by either the local municipality or the county.

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

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

ACTING PRESIDENT McGEE: Senator

Dollinger, on the bill.

SENATOR DOLLINGER: I'm not going to vote against this bill. I understand Senator Saland attempting to use the tool of a property tax exemption or a reduction of property taxes as an incentive for recruitment for our volunteer fire departments and ambulance departments.

My only regret, Madam President, is this is only a Dutchess County bill. This should be a statewide bill. With the importance of using tax incentives to get volunteers in this very busy time of American life, it would seem to me the best way to do this is with a statewide bill.

I continue to look forward to the adoption of a statewide bill, because that's really the right way to go, and not end up with a balkanized system in which certain counties get this benefit and others might not, in part because of the political affiliation of their elected representatives.

I think a statewide bill is the better way to go, and I look forward to casting another yes vote on a statewide bill

in the future.

ACTING PRESIDENT McGEE: 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.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1237, by Member of the Assembly Nolan, Assembly Print Number 7458, an act to amend the Labor Law, in relation to prevailing wage supplements.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1268, by Senator Morahan, Senate Print 5596, an act to amend the Penal Law, in relation to penalties for assault and manslaughter.

SENATOR DOLLINGER: Explanation, please.

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

SENATOR MORAHAN: Thank you, Madam President.

This bill would establish a more appropriate penalty for criminal conduct that results in unintended serious physical injury or harm or death.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1271, by the Senate Committee on Rules, Senate Print 5616, an act to amend the Education Law, in relation to the distribution.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR DOLLINGER: Explanation, please.

ACTING PRESIDENT McGEE: Senator Skelos, an explanation has been requested on Calendar 1271.

Senator Kuhl, an explanation has been requested, sir.

SENATOR KUHL: And who requested the explanation?

ACTING PRESIDENT McGEE: By Senator Dollinger.

SENATOR KUHL: Senator Dollinger, okay.

Senator, it's very simple in purpose. This bill, as you can see, is being offered up by Senate Rules. And it does two things. Number one, it provides that instead of a hearing possibly being held relative to the creation of a charter school district within a public school district that the public school district now, under this bill, would be required mandatorily to hold a hearing.

And then also it goes on to say that if a school district -- this is a little Section 1A that's added on. It says that if in fact a school district fails to conduct a public hearing that in fact the Board of Regents or the charter entity shall conduct a public hearing to solicit comments from the community in connection with the issuance or renewal of a charter.

And one of the things in the Education Committee that we've been dealing with, Senator, is that oftentimes we hear from school districts who all of a sudden, in the

middle of a budget year or whatever, find that there in fact is being a charter school established within their district which they didn't anticipate.

And as you know from the charter school legislation that was passed three years ago in this state that there is a trail of public monies that goes into that charter school that would no longer go to the public schools. So there is a -- I won't call it significant, but there is certainly a loss of revenue because of the transfer of students.

What we have heard from school superintendents across the state who have had charter schools established within their school districts is that oftentimes there are, for lack of a better word, recurrent expenses that they have incurred and will continue to incur that even with the loss of students they cannot eliminate. So that there are some additional revenues that are needed but that are taken away from them on a per-pupil basis.

What this bill does is attempt to essentially give them as much forewarning and fair warning of the possibility of a charter

school being created, so that they can make the appropriate accommodations.

SENATOR DOLLINGER: Through you, Mr. President, if the sponsor will yield.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: I have just two short questions.

ACTING PRESIDENT McGEE: Senator Kuhl, will you yield for some questions?

SENATOR KUHL: I'd be happy to.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: Under this bill, Senator, when is the hearing supposed to occur? As I understand it, the bill says the school district shall hold the hearing and, in the event they don't, then it defaults to either the Board of Regents or the charter entity. When would that hearing be held? Is there a time -

SENATOR KUHL: We didn't define that, Senator. We've kind of left that up to the discretion of the school district as to when to schedule.

I mean, what's happening is that these applications are coming in at different times. And so obviously we left it to their discretion to do it when they saw fit.

SENATOR DOLLINGER: Okay. And through you, Madam President, if Senator Kuhl would continue to yield.

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

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

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR DOLLINGER: I raised this question in the Rules Committee deliberation on this bill, and I think it's been answered. But at line 17 of the bill it says that "the Board of Regents or their charter entity."

Would that be the SUNY Board of Trustees, because they're the other entity under state law that has the authority to charter schools?

SENATOR KUHL: Yes. Yeah, there are only two entities, as you know, that have the power to grant charters.

SENATOR DOLLINGER: Great.

Just on the bill briefly, Madam President.

ACTING PRESIDENT McGEE: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I want to thank Senator Kuhl and his staff for their work on this bill. I raised a question in the Rules Committee about whether it would apply to the Board of Regents and to the SUNY trustees, the requirement that the default public hearing be held by the chartering entity. The bill certainly seems to have attended to that.

I think it's a good bill. I think that Senator Kuhl is correct, that oftentimes school districts are caught unawares, not only about the creation of the charter school but about the relevant costs and the extent to which they will take students away and take revenue away from the school district.

This is a good idea and a necessary amendment to the charter school process. I recommend people vote aye.

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, 55.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Saland.

SENATOR SALAND: Madam President, I would request unanimous consent to be recorded in the negative on Calendar 1069, Senate 5355A.

ACTING PRESIDENT McGEE: Without objection.

Senator Rath.

SENATOR RATH: Madam President, I would request unanimous consent to be recorded in the negative on Calendar 5355A.

ACTING PRESIDENT McGEE: Without objection.

Senator Balboni.

SENATOR BALBONI: Yes, Madam President. Could we please return to motions and resolutions.

There are three privileged resolutions at the desk, two by Senator Skelos and one by Senator LaValle. Could we please have the titles read and move for their immediate adoption.

ACTING PRESIDENT McGEE: Motions and resolutions.

The Secretary will read.

THE SECRETARY: By Senators Skelos, Bruno, LaValle, and Onorato, Legislative Resolution Number 2576, celebrating the memorable life of Brian Fahey, dedicated father, husband, firefighter and friend.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The

resolution is adopted.

Senator Balboni.

SENATOR BALBONI: Please continue to read the resolutions.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senators Skelos, Bruno, LaValle, and Onorato, Legislative Resolution Number 2599, mourning the tragic death of Harry Ford, dedicated father, husband, firefighter and friend.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Paterson.

SENATOR PATERSON: Madam President, is that resolution open to -

SENATOR BALBONI: Senator Paterson, at the conclusion of the next

resolution's reading I will make the usual - the customary and usual practice in this house is to open all the bills for sponsorship -- I mean open all resolutions. Thank you.

SENATOR PATERSON: And thank you.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senators LaValle, Bruno, Skelos, and Onorato, Legislative Resolution Number 2600, mourning the tragic death of John Downing, dedicated father, husband, firefighter and friend.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Balboni.

SENATOR BALBONI: Madam President, as I mentioned before to Senator Paterson, we'd like to open up all these -

the three resolutions for sponsorship.

And the prayers of everyone in this chamber go to the families of the firefighters who we honor today.

ACTING PRESIDENT McGEE: Thank you, Senator Balboni.

Senator Onorato.

SENATOR ONORATO: Madam President, I rise today to pay tribute to the memory of three extraordinary men, Brian Fahey, John Downing, and Harry Ford.

This past Sunday, on Father's Day, these three courageous firefighters made the ultimate sacrifice on our behalf. They died in an effort to serve and protect the people of Astoria, Queens, which I represent, from the ravages of a devastating explosive fire.

Brian Fahey, John Downing, and Harry Ford exemplified in word and deed what we have come to expect from these firefighters and police officers we call New York's finest. They were dedicated public servants and loving husbands and fathers. In passing this resolution today, the State Senate joins with the many others in New York City and New York

State in honoring their memories and expressing heartfelt condolences to their families.

We can never hope to repay our debt to Brian Fahey, John Downing, and Harry Ford, but we can pay tribute to their memories and reaffirm our deep respect for the firefighters in our city and state who stand ready, every minute of the day, to give their lives in an effort to save the lives of others.

As we honor their lives and these three men who were taken from their families and their communities so suddenly and so prematurely, we must remind ourselves never to take our firefighters for granted. We must honor their bravery and dedication to public service every day. That, I believe, would be a fitting and lasting tribute to the memories of Brian Fahey, John Downing, and Harry Ford.

These were true heroes, and their legacy of courage and commitment to the people of the City and the State of New York will live on.

Thank you.

ACTING PRESIDENT McGEE: The

three resolutions will be open to all members. Any member wishing not to be on the resolution should notify the desk.

Senator Balboni.

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

ACTING PRESIDENT McGEE: Yes, three substitutions.

The Secretary will read.

THE SECRETARY: Senator LaValle moves to discharge, from the Committee on Rules, Assembly Bill Number 6146 and substitute it for the identical Senate Bill Number 3179, Third Reading Calendar 1279.

Senator LaValle moves to discharge, from the Committee on Rules, Assembly Bill Number 6145 and substitute it for the identical Senate Bill Number 3180, Third Reading Calendar 1280.

Senator Volker moves to discharge, from the Committee on Rules, Assembly Bill Number 6697A and substitute it for the identical Senate Bill Number 3330A, Third Reading Calendar 1282.

And Senator Wright moves to

discharge, from the Committee on Rules, Assembly Bill Number 8952 and substitute it for the identical Senate Bill Number 5443, Third Reading Calendar 1284.

ACTING PRESIDENT McGEE: Substitutions ordered.

Senator Balboni.

SENATOR BALBONI: Madam President, could we just stand at ease for a moment, please.

ACTING PRESIDENT McGEE: The house will stand at ease.

SENATOR BALBONI: Thank you.

(Whereupon, the Senate stood at ease at 2:25 p.m.)

(Whereupon, the Senate reconvened at 2:30 p.m.)

SENATOR BALBONI: Madam President.

ACTING PRESIDENT McGEE: Senator Balboni.

SENATOR BALBONI: Madam President, now that the clock is right -- I'd like to thank the sergeant-at-arms for correcting the clock -- it's time to take up

the Supplemental Calendar Number 1, if possible. Could we please have the noncontroversial reading of that calendar.

ACTING PRESIDENT McGEE: Thank you, Senator Balboni.

The Secretary will read.

THE SECRETARY: Calendar Number 384, by Senator Marcellino, Senate Print 1110A, an act to amend the Education Law, in relation to establishing.

SENATOR DOLLINGER: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 683, by Senator Leibell, Senate Print 4772, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT McGEE: A home rule message is at the desk.

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 745, by Senator Alesi, Senate Print 1504A, an act to amend the General Business Law, in relation to misrepresentations.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR DOLLINGER: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 801, by Senator Seward, Senate Print 1050, an act to amend the State Finance Law and Chapter 83 of the Laws of 1995.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the

roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 55.

SENATOR SKELOS: The bill is passed.

THE SECRETARY: Calendar Number 886, by the Assembly Committee on Rules, Assembly Print Number 8485B, an act to amend the Education Law, in relation to safety devices.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 3. This act shall take effect in one year.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number

917, by Senator Marcellino, Senate Print 105 -

SENATOR DOLLINGER: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1278, by Senator Santiago, Senate Print 1048, an act authorizing the City of New York to reconvey its interest.

ACTING PRESIDENT McGEE: A home rule message is at the desk.

Read the last section.

THE SECRETARY: Section 5. 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, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1279, substituted earlier today by Member of

the Assembly Thiele, Assembly Print Number 6146, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR DOLLINGER: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1280, substituted earlier today by Member of the Assembly Thiele, Assembly Print Number 6145, an act to amend the Criminal Procedure Law.

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1281, by Senator Leibell, Senate Print 3246, an act to amend the Education Law and the Retirement and Social Security Law.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1282, substituted earlier today by Member of the Assembly Eve, Assembly Print Number 6697A, an act to amend the Education Law.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 4. This act shall take effect September 1.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1283, by Senator Alesi, Senate Print 5309A, an act to authorize the Town of Henrietta.

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

Read the last section.

THE SECRETARY: Section 4. 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, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1284, substituted earlier today by the Assembly Committee on Rules, Assembly Print Number 8952, an act to amend the Public Service Law.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR DOLLINGER: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number

1285, by Senator Volker, Senate Print 5463, an act to authorize.

SENATOR BALBONI: Lay that bill aside temporarily.

ACTING PRESIDENT McGEE: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 1286, by the Senate Committee on Rules, Senate Print 5619, an act to amend Chapter 141 of the Laws of 1994.

SENATOR BALBONI: Please lay that bill aside temporarily also.

ACTING PRESIDENT McGEE: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 1288, by Senator LaValle, Senate Print 5627, an act to amend the Insurance Law, in relation to coverage.

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

That completes the reading of the noncontroversial supplemental calendar.

SENATOR BALBONI: Madam President.

ACTING PRESIDENT McGEE: Senator Balboni.

SENATOR BALBONI: Could we please have a reading of the controversial calendar, in order.

ACTING PRESIDENT McGEE: The Secretary will read in order.

THE SECRETARY: Calendar Number 384, by Senator Marcellino, Senate Print 110A, an act to amend the Education Law.

SENATOR DOLLINGER: Explanation.

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

SENATOR MARCELLINO: Yes, Madam President.

This bill is similar to the one we've done recently with regard to daycare centers. We're simply asking that school districts develop a procedure -

ACTING PRESIDENT McGEE: Excuse me, Senator Marcellino.

Could we have some quiet in the house, please.

Thank you.

SENATOR MARCELLINO: Thank you,

Madam President.

We're simply asking that school districts develop a procedure in the schools that asks anyone coming into the school to check in, to identify themselves and state the purpose of their visit.

This ensures -- this would hopefully ensure the safety of the youngsters so that people just do not feel they can walk into schools at any point in time and just wander around. We'd like to know who is in the building and what the purpose is of the person in the building. If it's legitimate, that's fine. They'll be directed to the place they have to go.

This would at least allow a record to be maintained and we know who's in the building. And those who shouldn't be there are forewarned that they will not be permitted to enter.

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

SENATOR DOLLINGER: If the sponsor will yield just to one question, Madam President.

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

SENATOR MARCELLINO: Certainly.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: Senator, is there any reason why local school boards couldn't do this for themselves? And isn't there significant evidence that most of them have done this kind of check-in protocols for entering public schools?

SENATOR MARCELLINO: The answer to your question, Senator, is absolutely yes, they could do it for themselves, and many have. Many have not. And we are simply saying it is time that all districts take the precaution to identify people who come into a building where children are to be found.

It wouldn't be the first time that adults have walked into buildings unchallenged by anyone. I mentioned the case in the prior bill we passed in this house for my video surveillance bill where the person walked into the building unchallenged -

ACTING PRESIDENT McGEE: Excuse

me, Senator Marcellino, will you suffer an interruption?

We must have order in the chamber. Would you please take your conversations outside so that we can hear the debate.

Senator Marcellino.

SENATOR MARCELLINO: That person entered the building of a school unchallenged, went to the locker room, secreted a camera, left, a few days later came back, unchallenged, to pick up the camera.

We don't think that's the way to go. We believe that a parent whose child is in these buildings deserves to know that there is a security system there that will check to see who is walking into the school. Teachers deserve the right to be safe and secure and to know that people in the halls have been identified, we know who they are and they're not just some person deciding to wander around the building for whatever reason.

These are schools of learning and education. And certainly peace, quiet, and control is an essential element to learning and education.

SENATOR DOLLINGER: Madam President.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Just briefly on the bill.

ACTING PRESIDENT McGEE: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I'm going to vote in favor of this bill. It seems to me that -- I guess I regard this as a bill that will be duplicative of most districts' efforts. The protocols that Senator Marcellino's bill outlines are in effect in every school district that I know of in Monroe County and every building in Monroe County.

And my only concern is that by giving the Commissioner broad-based authority to promulgate regulations he will promulgate some regulations that are not in current effect, and what we'll do is have overly broad regulatory authority that will require school districts in many cases that have effective protocols for visitors to change those, and may require an additional expense and time and

effort.

And I'm going to vote in favor of it. But whenever we do this where we seem to be duplicating what's already in existence, I question how pervasive the need is for this particular bill.

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

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 745, by Senator Alesi, Senate Print 1504A, an act to amend the General Business Law.

ACTING PRESIDENT McGEE: Senator Balboni.

SENATOR BALBONI: Yes, Madam

President, could you please lay this bill aside temporarily and go to the next bill.

ACTING PRESIDENT McGEE: The bill is laid aside temporarily.

The Secretary will read.

THE SECRETARY: Calendar Number 917, by Senator Marcellino, Senate Print 105, an act in relation to granting.

SENATOR DOLLINGER: Explanation, please.

ACTING PRESIDENT McGEE: A home rule message is at the desk.

Senator Marcellino, an explanation has been requested.

SENATOR MARCELLINO: Thank you, Madam President.

This bill was introduced a number at the times at the request of the Town of Huntington. We have passed this bill on many occasions. It would grant a person by the name of Gladys Raso a retroactive senior citizen tax exemption for the years 1986-'87 through 1990-'91 inclusively.

They agree there was a mistake made on their part. She is entitled to the

exemption. They have sent us the home rule message. They are willing to grant it, they just would like us to give them the authority to do so. They feel we need to give them the authority to do so. Their lawyers tell them that, so we're here to do that.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Through you, Madam President, I'm going to vote in favor of this bill -

ACTING PRESIDENT McGEE: Senator Dollinger, on the bill.

SENATOR DOLLINGER: -- even though, quite frankly, I've voted against partial property tax exemptions for all the not-for-profit groups on Long Island, and because it appears in this case, based on what Senator Marcellino said, that the fault lies exclusively with the government entity.

And in those circumstances, I think it's justifiable to grant an exemption that they would otherwise be entitled to except the government made the mistake. In this case, I think this is distinguishable from that long

list of property tax exemptions where the entity that's entitled to it didn't take the steps to perfect it.

Under those circumstances, this is a different deal from the one I usually vote against, and I'll vote in favor.

ACTING PRESIDENT McGEE: A home rule message is at the desk.

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT McGEE: The bill is passed.

SENATOR BALBONI: Madam President.

ACTING PRESIDENT McGEE: Senator Balboni.

SENATOR BALBONI: There will be an immediate conference of the Senate Majority

in the Senate Majority Conference Room.

ACTING PRESIDENT McGEE: There will be an immediate conference of the Senate Majority in the Senate Majority Conference Room.

SENATOR BALBONI: Please recognize Senator Dollinger.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: I would yield, Madam President, to Senator Mendez.

ACTING PRESIDENT McGEE: Senator Mendez.

SENATOR MENDEZ: Thank you, Madam President.

There will be an immediate conference of the Minority in Room 314. Thank you.

ACTING PRESIDENT McGEE: There will be an immediate meeting of the Senate Minority in Room 314.

The Senate stands at ease.

(Whereupon, the Senate stood at ease at 2:45 p.m.)

(Whereupon, the Senate reconvened

at 4:00 p.m.)

SENATOR SKELOS: Madam President.

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: If we could return to the original active list, would you please call up Senator Balboni's bill, Calendar Number 1275.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1275, by Senator Balboni, Senate Print 5646, an act to amend the Penal Law and the Criminal Procedure Law.

ACTING PRESIDENT McGEE: There's a message of necessity at the desk.

SENATOR SKELOS: Move to accept the message of necessity.

ACTING PRESIDENT McGEE: The motion is to accept the message of necessity. All in favor answer aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The message is accepted.

Read the last section.

SENATOR DOLLINGER: May we have an explanation, please.

SENATOR SCHNEIDERMAN: A brief explanation.

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

SENATOR BALBONI: Yes, thank you, Senator Dollinger and Senator Schneiderman. I'd be pleased to offer an explanation, a brief one.

This is the Governor's program bill as it relates to creating the crimes of promoting, soliciting or hindering the prosecution of acts of terrorism. It essentially mirrors the federal laws on terrorism, and it creates new penalties and new crimes.

Thank you.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Just briefly,

Madam President.

I understand that this bill is the subject of some discussions with our colleagues in the Assembly. There are parts of the bill that I think bear some serious examination in those discussions. My understanding is that they will be the subject of a needed scrutiny.

And my hope is that with a reasoned scrutiny of those provisions we can end up a bill that protects us from acts of terrorism, is well-married to our federal law and the system of federal control of terrorism, and that we'll end up with a bill that can come back to this house and become law.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 9. This act shall take effect on the first day of November.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

SENATOR SKELOS: Madam President.

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Would you please call up Calendar Number 1276, by Senator Volker.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1276, by Senator Volker, Senate Print 5653, an act to amend the Penal Law and others.

SENATOR DOLLINGER: Explanation.

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

ACTING PRESIDENT McGEE: There is a message of necessity.

SENATOR SKELOS: Move to accept.

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.

Senator Volker, I understand an explanation has been requested by Senator Dollinger.

SENATOR VOLKER: Thank you. I appreciate the opportunity to explain it.

Last year when we passed the Sexual Assault Reform Act of 2000 there was an unusual provision in the end of that bill that basically said that we had run out of time and that we intended in the future -- presumably meaning 2001, this year -- to continue to make some changes in the laws involving sexual assault that we were unable to get through to last year.

This bill represents those continued changes. And the reason I am a little bit hesitant is the Governor, the Senate, and the Assembly have been negotiating on this issue for about four months, on and off. What this bill represents is about as close to an agreement as we've been able to

get to.

The Governor and the Senate are on board. We're not exactly sure where the Assembly is, since the Assembly has sort of backed away. They didn't object, but they have not completely agreed to this bill. I want to be perfectly candid.

But this was approximately where we were when, as I understand it, we stopped negotiating. Now, there may be a couple of things in here that they were still questioning, but basically this is an extension of last year's bill.

I will give a quick description. For the aggravated sexual assault, for instance, there was some question about the age of a person, if a person over 18 assaults a person under 13. And that is a higher crime. We have reduced that in this bill to 11. So in other words, if a person over 18 assaults someone under 11, the crime is a higher crime against that person.

This adds the crime of forcible touching to the list of crimes which will permit prosecution for a crime of persistent

sexual abuse. It permits a persistent misdemeanor sexual offender to be punished as a felon. It expands the Sex Offender Registration Act by including sex crimes of forcible touching, persistent sexual abuse, aggravated sexual abuse 4, and facilitating a sex offense with a controlled substance.

The bill amends the Family Court Act to ensure that children from 9 to 12 are presumptively able to testify in a Family Court proceeding.

It creates a marital-exemption defense for certain acts of consensual sexual relations. That's where the person is either incapable because of drugs or capacity to consent.

And it changes some of the terms from "sodomy" to "deviant sexual intercourse" and so forth, because many of the activists were saying that the terms were such that they preferred for the victims to have different terms. And that's what's in this bill.

Finally, the bill makes it a felony to possess or sell amounts of what is called the date-rape drug, which is GHB. Sale of

28 grams -- this is quite a bit -- would be a C felony, and the possession of 28 grams a D felony. And that's basically it.

And a lot of technical corrections to the SARA bill of last year.

ACTING PRESIDENT McGEE: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Yes, if the Senator would just yield for a question of clarification.

ACTING PRESIDENT McGEE: Senator Volker, will you yield?

SENATOR VOLKER: Sure, I yield.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR HASSELL-THOMPSON: Thank you. Through you, Madam President, just explain for me, please, if you will, Senator Volker, what creating a marital exemption relative to certain appropriate sex acts means.

SENATOR VOLKER: This is a situation -- and as you know, we have changed the rules on marriage as it is, so it is possible to have a sexual assault in a

marriage even -- even -- as long as the person does not consent and so forth.

What this legislation does is add although the person may have consented technically, that the consent was because of drugs, induced drugs -- that is, the other spouse or whatever used drugs on that person or used some sort of coercion, very similar to what occurs outside the marriage. Or where the person for reasons, for instance, of incapacity -- for instance, their skill or whatever -- and unable to consent, as another person would be, for instance, who is disabled or whatever. Then in that case, you could charge someone with a sexual assault also.

It kind of mirrors the law outside of marriage, and -- but still using the understanding that there is still the potential defense of marriage as long as some other intervening act -- if another intervening act occurs, then you could still charge somebody in a marriage.

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

ACTING PRESIDENT McGEE: Read the

last section.

THE SECRETARY: Section 74. This act shall take effect on the first day of November.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, would you please call up Calendar Number 1277.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1277, by Senator Skelos, Senate Print 5656, an act to amend Chapter 549 of the Laws of 2000.

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

ACTING PRESIDENT McGEE: There is a message of necessity at the desk.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT McGEE: The motion is to accept the message of necessity. All in favor say aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: All opposed say nay.

(No response.)

ACTING PRESIDENT McGEE: The motion is accepted.

SENATOR DOLLINGER: Explanation.

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

SENATOR SKELOS: Madam President, this is a chapter amendment to legislation that we passed last year that would allow victims, prosecutors and sentencing courts to be given notice when a prisoner makes application to change his or her name.

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: Senator Dollinger.

SENATOR DOLLINGER: To explain my vote, Madam President.

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

SENATOR DOLLINGER: I expressed my displeasure last year about the fact that this was a piece of legislation I had worked on. In fact, I'd actually appeared on the "Today Show" nationally to talk about the concept underlying this bill, because this bill was an idea that I had worked on when a woman came to me and we had found out that the murderer of her 4-year-old child was attempting to change his name in a faraway corner of New York, and we'd only through happenstance found out about the fact that that name change was underway and that it designed, in the words of the murderer, to protect him from the publicity that accompanied his crime.

I proposed a bill, there were a number of bills passed. The bill was finally passed by this house, signed into law, all of

which occurred without the name of the person who had done all the work actually appearing on the bill.

I stand here again today, we're doing a chapter amendment. It's one of the Governor's program bills. There are 27 Senators on this bill as sponsors. Except, quite frankly, the one who did the work and brought the idea was never even asked to be on the bill.

I will never understand the code of courtesy in this house that allows something like that to happen. I asked last year if there were a way to change it. Apparently, I can only conclude now that there is not. And when we talk about courtesy to members, I guess I will always remember what I believe is this tremendous lack of courtesy in this instance.

I'm going to vote in favor. It was a good idea when I had it. It was a good idea when I did all the work on it. It's still a good idea. But when someone reminds me about what this house means, I will never forget it. I said I wouldn't forget it last year. I

won't forget this year either.

ACTING PRESIDENT McGEE: Senator Dollinger, in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, on Supplemental Active List Number 1, would you please call up Calendar Number 745, by Senator Alesi.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 745, by Senator Alesi, Senate Print 1504A, an act to amend the General Business Law, in relation to misrepresentations.

SENATOR DOLLINGER: Explanation, please.

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

SENATOR ALESI: Thank you, Madam President.

This bill simply addresses an

interesting situation in the existing law that makes it illegal to represent the mileage on an odometer on a vehicle when it is sold; in other words, at the point of sale.

This bill addresses the situation by saying it's illegal to misrepresent the mileage prior to the sale.

Thank you very much, Madam President.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, will you just continue in the

regular order, please.

ACTING PRESIDENT McGEE: Yes, we will. Thank you, Senator Fuschillo.

The Secretary will read.

THE SECRETARY: Calendar Number 1279, substituted earlier today by Member of the Assembly Thiele, Assembly Print Number 6146, an act to amend the Criminal Procedure Law.

SENATOR DOLLINGER: Madam President, could we have an explanation of - I believe this bill was vetoed last year. If we could have an explanation of the veto changes.

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

SENATOR LAVALLE: Yes. This - we have two bills for -- one -- this bill is for -- Calendar Number 1279 is for the town of East Hampton. And it would allow animal shelter officers to have peace officer status. That would give them the ability to issue appearance tickets.

And we had some disagreement with the Governor because the Governor felt that

issuing peace officer status was not necessary for both the East Hampton bills, for the village and the town. We obviously are in disagreement and hope -- had some discussion with counsel on this issue in the intervening period between sessions.

And we hope that the counsel will see matters a little differently during this year on both bills.

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

SENATOR DOLLINGER: Through you, Madam President, I believe that both these bills passed unanimously or close to unanimously.

SENATOR LAVALLE: Yes, that is correct.

SENATOR DOLLINGER: I'll address both bills, even though they're not simultaneously before the house.

Senator LaValle, I think these are just the kind of bills that, whether the Governor likes them or not, ought to become law. And there's an easy way for us to do that: just say to the Governor we think they

should be peace officers, we're fully aware of what peace officer status is, we've done it a number of times throughout this state.

There is a growing tide, for municipal liability reasons, that they have peace officer status. I have expressed sometimes my frustration that we seem to be doing it all willy-nilly, group by group. But nonetheless, it's the unequivocal sentiment of this house that they should be peace officers.

I would just encourage you, if these bills are vetoed this year, please bring them back. Let's override the Governor's veto -- which I think is a somewhat silly reason. Let's bring those bills back to this house. And I believe you will see today that there's a two-thirds majority that will stand up and say we're going to make these laws whether the Governor likes it or not.

We have tended, as I think Senator LaValle's experience indicates, to, quote, negotiate these bills with the Governor. But they're bills that have a strong Senate sentiment behind them that we should make them law regardless of what the Governor thinks.

That's what our constitution allows us to do. We should do it in this instance.

With all due respect, he's got 40 votes here. If we have more than 40, if we have 41, we ought to pass these bills into law regardless of his lack of signature.

I'd encourage you, Senator LaValle, not only to accept our yes votes but to accept a vote that says we'll vote for an override on these bills if the Governor vetoes them because he doesn't like the rising incidence of peace officer status. That's not reason enough to justify it to me.

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

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill

is passed.

THE SECRETARY: Calendar Number 1280, substituted earlier today by Member of the Assembly Thiele, Assembly Print Number 6145, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT McGEE: Read the last section.

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

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT McGEE: Senator LaValle, an explanation has been requested by Senator Dollinger.

SENATOR LAVALLE: Senator Dollinger, this is the same bill for the Village of East Hampton, and this would allow peace officers to issue appearance tickets.

The difference with code enforcement officers, really, they have no more standing than a normal, ordinary citizen. And so, as you had indicated in the prior bill, this has an additional piece to indemnify when a person has peace officer status in the actions that they take.

So this would again give the peace officers the ability to issue appearance tickets to enforce the codes in the laws within the municipality.

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

SENATOR DOLLINGER: Thank you for the explanation from Senator LaValle.

I'd simply point out for the record that Senator Montgomery, Senator Duane, and Senator Hevesi voted against this bill the last time around.

ACTING PRESIDENT McGEE: Thank you, Senator Dollinger.

Any other Senator wishing to speak on the bill?

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 1. Senator Montgomery recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1284, by the Assembly Committee on Rules, Assembly Print Number 8952, an act to amend the Public Service Law.

SENATOR ONORATO: Explanation.

ACTING PRESIDENT McGEE: An explanation has been requested, Senator Wright.

SENATOR WRIGHT: Thank you, Madam President.

The bill before us this afternoon amends the Public Service Law and provides for an expedited proceeding when applying for an application to repower or site an electrical generating facility.

As my colleagues will remember, it was two years ago that we made amendments to Article 10 establishing a one-year time frame during which a decision has to be made. And within that one-year time frame, you have the ability to extend an additional six months.

What this bill does is takes circumstances where either we are repowering a

plant and thereby reducing the emissions significantly, the threshold being a minimum of 75 percent, or we are relocating a facility on an existing -- on the site of an existing facility, again achieving emissions reductions of at least 75 percent.

In those instances, the siting procedure has to be completed with a decision within a six-month time frame, so we're reducing it from one year to six months. And it also allows an extension of three months. So we're reducing six-month extension to a three-month extension.

The intent is frankly relatively simple. It is to provide an incentive to build new capacity, to put that capacity online where it replaces existing capacity where we will have a significant reduction in emissions, thereby improving the air quality.

Let me also say that it is not the intent to exclude any new generation of plants from repowering. They would follow the normal procedure, since they may not be a position to achieve a reduction of 75 percent. But new-generation plants certainly could achieve

improvements. And that being the case, they would utilize the existing procedure.

So this is really targeted and focused at older, old-generation facilities that tend to be the facilities with the highest levels of emission, the facilities that we are currently using to meet our capacity requirements. And it would certainly be in the interest of all parties to replace that capacity with new generation.

As evidence of that, we can point to memorandums of support from both the EPL as well as the American Lung Association.

ACTING PRESIDENT McGEE: Senator Onorato.

SENATOR ONORATO: Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator Onorato, on the bill.

SENATOR ONORATO: I'd like to congratulate and thank Senator Wright for putting this bill forward. I represent the district in Queens County that provides the City of New York currently with about 48 percent of its current power. With some of

the new plants being proposed, we'll be able to provide over 60 percent of the total power needed in the City of New York.

This bill is certainly a step in the right direction, and one of the things that we have been stressing time and time again regarding the old, grandfathered plants that are currently operating at a much higher rate of pollution than the newer plants are. And while this will give them an incentive to upgrade their plants, it does not mandate it currently.

And I'm looking forward that, giving them the opportunity to take the steps on their own, that they will do so. But if they don't, that I hope we will revisit this legislation and make it necessary for them to comply in the future.

Thank you.

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

Read the last section.

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

ACTING PRESIDENT McGEE: Call the

roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1287, by Senator Bruno, Senate Print 5626, an act to amend the Insurance Law and the Public Health Law.

SENATOR FUSCHILLO: Please lay that aside temporarily.

ACTING PRESIDENT McGEE: The bill is laid aside temporarily.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, please call up Calendar Number 1220.

ACTING PRESIDENT McGEE: There is a message of necessity at the desk.

The Secretary will read.

THE SECRETARY: Calendar Number 1220, by Senator Skelos, Senate Print 5523, an act authorizing the assessor of the County of

Nassau.

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

ACTING PRESIDENT McGEE: There is a message of necessity at the desk, Senator Fuschillo.

SENATOR FUSCHILLO: Move to accept.

ACTING PRESIDENT McGEE: The motion is made to accept the message of necessity. All in favor will say aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: All opposed say nay.

(No response.)

ACTING PRESIDENT McGEE: The message of necessity has been accepted.

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. Nays, 1. Senator Dollinger recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

SENATOR FUSCHILLO: Madam President.

ACTING PRESIDENT McGEE: Senator Fuschillo.

SENATOR FUSCHILLO: Are there any substitutions at the desk?

ACTING PRESIDENT McGEE: Yes, there are.

SENATOR FUSCHILLO: Can we make them at this time, please.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: On page 10, Senator Volker moves to discharge, from the Committee on Rules, Assembly Bill Number 8529 and substitute it for the identical Senate Bill Number 2835, Third Reading Calendar 241.

On page 13, Senator Farley moves to discharge, from the Committee on Rules, Assembly Bill Number 1736 and substitute it

for the identical Senate Bill Number 3129, Third Reading Calendar 370.

On page 15, Senator Saland moves to discharge, from the Committee on Rules, Assembly Bill Number 5026A and substitute it for the identical Senate Bill Number 4231, Third Reading Calendar 413.

On page 16, Senator Morahan moves to discharge, from the Committee on Rules, Assembly Bill Number 7733B and substitute it for the identical Senate Bill Number 4023B, Third Reading Calendar 451.

On page 29, Senator Fuschillo moves to discharge, from the Committee on Rules, Assembly Bill Number 4955 and substitute it for the identical Senate Bill Number 2586, Third Reading Calendar 759.

On page 30, Senator Fuschillo moves to discharge, from the Committee on Rules, Assembly Bill Number 4042A and substitute it for the identical Senate Bill Number 4758A, Third Reading Calendar 778.

On page 30, Senator Fuschillo moves to discharge, from the Committee on Rules, Assembly Bill Number 6061A and substitute it

for the identical Senate Bill Number 4759A, Third Reading Calendar 779.

On page 30, Senator Saland moves to discharge, from the Committee on Rules, Assembly Bill Number 7752 and substitute it for the identical Senate Bill Number 5144, Third Reading Calendar 785.

On page 36, Senator Larkin moves to discharge, from the Committee on Rules, Assembly Bill Number 6527 and substitute it for the identical Senate Bill Number 3405, Third Reading Calendar 919.

On page 38, Senator Volker moves to discharge, from the Committee on Rules, Assembly Bill Number 2149 and substitute it for the identical Senate Bill Number 1092, Third Reading Calendar 959.

And on page 42, Senator Spano moves to discharge, from the Committee on Rules, Assembly Bill Number 3884 and substitute it for the identical Senate Bill Number 5330, Third Reading Calendar 1189.

ACTING PRESIDENT McGEE: Substitutions accepted.

Senator Duane.

SENATOR DUANE: Thank you, Madam President. I was hoping to have unanimous consent to vote no on the following pieces of legislation, which I'll do slowly: Number 1264, that's S5589; 1267, that's S5595; 1268, that's S5596; 1275, S5646; Number 1277, S5656; 1279, S3179; 1280, S3180; and 1284, S5443.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Without objection, so ordered.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, will you please take up Calendar Number 1288.

ACTING PRESIDENT McGEE: The Secretary will read Calendar Number 1288.

THE SECRETARY: Calendar Number 1288, by Senator LaValle, Senate Print 5627, an act to amend the Insurance Law.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR DOLLINGER: Explanation.

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

SENATOR LAVALLE: Madam

President, this is an issue that this house has discussed and debated before. This bill, as I had said in my remarks previously, is one in which our government, that is formed to protect the health, safety and welfare of people, really allows us to help people be pro-family, to have a family.

Today there are many couples who for a variety of reasons are marrying later and are trying to start a family later in life. This bill would require that every group or blanket health insurance policy that is delivered or issued in the state of New York provide medical coverage for physician services, hospital, surgical, major medical or similar comprehensive type coverage. And it must also include coverage for the diagnosis and the treatment of infertility.

Such coverage would be subject to annual copayments, coinsurance, and deductibles which the contracts or policies provide for other diseases.

Additionally, this bill would require that a person be insured for 12 months

before receiving such coverage, and a $60,000 lifetime limit on benefits would be imposed. Prescription drugs, however, would not be subject to this lifetime cap.

It should be noted that this bill would provide that certain procedures -- and we had discussed this before on this floor - such as the reversal of sterilization, reversal of sex-change operations, cloning or sperm or egg retrieval from deceased individuals would not be covered. However, if a deceased individual had provided for prior approval, then the use of sperm or eggs from a deceased individual would be approved.

This bill would permit religious and denominational employers and health insurance providers to be exempt from the mandates of this bill if such mandates would be contrary to the religious tenets of such religious or denominational entity.

This is the conscience clause. And this was discussed at great length and seemed to be a major point of contention for many of the members in this house.

I must say, in the intervening

months, in discussion with staff, we tried to think outside of the box and talked also to people who had objections to this particular provision. There are many people who said it was important to them that access for all people was something that they sought.

And so we went to work and said how can we achieve this, how could we recognize constitutional rights not to trample or impede upon one's religious beliefs, whether they be personal or institutional, and yet at the same time provide for coverage.

And so what we established was a New York State infertility health insurance pool. We have used this device in other circumstances, whether it be for med-mal insurance, auto insurance, to provide the ability of people to be able to get coverage.

And so the way this really works is that the religious organization would indicate that this was contrary to their belief. They would go to the insurance company that is providing general coverage for their employees and say, We have a problem with providing this coverage. The insurance company would then

make application to the Superintendent of Insurance. And at that juncture, the Superintendent of Insurance would then contact each of those individuals and tell them that they would be entitled to and have available to them coverage, infertility coverage.

And so we believe that we have bridged a gap, have put forth a balance, as I have said, and I can't say it enough, to both recognize and not trample on one's religious beliefs but at the same time to ensure that individuals, couples in our state would have available to them infertility coverage.

This legislation also, as we have discussed -- and this is, by the way -- this is, what I have just discussed, the creation of the infertility pool insurance pool is really the major change in this bill. We have really mirrored in every other way the legislation that had been discussed and debated on this floor and we have, as I have said, made sure that access is provided.

This bill and all its provisions would take effect on October 1, 2001, and would sunset on October 1 in the year 2003.

Madam President, that is the explanation on the bill that is before this house.

ACTING PRESIDENT McGEE: Thank you, Senator LaValle.

Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Madam President, will Senator LaValle yield for a couple of questions?

ACTING PRESIDENT McGEE: Senator LaValle, will you yield?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT McGEE: Thank you.

SENATOR DOLLINGER: Senator, you and I, I think, had a strong debate about this bill and its science and the technology and the cost and other issues behind this bill the last time around.

I want to focus my attention on the pool concept and how it's going to work. Since I have to commend you, Senator LaValle, you -- the best I can tell, you did think outside the box and came up with an idea that I think is an interesting idea. I want to

make sure I understand it. As I think I'll explain later, it may not quite overcome what my objection to this bill was, but let me just make sure I understand it.

This bill sets up a pool of people who request infertility coverage but who work for or are connected to an organization whose religious tenets are against infertility treatments; is that correct?

SENATOR LAVALLE: The answer is yes.

SENATOR DOLLINGER: Again through you, Madam President, if Senator LaValle will continue to yield.

SENATOR LAVALLE: Yes.

SENATOR DOLLINGER: Approximately how many people in New York would you expect would be in the pool?

SENATOR LAVALLE: We believe it to be in the tens of thousands. In other words, greater than 10,000. I can't say whether it's 20,000 or 30,000, but certainly more than 10,000.

SENATOR DOLLINGER: Through you, Madam President, if Senator LaValle will

continue to yield.

SENATOR LAVALLE: And, Senator, remember -

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

SENATOR LAVALLE: I just want to finish my answer to Senator Dollinger.

SENATOR DOLLINGER: I withdraw the question.

SENATOR LAVALLE: You must remember, Senator, that the Superintendent of Insurance will be contacting individuals who are employees of the religious organizations that have filed with the insurance company saying that they will not be providing this coverage. The insurance company contacts the employees.

And the question that cannot be quantified is we do not know whether each of those employees will say, "Yes, I want the coverage," and so it's very difficult to determine. We just can't take all of the people who work for a religious organization and say, yes, they're going to all want this coverage.

SENATOR DOLLINGER: Through you, Madam President -

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: -- if Senator LaValle will continue to yield.

SENATOR LAVALLE: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: I guess, then, I need to rephrase my first question. The 10,000 number, the tens of thousands number that you indicated, are those the number of people that would be covered by group policies that work for religious organizations in which infertility would violate the tenets of their faith, or are those -

SENATOR LAVALLE: The answer is yes.

SENATOR DOLLINGER: And then through you, Madam President, if Senator LaValle will continue to yield.

SENATOR LAVALLE: Yes.

SENATOR DOLLINGER: How many of

that group would you expect would then request the infertility coverage?

SENATOR LAVALLE: Senator, that's why I went through that lengthy answer. I just don't know how you would quantify at this time how many of those individuals who are covered with a policy would execute the infertility provisions. We just don't know.

SENATOR DOLLINGER: Through you, Madam President.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Senator, do you have an estimate -

ACTING PRESIDENT McGEE: Do you wish the Senator to continue to yield, Senator Dollinger?

SENATOR DOLLINGER: Yes.

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

SENATOR LAVALLE: Yes, I will.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: Approximately what would be the cost of this bill to provide

infertility coverage to couples in New York that needed it? What would the annual cost be to the overall insurance system in New York?

SENATOR LAVALLE: That would be the rate of increase per capita across the entire state. So that we're not just looking at one region and so forth, it's on a per-capita basis across the entire state.

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

SENATOR LAVALLE: Yes, I will.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: Approximately how many people who do not have this coverage now would utilize the $60,000 cap of expenses for infertility treatment in this state under this bill on an annual basis?

SENATOR LAVALLE: Senator, since this is -- should this become law, this would be the first time that there would be a $60,000 cap. And therefore, again, it's difficult to quantify it.

SENATOR DOLLINGER: Through you,

Madam President, if Senator LaValle will yield just to one more question.

SENATOR LAVALLE: Yes, I will yield.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: I just want to make sure I understand the pool concept.

As I understand it, all those who work for religious organizations for which infertility violates the tenets of their faith will be placed in a pool, and then from the pool, the people in the pool, they will be able to elect who gets infertility coverage; is that correct? They will be able to purchase the rider or participate in a rider that would provide the infertility coverage?

SENATOR LAVALLE: The first part is that people will be eligible to be in the pool.

The second part is we don't know how many people will trigger, by saying, Yes, I want to be in the pool -- we don't know what that number is who will want this coverage.

ACTING PRESIDENT McGEE: Senator

Dollinger.

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

SENATOR LAVALLE: Yes, I will yield.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: Is it fair, then, to say, Senator LaValle, that what we'll end up with is a pool that will be relatively sizable, we will end up with a group of people from that pool who will elect this coverage, and that there's a very good chance that that smaller subset, that smaller group will then draw down extensive costs because they'll be the -- I mean, they're going to select the election in order to deal with infertility. They will immediately begin to draw on the funds out of the pool.

The reason why I ask, Senator LaValle, is because this is an unusual use of the term "pool." Usually we put in the pools, insurance pools, people who have a risk -- in some cases, as you know, in our other

insurance areas, people who may be at a higher risk for needing automobile coverage or other types of coverage.

In this case, we're going to create a pool for which we will then have a group of people self-select this coverage in which there's a very good chance that they'll use infertility coverage. I mean, it's not a risk pool. We know they're going to use it if they're in that group. Is that a fair statement?

SENATOR LAVALLE: Senator, this is a little different than an insurance pool where there are greater risks in some parts of the state as opposed to other parts of the state.

Here -- and I go back to the cost is based on per-capita unit across the state, across the entire state. Not taking into consideration -- in other words, by setting that rate you're going to look at peaks and valleys across the state and set a uniform rate. So we'll be a statewide rate.

SENATOR DOLLINGER: A final question for Senator LaValle if -

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

SENATOR FUSCHILLO: Madam President, thank you. There will be an immediate meeting of the Rules Committee in the Majority Conference Room.

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

Senator Dollinger.

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

ACTING PRESIDENT McGEE: Senator, just one final question.

SENATOR LAVALLE: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: Senator, in the debate we had earlier on this bill we talked about the cost of the treatments, the success of the treatments, the ratio of the success of the treatments, and the potential overall cost of including infertility coverage into the standard insurance policy. And we

had talked about the $60,000 expense, about a 27 percent chance of success, and that the estimate of a cost increase to the overall insurance system was somewhere in the 3 to 6, 7 percent potential range, again, depending on how many people annually avail themselves of this service.

Is there anything in this bill with the pooling concept that would change any of that information that you gave to me last time?

SENATOR LAVALLE: Senator, the answer is no.

SENATOR DOLLINGER: Okay.

On the bill briefly, Madam President.

ACTING PRESIDENT McGEE: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I spoke at some length about this bill last time we debated it. And seems to me that while Senator LaValle, I think, has thought out of the box with respect to the use of the pool requirement -- it's an unusual term for a pool. It doesn't really -- it's a different

type of pool than we may often have dealt with in the insurance concept.

But nonetheless, I go back to what I said back, I believe, in January. And that is, from my perspective these types of insurance mandates that have the potential to increase the cost from 3 to 8 percent have a consequence of driving up the number of uninsured in this state.

I used a simple test then, and I'll use the same test now. It's a question of how effective the treatments are. It's the number of people that are going to be covered by the treatment and the overall impact on the health care system.

In this case, the cost of the treatments are very, very expensive. The science is such that they're not effective universally. They only are successful, Senator LaValle properly acknowledges, about 27 percent of the time. There aren't -- the incidence of infertility, although enormously difficult for couples, is not widespread. Clearly there's an incidence that I understand, but the benefit of this will be

confined to probably less than 10 percent of the people in this state. My information is it may be as small as 3 or 4 percent.

And the final point, Madam President, is that this benefit is enormously expensive from the point of view of our overall insurance system. The high number is about 8 percent, the low number is about 3½ percent. If, as most people acknowledge, a 1 percent increase in premium drives up additional uninsured in this state 40,000 to 50,000, we could, by passing this measure, take the population of the uninsured up as much as 300,000 just by passing this measure alone.

For all of those reasons, I voted against this bill last time. I appreciate Senator LaValle's effort to deal with the conscience clause issue. But for me, this is about science, this is about cost and the cost to our uninsured. And those issues, in my mind, are still significant and require that this bill be voted against.

I thank you, Madam President.

ACTING PRESIDENT McGEE: Senator

Lachman.

SENATOR LACHMAN: Madam Chair, on the bill.

ACTING PRESIDENT McGEE: Senator Lachman, on the bill.

SENATOR LACHMAN: First, I want to commend Senator LaValle for shepherding various versions of this bill through the State Senate over the last four years.

Secondly, and equally important, I think there has been an attempt at creativity to make this bill more acceptable to the Assembly.

Now, I look upon this bill in many ways. I don't think it's fair that wealthy people can have treatments for fertility that poorer people and working-class people are denied. Infertility is a disease that we know results from the abnormal function of the reproductive system. Infertility prevents people from creating a family.

If one does not want to have a family, that is their right and privilege. If one does want to have a family, why should poor or working-class people be penalized?

A recent Supreme Court decision concluded that reproduction is a major life activity, as defined by the Americans With Disabilities Act. And infertility affects all people of all ethnic, racial, religious and socioeconomic backgrounds. Today, in America, infertility impacts upon 6 million Americans of reproductive age. The average age is 32. Furthermore, 1 out of 6 Americans cannot bear a child without having some infertility drug.

As with other diseases, infertility can lead to depression and anxiety, affecting job performance and productivity.

Now, the question was asked by Senator Dollinger about insurance coverage for infertility treatment. Today, in the United States, 13 states mandate some form of coverage for infertility treatment. A 1997 study by benefits consultant William Mercer found that the cost of including assisted reproductive technology as a covered benefit is $2.49 per member per year. In Massachusetts, which has the most comprehensive state mandate, one insurer reported that in 1993 infertility coverage

represented only 0.4 percent of the total family health insurance premium.

I don't know, you don't know what the cost will eventually be to New York. Therefore, I also commend you for having a prototype trial period for two years, when we can then reevaluate the entire situation.

Insurance coverage for infertility allows the use of the most appropriate procedures. Most infertility treatment is not in-vitro fertilization, and that's a very important thing to realize. I mean, even middle-class people can't afford $10,000, $12,000 a year for IVF. The vast majority of treatments for infertility are far, far less expensive. I look upon this bill as giving a right to poor people that wealthy people now have in America.

In conclusion, Madam Chairperson, I would hope that the Senate leadership and the Assembly leadership meet again on this bill. But the changes in this bill give me the realization that further accommodation might be possible between the Senate version and the Assembly version and that this Legislature,

this year, will finally pass an infertility bill.

Thank you.

ACTING PRESIDENT McGEE: Senator Morahan.

SENATOR MORAHAN: Thank you, Madam President.

I rise in support of this bill, obviously. This Thursday night I'm going to attend the graduation of my first two grandchildren from high school. These two children, by the grace of God and science, were brought forth by infertility treatments to my daughter and her husband.

This is an important bill for many, many people in this state. It's my understanding that one out of five couples have difficulty in conceiving. And it crosses all ethnic lines, all religious lines. And to merely say to people, Well, just adopt, that may not fulfill the need of many, many couples.

I want to congratulate Senator LaValle and those who worked on this bill for, as he said, thinking out of the box, trying to

accommodate, trying to avoid a dogmatic war or conflict, to do something that will help many New Yorkers.

Now -- that's for the broad base of the bill. As to the science and the expense, we had a bill in here the other day called GE-NY-SIS. And in that bill we talked about science and health. And we heard some very moving stories on the floor of personal experiences and the hope that science would move forward to treat those diseases. Because as we know, while there is some success in treatments, it's not all successful and not everyone has a cure or a successful resolution to their disease.

But as Senator Lachman said, this is truly a disease. And I don't know that we should be saying to people, Well, we know you have this disease, we know it's going to have a tremendous impact on your life, your lifestyle, your marriage, whatever, but the science isn't all that great, it's a little bit of a hit and miss, and, notwithstanding that, it's too expensive.

Now, please understand, the

majority of New Yorkers will be covered through their insurance companies. And another point made by Senator Lachman is that many people now who are in an economic class that can afford these treatments, they can fulfill their life's dream. They can get a cure. But working poor people, working middle class can't afford infertility treatments that take us out to the nth degree of the treatments.

And I think what's important to note is that not every treatment winds up at the last juncture of in vitro, which is indeed the most expensive phase. But there are drug treatments, there are other infertility treatments, as they phase those treatments along till they have some success.

So I think when we talk about the cost -- and if someone said, Well, the cost is the issue, well, then we shouldn't do an infertility bill at all. We shouldn't be hung up on a conscience clause or getting around with a pool. It ought to be, Hey, we don't mandate any expensive treatments.

But we're going to have a women's

health and wellness bill coming out in a few minutes, at the end of this one, that's going to talk about cervical cancer, that's going to talk about osteoporosis, it's going to talk about breast cancer, mammography treatments, contraceptives. For the most part, I think that's expensive too, to mandate that to everyone.

And it will be interesting to see those Senators who vote against this bill because it is expensive to vote against that bill, which probably is equally expensive, and I don't know that we know the full impact of the cost of that bill. And I don't know that we have all the numbers of the people who will be impacted by that bill. I would think it would be. I would think it would be far, far in excess of those who would avail themselves of the infertility treatments.

So I think this bill is a good bill. I think Senator LaValle and his team and those legislators working together as a team came up with something that ought to address the issue, afford the coverage, and make it available to all at modest cost.

And I think the Senate bill, which puts a cap, versus the other house, that has no cap, the Senate bill that does provide some copay, that the other doesn't provide copay - I think our bill is more reasonable, it's to the point, gets the job done.

I ask sincerely that we vote for this bill. Congratulations, Senator LaValle, and thank you very much from the Morahan family.

ACTING PRESIDENT McGEE: Senator Breslin.

SENATOR BRESLIN: On the bill, Madam President.

ACTING PRESIDENT McGEE: On the bill.

SENATOR BRESLIN: Briefly.

I don't disagree with the positive elements of what Senator Lachman said about this bill or Senator Morahan, but I will focus on the cost.

And the cost, in my opinion, is prohibitive. Each time you raise medical insurance rates by 1 percent in New York State you drive 60,000 people off the insurance

rolls. We are now a state that has over 3 million people without any basic health coverage other than the emergency room. And that's unacceptable.

We have to look for ways not to increase the mandates, but look for ways with a finite dollar -- that is a given, is a premise -- look for ways to give all the people of this state basic health coverage. And I accordingly will be voting in the negative.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you.

Any other Senator wishing to speak on the bill?

Senator LaValle.

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

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 4. This act shall take effect October 1, 2001.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator LaValle.

SENATOR LAVALLE: Thank you, Madam President.

Just briefly, I want to thank my counsel, Mike Kinum, and also Robert Farley, who's been on loan to me by Senator Leibell. And, Senator Leibell, thank you for giving Bob Farley to me so that we could follow through on this insurance pool concept that they worked on very, very hard.

Early on -- and I've said this in the two previous debates -- one of the charges by Senator Bruno was that we balance the need with the cost. Cost was very important. It was mentioned that the Assembly bill had no limits. It was important to us to put limitations. Senator Lachman is right on target when he said that the vast majority of cases do not go to in-vitro fertilization. They simply do not.

The last thing that I want to say is that we will look at, there will be a report to this Legislature on the cost issue.

And so for the two-year period, I think we need to ensure that individuals be able to fulfill the ultimate dream of what marriage is all about, and that is having a family. And I think that this two-year period is worth moving forward.

And I feel very, very confident, Senator Breslin, Senator Dollinger, that both of you will be surprised by the cost figures that this -- by enacting this legislation.

Madam President, I vote aye.

ACTING PRESIDENT McGEE: You will be recorded in the affirmative, Senator LaValle.

Anyone else?

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1288 are Senators Breslin, Brown, Connor, Dollinger, Duane, Hassell-Thompson, Kuhl, McGee, Meier, Montgomery, Onorato, Oppenheimer, Sampson, Schneiderman, Seward, M. Smith, Stachowski, and Stavisky.

Ayes, 40. Nays, 18.

ACTING PRESIDENT McGEE: The bill

is passed.

Senator Balboni.

SENATOR BALBONI: Yes, Madam President, could we please take up the Supplemental Calendar Number 2. And I would ask for a noncontroversial reading of that calendar.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 604, by Senator Hannon, Senate Print 4560A, an act to amend Chapter 331 of the Laws of 2000.

ACTING PRESIDENT McGEE: Read the last section.

Senator Balboni.

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

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

SENATOR BALBONI: And while I have you, Madam President, I'd like to call an immediate meeting of the Committee on Finance.

ACTING PRESIDENT McGEE: There will be an immediate meeting of the Committee

on Finance in the Senate Majority Conference Room.

SENATOR BALBONI: In the Senate Majority Conference Room, thank you.

Move to accept the message of necessity.

ACTING PRESIDENT McGEE: The motion is to accept the message of necessity. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The message is accepted.

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

SENATOR DOLLINGER: Lay it aside, please.

THE SECRETARY: Calendar Number 632, by Member of the Assembly Gottfried -

SENATOR HEVESI: Madam President.

ACTING PRESIDENT McGEE: Senator Hevesi.

SENATOR HEVESI: Madam President, I rise to request that we pause for a moment. We don't have the bills. They have not yet been provided to us. And we can lay every bill aside, or we can wait until we have the bills before we continue with the calendar.

ACTING PRESIDENT McGEE: Senator Hevesi, all these bills are from your regular calendar, if you will look at your -

SENATOR HEVESI: These are on the Supplemental List Number 2.

ACTING PRESIDENT McGEE: If you'll look in your calendar books, they're there, all there.

Senator Balboni.

SENATOR BALBONI: Again, Senator Hevesi, for your information, they're in the calendar in front of you. Everyone should have them on their desk.

This is an active list, not a Rules report. An active list, not a Rules report.

Thank you very much, Madam

President.

ACTING PRESIDENT McGEE: The Secretary will read Calendar Number 632.

THE SECRETARY: Calendar Number 632, by Member of the Assembly Gottfried, Assembly Print Number 7184, an act to amend Chapter 640 of the Laws of 1997.

SENATOR ONORATO: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

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

ACTING PRESIDENT McGEE: Senator Balboni.

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

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

SENATOR BALBONI: I would move to accept the message of necessity.

ACTING PRESIDENT McGEE: The motion is to accept the message of necessity.

All in favor will 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 immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

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

ACTING PRESIDENT McGEE: Senator Balboni.

SENATOR BALBONI: Is there a

message of necessity at the desk?

ACTING PRESIDENT McGEE: There is a message of necessity at the desk.

SENATOR BALBONI: I would move to accept the message of necessity.

ACTING PRESIDENT McGEE: The motion is to accept the message of necessity. All those in favor will say aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Those opposed will say nay.

(No response.)

ACTING PRESIDENT McGEE: The message is accepted.

The Secretary will read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

SENATOR ONORATO: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number

778, substituted earlier today by Member of the Assembly Sweeney, Assembly Print Number 4042A, an act to authorize.

SENATOR ONORATO: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 779, substituted earlier today by Member of the Assembly Sweeney, Assembly Print Number 6061A, an act to authorize.

SENATOR ONORATO: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 804, by Member of the Assembly Eve, Assembly Print Number 5242A, an act to amend the State Finance 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, 58.

ACTING PRESIDENT McGEE: The bill is passed.

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

ACTING PRESIDENT McGEE: Senator Balboni.

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

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

SENATOR BALBONI: I move to accept the message.

ACTING PRESIDENT McGEE: The motion is to accept the message of necessity. All in favor will say aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: All opposed will say nay.

(No response.)

ACTING PRESIDENT McGEE: The message is accepted.

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

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

ACTING PRESIDENT McGEE: Senator Bruno.

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

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

SENATOR BRUNO: Move to accept the message.

ACTING PRESIDENT McGEE: The motion is to accept the message of necessity. All in favor will say aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed will say nay.

(No response.)

ACTING PRESIDENT McGEE: The motion is accepted.

The Secretary will read the last section.

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

SENATOR ONORATO: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1064, by Senator Skelos, Senate Print 4654A, an act to establish the Baldwin-West End Canal Improvement District.

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

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

SENATOR BRUNO: Move to accept the message.

ACTING PRESIDENT McGEE: The motion is to accept the message of necessity

at the desk. All in favor will say aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Those opposed will say nay.

(No response.)

ACTING PRESIDENT McGEE: The motion is accepted.

There is a home rule message at the desk.

The Secretary will read the last section.

THE SECRETARY: Section 12. 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, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1065, by Senator Skelos, Senate Print 4655A, an act to -

ACTING PRESIDENT McGEE: Senator

Bruno.

SENATOR BRUNO: Is there a message of necessity at the desk, Madam President?

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

SENATOR BRUNO: Move to accept the message.

ACTING PRESIDENT McGEE: The motion is made to accept the message of necessity at the desk. All those in favor of accepting this motion will answer aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: All opposed will say nay.

(No response.)

ACTING PRESIDENT McGEE: The motion is accepted.

There is a home rule message at the desk.

The Secretary will read the last section.

THE SECRETARY: Section 12. 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, 58.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time call up Calendar Number 1287.

ACTING PRESIDENT McGEE: The Secretary will read Calendar Number 1287.

THE SECRETARY: Calendar Number 1287, by Senator Bruno, Senate Print 5626, an act to amend the Insurance Law and the Public Health Law.

SENATOR ONORATO: Explanation.

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

SENATOR BRUNO: Thank you, Madam President.

This bill that's before us is referred to as the women's wellness bill. And this bill expands the coverage for millions of

women here in New York State. It covers breast cancer screening, cervical cancer expanded screening, accessing gynecologists without referrals, osteoporosis screening that afflicts 50 percent of women in New York State.

And it also has a contraceptive-by-prescription clause in it. And it has a conscience clause. And the conscience clause, so-called, allows those who against their religious beliefs don't want to provide contraceptives.

One of the criticisms of the previous bill that we passed in this chamber was that women wouldn't have access to contraceptives because of the conscience clause where there was some religious prohibition from the employer providing it. We have, by way of compromising, changed this bill so that we create access for any woman that wants and needs the contraceptives by paying a small monthly charge. And that monthly charge will be the same rate that the employer would pay.

So we open up the access so that no

one is denied the coverage that would want to have the coverage. And that is mandated that that must be provided.

Now, we in the Senate and in this house and in this Majority, with our colleagues on the other side of the aisle, have provided the leadership in this state on almost every major women's-health piece of legislation that is now law. Like the 48-hour after-birth hospital care, early detection for cancer, breast reconstructive surgery, an end to drive-through mastectomies. Millions of women have benefited from these efforts.

Now, the question comes up whether or not we have agreement with the Assembly on this bill. We have no agreement on this bill with the Assembly. The Assembly has not been willing to negotiate this bill because of the conscience clause. There have been no discussions with them. And many of the advocates that are out there have partnered with the Assembly and seen fit to be nonsupportive. And that's their decision and that's their choice.

But I want to applaud the efforts

of my colleagues here, especially Senators Rath and Bonacic, who chaired our task force that went on over the last couple of years. And our chair of Health, Senator Kemp Hannon, chair of Insurance, Jim Seward, and all the members that served on this task force and spent a lot of time, a lot of energy trying to make something happen.

And we are here in what should be the last hours of the session doing our best to compromise this issue so that the women that truly need this additional health coverage that will prevent illness and save lives can get it.

So before we leave here, we would like to have been able to reconcile our differences. This is a sincere, honest attempt do that. And there is no reason, none, why this bill should not pass the Assembly, because it does all of the things that those that were objecting to the previous bill that we passed here, it contains all of their objections.

And the main objective was to create access for contraceptives, and we have

managed that and handled that in a way that the Catholic Church is comfortable, the Jewish community is comfortable, and most of the women's groups, we think, feel that this is a real effort to get this done.

So with your support here in this house, hopefully, we will pass this bill and send it to the Assembly before they leave. If they pass it, this will become law, because the Governor has indicated his willingness to sign it.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Madam President. I rise to proudly salute my colleagues and thank the members of the Senate Majority, specifically Senator Bruno for his leadership in this area.

And I'm reminded at how there were so many naysayers even a few months ago that failed to believe this measure could come forward here in the New York State Senate.

It is a sensible, it is a reasonable, and it is an appropriate

compromise. We have to be reminded of the fact occasionally that we have a constitutional separation of church and state in this country. And although people can split hairs about the different points at which that separation of church and state has to be analyzed, it is very clear in this area there are some extremely sensitive areas.

And for us to require that the Catholic Church as an employer be forced to provide contraceptive coverage to female employees who are not of the same belief would be a violation of that constitutional separation of church and state.

Notwithstanding that reality, however, this Senate has come up with a provision that would allow women who are employed within a diocese responsibility, in a diocese occupation, to obtain that coverage.

Now, those who are dissatisfied with that provision of the bill note that there would be an added cost. Yes, there would. There would be a cost even though we have attempted to minimize the cost by providing that it must be at the lowest

possible group rate. There is, in fact, an increase in cost coverage for women in that unique category.

But the vast majority of women who have been denied contraceptive coverage under their insurance plans in the state would be able to have that coverage at the same copay they have for all other medications.

Now, from a purely personal perspective, I will note for the record that those copays are often much too high. And in some instance, the cost of the copay plus the cost of the added group rate insurance differential for the religious exemptions might in fact come close to or equal the drugstore price for contraceptives.

I think we all recognize that it is not a perfect solution. But, by golly, it's a darn good one. And it's an important reflection on how far we have come in this state recognizing women's health.

And while we're talking about the contraceptive aspect of this bill that has been a sticking point, let me rephrase something that Senator Bruno said a moment

ago, because I want people to understand from a woman in this Senate who feels passionately about these issues, from a woman who is here precisely because she wants to see that women's issues are better addressed in this state and at all levels of government, I'm proud of the fact that we are doing more through this measure to provide early detection for mammography screening, for cervical cancer, for the vast array of other women's health issues.

Let us not lose sight of the large increase in attention to women's health that will occur through this bill because we're looking so often at the contraceptive-coverage aspects of it. This is a major breakthrough. It's one that will allow us to say with great pride that we care about all of the people of this state, that we are not gender-blind in some cases, and it also gives us a starting point. Because in future years I anticipate there will be more pieces of legislation that deal with insurance, that deal with the differentials in copay. We have frequently tinkered in these areas.

And to do this important measure today sends a message that we value women's health care, it is in fact a priority of this state government, and we want all women to receive that care to which they are rightfully entitled.

ACTING PRESIDENT McGEE: Senator Bonacic.

SENATOR BONACIC: Thank you, Madam President. On the bill.

First of all, I'd like to commend Senator Bruno, Senator Rath, Senator Hannon, and Senator Seward, plus you, Madam President, and Nancy Larraine Hoffmann. All of the women in our conference have contributed to the piece of legislation that is before us.

Before I talk about this specifics of the bill, I would like to classify this session as outright gridlock, political polarization that I have seen in the worst that I have been here in 11 years. And it's a shame, because what we see happening is we never have good-faith attempts from the other side to negotiate women's wellness.

When we started the fight to try to

improve on women's wellness, the premise was that women in general were paying more for their health needs not covered by insurance than men. And we said we have to do something to rectify that, to bring more parity in what a man and a woman pay for their health needs beyond insurance coverage.

And we listened to the advocates, and there are over a hundred women's organizations in the State of New York, that said breast cancer, cervical cancer, ages 40 to 49, very important, we want you to do something about that.

Now, under existing law, a woman age 40 to 49, unless there's a history of cancer in her family, can only get insurance companies to pay for mammograms once every two years. We say, under this bill, once every year. Now, 12,000 women in the state of New York get cancer every year. 3500 die each year. And 70 percent of the women don't know they have it until it's too late.

So this legislation, in detection and prevention, is something that the women of this state are crying out for. And it is

delivered in this legislation. Cervical cancer, same thing. Now -- and by the way, women get afflicted with breast cancer at five to six times the rate of men.

Osteoporosis, not covered by our health insurance policies, another area identified by the women's groups. It afflicts women eight times the rate of men. This bill covers osteoporosis. Mandated coverage. When you pay a premium for a policy, you will have mammogram coverage, 40 to 49, you will have osteoporosis coverage.

And by the way, breast cancer, the leading killer of women ages 40 to 55. Heart disease generally number one, but in that age group, breast cancer.

Now we get to the third leg of the legislation, and that was the contraception piece. When this started out, it was women's wellness, get the breast cancer done, get the osteoporosis done, and then we went to the contraception, which didn't seem -- I wouldn't say as important, but not as vital as the others.

So we came up with a piece of

legislation knowing that there is a constitutional right of religious freedom, that there were religious organizations out there that said, We shouldn't have to pay for something we don't believe in. So this Senate said we're going to cover contraception but for those religious employers there would be an exemption.

Now, under that legislation, which this house passed on January 23rd, it affected 3.2 million women, approximately, in the state of New York. The others are not covered because they're in ERISA plans or they're uninsured. So this legislation, for the women that are covered by it, came to 3.2 million.

The women's advocates came forward and said, There's some women we're leaving behind. And then there was conflict as to what the numbers were. We talked about and I talked about the IRS qualifications as to who would qualify. We talked about the Catholic directory. And we came up with a number of less than 3 percent of the women would not be covered of that 3.2 million.

And the opponents said, No woman

shall be left behind. I can remember that as a knockout punch. And we don't care about all the good benefits, but we're not going to abandon one woman.

Okay, we went back to the drawing board. And we came up with this legislation that preserves the integrity of the religious freedom clause and now says not one woman will be left behind, every woman of that 3.2 million will have access to contraception. It will cost a little bit more, because they'll have to get a rider, and it was estimated $8 to $10.

Now, some of those small opponents are saying it's not enough, you're discriminating because it's costing them a little bit more money, $8 to $10, and with the copay. And we don't determine copays, employers determine that. And depending on the business and the health menu selection, they decide what's covered. We don't do that. So a copay can range from $5 to $20.

So it's an affordability issue. And that is true. It will be a little expensive for that woman, for that 3 percent

that work for an organization that has a religious objection.

I can't get the Assembly to sit down and talk about this bill. And I want you to know, and I'll say it again, 3500 women a year die from cancer. And probably we could save about 1100, that's what our board of health says, if we had early detection.

So while we play, while we're in gridlock, while we're in political polarization, women are dying because the Assembly fails to come to the table, like this and a host of many other things.

And I'm coming to the conclusion. And, you know, it's tough for me to say this, but they'd rather have the issue for politics rather than do something good for the women of the state of New York.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Rath.

SENATOR RATH: Thank you, Madam President.

Well, here we are again with this bill in front of us. What's happened since

the last time we had a women's health bill in front of us? A few things. We've had a conference committee. And I want to thank Senator Bruno for his confidence and for his leadership and willingness to go forward with the Assembly. I want to thank the Assembly leader and the members of the persons in the Assembly who served on the conference committee, and my colleagues Senators Bonacic and Seward and Hannon who served with me on the conference committee.

It was an attempt to get somewhere that didn't happen. We closed it down because we could not come to an accommodation and an agreement. We had lots of conversation, we learned a lot about each other. I thought we made a lot of progress, frankly. There were a number of fronts that we were either very close on or had that we had virtual agreement. And I think Senator Bonacic clearly stated many of them; Senator Hoffmann very articulately and clearly stated the purposes and some of the places that we had arrived at in our good-faith effort. But we couldn't complete it, so we shut it down.

But going back to why we even got that far, the Senate passed a bill in January, we passed a bill. It was the first time we had passed this bill. We had the conference committee, and it did not go forward, we shut it down.

Then we talked about dividing the bill. We talked about two bills, maybe a bill that covered all the kinds of things that we thought we were close to agreement on and that we would be able to move forward with the Assembly and send to the Governor, the kind of items that Senator Bonacic just talked about -- the kinds of coverage for mammography and cervical screening and osteoporosis and the dramatic need in New York State for additional coverage. We've been talking about this for a long time. We know that need. It's clear that we need to move forward in that area.

But we were advised by the advocates that dividing this bill was not the thing to do. And we backed off. We said we'll leave the bill together and we'll try to improve the bill. And that's exactly what we

did, because you wanted us to do that. And that's what we did.

But it still wasn't enough. It's not enough today. We've got dinosaurs in the lobby making fun of the bill, making it look silly. I don't think the women of New York State expect us to look silly. I don't think that they expect that of you who are out there advocating on their behalf and those of us who are elected to serve on behalf of the interests that we represent in our districts.

And, frankly, it saddens me. It really saddens me. Because if we had divided that bill, we could have passed a large portion of it that had nothing as controversial as the conscience clause in it. Senator Bonacic very clearly went through the fact that 97 percent of the women who would be eligible for this coverage would be covered with contraceptive coverage, with the services of the contraceptive clause in this bill.

We've made allowances for the other 3 percent. Granted, there's a small cost. Are we finished with trying to find if people that can't afford that $8 to $10 a month, if

they can't afford it, can we help them? I don't know. I don't know what the future holds for that part of this particular issue.

But now the Senate has passed a bill in January, we backed off of dividing the bill because we were told that wasn't good, we didn't divide the bill. We are about, I believe, to pass another bill. And you know what? We're going to be told again it's not enough.

Well, again, that makes me feel very badly. Because someone used the words a few minutes ago a "good-faith attempt." Any of you here who have ever been involved in a successful relationship of any kind know that there are some things that you have to do. You have to have confidence in the people that you're with in this relationship, you have to trust them, that their motives are good and that they're trying to do the right thing, and you have to be willing to compromise.

You can't pit the children against the mother and expect the father to cave. You can't pit the father against the children and expect the mother to cave. It doesn't work

that way in my household; I don't think it works that way in your household. Because the mother and father eventually figure out that the kids are trying to work a deal, and the mother and father say, "Okay, kids, go to your rooms, all bets are off, we've figured out what you're trying to do and it's not going to happen."

That's the kind of confidence that's in a marriage between mother and father when the kids are trying to figure out a way to make something happen. You can't do it. It's not right. You try to do the right thing.

We've tried to do the right thing here in this Senate. The Assembly has tried to do the right thing. They care about how they are trying to make this happen, leaving no woman behind, as Senator Bonacic has said. We're trying to leave no woman behind. But what we need to do is to move forward, in my opinion, with some confidence, some trust and willingness to compromise. To play one side against the other is not really an appropriate measure in a trusting and willing

relationship.

I hope that that relationship can change, that we can trust each other and have some confidence that we're trying to do the right thing for the women of the state of New York, as well as some others who have different viewpoints on it. But I think we need to move forward on this, and I hope that you all will support this.

And I urge you to consider how many people will be affected by a bill that is vastly different from what we started with in January.

Thank you.

ACTING PRESIDENT McGEE: Senator Mendez.

SENATOR MENDEZ: Madam President, I first want to congratulate Senator Bruno and the task force -- if I understand correctly, chaired by Senator Bonacic -- on presenting this bill here today. What the bill does already has been stated and articulated wonderfully well.

I was lobbied by family planning in an effort to convince me to vote against this

bill, and I told them that the bottom line is that all those services that all these women need so very badly and that they are so expensive, are we going to throw them out the window because they are not getting -- only 3 percent of the women are not getting a little -- are not getting the contraceptives?

I mean, in terms of the balance, I think it would be a very callous thing if an agreement is not achieved to prevent all those women that suffer from cancer -- and as a cancer survivor myself, I resent enormously that a situation that could be compromised for the benefit of all the women in the state of New York to benefit from those services that -- health services that in fact will be saving their lives. And because a small number, 3 percent, are not covered by contraceptives because religious organizations do not want to push for something that runs against the grain of their beliefs, I think that in the balance of justice and consideration it would be a very terrible thing to do.

So I hope that the Assembly and the

Senate will get together. This compromise, I believe, is a good one. And I don't see any reason on earth why it cannot be accepted by the parties concerned. What should be placed in the front burner is not political partisanship, not political rhetoric, but what this really means, which is the health of the women of the state of New York.

I support this bill. Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Oppenheimer.

SENATOR OPPENHEIMER: Well, to present the opposing view.

And I must say I'm very concerned about the health of the women of this state. And like Senator Mendez, I also am a survivor of breast cancer. So I can't say it doesn't have an important impact for me.

But I have to discuss why I am not supporting this bill. And it isn't that I distrust the motives of Senator Bonacic or Senator Rath. I think they're trying their darnedest to move this legislation. And it does have many beneficial benefits to the

women of this state.

But there's a couple of things that I have trouble countenancing, and I have to discuss that. It maintains financial barriers, as I said the last time this bill was -- a similar bill was before us. Not as good a bill as this bill, but this bill is, while heading in the right direction, still not a good enough bill.

There are financial barriers as far as accessing mammograms and Pap smears, because we still require copays and deductibles. It also contains a more restrictive definition for bone density screening than is in the Assembly bill. That is the osteoporosis screening.

I think one of the things that distresses me the most in the bill is that it definitely treats women -- definitely, definitely treats them differently than men. And it's not only the copay, it's also the rider. Right now women pay perhaps $8 to $10 per month, or would have to pay $8 to $10 per month for the rider. Now, right now, when they buy their prescription for contraception,

they're copaying about $20. Now, that means they're ending up saving very little, maybe $2 per month.

Now, what do they give up for that $2 saving per month? They give up their right to privacy on their very private reproductive decisions. Why is that? Because now the employer will know what those decisions are. It is such a small savings to the woman to disclose this kind of information to her employer. The employer has no right to know what a woman's decision is, either to take contraception or to stop taking contraception and get pregnant.

I find this a fatal flaw. And I hope we will continue to work on this bill, because I do see the need for the various coverages that are offered by the bill. But because of the fatal flaw, I will not be supporting it.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: I will yield to Senator Bonacic if he needs to respond at this time.

ACTING PRESIDENT McGEE: Senator Bonacic.

SENATOR BONACIC: I was wondering if Senator Oppenheimer would yield to a question.

ACTING PRESIDENT McGEE: Senator Oppenheimer, do you yield?

SENATOR OPPENHEIMER: Absolutely.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR BONACIC: You mentioned your concern with the woman's right to privacy. This legislation allows her to retain her right to privacy. Nowhere in this legislation does her employer know that she is accessing or utilizing contraception. That's between her insurance company, her HMO, and her.

And as you know, we are under the limits, today it's the law, of maintaining a right of privacy between HMOs, the insurance company, and the employee.

So I don't know where you got that idea about privacy. If you want to point it out to me in the bill, I'll gladly -- I don't

think it's in there. So I only ask you that question.

SENATOR OPPENHEIMER: If Senator Bonacic would yield for a question.

ACTING PRESIDENT McGEE: Senator Bonacic?

SENATOR BONACIC: Yes, of course.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR OPPENHEIMER: How is the employee going to pay for the health insurance?

SENATOR BONACIC: Okay, you said two things. You said the women would have to pay more for contraceptive coverage. The women we're talking about are not the 3.1 million women that don't come under the conscience clause. That's part of their policy, so there's no extra charge for them.

We're talking about that percentage that would be a religious employer. And our numbers are anywhere from 50,000 to 90,000 of those women.

Now, let's take those women. Under this bill, that HMO or that insurance company

that that Catholic employer would work with has to have a rider. They must have a rider to allow every employee the right to exercise that rider privately with their HMO or insurance company. The employer is not in that line of communication under this legislation.

SENATOR OPPENHEIMER: If Senator Bonacic would yield for another question.

SENATOR BONACIC: I would.

SENATOR OPPENHEIMER: The rider is going to cost additionally over the basic amount of the insurance that is offered to all employees. So that those women choosing to take contraception coverage through the rider will be paying an additional amount each month.

Is this not -- here's the question -- is this not going to be paid by or out of their wages so that it would be visibly seen as an additional amount and therefore easily determined to be the rider?

SENATOR BONACIC: The answer to that is the woman who works for the religious organization that exercises the rider will pay

more money than a woman that doesn't work for a religious organization.

But my questions to you are on the issue of privacy. And you said that -- you used the word generically "women." But it's not true, because 3.1 million women are not going to be involved with the rider. It's going to be part of their package, and they're not going to -- it's going to be a mandated coverage, and they will never have to get involved with a rider. That was my point.

SENATOR OPPENHEIMER: And I will stand corrected in being so general in my statement. Really, I was referring to those women who work for organizations where this is not provided as part of the basic insurance.

My point that I was trying to make about privacy is that in those cases where the female employee of an institution that does not cover contraception as part of their basic package, in those institutions the employee will have the medical-expenses insurance costs paid out of her salary.

And since it is a rider, it will be an additional amount paid to the insurance

company than all the other employees will be paying, be it $8 a month. But it will show up very visibly in the additional amount that the rider costs, and therefore the amount that will be paid to the insurance company will be quite visible.

And so those women that are taking the rider will have that additional charge on -- deducted from their salary for their insurance coverage. That is why I say that the employer will know what the decision is that that woman is making, either when to use contraception and when to stop and have a pregnancy.

ACTING PRESIDENT McGEE: Senator Hannon.

SENATOR HANNON: There's a number of things I could say on this, but I just want to address myself to this whole point of the drugs.

With all due respect to Senator Oppenheimer, I think she's dead wrong. And I think this whole argument is a total red herring, trying to do what people would rather do, which is preserve an issue instead of

coming to agreement and getting a benefit to the women of this state.

Now, why do I say that? For two or three reasons. First of all, under every comprehensive policy that we regulate in this state -- and that means there are a number that are not regulated by the state government but are regulated by the federal government. Those are called the ERISA plans. We're preempted from dealing with that.

So let's just talk about the ones we can regulate. Guess how they treat drugs? It's an optional coverage. It's not a mandate. It's not a mandate. If the employer wants to cover it. They do. If they don't, they don't. Because we have employer, you know, sponsored insurance in this state. It's not a mandate.

We can't force the employer to give insurance. That's what the whole debate is for Children's Health Plus, Family Health Plus, expanding Medicaid, because we're trying to get more people covered.

So we first of all have to realize we're trying to get people -- leading them

down the path to do good things. And if we don't do it correctly, they can just opt out.

So the basic structure here which Senator Bonacic has constructed of getting coverage for women is a way to try to balance the interests so we will get all of the women with an opportunity to access this coverage.

Second, frankly, your argument about privacy is a real red herring. You try to say the opt-out somehow creates a paper trail. What you don't realize is most employers will keep track of what drugs you use. And the best employers make sure that's kept private in a human resource division. So that somebody who is covered by the mandate for contraception, that record is kept.

And I will tell you something else. I'm not so sure it's as sensitive as it used to be. Society has changed.

We ought to be concerned, perhaps, about some other things in drug use that would be more sensitive, because we've had revolutions to benefit people in regard to the coverage of mental illness. Depression, schizophrenia can now be treated beneficially

to help people be productive and work. That would seem to me, in terms of society's mores that go on in the year 2001, to be a lot more sensitive as to whether someone opts to have contraception.

So I think we're dealing with red herrings. What's really being done here? These are interesting arguments, but we have to look at what's going on with this bill. We're extending coverage.

And you bring up the other point, and it's probably one of the most boring things, but I brought it up during the conference committee, and it was the question of, well, copays, are we creating barriers? We did some research on it, and we came up with a federal study done through the National Institute of Health, and they found out that with copays it created a sense of benefit, that there was a greater utilization of mammograms, that there was more regular appointments kept. And, yes, they put it on the sliding scale, but they found it was a benefit to it, not a barrier.

Once again, just another

illustration where the facts of delivering health care services I think are met by what we have proposed as a piece of legislation. And the arguments by people who for some reason don't want to come to an agreement remain to me of a greater puzzle and a greater puzzle. Because I think what we have done is come to a major advance.

And I thank Senators Bonacic and Rath for having led the way on this.

Thank you.

ACTING PRESIDENT McGEE: Senator Schneiderman.

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

ACTING PRESIDENT McGEE: Senator Bonacic, will you yield?

SENATOR BONACIC: I do.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR SCHNEIDERMAN: Thank you.

There appears to be some confusion as to actually how this bill would operate in practice for someone who is, say, a woman who

works as a clerk or a janitor or a professor, say, at, you know, a Catholic university or something like that who wants to avail herself of contraceptive coverage.

What would that person do, what notice would she receive, and what steps would she have to take?

SENATOR BONACIC: Let's assume it's a Catholic university, she's a professor, and the Catholic university contracts with Aetna or an HMO for all of the health benefits. But they say, We're not paying for that professor for contraception. Okay?

The Superintendent of Insurance would require that HMO or that insurance company to have a rider to their plan. And that insurance company or HMO, when that plan goes into existence, probably January 1, 2002, to make everything uniform statewide, she would be notified, every employee in that Catholic university would be notified that you have the option to exercise a rider for contraception coverage at a price of.

That's how it would work. She would notify them, and then she would have

that coverage.

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

SENATOR BONACIC: I do.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR SCHNEIDERMAN: So then the employee would directly deal with, in this hypothetical case, the insurance company. And then, as Senator Oppenheimer was discussing, would the amount that's withheld out of paychecks be increased?

SENATOR BONACIC: No, there's no payroll deduction. I know that Senator Oppenheimer said that. But this is like a customer would handle car insurance or house insurance. You pay directly from your checkbook to have that coverage. There's no payroll deduction.

SENATOR SCHNEIDERMAN: So the individual would have to, in addition to dealing with whatever other provisions of their insurance coverage they dealt with through their employer, would have to have a

separate arrangement and write a separate check annually or monthly for contraceptive coverage?

SENATOR BONACIC: For that rider. Just like you would for jewelry. If you wanted a ring covered or something, you pay extra.

SENATOR SCHNEIDERMAN: Well, I think I understand how that works.

So every employee, if I understand correctly, then, of all of the institutions covered under this what to me is a very broad exclusion clause, would have to have individual contact with an insurance company, make individual arrangements and individual payments, they wouldn't have the benefit of the payroll deduction in this one area?

SENATOR BONACIC: There's no payroll deduction.

SENATOR SCHNEIDERMAN: Okay. In the exclusion clause, is there any -- I don't see it here -- is there any limitation that would prevent this from being applied to a for-profit corporation?

SENATOR BONACIC: It's

irrelevant. I mean no, the answer is no.

SENATOR SCHNEIDERMAN: Thank you. Thank the sponsor.

Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I listened with great fascination to the arguments that were made. And I think we are so deep inside the spin machine that we're in danger of getting dizzy.

This is not a bill that deals with the fundamental issue that has been raised by the advocates and was raised by the Assembly. The issue is simply this. This is not a conscience clause. This is a conscience usurpation clause. People have consciences. People have religious beliefs. Insurance companies do not have consciences. Corporations do not have consciences. HMOs do not have consciences. Even our beloved alma mater, the university, does not have a conscience.

The notion that this is a conscience clause, the rhetoric suggesting it

is a conscience clause I think is at the heart of the problem of getting a law passed in both houses. This is very simply the problem.

This exclusion, this conscience-usurpation clause is so broad that any employer with the remotest connection - and it does use the words, in fact, "in connection with a religious institution." This means some -- a joint venture, a for-profit corporation that's a joint venture of Fordham University and IBM? This is the broadest exclusion clause that I am familiar with, and I've reviewed quite a few of these.

The difficulty here is that it creates two classes of women, two classes of employees in this state in this bizarre effort to promote the notion that corporations and institutions have consciences. I think that this is something that I would appreciate hearing a coherent response to at some point.

I have religious beliefs, employees have religious beliefs. No one is telling someone who is a devoted Catholic: You have to get contraceptives. You make the decision for yourself. You have a conscience. But if

you are an employee and you're working at Columbia University and then you transfer to be a professor at Fordham University, why on earth should you fall into this second-tier category of women who are discriminated against just because their employers have some connection, however remote, to a religious institution?

The advocates have not said we want to make, you know, churches, religious institutions whose primary purpose, and I gather in canon law there's some expression that is "the inculcation of the faith," subject to this sort of a provision. We're talking about everything else.

If you're working for the Goddard Riverside Community Center or St. Mary's Community Center, you shouldn't have this type of discrimination imposed on you. If you're working at New York Hospital or St. Peter's Hospital, you shouldn't have this kind of discrimination imposed on you. Your conscience as an individual should not be usurped by an institution or a corporation.

And I think that if we're going to

be serious about this -- and we're here at the last days of session, and my colleagues on the other side of the aisle have raised the issue of the negotiations with the Assembly and the history of this bill. One great, important piece of the history of this legislation was left out of this story. Senator Bonacic has a wonderful bill he was the sponsor of last year that had no conscience-usurpation clause, that had no exclusion clause. Same as the bill in the Assembly. There were lots of Republican sponsors on that bill.

Put that bill on the floor. Put that bill on the floor. That will pass. That will pass the Assembly.

The way this is going to be resolved, I respectfully submit, is to cut down on the conscience-usurpation clause. There is no legitimate rationale, in my mind, for pretending that insurance companies and corporations have consciences, denying women -- and men, because if you're the employee and you want your spouse to be covered, you could be discriminated against also -- from exercising their own consciences

and, because of this fiction, holding up a critical piece of legislation.

I think that it is absolutely clear that the bill that Senator Bonacic was good enough to sponsor last year would pass if it was put on the floor of this house. It has already passed in the Assembly. Let's cut down on this bizarre conscience-usurpation clause and get serious about passing a law.

I do not see any moral or legal impediment to it. And I have to say that, you know, this -- and this is the same issue, really, as in the fertility bill. You know, at some point you have to acknowledge some of the cynicism that is generated by the legislative process. We all know this is a poison pill. We know the Assembly is not going to pass this.

If we really want to get this done, let's cut down on the conscience clause. Let's do what has been done in other states. Other states have language that are much narrower provisions.

Let's get to the heart of this dispute and resolve it. I take it we're going

to be a little bit longer this year. Maybe by the time we come back in July or August or September, however long this budget gridlock goes on, we can get something done. But the way to get it done is not with this bill. Let's go back to the Bonacic bill from last year and actually pass a law.

Thank you.

ACTING PRESIDENT McGEE: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Madam President, just on the bill.

ACTING PRESIDENT McGEE: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Yes, I also want to compliment Senator Bonacic. I know that he is trying very desperately to bring this issue to some negotiated conclusion, and I appreciate that.

I must say, however, that the problem with it is that no matter how we approach it, as long as we have this conscience clause, which I refer to as an exclusion clause, it creates an inequity for women. And everyone knows that women are

already receiving only a percentage of the pay, on the average, that men receive. So there already is an inequity that we have worked very hard to try to address, but it still exists.

And so we now come with legislation, a proposal that will create further inequity in terms of women's access to health care, specifically for the area of contraceptive and other aspects of reproductive health care.

When I think of my own district, even though Senator Bonacic has said on several occasions that this is a very small number of women, it's not -- it's a small percentage of the women that we're talking about. But I think about my district, and I sort of go down a list of the sites in my district. I have St. Mary's Hospital, I have St. Joseph's College, I have St. Christopher Ottilie. That's a very large family service program. I have at least two Catholic high schools. Bishop Laughlin is one of them, the mayor's own high school. I have several elementary schools that are sponsored by the

diocese. Many of the people in my district work for the Fidelis HMO.

I can count a very large percent of people who work in those institutions. And whether or not they subscribe to the religious tenets of their church is their own private decision and business. But I do know that there are large numbers of people who do not and therefore are not necessarily bound by those tenets. But yet we are establishing an insurance legislation which essentially forces them to abide by such tenets.

And as I look at this legislation, not only is it contraceptives, I believe, but it's any other procedure that relates to - that is contrary to religious tenets. And it says with respect to such cases an insurer shall not be required to issue the rider required. With respect to such cases, the superintendent shall promulgate regulations providing for alternative arrangements for access to the coverage, provided that such arrangements shall not be contrary to the religious tenets of the insurer.

So it's not clear to me that even

though we have said there shall be a rider for which the women shall pay, it's not clear to me that, one, there is an enforcement of that based on this legislation, and, two, how in fact will that rider be accessed.

Because the insurer -- the religious institution or the institution that has an objection based on their religion is not required to issue the rider. So the person who is seeking the rider must go out and access it, and I'm not sure, the legislation is not clear on just how that is to happen.

So we have really created a barrier, and we have also created an additional cost to women who are least able to afford that additional cost, in addition to their requirements for copay.

So I have to oppose this. And I speak, yes, on behalf of all of those women and men and their daughters who might need to have access to contraceptive services and will not be able to get it. And if they don't, if they are not able to purchase it because they don't earn enough to afford them to get the

rider, then they may go without.

And I have figures here that 60 percent of all pregnancies each year in the United States are unintended. So it means that we need to have, especially the women that I'm talking about, that I'm thinking about, need to have access to contraceptive services.

And lastly, Madam President, I just want you to know and I would like Senator Bonacic to know that the women in my district have made it very clear to me that even though it is very important to have a women's wellness bill, that they want a women's wellness bill that includes all women and all services that they need. And if we don't have a bill that includes all of those services, we are not -- we will not reach an agreement that they will appreciate.

Thank you very much.

ACTING PRESIDENT McGEE: Senator Paterson.

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

ACTING PRESIDENT McGEE: Senator Montgomery, will you yield for a question?

SENATOR MONTGOMERY: Yes, Madam President.

SENATOR PATERSON: Madam President, Senator Montgomery raised a point that I hadn't thought about, which is these employees of Fidelis Care, the HMO, how are they going to get insurance?

Or if you worked, say, for a religious institution that was insured by Fidelis Care, and that's not going to be a coincidence, that's going to happen a lot, what is going to be the coverage for those women? They can't get a rider from Fidelis Care.

SENATOR MONTGOMERY: Right now, Senator Paterson, you're absolutely correct, those women who are covered by Fidelis Care do not have access to contraceptive or reproductive health services at all, so they must already go outside of that HMO in order to access those services.

Under this legislation, the employees also will not have that coverage.

They already don't have it at -

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

SENATOR HANNON: I wanted to ask Senator Montgomery if she'd yield.

ACTING PRESIDENT McGEE: Senator Montgomery, will you yield?

SENATOR MONTGOMERY: Yes, I'll yield.

SENATOR HANNON: Senator Montgomery, do you realize that Fidelis Care only provides Medicaid services? And that's not covered under this bill, so the hypothetical you were asked is not germane.

SENATOR MONTGOMERY: Well, no, it's germane, Senator, in that in my statement regarding Fidelis I was referring to people who work for the HMO.

But Senator Paterson's question went to how do we -- how do people now access these services who are already either covered by Fidelis or work for them. And my answer is that they are not covered by Fidelis.

I understand that. They are not covered, they have to go outside of Fidelis in

order to access those services if they are in the Fidelis HMO, because they do not provide those services. If you work for Fidelis, you also don't have the coverage. And under this legislation, they would have to have the rider.

ACTING PRESIDENT McGEE: Senator Stavisky.

You have spoken, Senator -

SENATOR SCHNEIDERMAN: I just wanted to ask Senator Hannon to yield for a question.

ACTING PRESIDENT McGEE: Senator Hannon, will you yield for a question?

SENATOR HANNON: But I don't have the floor.

ACTING PRESIDENT McGEE: I know you don't have the floor.

SENATOR STAVISKY: I yield it to Senator Hannon.

SENATOR SCHNEIDERMAN: I would like to ask, through you, Madam President -- I appreciate the point about Fidelis. There's an insurance company called MDNY, a Long-Island-based HMO partially owned by a

group of Catholic hospitals.

And I'd like to ask Senator Hannon, would not that insurance company, under this bill, be exempt from having to write contraceptive coverage?

SENATOR HANNON: First of all, it wouldn't be eligible, as I understand it, because they're going to exercise their conscience clause. That would be for what they would be offering.

Second, for their employees, the employees would be subject to the opportunity to go around and be offered this directly, like the other employees covered by the conscience clause.

SENATOR SCHNEIDERMAN: Through you, Madam President, they would go around and get it from who? They wouldn't get it from their insurance company, but they would have to go to a second insurance company, is that what you're saying?

SENATOR HANNON: They would - the provisions -- they would -- each enrollee covered under the contract issued shall have the right to directly purchase the rider

required by the subsection from the insurer or the health maintenance organization which issued the group contract.

That would be on page -- I have the typewritten copy -- 7 of 10 of this 5626.

SENATOR SCHNEIDERMAN: But again, I guess maybe I'm not being clear in my question, because I don't think I'm getting a clear answer.

When the insurance company that writes the policy won't do it because it's partially owned by a Catholic institution, where do the employees go?

SENATOR HANNON: No, no, no, no, no. No, no. They're not going to be able to issue that policy whatsoever because, I presume, they will say, "That's not something we're going to write," and therefore no one will purchase it from them because they're not going to write it. It's somewhat like a, you know, circular argument.

But they're not going to be offering it, so therefore you don't have to worry about the situation. It won't arise under your hypothetical.

SENATOR SCHNEIDERMAN: My hypothetical is the following. If there's an employee of an institution whose insurance company is MDNY, which does not have to write -- provide these riders, where does that employee go, since he can't get it from their insurer, the insurer that provides all the other coverage for this person through their employer, where does the employee get the rider, get contraceptive coverage if they want it?

SENATOR HANNON: In that case I'm told that they must go through the Insurance Commissioner, who will provide alternative ways to write. Obviously, saying one of the third-party administrators will make the arrangements, one of the people who do issue those policies will issue the coverage, and they will be covered that way.

I mean, I think there will be a fairly large number of people who will be covered in the ordinary course of business. And therefore, the Commissioner, as is done in many other health policies, such as those that we create for single individuals or that we've

created in any of the New York health programs, he will be able to direct this coverage.

Frankly, I think that is a very easy, logical, and accessible thing that will happen.

SENATOR SCHNEIDERMAN: Thank you.

ACTING PRESIDENT McGEE: Senator Stavisky.

SENATOR STAVISKY: If the sponsor will yield.

ACTING PRESIDENT McGEE: Senator Bonacic, will you yield?

SENATOR BONACIC: Yes, I will yield.

SENATOR STAVISKY: For just one question. Mercifully, just one question.

If a woman has the rider and it includes birth-control coverage and she has a daughter in college, would the daughter in college also be entitled to the same protection, the same coverage that she has?

SENATOR BONACIC: If she -- if the employee took the family plan as opposed to, you know -

SENATOR STAVISKY: Obviously. Obviously.

SENATOR BONACIC: The answer is yes.

SENATOR STAVISKY: Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator Stavisky, on the bill.

SENATOR STAVISKY: And I will be very, very brief.

I have a number of problems with the bill that haven't been discussed previously. One is to limit the exclusions for religious purposes. Because some of the purposes of these not-for-profit organizations, while they are under the aegis of a religious institution, they are nonsectarian in their approach and in their mission.

For example, Catholic Charities has an extensive senior program with senior centers in Queens County. And in fact, I happen to have a cousin who is a social worker at one of the senior centers. She does not subscribe to the tenets of the Catholic

Church, and yet she would have to ask for the rider. And yet the mission of this senior center is to provide programs -- a congregate meals program, et cetera -- to every senior eligible, unrelated to religious mission.

And that's the first problem that I have with the bill, that I think we ought to apply the conscience clause to religious entities exclusively.

Secondly, I have a problem with the privacy area. Senator Bonacic has assured us that there will not be payroll deductions, but I'm still not convinced that the employer, the religious institution -- whether it be an orthodox Jewish institution or a Catholic institution, it makes no difference -- the employer will not become familiar with the person's birth-control practices.

I do commend everyone for their concern for this issue, and I really wish this were a more comprehensive bill. And I think for that reason, for those reasons, I'm going to vote no.

Thank you.

ACTING PRESIDENT McGEE: Is there

any other Senator that wishes to speak on the bill?

Read the last section.

THE SECRETARY: Section 16. This act shall take effect -

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

SENATOR DOLLINGER: Is debate still open on the bill? I'd like to address the bill, if I could, on the merits.

ACTING PRESIDENT McGEE: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Yes. Madam President, I'll try to be very brief.

A number of my colleagues have addressed the overexpansive conscience clause that's a part of this bill. And let me tell you why I think it's too broad and I think it sets up a barrier that is unnecessary.

I said in this debate the last time we did this bill that to the extent a religious organization uses the funds that are raised through its religious activities -- as we would call it in the Catholic Church, from the collection plate -- that it is entitled to

impose its conscientious choices for health care or, for that matter, for anything else upon its employees. I believe that they have the power to do that. I believe that that power should be respected by this Legislature.

But if you look at the definition of this conscience clause, it includes those connected to religious organizations. And here's why it's too broad, Madam President. I was the vice president of the Catholic Families Center in Rochester. It's about a $10 million agency. $9.5 million of the money it uses to pay its employees comes from the government. It's the public's money. These are people who work under a connection to the Catholic Church but the money that pays their salaries and buys their health care, 95 percent of that money comes from the government.

And I would suggest if you look at those who work for hospitals and you look at those who work for social service agencies and you look at those who work for senior centers like Senator Stavisky talked about, you will find that they have an affiliation with the

religious organization but most of the money that pays their salary comes and originates in public funds.

And I would just suggest that for any religious organization that uses public money to pay the salaries of its employees and then imposes a conscience exemption on public funds when they spend public funds, it seems to me that that goes too far, that that in essence permits us, during the course of the last two decades as we privatized former government services, whether it's care for the mentally retarded, whether it's care for the mentally ill, job training services -- all kinds of services that we now provide through religious-affiliated organizations like the Catholic Families Center in Rochester, they're using our money, they're paying the salaries with our money.

And I would suggest that since that's public money paying for their health care, and only a small portion of the premium is paid for with what I would call the ecclesiastical dollars that come out of a collection plate -- and in fact, in most

religious organizations they completely divide the employees that are performing public services from those who are performing ecclesiastical services.

And it seems to me that while sponsoring of an organization does give the sponsor some right to control what the employees do, it really stretches our credibility to say that when 95 percent of the dollars that pay salaries and health insurance premiums originates in public money, that then we can allow the sponsor to impose conscientious objections on what's available to their employees for health care.

I think that's unfair. And I don't know why we would erect a barrier to women getting contraceptive care when most of what's being used to buy their premiums is public dollars. It's our money that's being used to pay their salary.

With all due respect to the Catholic Church, whose tenets I respect and am a part of, I think when they're ecclesiastical employees being paid by the church's money, when the church's money is being used to pay

their health insurance premiums, I'll under those circumstances agree with the conscience clause.

But when the church and it's not-for-profit corporation created by this government -- we charter those not-for-profit corporations. They are created by the power of the State of New York -- when we create them, we fund them, we give them our money, I think it's unfair for their sponsor to say: We're going to control what kind of health care they get with public dollars.

I think that's a mistake. That sets up a barrier to health care for women across this state that we shouldn't countenance. The churches have a right, a duty, and an obligation to impose their religious views on their employees that they pay for. When they're their employees that we pay for, it's clearly within our power and our right to say to them: You must provide certain types of women's health care to them without any barriers whatsoever.

Let's redefine the conscience clause more narrowly. Let's tell the churches

that we will respect their views when they use their money. Let's tell them when they use our money that we have the power to say no barriers to appropriate women's health care.

That's the message we should send. Unfortunately, this bill -- and I credit Senator Bonacic for trying to wrestle with this difficult problem. Unfortunately, Senator, this bill doesn't get us there. Follow the money. When it's the public's money, we should be able to tell them what health care they have to provide.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, very briefly.

I think that Senator Dollinger's point speaks to what is the real issue that troubles some of us who cannot support this bill.

And it really is favoring the value of the ecclesiastic institutions, not because of the spiritual beliefs that they have, but because to some degree they have a great deal of weight with government in terms of their

impact on our capacity to resolve issues. And in favoring that value, we are diminishing the quality of care that women are going to receive.

If we are going to make women leave their insurers, seek riders -- or now I understand if they work for insurance companies that are also religiously based, they'll have to go to the Commissioner of Insurance -- it's going to be so remote from the basic insurance that they deserve that they're going to be in the position where they're either going to pay more or not get insurance at all.

Now, at a certain point if it becomes so difficult for women to receive insurance to the degree that women who are working for institutions that are not religious are getting, there's going to be a distinct difference in the coverage, a definite difference between the coverage that men get.

And I think that opens the door for the situation, a repeat of the situation that occurred in the state of Washington where a

pharmacist sued a chain of drugstores for failure to provide insurance for contraception. And in that case, Erickson versus Bartell, the plaintiff prevailed.

I would not be surprised if New York State winds up in a lot of lawsuits relying, to our detriment, on the fact that this program that we've set up is going to be equal. I think it's unequal, it was even said that it was unequal by those who advocated for it. They said it's just a little bit more of a charge. A little bit to some is a lot to others. And it all adds up to discrimination.

ACTING PRESIDENT McGEE: Senator Brown.

SENATOR BROWN: Thank you, Madam President.

I must confess I am torn on this piece of legislation, this women's health and wellness bill that we look at today. I'm torn because I desperately want to provide coverage to women's health needs. And I think all of us in this room want to provide coverage to women's health needs. And I recognize the work of Senators Bonacic, Rath, and Hannon in

trying to work out some differences in this bill.

But unfortunately, this is a one-house bill. I mean, let's face the fact that this bill is not going anywhere in the Assembly. So what this essentially means is again we are not going to address the health care needs of women in the state of New York.

Last year when I campaigned, I campaigned and I told citizens that I would fight and vote to pass a bill that would safeguard women's health. And sadly, it doesn't look like this year that's going to happen. And I think that's a value that we all share in this room. And while this bill has moved closer to where we need to be, I don't think this legislation goes far enough, unfortunately.

I think what we have done here for the last two years ago, clearly, is we've treated women's health in this state differently than we've treated men's health. There's a difference in the coverage that men receive and the coverage that women receive. And to set up a situation that exempts certain

organizations from providing coverage for prescription contraception, coverage that citizens want, that women want, and allows uncovered employees to purchase a rider at a group rate, that might sound like it's a good thing, but the riders will cost additional money. So again, that is an unfair additional burden.

Now, some say it's not that much more money, it's 7 or 8 bucks more. But it's still different. It's still more. And there are those in our state in the community that oppose this difference.

So I rise to say that I think it's sad that again we, the Senate and the Assembly, have not been able to convene these conference committees and to keep the conference committees going. I know the process was started, but the process was not completed. And because the process was not completed, we have two one-house bills, a one-house bill in the Assembly and a one-house bill in the Senate. And again this year nothing will be done on these critical issues for women's health.

This bill that would provide mammograms to detect breast cancer, cervical examinations to detect cervical cancer, and bone density measurement to be able to detect osteoporosis is not going to happen.

And some people will say, Well, vote for the bill to reflect your strong support, to reflect the value that you have to protect women's health. And some will say, Don't vote for the bill because some women are left out. Well, I've got to tell you, I'm terribly torn.

But because some women are going to be left out, and because this bill clearly is not going to pass this year, I think I'm going to find myself in the difficult position of voting no to this piece of legislation that I know many of my colleagues very thoughtfully and in earnest worked to try to get something that would be an acceptable compromise.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Hassell-Thompson.

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

In January when this bill was presented before, it was my first opportunity to really hear Senator Bonacic in one of what I consider to be one of his most passionate discussions in this chamber. And I certainly don't mean that sarcastically at all, I mean that very sincerely.

And I told him then that he almost convinced me, because his argument was very compelling. But I've had an opportunity to study this bill, and I've also had an opportunity to listen to and to read, in the last couple of days, the new provisions in this bill.

And I want to personally say that I think that you have done a very good job in trying to examine and to look at those issues -- as Senator LaValle said, look at those issues that created barriers and try to do the kinds of things that would make this a better bill that we can all live with.

We're close, but no cigar. We're not close because one of the statistics that you quoted, and I quoted back to you, was that 3 percent of the women would be left behind.

And many of you don't think that 3 percent of the women is a very large number, but it's too large a number for me, particularly because most of those women are in my district. And I can't go back home and say to them that you now have to pay a copayment as well as the payment for a rider when already budgetarily you can't afford to pay for food for your children.

I can't say to them, after the years of trying to educate them about the need to seek and get good health care, that it's available but, I'm sorry, it's not accessible, because you can't pay for it. I cannot support any legislation that is going to create a barrier for any woman to get the much-needed health care that is needed for women in this society.

And I do commend you. I commend all of you who have worked strenuously. But we still have to work harder. And we need to not talk about the politicizing, because that's not what this is about. And it's not about polarizing. Because I think the people in this chamber -- and I'm not talking about

the advocates outside, but I'm talking about the people in this chamber -- I think are honestly together trying to create the best health facilities, the best health care services and ensure that health care is more than available but that it is truly accessible.

This makes it just out of the reach of many of the women that I serve, and certainly for those who have voted for me. So I can't vote for this bill. And I will take the heat when Senator Spano and some of the others in Westchester say "She voted against the bill again."

But I think that the people that I educate and try to educate about good health care will understand why we have to hold out to get a better bill than this is to meet the health needs of women in this state.

Thank you, Madam President.

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

Senator Bonacic, to close.

SENATOR BONACIC: First of all,

I'd like to thank my colleagues on both of the sides of the aisle for sharing their thoughts on this legislation.

Just a couple of points. Nine states have conscience clauses. The language of this conscience clause was taken substantially from our existing Executive Law, which we have in our human rights, our housing, and our employment legislation. So that's where the language came from.

We're trying to maintain and safeguard the constitutionality of religious freedom, and at the same time we want all women to be able to access better health benefits. And under this legislation, 3.2 million women, including the women in your districts, will have access to breast cancer mammograms, osteoporosis screening, and 3.1 million of them will have access to contraception.

Now, the less than 100,000, which we've talked about for an hour and a half, we've given you through this legislation accessibility, but you've said affordability may be too high to deny some access. That's

basically what you're saying.

And I look at the entire bill on balance, and I say there's so much more good here that we can do and move forward, and then come back another day to try to iron out other pieces that may not be satisfactory. Because that can be said of all legislation. It's always a work in progress. We always can make things more better.

But with breast cancer and osteoporosis, these are life-threatening. When people do not have early detection and prevention, they die. And on contraception, most of the women are covered. And those that might not might get pregnant and shouldn't, but they will live.

So on balance, I think it's good legislation. I think it should be supported. And I thank you all for taking the time and sharing with me how you feel.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 16. 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: Senator LaValle.

SENATOR LAVALLE: Madam President, to explain my vote.

ACTING PRESIDENT McGEE: To explain his vote.

SENATOR LAVALLE: I just want to say to Senator Bonacic, Senator Rath, I think a job well done. As a member of the task force, I think we approached this matter in very deliberative way. The conference committee worked very energetically, very openly, very honestly to try and meet the other house halfway.

I want to say that this legislation really would protect women, will save lives. And I think Senator Bonacic said that very clearly. I think we have heard excuses, excuses, excuses in why this legislation should not be enacted both in this house and passed in the Assembly.

I've worked, you know, behind the

scenes and openly with some of the people who oppose this and was led to believe that if two doors were created, one with a conscience clause and the second with access for all women, that a bill would be acceptable. I think, very honestly, people simply do not want religious institutions to be protected under the constitution. And no matter what we change or what we do, as long as there is a conscience clause, women will be deprived.

Our process is supposed to be to represent the majority point of view. I've spoken to women in my district, and I would say that this bill, if every woman were polled, they would unanimously be behind this legislation. I think by not passing this legislation we are merely responding to a minority point of view. And a minority point of view will not allow women to receive proper health care and have their lives protected.

I vote in the affirmative, Madam President.

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

SENATOR SCHNEIDERMAN: Thank you,

Madam President.

I think this has been a good debate on this issue. I want to -- I'm voting no for the reasons I've stated already.

I also want to say several of my colleagues have raised the sort of specter of religious discrimination and constitutional rights. There are other bills in other states that have been upheld. There's no constitutional issue here. There's no discrimination against religion in the Assembly bill, as there was not in the Bonacic bill which many of you sponsored and which had no exclusion clause.

This is not a constitutional issue. This is a conscience issue. And I still have not heard a response to my point that people have consciences, corporations do not. This is a very, very misguided effort to sidetrack us from the real issue.

I vote no. Let's narrow the exclusion clause, then we'll get a law.

Thank you, Madam President.

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

SENATOR SCHNEIDERMAN: No.

ACTING PRESIDENT McGEE: In the negative.

Senator Rath.

SENATOR RATH: Madam President, I rise a second time to explain my vote.

And I had thought about whether I really wanted to raise this point or not, but something Senator Schneiderman just said caused me to go back to some notes I've been writing here that I felt really pulled together my thoughts for the day. And he spoke about a collective conscience.

And my question to myself was, and to you, my colleagues on both sides of the aisle, and to the advocates and friends that we've worked with, as we leave here this year and it doesn't look like we're going to have a bill, I think we've got to look at our own individual consciences and start to think about where we are and where we're going.

But there's a bigger question that arises here. Do we have a circumstance where the individual conscience is going to be subjected to a collective conscience, or are

we going to subject the collective conscience to the individual consciences?

Now, the collective conscience, in my mind, is the basis for many of our government, religious, civic, volunteer organizations. And as we are an emerging society, and continue to emerge, we have to look to something as we make decisions, as we move forward as a society. And our actions are so often guided by our consciences.

Our consciences have been shaped by our upbringing. Our families have helped shape those consciences. But also by the churches and the synagogues and the organizations that we were encouraged to go to and be a part of through our families. So our consciences are important to us.

But does the question now become the jurisdiction of the conscience? Is it an individual conscience that we follow, or is it a collective conscience that we follow? Is there room for both in our society? Are we going to jeopardize a God-given right that we have to religious freedom by jeopardizing either our collective conscience or our

individual conscience?

I don't think we can answer that question in this room today. I think there may be a much larger forum that is going to have to address that question. But I ask you to look at it yourself. Think about it some this summer. When we come back next year, maybe we'll have a chance to review our individual responsibilities and our collective and individual consciences.

Thank you. I vote aye.

ACTING PRESIDENT McGEE: Senator Rath, in the affirmative.

Senator Goodman.

SENATOR GOODMAN: Madam President, this bill is many ways poses a very perplexing question. As you might note, my name appears on the bill as a sponsor and thus reveals a degree of ambiguity in my own thinking with respect to how to vote on it.

Let me say, however, after careful reflection, my judgment is that the bill should not attract an affirmative vote, for a reason I'd like to explain. It's my view that it is imperative that we pass some form of

legislation which will give women the protection that they need, and I think we should credit this side with every tangible goodwill effort to try to accomplish that.

The conspiratorial notion that there is a plot to try to deprive women of these rights is, I think, not an accurate one. In fact, I would say it's an absolutely untenable position for us to even consider. The fact of the matter is I know for a fact there's been sincere effort to craft a bill which would pass muster in many respects.

But let me say that I think one of the compass points in this issue is the recent federal court decision in Erickson versus Bartell Drug Company which reaffirmed how the failure of an employer to cover birth control constitutes sex discrimination.

By supporting a broad religious exemption clause, my side I believe are sanctioning, without intending to, a certain degree of employer -- I don't want to use the word "discrimination," but employer selectivity.

Rather than allowing such

selectivity, the Senate should seek, in my opinion, to limit the unfair treatment of women by their employers and insurance companies.

Now, let's be practical once again and position this in its true spot at the moment. This is not going to pass in the other house. Therefore, this becomes a one-house bill. I think it's fair to say that we are in a position where this should be regarded as a step in the right direction, but one that is a tangible indication of the need for further intense negotiation which hopefully would bring about a solution to this.

And in making this suggestion it is certainly my hope that we will put an end to the type of recrimination which can be nothing but destructive in regard to the consideration of where we go. We all agree that women need the coverage provided by the bill, and the narrow, rather bizarre piece that relates to the conscience clause is one that I think can readily be surmounted by individuals of goodwill.

It's my hope that we can get on with this promptly, because the sooner the bill is adopted, the better things will be for the health of women and the welfare of the people of this state.

Thank you very much, Madam President.

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

SENATOR GOODMAN: I vote in the negative.

ACTING PRESIDENT McGEE: Senator Goodman in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1287 are Senators Breslin, Brown, Connor, Dollinger, Duane, Goodman, Hassell-Thompson, Montgomery, Oppenheimer, Santiago, Schneiderman, and Stavisky. Also, Senator Paterson. Ayes, 45. Nays, 13.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam

President, may we return to reports of standing committees for a report of the Rules and Finance Committees, respectively.

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 214, by Senator Nozzolio, an act to amend the Civil Service Law.

415A, by Senator LaValle, an act to amend the Executive Law.

416A, by Senator Morahan, an act enacting.

434A, by Senator DeFrancisco, an act to amend the Vehicle and Traffic Law.

473A, by Senator Alesi, an act to amend the Education Law.

3826, by Senator Breslin, an act authorizing.

3950, by Senator Maziarz, an act to amend the Executive Law.

4467, by Senator Marcellino, an act

to amend the Environmental Conservation Law.

4624A, by Senator Hannon, an act to amend the State Technology Law.

4641A, by Senator Seward, an act to amend the Insurance Law.

4742, by Senator Morahan, an act to reopen.

4898A, by Senator Saland, an act relating to establishing.

4924A, by Senator DeFrancisco, an act to authorize.

4942, by Senator Leibell, an act to amend the Civil Service Law.

5404A, by Senator Lack, an act to amend the Uniform Commercial Code.

5420, by Senator Kuhl, an act to amend the Vehicle and Traffic Law.

5428, by Senator Nozzolio, an act to amend the Judiciary Law.

5467, by Senator DeFrancisco, an act in relation to the apportionment.

5498, by Senator Meier, an act in relation to contracts.

5510, by Senator Johnson, an act to amend the Retirement and Social Security Law.

5559, by Senator Marcellino, an act to amend the Parks, Recreation and Historic Preservation Law.

5588, by Senator DeFrancisco, an act to amend the Vehicle and Traffic Law.

5634, by Senator Kuhl, an act to amend the Town Law.

5639, by Senator Wright, an act to amend the Public Authorities Law.

5649, by Senator Seward, an act authorizing.

And 5666, by Senator Bonacic, an act to amend the Public Authorities Law.

All bills ordered direct to third reading.

ACTING PRESIDENT McGEE: Senator Fuschillo.

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

ACTING PRESIDENT McGEE: All in favor of 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 Fuschillo.

SENATOR FUSCHILLO: Madam President, can we read the report of the Finance Committee.

ACTING PRESIDENT McGEE: The Secretary will read.

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

As a member of the Administrative Review Board for Professional Medical Conduct, Robert M. Briber, of Schenectady.

As members of the Small Business Advisory Board, Catherine Crowley, of New York City, and Judith B. Russell, of Albion.

As a member of the Fire Fighting and Code Enforcement Personnel Standards and Education Commission, Gerald W. Lynch.

As a member of the Veterans' Affairs Commission, Harold G. Cronin, of Lake Luzerne.

As members of the Board of Trustees of the New York State Higher Education Services Corporation, William P. Beckman, of Bronxville, and Christopher Walsh, of Jamesville.

As a member of the Board of Directors of the Roosevelt Island Operating Corporation, John B. Mannix, of New York City.

As a member of the State Camp Safety Advisory Council, Robert Geraci, of Baldwinsville.

As members of the State Hospital Review and Planning Council, James X. Kennedy, of Geneva, and David O. Simon, of Chappaqua.

As a member of the Board of Visitors of the New York State Home for Veterans and their Dependents at St. Albans, Ruth Lillian Young, of Jamaica.

As a member of the Board of Visitors of the Capital District Psychiatric Center, Angelo T. Muccigrosso, of Niskayuna.

As a member of the Board of Visitors of the Rockland Psychiatric Center, Margot Vazquez, of Suffern.

And as sheriff of Monroe County,

Patrick O'Flynn, of Penfield.

ACTING PRESIDENT McGEE: Senator Stafford.

SENATOR STAFFORD: Move the nominations, please.

ACTING PRESIDENT McGEE: Senator Nozzolio.

SENATOR NOZZOLIO: Madam President, I defer to Senator Alesi.

ACTING PRESIDENT McGEE: Senator Alesi.

SENATOR ALESI: Thank you, Madam President.

Last week my colleagues Senators Nozzolio, Maziarz, and Dollinger, we all had the opportunity to speak on a privileged resolution recognizing the resignation of a great, nationally recognized sheriff from Monroe County.

And today we have the opportunity to recognize Patrick O'Flynn, who has been nominated by the Governor. And again, showing the Governor's exceptional wisdom in this nomination, Patrick O'Flynn has served for over twenty years on the Monroe County

Sheriff's Department and has worked his way up from every position imaginable, gaining invaluable experience to assume the role of Monroe County sheriff.

Aside from his very impressive resume, however, I would like to say that not only as the Senator representing him, as he is my constituent, but as a personal friend of him and his family, I am extremely proud and have firsthand knowledge of his abilities and his ability also to inspire the people that will be working under him.

Patrick O'Flynn is a very good personal friend of mine, and it's a deep honor for me to be able to speak on his behalf.

ACTING PRESIDENT McGEE: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Madam President.

Certainly I wish to echo the comments of Senator Alesi on the nomination of Patrick O'Flynn to be Monroe County sheriff. Officer O'Flynn, Patrick O'Flynn is a dedicated public servant. He has devoted his life to law enforcement.

And as Senator Alesi said, although he certainly has extremely big shoes to fill in succeeding our beloved sheriff Andy Meloni, that Patrick O'Flynn is up to the task, serving at Sheriff Meloni's side for many, many years.

He has worked as undersheriff, is uniquely qualified, extremely qualified to be the Monroe County sheriff. And we certainly look forward to working with him to better law enforcement efforts in the County of Monroe.

I support the nomination.

Thank you, Madam President.

ACTING PRESIDENT McGEE: The question is on the appointees as read by the Secretary. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The appointees are hereby confirmed.

Senator Dollinger.

SENATOR DOLLINGER: Madam

President, I was out of the chamber. I understand one of the issues before us is the nomination of Patrick O'Flynn as the sheriff of Monroe County, and I believe it has been voted on by the house.

I'd like to be recorded in the negative, Madam President. I was disappointed that Mr. O'Flynn was not here before the Senate Finance Committee. I had thought he would be. I understand the protocol is that unless requested, the sheriff wouldn't have been here. He was here yesterday.

I am concerned about a number of issues under the jurisdiction of the sheriff, the health care at the county jail. It's been highly publicized that there was a death at the jail, in a heroin overdose situation, in which the Commission on Corrections in this state found that there was gross negligence on the part of the operation by the sheriff of the jail.

And I wish I had had the opportunity to discuss that issue with Mr. O'Flynn before his appointment.

But I'm also concerned, Madam

President, because I don't quite understand why we're doing this. County law makes it very clear that the undersheriff serves as the acting sheriff until such time as an election occurs. I think we've perhaps burnished Mr. O'Flynn's credentials to be in the election coming this fall.

But I wish he had been here for a more thorough discussion about some of the critical issues that face the county sheriff's department, and I regret I didn't get a chance to do that, Madam President.

But I'd ask to be recorded in the negative.

ACTING PRESIDENT McGEE: The record will reflect your vote.

Senator Paterson.

SENATOR PATERSON: Madam President, with unanimous consent I'd like to be recorded in the negative on Calendar Number 1288.

ACTING PRESIDENT McGEE: Without objection, so ordered.

Senator Skelos.

SENATOR SKELOS: Madam President,

is there any housekeeping at the desk?

ACTING PRESIDENT McGEE: Yes.

Senator Seward.

SENATOR SEWARD: Yes, Madam President. On page 27, I offer the following amendments to my bill, Calendar Number 728, Senate Print Number 5213A, and ask that the bill retain its place on the Third Reading Calendar.

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

SENATOR SEWARD: Thank you, Madam President.

And on behalf of Senator Goodman, I wish to call up his bill, Senate Print Number 5565, which is now at this desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1167, by Senator Goodman, Senate Print 5565, an act to amend the Tax Law.

SENATOR SEWARD: Madam President, I now move to reconsider the vote by which

this bill was passed and ask that the bill be restored to the order of third reading.

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

SENATOR SEWARD: Thank you.

ACTING PRESIDENT McGEE: The bill is restored to Third Reading Calendar.

Senator Duane.

SENATOR DUANE: Thank you, Madam President. With unanimous consent I'd like to be recorded in the negative on Calendar Number 638, Senate 357C, and Calendar Number 961, Senate 1963B.

ACTING PRESIDENT McGEE: Without objection, so ordered.

Senator Wright.

SENATOR WRIGHT: Thank you, Madam President. With unanimous consent, I wish to be recorded in the negative on Calendar Number 1288, Senate 5627.

ACTING PRESIDENT McGEE: Without objection, so ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could go to Supplemental Calendar Number 2, controversial.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 604, by Senator Hannon, Senate Print 4560A, an act to amend Chapter 331 of the Laws of 2000.

SENATOR PATERSON: Explanation.

SENATOR DOLLINGER: Madam President -

SENATOR SKELOS: Madam President, on Calendar Number 604, is there a message at the desk?

ACTING PRESIDENT McGEE: There is a message at the desk.

SENATOR SKELOS: Move to accept the message.

ACTING PRESIDENT McGEE: All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The message of necessity has been accepted.

Senator Dollinger, an explanation of the bill? Just one moment, Senator Dollinger.

SENATOR SKELOS: Lay it aside temporarily.

ACTING PRESIDENT McGEE: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 632, by Member of the Assembly Gottfried, Assembly Print Number 7184, an act to amend Chapter 640 of the Laws of 1997.

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, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 668, by Senator Marchi, Senate Print 3382B, an act to amend the Navigation Law, in relation to pilotage fees.

SENATOR SKELOS: Is there a message at the desk?

ACTING PRESIDENT McGEE: Yes, there is a message at the desk.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT McGEE: The motion is to accept the message of necessity. All in favor will say aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed say nay.

(No response.)

ACTING PRESIDENT McGEE: The message is accepted.

The Secretary will read the last section.

Senator Dollinger.

SENATOR DOLLINGER: May we have an explanation, Madam President?

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

SENATOR MARCHI: Madam President, this provides for an increase in the pilotage tariff for the Sandy Hook pilots. They pick up these vessels when they -- foreign-flag vessels when they pass the sandbar and -

ACTING PRESIDENT McGEE: Pardon me, Senator Marchi, for just one moment.

Could we have some quiet in this chamber, please, while this distinguished gentleman answers Senator Dollinger's request.

SENATOR MARCHI: Thank you. This bill provides for a pilotage an increase in the pilotage tariff charged or accounted for by the services provided by the Sandy Hook pilots for piloting foreign-flag vessels over the sandbar and into the harbor.

It provides for an immediate increase of the rate of 5 percent until July 1, 2002, and, beyond that, 4½ percent.

Now, the nature of the vessels, for those of you who have had any seagoing experience -- and if you don't, you probably know about it -- have changed dramatically. You have much larger vessels, a smaller number of vessels.

So the economics of it bring in some very serious burdens on the provision of those services to correspond to the changing nature of the transport of the product. So that there has been a two-step increase to meet these expenses.

I don't think there's any -- I think there's general consensus that this is an orderly response to the changing nature of the provisioning of these services.

You have to realize, and I assume those of you who have had seagoing experience, as I have, that you have a very serious problem when you bring in vessels, very, very large vessels, where one serious accident could wipe out all of the costs that are involved, in the absence of enlightened and high professional competence in the delivery of this service.

And this has indeed been the experience. These are the finest pilots in the world, carrying the most expensive and difficult vessels -- perhaps not on distances that are as long. There are some areas of Chesapeake Bay where you may have to travel

longer. But the burdens and the tensions and the pressures that are on pilots require people of a high degree of competence.

And this represents an enlightened consensus of the best way to meet this. We have not had a reflection of the changing nature of the dynamics of this process, and this would bring it into rough parity.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, I don't know if I have a problem with this bill. It just kind of jumped off the page when in 1999 we gave a 15 percent increase and also a $75 per trip fee, and now we're going to add an additional 40 percent. And one of the memos believes that if you add up all of the fees for pilotage and the increases over the last three years, it would be about 59.2 percent.

And I just wanted to ask Senator Marchi if we're going to have a 13 percent increase annually. Does this final increase really bring the pilotage vessels that -- you know, the industry up-to-date? In other

words, they're not going to be back here in another two years looking for a 30 percent increase? There might have to be an increase. But does this put the workers and everyone on par with where they should be?

SENATOR MARCHI: Did I give you those statistics here? It's 5 percent until 2002, and 4½ percent beyond that, in our second step.

The total is -- no, this -- the present arrangement terminates, and these are the dynamics of the problem as they exist today. And there has been that change.

I don't anticipate any -- unless there's -- I really don't anticipate any large-scale increases. Because of the very nature and the depth of the channels and the configuration of the ships, I don't think that they can expand very much anything that adds appreciably to the distance from the waterline down to the keel. We are at the outer limits right now. In the absence of even -- in the presence, you wouldn't have the berthing quarters.

So I don't -- I feel very confident

that this will enable them to go forward and to make the needed replacement of vessels that have outworn their usefulness. There are a whole series of problems that would require more extended presentation. But I there's a general consensus that we're on the right road here.

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

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

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

SENATOR PATERSON: Explanation.

ACTING PRESIDENT McGEE: An explanation has been requested, Senator Larkin.

Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 778, substituted earlier today by Member of the Assembly Sweeney, Assembly Print Number 4042A, an act to authorize the Shaw Temple.

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, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 779, substituted earlier today by Member of the Assembly Sweeney, Assembly Print Number 6061A, an act to authorize.

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, 58.

ACTING PRESIDENT McGEE: The bill is passed.

SENATOR DOLLINGER: I'd ask to vote in the negative on that.

ACTING PRESIDENT McGEE: Without objection, Senator Dollinger will be recorded in the negative.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, will you please call up Calendar Number 604.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 604, by Senator Hannon, Senate Print 4560A, an act to amend Chapter 331 of the Laws of 2000.

SENATOR PATERSON: Explanation.

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

SENATOR HANNON: This allows the Miracle Christian Church in the town of Hempstead to file an application for a real property tax exemption.

Previously this house had passed such an authority for them to file an exemption with the County of Nassau on behalf of the taxing districts for which the County of Nassau provides the assessment. This would add to that earlier statute the village of Hempstead, which is a separate assessing district.

ACTING PRESIDENT McGEE: Senator Paterson.

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

ACTING PRESIDENT McGEE: Senator Hannon, will you yield for a question?

SENATOR HANNON: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR PATERSON: Was it that there was a ministerial filing and that it was late, or that they went to the wrong entity?

SENATOR HANNON: No, neither, Senator, in this sense. They had been late, I believe, originally. But when we passed the original statute, it didn't cover the village of Hempstead.

We had gotten the draft in this house from the Assembly and had passed it as they had passed it. Because of the timing of when we could pass, we couldn't go back and get another bill from them.

SENATOR PATERSON: Okay, thank you.

SENATOR HANNON: So we have to do this as a nature of a chapter amendment to an already existing exemption application statute. Which I must admit, if we pass a more general statute, we wouldn't need this series of minor statutes.

SENATOR PATERSON: Madam President, stop him before I change my mind.

(Laughter.)

ACTING PRESIDENT McGEE: Read the

last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: With all due respect to my good friend Senator Hannon, I have to vote against the chapter amendment to the bill that I voted against the first time around.

I couldn't agree with the chair of the Committee on Health more than ever. Let's do the statewide bill and get out of the business. Which Senator Hannon's bill exactly exemplifies the problem, is that these bills, we make a tiny mistake in the deed description or we leave out the village taxing entity, and we have to bring the whole bill back.

It just highlights the continuing problem, Madam President, and I hope my continuing negative vote will continue to highlight why we should change it.

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 57. Nays, 1. Senator Dollinger recorded in the negative.

The bill is passed.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, will you kindly call up Calendar Number 733.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 733, by Senator Larkin, Senate Print 4251A, an act to amend the Racing, Pari-Mutuel Wagering and Breeding 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, 58.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, will you please call up Calendar Number 1025.

ACTING PRESIDENT McGEE: The Secretary will read.

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

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. Nays, 1. Senator Dollinger recorded in the negative.

ACTING PRESIDENT McGEE: The bill

is passed.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, will you please recognize Senator Dollinger.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. I'd just ask unanimous consent to be recorded in the negative on Calendar Number 778.

Thank you to the Acting Majority Leader.

ACTING PRESIDENT McGEE: Without objection, so ordered.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, if we can take up the noncontroversial reading of Supplemental Calendar Number 56B.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 1289, Senator Nozzolio moves to discharge, from the Committee on Rules,

Assembly Bill Number 3938 and substitute it for the identical Senate Bill Number 214, Third Reading Calendar 1289.

ACTING PRESIDENT McGEE: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1289, by Member of the Assembly Destito, Assembly Print Number 3938, an act to amend the Civil Service Law.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

Senator Nozzolio, to explain his vote.

SENATOR NOZZOLIO: Madam President, this bill before us is one of the most important measures ever adopted by this house to recognize the incredibly difficult conditions faced every day by the brave men and women who serve as correction officers in this state. Without a doubt, they walk the

toughest law enforcement beat in America.

And that this measure provides them with the respect that is afforded law enforcement officials across the state, including the state police, city, town, and village police departments.

Correction officers need binding arbitration. This is a tremendous victory, and I thank Senator Bruno for his leadership. I respect certainly and thank those correction officers who worked so hard for this measure.

That this is a very important measure to enhance the workplace environment for correction officers. And, Madam President, I move the bill.

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1290, Senator LaValle moves to discharge, from the Committee on Finance, Assembly Bill Number 295A and substitute it for the identical Senate Bill Number 415A,

Third Reading Calendar 1290.

ACTING PRESIDENT McGEE: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1290, by Member of the Assembly Tokasz, Assembly Print Number 295A, an act to amend the Executive Law.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT McGEE: Lay the bill aside.

THE SECRETARY: In relation to Calendar Number 1291, Senator Morahan moves to discharge, from the Committee on Finance, Assembly Bill Number 294A and substitute it for the identical Senate Bill Number 416A, Third Reading Calendar 1291.

ACTING PRESIDENT McGEE: Substitution is ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1291, by Member of the Assembly Gunther, Assembly Print Number 294A, an act enacting the Greenwood Lake Commission.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 8. This act shall take effect upon enactment into law.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1292, by Senator DeFrancisco, Senate Print 434A, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill

is passed.

THE SECRETARY: Calendar Number 1293, by Senator Alesi, Senate Print 473A, an act to amend the Education Law.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1294, by Senator Breslin, Senate Print 3826, an act authorizing William P. Soronen, Jr., to file retroactive membership.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1295, by Senator Maziarz, Senate Print 3950, an act to amend the Executive Law.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1296, by Senator Marcellino, Senate Print

4467, 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, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1298, by Senator Seward, Senate Print 4641A, an act to amend the Insurance Law.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 12. This act shall take effect December 31, 2001.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce

the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1299, by Senator Morahan, Senate Print 4742, an act to reopen.

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

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1301, by Senator Saland, Senate Print 4898A, an act relating to establishing.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 4. 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, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1302, by Senator DeFrancisco, Senate Print 4924A, an act to authorize.

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

Read the last section.

THE SECRETARY: Section 4. 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, 58.

ACTING PRESIDENT McGEE: The bill

is passed.

THE SECRETARY: In relation to Calendar Number 1303, Senator Leibell moves to discharge, from the Committee on Rules, Assembly Bill Number 8440 and substitute it for the identical Senate Bill Number 4942, Third Reading Calendar 1303.

ACTING PRESIDENT McGEE: Substitution ordered.

There is a home rule message at the desk.

The Secretary will read.

THE SECRETARY: Calendar Number 1303, by the Assembly Committee on Rules, Assembly Print Number 8440, an act to amend the Civil Service Law.

ACTING PRESIDENT McGEE: 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, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1304, by Senator Lack -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1305, by Senator Kuhl, Senate Print 5420, an act to amend the Vehicle and Traffic Law and the State Finance Law.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1306, by Senator Nozzolio, Senate Print 5428, an act to amend the Judiciary Law.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator Dollinger.

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

I'm going to vote in favor of this bill, and I do so with a bittersweet twinge in my casting this ballot. This is a salary for a position that I once ran for and was unsuccessful in attaining. The man who beat me in that election quite frankly deserves to be paid the same amount as Surrogate Court judges throughout the major counties in upstate New York. And it seems to me it's only fair.

I commend Senator Nozzolio for

putting this bill on the floor. This is a bill about the fairness in what we pay our county Surrogate Court judges. And when you live by the voters, Madam President, sometimes you die by the voters, but you respect their choice. I respect their choice in this case, and I vote to raise this salary for this particular gentleman, with best wishes to him.

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1307, by Senator DeFrancisco, Senate Print 5467, an act in relation to the apportionment.

SENATOR HEVESI: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1308, by Senator Meier, Senate Print 5498, an act in relation to contracts.

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, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1309, by Senator Johnson, Senate Print 5510, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1310, by Senator Marcellino, Senate Print 5559, an act to amend the Parks, Recreation and Historic Preservation 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, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1311, by Senator DeFrancisco, Senate Print 5588, an act to amend the Vehicle and Traffic 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, 58.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Fuschillo, that completes the reading of the noncontroversial supplemental calendar.

SENATOR FUSCHILLO: Madam President, can we now take up the controversial reading of the calendar.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1290, substituted earlier today by Member of the Assembly Tokasz, Assembly Print Number 295A, an act to amend the Executive Law.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take -

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, I had had a question relating to the recent Supreme Court case involving the restrictions on police when it comes to thermal imaging. But this is the fire department, as it was explained to me by Senator LaValle.

If the police were to approach the fire department for any of that information, that would be in violation of the court decision. But what the fire department does with it on its own is not going to have any Fourth Amendment implications, so I withdraw the need for an explanation.

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, 58.

ACTING PRESIDENT McGEE: The bill

is passed.

THE SECRETARY: Calendar Number 1304, by Senator Lack, Senate Print 5404A, an act to amend the Uniform Commercial Code.

SENATOR DOLLINGER: Explanation.

SENATOR FUSCHILLO: Lay it aside temporarily.

ACTING PRESIDENT McGEE: Lay the bill aside temporarily, please.

THE SECRETARY: Calendar Number 1307, by Senator DeFrancisco, Senate Print 5467, an act in relation to the apportionment.

SENATOR HEVESI: Explanation.

ACTING PRESIDENT McGEE: Lay the bill is aside temporarily.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, will you please take up Calendar Number 1304.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1304, by Senator Lack, Senate Print 5404A, an act to amend the Uniform Commercial Code.

SENATOR LAVALLE: Explanation.

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

SENATOR LACK: Thank you, Madam President.

While this is a 109-page bill, it's actually fairly simple. It's the agreed-upon revision of Article 9 of the Uniform Commercial Code. Article 9 applies to any action in which a security interest is created in personal property. Forty-five states have enacted the revised Article 9. It's been 25 years since there was a revision of this particular article of the code.

Of course, I'd be more than happy to stand here and tell you that I revised it all myself, except to say that this effort began in 1993 with the effort by the National Conference of Commissioners on Uniform State Laws. They have produced thousands of pages of documents which were then discussed among the various national commissioners, law schools, professors, et cetera, across the country.

The Article 9 drafting committee worked between 1993 and 1998 to complete its

work, and then the revised Article 9 was unanimously approved by the national conference and the American Law Institute. As I said, 45 states have now considered it.

The national effective date is July 1, 2001. That is very important for the State of New York, because the basis of many secure transactions in the United States is according to New York law because of the place, New York, where the root of many of those transactions do take place. If by July 1st of this year our law is nonconforming with at least 44 and perhaps 49 other states -- because bills are pending in other state legislatures, the few that have not passed it -- suffice it to say there would be a rather extended crisis in terms of such financial transactions.

What is basically done is that the scope of Article 9 was expanded to cover where technology has come into play over the last 25 years. Rules have been simplified and clarified governing the creation, perfection, priority, and enforcement of security interests. These changes lower the cost,

increase the availability of secured credit.

It also, in the case of New York, does away with what was the dual filing requirements, which, considering computerization, availability of the Internet, is no longer needed in the state.

It provides for central filing for agricultural collateral instead of local filing currently required under old Article 9.

And it provides significant new benefits and protections to consumers by expanding the definition of "good faith" to include honesty in fact and the observance of a reasonable commercial standard of fair dealing, has enhanced description requirements applicable to certain types of collateral, special presale and postsale notice rules, limitations on recovery in certain low-priced dispositions, enhanced rights as a buyer in the ordinary course of business, inclusion of consumer transactions in certain new rules that enhance the rights of secured creditors -- that is, rules related to deposit accounts and partial strict foreclosure -- and the adoption of the holder in due course rule,

the FTC rule, protecting the consumer where a claim is made by an assignee of the consumer credit contract.

As I said, the immediate enactment is needed so that on the nationwide, universal commencement date of July 1st New York is in conformity with the laws of all the other states that have already enacted this Article 9.

For the most part, these elements of the Uniform Commercial Code are outside the normal political give-and-take and are handled by the national conference and the uniform laws commissioners who, in my opinion, have done an excellent job over the eight years that they have worked on bringing about the revised Article 9.

ACTING PRESIDENT McGEE: Senator LaValle.

SENATOR LAVALLE: Will Senator Lack yield for one question?

SENATOR LACK: Yes, Senator.

SENATOR LAVALLE: Senator Lack, in looking through, and other members here looking at the 111-page bill, those of us who

are attorneys and must fulfill CLE credits wonder, do we receive one credit for passage of this bill and the explanation and receiving the briefing book such that you have?

(Laughter.)

SENATOR LACK: Senator LaValle, if you look at the 14th line on page 69, you would find that CLE credit has been included.

(Laughter.)

SENATOR LAVALLE: Explanation satisfactory.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 61. This act shall take effect July 1, 2001.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Just to explain my vote.

I appreciate Senator Lack shepherding this bill. This bill, at least based on what I know -

ACTING PRESIDENT McGEE: Senator Dollinger, could you hold it for one moment. We're on a roll call right now. We've got to

get to the roll call.

Read the last section.

THE SECRETARY: Section 61. This act shall take effect July 1, 2001.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

I just want to commend Senator Lack for shepherding this bill through, the 109-page, 111-page bill. I predicted in our short discussion back here with my colleagues from Long Island that this will be the CLE curse of lawyers in New York.

And lo and behold, Senator Lack, I have no doubt that someday you will be called back to the board of bar examiners to explain this to them when they in turn correct the exams from those young law students who are trying to figure out what Article 9 is, what it means, and what are all those security interest filings they do at the time of

closing of commercial transactions.

But I think Senator LaValle made a good point when we were discussing, that the electronic commerce of the future means that we won't wait another 25 years to review Article 9, that the door is open for transactions that even today we can't necessarily envision. When they come, we have to preserve the rights of creditors and lenders to be able to reclaim collateral and assets in order to make our financial system work.

So this is a bravo in getting it to this point, Senator Lack. And when my clients call me and ask me what Article 9 really means, the new Article 9, I will no doubt be referring them to you, Senator Lack, wherever you may be.

SENATOR LACK: My cards are being distributed as we speak.

(Laughter.)

SENATOR DOLLINGER: That's all based on the assumption that Senator Lack knows what it means himself. And I'm willing to concede that, but we'll wait and see.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, will you please take up Calendar Number 1307.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1307, by Senator DeFrancisco, Senate Print 5467, an act in relation to the apportionment.

SENATOR HEVESI: Explanation, please.

ACTING PRESIDENT McGEE: Senator DeFrancisco, Senator Hevesi has asked requested an explanation.

SENATOR DeFRANCISCO: Yes. This bill was done in response to a request from the superintendent of the North Syracuse School District.

Apparently during the years

1991-1992 to 1995-1996, during those school years, the district submitted information concerning its attendance, its number of pupils at various schools. It wasn't until four years after the '95-'96 school year that the school was notified that their numbers - the State Education Department said that their numbers were inaccurate and that they were overpaid by $486,000 plus. They were notified, as I say, four years after the years in question.

The school district went back to the State Education Department during the year -- the end of the year 2000 to go over these numbers after they were notified of the information. By April of 2001, the State Education Department agreed that their original conclusion was erroneous.

However, by that time the time within which to appeal a determination by the State Education Department of overpayments or underpayments, their time limitation had run. And the Education Department says the only way that they could be paid what they were required to be paid and not have to reimburse

the so-called overpayment, since it was proven that it wasn't an overpayment, was by legislative action in view of the limit of time that the school district had to contest the overpayment.

So all this really does is allow - it will mean that the North Syracuse School District will be in line with everybody else as far as when they get payments for -- on additional sums that they were entitled to by the State Education Department. And whenever they're reached in the ordinary course where they're entitled to more payments from prior years, they will be able to get this money back.

ACTING PRESIDENT McGEE: Senator Hevesi.

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

ACTING PRESIDENT McGEE: Senator DeFrancisco, will you yield?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR HEVESI: Thank you.

That was an excellent explanation, and your final point hit on my concern here. So let me just clarify, you did a good job doing it, but there's a specific provision in this bill that I want to ask you about in terms of the payment.

It's in line 7: "Such aid shall be payable pursuant to the provisions of paragraph C of subdivision 5 of Section 3604 of the Education Law, but not subject to the provisions of any other paragraph."

My question to you is, this will be treated, as a result of that language that I just read to you, as any other prior-year school aid claim is treated by any school district in New York State?

SENATOR DeFRANCISCO: That is my understanding. I didn't bring the entire Education Law with me to verify that.

But if you would like to, we could lay this aside temporarily and I could double-check on it. But that's the way it was explained to me.

SENATOR HEVESI: Madam President, I would very much appreciate if you would do

that. Because if that's not the case, I have a major problem with this bill.

SENATOR DeFRANCISCO: Okay.

ACTING PRESIDENT McGEE: Senator DeFrancisco.

SENATOR DeFRANCISCO: Can we lay the bill aside temporarily?

ACTING PRESIDENT McGEE: The bill is laid aside at the sponsor's request.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, may we please take up the Supplemental Calendar Number 3, noncontroversial calendar.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 484, by Senator Balboni, Senate Print 855, an act to amend the Executive Law.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 797, by Senator Hannon, Senate Print 4255A, an act to amend the Public Health Law.

ACTING PRESIDENT McGEE: Senator Fuschillo.

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

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

SENATOR FUSCHILLO: Move to accept.

ACTING PRESIDENT McGEE: The motion is to accept the message of necessity. All those in favor say aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Those opposed say nay.

(No response.)

ACTING PRESIDENT McGEE: The motion is carried. The message is accepted.

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.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Duane.

SENATOR DUANE: Madam President, I just wanted to make sure that I was seen voting in the negative on Calendar Number 484.

ACTING PRESIDENT McGEE: Calendar 484?

SENATOR DUANE: Yes, Madam President.

ACTING PRESIDENT McGEE: Without objection, so ordered.

SENATOR DUANE: It wasn't my fault. It was the lamps.

ACTING PRESIDENT McGEE: It was the lamp? Oh, okay. Well, that happens.

Thank you very much.

THE SECRETARY: Calendar Number 799, by Senator Hannon, Senate Print 4545, an act to amend the Public Health Law.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator Hannon.

SENATOR HANNON: Yes, Madam President. I just want to explain my vote.

ACTING PRESIDENT McGEE: That's okay. Thank you.

SENATOR HANNON: Okay. This legislation would deal with the question of access to tobacco products, aimed at curtailing the access by minors.

One of the difficulties we have in trying to diminish the number of people in the state who smoke is the fact that so often when a person is a minor, they begin smoking, get

addicted, and continue. Studies have found that if we could cut that cycle, we would do a great deal to improve the individual's health and our society's costs in curing the health problems that result from smoking.

So that what we do here is say that products, tobacco products and cigarettes must be stored behind a counter in an area accessible only to the personnel of such business or in a locked container. And the idea is so that the product can be visible but not accessible to the consumer from the selling side of the counter, and it would only accessible to the personnel of the business from behind the counter.

And we feel by doing this we'd be adding a great deal to what happens in disposal of the cigarettes and thinking therefore we'd add a great deal to the public policy of this state.

And I thank you very much.

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill

is passed.

THE SECRETARY: Calendar Number 617, by Senator Trunzo, Senate Print 5027, an act to amend the Public Authorities 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, 58.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, would you read Calendar Number 1307.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1307, Senate Print 5467, an act in relation to the apportionment.

SENATOR PATERSON: Explanation.

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

SENATOR DeFRANCISCO: I think we've already explained it, if you were paying attention, Senator Paterson.

I requested this bill be temporarily laid aside, and I checked the statute. And my reading of the statute is what I explained earlier; namely, that the school district would wait in line behind any other school district that had a prior claim that had been approved.

SENATOR HEVESI: Madam President.

ACTING PRESIDENT McGEE: Senator Hevesi.

SENATOR HEVESI: Very briefly on the bill.

ACTING PRESIDENT McGEE: Senator Hevesi, on the bill.

SENATOR HEVESI: Thank you, Madam President.

I fully support this bill and just wanted to take a moment to commend Senator

DeFrancisco. That's the way you conduct business. That spirit of collegiality will advance public policy interests in addition to the normal discourse in this chamber. He is to be commended.

And this is a worthy bill, and I applaud his efforts to bring fruitful results to the students of the North Syracuse Central School District.

Thank you, Madam President.

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, 58.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, is there any housekeeping at the

desk?

THE PRESIDENT: No, there is no housekeeping at the desk.

SENATOR FUSCHILLO: Madam President, would you recognize Senator Paterson, please.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, there will be an immediate conference of the Minority right after session, an immediate conference of the Minority.

ACTING PRESIDENT McGEE: There will be an immediate meeting of the Senate Minority in Room 314, immediately following session.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, there being no further business to come before the Senate, I move we adjourn until 10:30 tomorrow morning.

ACTING PRESIDENT McGEE: On motion, the Senate stands adjourned until 10:30 tomorrow morning.

(Whereupon, at 8:00 p.m., the Senate adjourned.)