THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

July 17, 2001

1:34 p.m.

REGULAR SESSION

SENATOR RAYMOND A. MEIER, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MEIER: The Senate will come to order. I ask everyone to take your place in the chamber.

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

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

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

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

ACTING PRESIDENT MEIER: Reading of the Journal.

THE SECRETARY: In Senate, Monday, July 16, the Senate met pursuant to adjournment. The Journal of Sunday, July 15, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President. On behalf of Senator Libous, I wish to call Senate Print Number 5492, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 1219, by Senator Libous, Senate Print 5492, an act authorizing the Commissioner of Transportation.

ACTING PRESIDENT MEIER: Senator Fuschillo.

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

ACTING PRESIDENT MEIER: Call the

roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

SENATOR FUSCHILLO: I now move to recommit the bill to the Committee on Rules.

ACTING PRESIDENT MEIER: So ordered.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President.

On behalf of Senator Kuhl, I wish to call up Senate Print Number 4154, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 880, by Senator Kuhl, Senate Print 4154, an act to amend the Education Law.

ACTING PRESIDENT MEIER: Senator Fuschillo.

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

ACTING PRESIDENT MEIER: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT MEIER: Senator Fuschillo.

SENATOR FUSCHILLO: I now move to recommit the bill to the Committee on Rules.

ACTING PRESIDENT MEIER: So ordered.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President.

On behalf of Senator Leibell, I wish to call up Senate Print Number 4943, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 1091, by Senator Leibell, Senate Print 4943, an act to authorize the Town of Putnam Valley.

ACTING PRESIDENT MEIER: Senator Fuschillo.

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

ACTING PRESIDENT MEIER: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT MEIER: Senator Fuschillo.

SENATOR FUSCHILLO: I now move to recommit the bill to the Committee on Rules.

ACTING PRESIDENT MEIER: So ordered.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President.

And on behalf of Senator Bruno, I move that the Senate not concur on said amendments and move to reconsider the vote by which the bill was passed.

ACTING PRESIDENT MEIER: Call the roll on reconsideration.

Can we have some order in the chamber, please.

The Secretary will read the title.

THE SECRETARY: Calendar Number 1362, by the Senate Committee on Rules, Senate Print 5667B, an act to amend the Election Law.

ACTING PRESIDENT MEIER: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT MEIER: Senator Fuschillo.

SENATOR FUSCHILLO: I further move that said bill be recommitted to the Committee on Rules.

ACTING PRESIDENT MEIER: So ordered.

SENATOR FUSCHILLO: Thank you.

ACTING PRESIDENT MEIER: Senator Skelos.

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

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

Senator Skelos.

SENATOR SKELOS: Mr. President, may we please adopt the Resolution Calendar, with the exception of Resolution 2744.

ACTING PRESIDENT MEIER: All those in favor of adopting the Resolution Calendar, with the exception of Resolution 2744, signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The Resolution Calendar, with exception, is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, we'll stand at ease pending the return of the report of the Finance Committee.

ACTING PRESIDENT MEIER: The Senate will stand at ease pending the report of the Finance Committee.

(Whereupon, the Senate stood at ease at 1:39 p.m.)

(Whereupon, the Senate reconvened at 1:46 p.m.)

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Mr. President,

can we at this time return to the reports of standing committees. I believe there's a report of the Finance Committee at the desk. I ask that it be read at this time.

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following bill direct to third reading: Senate Print 5704, by the Senate Committee on Rules, an act making appropriations for the support of government.

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Senate 5704.

ACTING PRESIDENT MEIER: Without objection, the bill is reported to third reading.

The Secretary will now read.

THE SECRETARY: Calendar Number 1404, by the Senate Committee on Rules, Senate Print 5704, an act making appropriations for the support of government.

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Mr. President, is there a message of necessity and appropriation at the desk?

ACTING PRESIDENT MEIER: There is a message at the desk.

SENATOR BRUNO: Move to accept the message.

ACTING PRESIDENT MEIER: All those in favor of accepting the message of appropriation and necessity signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

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

Read the last section.

THE SECRETARY: Section 51. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Mr. President, by way of explaining my vote and, of course, the appropriation bill that's before us, this is what we in this house have been voting on as an emergency appropriation bill.

What is different about this one versus the last couple we have done is that this is for approximately one week. It is for $2.1 billion. We will have passed, with the passage of this -- and I see by the show of hands that we have the support to pass this, so that we can keep the state funding in sort of this emergency mode and not create any pain for all the agencies that deliver the services of the state to the people of this state. This will make $31 billion of our budget that we will have passed in this year in this fashion.

Now, the reason why we're here, all of us, in the middle of July doing an emergency appropriation bill is because we could not publicly negotiate and get a budget

done for the people of this state.

Now, why can't we get a budget done for the people of this state? Why are we 108 days late in getting a budget done? Why are we 18 days away from setting an infamous record for late budgets in this state? Why? Because you on the left side of the aisle - my left -- and the Assembly Democrats refuse to get together in a public forum to negotiate a budget. You have refused.

We have met eight weeks in a row with our general conference committee trying to get the Democrat representation to the table in a public forum, that we all agreed, we agreed three years ago that this would be the way we would negotiate a public budget, do it through conference committees.

Let me just review. We have named all of our members to the conference committees, "we" being the Republicans. Senator Connor, to his credit, has named his members to the conference committees in preparation to convene those committees to negotiate a budget. The only members not named are the Democrats in the majority in the

Assembly.

So why am I here talking in a loud voice? Because I want you, if you will, I'm asking you to talk to your colleagues in the other house. Suggest to them that we understand that we have legitimate differences of opinion on how much is available to spend. They have their numbers in their resolution; we have ours. They passed theirs, we passed ours. The Governor submitted the budget in the middle of January, two weeks earlier than he should constitutionally. And still we're 108 days late. 108.

And what's worse, there's no relief in sight. We're prepared to stay tonight, we're prepared to stay tomorrow, we're prepared to stay the next day if we can get the conference committees convened and talk about our differences. That's what legislation is about: talking, negotiating, compromising, reaching a solution. What's wrong with that? You don't have to answer. But I have feeling somebody will.

There is nothing wrong with that. It's the way we govern. But we cannot in the

Senate -- and I thank you for your support of these emergency bills. You're doing the prudent, realistic thing, keeping government functioning. But it's not the answer. Schools are facing deadlines. In August they're going to be submitting their budget - their budget bills will come up in August. They're going to be sending out bills to your constituents and to mine. And how will they bill them? They'll bill them by guessing. By guessing, by estimating what they think we will end up providing in school aid.

The Governor's got $382 million in school aid increase over last year. We have $925 million. The Assembly has $1.7 billion this year, $1.7 billion next year. Not going to happen. The money is not there; it's not going to happen.

So, Mr. President, it's important that we do this emergency bill. The Article 7 language will follow. It's important to keep government functioning. We all recognize that. So I thank you for your support.

But I again am asking you, the Democrats who are representative of the people

in your districts, to talk to your colleagues in the Assembly and ask them to name their conference committee members and to get engaged in the general conference committee to see if we can't publicly resolve our differences and do a budget for the people of this state. So the schools that you represent, the young people that get educated, their parents will know what the expectation is in terms of state aid, the most important thing that will be happening.

Hospitals, nursing homes, road contractors, bridge contractors, the MTA are all waiting to see what the cash flow will be. It's up to us. It's our move.

Thank you, Mr. President.

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

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I don't think anyone would argue that Senator Bruno is not one of the parties who is prepared to negotiate and prepared to get moving on this. However, I would respectfully suggest that if we're not playing

games of ego here, the Assembly has made it clear they will come to the table and negotiate if the third party also does, Governor Pataki.

And as everyone here knows, the use of the Governor's veto has been and will again, I guess, be the subject of litigation as to how he's exercised it and whether it was proper.

We're getting this late, why not get the Governor to the table also? I mean, if that's what it takes to get the Assembly to the table, why not get the Governor to the table? He's not here. I don't know where he is, I don't know who he's meeting with. It's an abdication of his responsibility.

And I am sure that while our influence with our colleagues in the Assembly may not be great enough to get them to do what we want, I'm sure that Senator Bruno and our Republican colleagues here could probably persuade the Governor to do something. Although, you know, certainly I am prepared to stand corrected on that, since he seems to spend more of his time with Democrats these

days than Republicans.

But it's clear we're not going to get going unless he comes to the table, or at least comes to Albany and makes an effort. We're this late; let's not play an ego game, let's get all three parties here.

I'm going to vote no. I think we should be here all the time. A lot of people have said to me, as we've been talking in the last few hours, "We're not moving because people don't care." Well, we have to set an example. And if we don't act like we care in the Legislature, then we can't expect anyone else to care. We should stay here. We should get to the Governor to the table. We should get this done.

I'm voting no. I think enough with the extenders. There are a lot of people paying a price, a lot of programs paying a price for this process. And I think it's up to the Governor to step up to the plate and get things moving.

Thank you, Mr. President.

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

Senator Mendez, to explain her vote.

SENATOR MENDEZ: Thank you, Mr. President.

I just have to rise up and express again, like many of us here do feel, our frustration because there is no budget in place. However, it is my understanding -- and if I am wrong, I would like people to say to me, "You are wrong, Olga," and that's fine.

I think that in terms of the process of budget making, the Legislature is supposed to be the mechanism through which budget is worked. The Governor presents it, then the Assembly and the Senate work on the budget proposal, on the Governor's proposal, and then we send it back to him. And he has the option, a constitutional right either to veto or not to veto. And if he does veto, then it is our right in the Legislature to override his veto.

So in terms of what people learn in political science in the first course, I think that there is something wrong in here. Because we are being told that if the Governor

doesn't come to the table, then there is no budget.

So I must tell you, Mr. President, I've been serving here for 23 years. And the first time, 17 years ago, when I realized that the constitution expects all of us to have a budget in place on April the 1st and I saw how that constitutional mandate was thrown out the window, I was really shocked.

So I think that the Assembly and the Senate, in my mind, should come together and discuss their differences and arrive at a compromise, send it to the Governor. If he doesn't like it, veto it, and then we can always override. So I don't see that this is an overwhelming problem. I think that that's what we should proceed to do. Otherwise, we're going to be here to the end of the year just with budget resolutions to ensure that government keeps on its pace.

And I think it's a disservice to all of our constituents out there. It is a disservice to the school districts that we all want to favor. It's a disservice to the kids that we want them to have their school budget

in place so they could be there and learn.

So what I'm saying is I don't believe in rationalizations. If the Governor doesn't want to come to the table, let it be. But then it is the responsibility of the Assembly and the Senate to get together and work it out.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Mendez, how do you vote?

SENATOR MENDEZ: Yes.

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

Senator Dollinger, to explain his vote.

SENATOR DOLLINGER: Thank you, Mr. President.

I've been doing some reading and watching this summer in my time away. I went to a couple of Shakespearian plays. I would suggest that the fifth act has started, the final scene has started, and it's time for the simple Shakespearian formula to take place right here in New York.

You know what happens in the

Shakespearian comedies. All the lovers wander around in the dark, in the night, and they can't seem to find one another. And then in the last scene, up shows the duke, Prospero - pick your character out of Shakespeare -- up shows the final deus ex machina character, the person with all the power, the person who you could say is elected by everyone. He or she shows up, casts their magic wand, and the play is over, everything has been brought together.

I would suggest that the solution, Senator Bruno, to this midsummer's nightmare is to simply ask the Governor of this state, who not only represents you, Senator Bruno, but me as well, and all the people that I represent -- have him come in. The final curtain has gone up. We're ready to play the final act, but we're all waiting for that one character who can make it happen.

I tell you, Governor Pataki, your love's labor will not be lost and all will be well that ends well. But come to the table and do this budget.

It's his absence, Senator Bruno, that has brought this to the final act without

a conclusion. Bring him to the table and we will have a solution.

ACTING PRESIDENT MEIER: Senator Dollinger doth protest and voteth in the negative.

(Laughter.)

ACTING PRESIDENT MEIER: Any other Senator wish to explain his or her vote?

Could we see the negatives again by a show of hands so the Secretary can have all of them.

THE SECRETARY: Those recorded in the negative on Calendar Number 1404 are Senators Brown, Connor, Dollinger, Duane, Hassell-Thompson, Montgomery, Oppenheimer, Paterson, Schneiderman, A. Smith, and Stavisky. Ayes, 46. Nays, 11.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we have an immediate meeting of the Rules Committee in the Majority Conference Room.

ACTING PRESIDENT MEIER: Immediate meeting of the Rules Committee in

the Majority Conference Room.

The Senate will come to order.

Can I ask that people who are conducting conversations in the back of the room to either stop them or take them outside, please.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees, I believe there's a report of the Rules Committee at the desk. I ask that it be read at this time.

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bill direct to third reading: Senate Print 3148B, by Senator Saland, an act to amend the Education Law.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Move to accept the report of the Rules Committee.

ACTING PRESIDENT MEIER: All

those in favor of accepting the report of the Rules Committee signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The report is accepted.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could take up that bill at this time.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 223, Senator Saland moves to discharge, from the Committee on Rules, Assembly Bill Number 8898A and substitute it for the identical Senate Bill Number 3148B, Third Reading Calendar 223.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 223, by the Assembly Committee on Rules, Assembly Print Number 8898A, an act to amend

the Education Law.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR HEVESI: Explanation, please.

ACTING PRESIDENT MEIER: Senator Saland, an explanation has been requested by Senator Hevesi.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, this bill is an agreed-upon bill, which certainly would be indicated by the substitution that we just had. What the bill does is it attempts to deal with the issue of conditional hiring.

As you will recall, last year we passed legislation which was signed into law which required the fingerprinting of school employees, prospective school employees. That bill was effective July 1 of this year.

We were advised, it was certainly brought to our attention that there were certain mechanical difficulties that schools were going to undergo in terms of dealing with both summer schools and filling positions for

September of this coming year. In order to accommodate that problem, we created a mechanism of conditional employment or conditional screenings.

What this bill would do would be to effectively say that all prospective employees who are candidates for conditional employees will undergo a certain process. Each school district will have to make a determination: (a) do they want to hire conditional employees. It may well be possible that in some smaller, stable districts there may be little turnover and perhaps won't be any need for conditional employees.

If they decide that they want to hire conditional employees, what they will then have to do is establish a policy, a policy that deals with the safety of students who are in the presence of conditional employees. Again, that's a discretionary decision for each school district to make.

Once they make that decision, each prospective or proposed conditional employee would have to complete an affidavit in which he or she indicated that they had no criminal

record or, if in fact they did, what that criminal record consisted of. Not only would the execution of a false statement in affidavit form be the filing of a false statement which would result in a criminal charge, but it would also serve as grounds for immediate dismissal.

Secondly, each of those employees would have to be fingerprinted. Upon being fingerprinted, taking it to that stage, there's effectively a divergence. A conditional employee who is not considered to be an emergency employee would have to wait for clearance from the State Education Department. That clearance would reasonably be expected to occur in some 10 to 14 days.

A person who is deemed to be an emergency employee -- and that is a determination made by a school board; the language is set out in the bill -- that person again would have provided an affidavit, would have been fingerprinted. If the school board made a determination that it was absolutely necessary that in fact this was essential to provide a compliance with law to provide for

the safety or health of students and staff, that school board could elect to hire on an emergency basis.

And in doing that, that emergency employee would immediately begin to serve in whatever capacity he or she was hired in. That service would be available or could continue for 20 business days, after which they could no longer serve in that particular capacity or no longer serve.

The difficulty in providing expedited review for purposes of conditional hiring is not necessarily within the State of New York. Our DCJS, I'm told, can run these checks in as little as four days. The turnaround through SED, as I said earlier, probably should take no more than 10 to 14 days. The problem is the FBI clearance. The FBI clearance would take, we're told, anywhere from 30 to 45 days and perhaps could even be longer.

So this is an attempt to arrive at an accommodation, an accommodation between the policy that we established here in this Legislature last year when we said that it was

critically important that school employees be fingerprinted, fingerprinted so we could determine whether in fact they had criminal records that made them inappropriate candidates to be working with schoolchildren, and recognition of the fact that, particularly in year one of the effective date of this bill, that school districts could be caught short in terms of filling slots, putting people into positions necessary to provide the services that one would reasonably expect, whether they be educational services or support or maintenance services.

We believe we've struck that medium here and provided the mechanism for those school districts that do wish to hire conditionally and in a fashion that attends to both the question of continued security for children and at the same time provides the ability of school districts to continue to do what they're supposed to do, which is to provide an educational environment for our young people.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator

Hevesi.

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

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you, Mr. President.

We had a fairly lengthy debate about this issue a few weeks back. I'm not going to repeat the specifics of that discussion. But I do have a question if you could enlighten us as to what the specific differences are between the legislation that's before us right now and the specific bill which we debated some weeks ago.

SENATOR SALAND: Primarily -- and unfortunately, I don't have the other bill with me -- but primarily I think it would be safe to say that the use of some of the time limits that are contained in this legislation would be the principal differences.

And one other thing, the definition of emergency. The definition of emergency for purposes of emergency hiring certainly is far more substantial in terms of detail than was the prior emergency hiring language.

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

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

SENATOR SALAND: Yes, Mr. President.

SENATOR HEVESI: The 20-day limit on the emergency category, that is new also; is that the case?

SENATOR SALAND: I believe that that is one of at least two specified time periods. And I believe the other one, there's a 15-day time period as well for the commissioner of the State Education Department to do a clearance.

SENATOR HEVESI: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Hevesi, on the bill.

SENATOR HEVESI: Thank you, Mr.

President. I thank the sponsor for his patience and a very thorough explanation.

This is, I believe, the third time we are seeing legislation on this floor to address this issue. And I guess I'm gratified to say that each time, this legislation gets better. It gets much more restrictive in scope and, by my standards and my assessment, it much better protects the children in schools in New York State, which is the purpose.

But I'm against this bill, as I was against the bill that we did a few weeks ago, because I have the luxury of taking a position on this that under absolutely no circumstances -- none, no circumstances - should there ever be an individual in a school system in New York State who has direct contact with children which is unsupervised contact if that individual has not undergone a criminal background check, including fingerprints. That is an ironclad position irrespective of the difficulties that any one particular school district may have, hiring difficulties or what have you.

And I would point out that none of Senator Saland's bills -- and they're carefully crafted bills, and I appreciate his work on them -- none of them include the City of New York, and I'm glad they don't. But I just want to point out, New York City has the most acute overcrowding problem of any district in New York State. And we wouldn't even think about doing this, allowing for this emergency exemption for conditional hires in New York City, primarily because the very notion of it would be ludicrous on its face.

And I'll use the anecdotal evidence that we know that in New York City, one out of every five applicants for a position in the school system has a criminal background. Okay? Twenty percent. Which is much higher than anywhere else. In New Jersey it's about 5 percent. I think in the State of Washington it's about 4.5 to 5 percent.

But 20 percent of all applicants in New York City for positions in the school system are later rejected because they showed up -- by the way, what they did was they certified, as this legislation would mandate

for all the prospective hirees, it mandates that they sign a form saying that they don't have a criminal record. Well, every single one of those 20 percent in New York City who were ultimately rejected because they had a criminal background also signed that form, which is currently mandated in law. So we don't have the protection.

And the last reason why I'm against this is if -- I would consider supporting this if we don't leave it up to individual school districts to adopt their own policies to safeguard students if they choose the exercise the rights that we give them in this bill to hire people without having gone through the entire criminal background process. But what we're doing -- and, consequentially, if we also not only mandate what the process is but mandate that that process provides for direct supervision by another employee for that 20-day period or however long it is when the person who has not been cleared is in a classroom with a child.

Not only do we not do that, we give the individual districts the policy discretion

to come up with their own way of going about protecting the kids. And if you think or conceive that these districts are going to go the fullest step -- the fullest step, I think we all agree, would be for anyone hired under emergency conditions like this to be directly supervised by somebody else -- it's counterintuitive.

And it's counterintuitive because the school districts who would need the emergency hirees, those are the school districts who have the most acute shortage of professional education personnel, so they would be the least likely to come up with a policy that says to SED, If you let us hire somebody without the background check, we'll provide somebody else in the classroom to supervise. It's not going to happen. It's flat out not going to happen. So I'm against this.

And let me just, you know, caution everybody here. If we do this today -- and I understand there are needs that school districts have, and it's very pressing. And I said in the last debate that I would even be

willing to have students sit in a classroom and not learn, as opposed to be in a classroom potentially with somebody with a criminal background.

Let me say this. If we do this here today -- and I'm not trying to be dramatic, but if we do it here today, I can almost guarantee that at some point some school district is going to hire an emergency employee without having done a criminal background check on them, and then this individual with a criminal background who otherwise would not be permitted in a classroom with a child is going to be in a classroom with a child and one of those individuals at some point is going to do something bad. Okay? Hopefully that will not be of serious physical harm to another student, but it could be.

So not only for the moral imperative of protecting children, but just from your own perspectives as state senators, if that crisis occurred in your school district, if that happens in one of the districts that you represent, forgetting the

fact that you will feel terrible that this was able to happen, the press is going to come to your door and say to you you voted in favor of a piece of legislation that provided a loophole that allowed a teacher to come into a classroom who had not been criminally background checked and that teacher then went and perpetrated a crime on a student. What will be your response to that?

Your argument today that we need it because we have an overcrowding problem, we need to hire people quickly, will seem just a silly argument to make when the press is beating down your door for an explanation as to why you voted in favor of a bill that provided this loophole.

So I caution everybody as you cast your votes today, this is serious stuff. You should never have a situation where a teacher or anybody else comes into contact with a student without any other supervision before we know that that individual is not a criminal or has a criminal background. This bill moves in the opposite direction even though it's well-intended.

And so many times we have in this chamber very well-intended bills that in their practical application create problems. And this one creates a very unlikely yet conceivable and possible eventuality which compromises the safety of children in classrooms. And for that reason, I'm against it, and I hope my colleagues here today on both sides of the aisle vote against this bill.

ACTING PRESIDENT MEIER: Senator Mendez.

SENATOR MENDEZ: Thank you, Mr. President. Will Senator Saland yield for question?

ACTING PRESIDENT MEIER: Senator Saland, do you yield for a question from Senator Mendez?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MENDEZ: It seems to me that the intention of this bill could be achieved if the different school districts

would in fact maintain a list of people that are interested in working way ahead of time, and for them to be also, you know, credentialed, so to speak, prior to the emergency of the crisis.

So why -- don't you think that that could be done?

SENATOR SALAND: It's hard for me to hear, Senator Mendez. Let me -- I think what you were saying is that should there not be a list in advance.

SENATOR MENDEZ: Yes.

ACTING PRESIDENT MEIER: Excuse me, Senator Saland.

Can we have some order in the chamber so the members who are debating this bill can hear each other.

Go ahead, Senator Saland. Excuse me.

SENATOR SALAND: The major impact of this bill will probably be in this, its first year, because we're starting this new process that as of the 1st of July required people to be fingerprinted.

And let me suggest to you -- I know

you're a senator from the City of New York - this is more restrictive than the current practice in the City of New York, notwithstanding the comments a bit earlier by Senator Hevesi, because in the City of New York what they do is they fingerprint and then it stays open-ended indefinitely as a conditional.

Here, the city doesn't have the ability to hire even -- they have no emergency category -- to hire in an emergency fashion and limit that to some 20 days. So I would certainly want us to be well aware of that.

What will happen in year one is as so many of these people are coming through the process for the first time, there's really no pool to draw on. You're really talking about a pool, a pool of people who have already been processed. By the time we get to next year, there will be a larger pool. And the year after, there'll be an even larger pool.

There may well be times when, on short notice, someone has had an accident of some kind and can't serve in whatever capacity they're serving the school district, someone

is unexpectedly called away for a prolonged period of time in which a school district may have to hire someone conditionally, and it may also be an emergency situation.

But by the time you get two and three years down the road, there will be, in effect, a base of people who have been processed and fingerprinted who will readily be able to be hired. This is the biggest year, or biggest challenge, because it didn't start until a couple of weeks ago, on the 1st of July.

ACTING PRESIDENT MEIER: Senator Mendez.

SENATOR MENDEZ: I understand the zealousness and the preoccupation that Senator Saland has to resolve that problem in upstate school districts.

However, I believe that to have 20 days go by and allowing somebody whose criminal records have not been checked is placing too many kids at risk. We know what's happening in the New York City school system, that finally, finally the school system is doing something about the sexual abuse that

has been occurring about so many good kids in there.

And I know that this bill also, Mr. President, is more restrictive than the present policy in New York City.

However, I am going to vote against this bill, because I don't want to have it on my conscience that maybe -- I mean, it will take two or three years to develop the pool necessary to be able to have qualified people with criminal records checked. But in those 20 days, and in those two or three years, I do not want to have it upon my conscience, Mr. President, that a child is sexually abused or molested. Because those guys, those pederasts belong in jail forever and ever and ever.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would like to ask Senator Saland a couple of questions.

ACTING PRESIDENT MEIER: Senator Saland, do you yield to a question from Senator Montgomery?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Senator Saland, I just would like to ask you a couple of questions regarding the law as it stands now. When you ask for fingerprints from DCJS and the FBI, does that also include people who come from other countries? Are we able to track a criminal record of a person who may be coming from another country? Since they're doing something -

SENATOR SALAND: If the FBI has access to that, the answer is yes. If they don't, then the answer would be no.

And I honestly don't know the answer to that question, whether there's some type of link through Interpol or however they -- however they have any exchange agreements that they may have. I honestly don't know the answer to that question.

SENATOR MONTGOMERY: All right. I have another question.

ACTING PRESIDENT MEIER: Senator

Saland, do you yield for another question?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Senator Saland, is there any type of limitation on, one, the nature of a charge or the time frame that we're talking about?

I.e., there have been some reports recently of, I guess, 10-or-12-year-olds who were so-called molesting 5-year-olds or something to that effect, or a 6-year-old who molests a 5-year-old. And my assumption is that, based on the current law, that child is charged as a sexual molester of some sort.

And if that young person carries that through into adulthood, never does anything else but nonetheless has a charge like that, or a college student is charged with assault because they are demonstrating at college at 18 or 20 and they then want to teach in some district, is there any consideration for that sort of thing being different from a person who is convicted of

murder or some other heinous criminal act?

SENATOR SALAND: The first example which you gave, that would be a juvenile record. It would not be a criminal record. It would not ever be part of the consideration of either DCJS, the FBI, or, ultimately, the State Education Department.

The second example which you gave in which a crime of whatever nature was committed by somebody who was an adult for whom there could be a criminal record, that would come up. There is, in the original legislation, language that deals with -- and I don't recall the section. It's a section of the Corrections Law which basically says that the crimes which are under consideration have to be relevant to the position which the applicant or individual is seeking to fill.

SENATOR MONTGOMERY: One last question, Mr. President.

ACTING PRESIDENT MEIER: Senator Saland, do you yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR MONTGOMERY: Senator Saland, before I ask the question I would just like to inform you that I have a number of young people in my district who have talked to me very recently, within the last few months, who had juvenile charges, their records were supposed to have been sealed and they have not been. So those young people are not able to be employed because their records are indeed not sealed.

So I just wanted to inform you of that. Even though it may be in law, in practice it does not work. So I just want to make sure you have that information.

But my question is, in New York City there are also a number of after-school programs, there are community-based organizations who run programs in schools. And in many of the after-school or the extended-day programs, the teachers are involved with those. Does this cover anything that happens in the school, any adult? So, in other words, even people who work in an after-school program would be required to be

fingerprinted as well?

SENATOR SALAND: If these are school employees who have regular contact with children, they would have to be fingerprinted.

Let me just suggest to you, with regard to the situation that came up in your district, juvenile records are not records that are open records. There has been legislation proposed at one time or another where repeat offenders may have their record accessed for purpose of sentencing, to determine if in fact there has been a history of committing similar or other crimes.

But if somebody had an incident where they were handled as a juvenile delinquent and that is the extent to which they have ever had any contact with the law, then I would suggest that you suggest to them that they should be speaking with an attorney.

SENATOR MONTGOMERY: Thank you. Certainly I will do that.

Just briefly on the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: I think the issues, the questions that I have raised with Senator Saland are questions that are not directly related to the legislation, although they are questions that I would have as it relates to the fingerprinting process in general.

And certainly I think, I believe that what Senator Saland is trying to do is to give some latitude for people being able to be hired if -- especially if there is an emergency, and certainly if there is a situation where a class is uncovered or a group of children don't have an adult, I think that's the purpose of this, it seems to me, is to make sure that there is the capacity to hire someone at least on a temporary basis.

I would say, however, that the question of fingerprinting obviously, Senator Saland, is a very serious issue. Especially as it relates to the fact that we have more and more categories where fingerprinting is required and is contingent upon employment, we will have a very large number of people who for any other reason except that they have

this fingerprint, this issue on their records, would make excellent employees.

I have a number of very, very productive and very expert programs being run by former inmates in my district. I know it sounds very strange, but it certainly is the case. So if we are going to make it possible for people to be able to ever make a contribution once they have made a mistake, done something antisocial, illegal -- if they are able to ever again make a contribution, I think that we must consider at some point that those people must be given a chance.

So I'm going to support the legislation, because I think it merits doing something for those districts who don't have the option. But certainly I hope that we can visit this issue of fingerprinting. Because while we want to protect people from criminals, I think we also, on the opposite side of that, want to make it possible for people to have a second chance in life.

So with that, Mr. President, I'll be voting yes on this bill.

ACTING PRESIDENT MEIER: Any

other Senator wish to be heard on the bill?

The debate is closed.

Read the last section.

THE SECRETARY: Section 12. This act shall take effect on the same date as Chapter 180 of the Laws of 2000.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

SENATOR SKELOS: Mr. President, to explain my vote.

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

SENATOR SKELOS: I want to congratulate Senator Saland on his fine work. And certainly I'm going to support this legislation, because I believe it gives the school districts the flexibility they need to run their own house.

And while talking about that, I just want to mention that there are a number of newly elected NYSUT local presidents here today who have been of assistance in this whole issue of protecting our children. So we welcome them also.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 223 are Senators Duane, Fuschillo, Gentile, Hevesi, LaValle, Mendez, Morahan, and Sampson.

Ayes, 50. Nays, 8.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

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

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

SENATOR SKELOS: We'll stand at ease, Mr. President.

ACTING PRESIDENT MEIER: The Senate will stand at ease pending the report of the Rules Committee.

(Whereupon, the Senate stood at ease at 2:54 p.m.)

(Whereupon, the Senate reconvened at 3:03 p.m.)

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Madam President, if we could return to reports of standing committees, I believe there's a report of the Rules Committee at the desk. I ask that it be read at this time.

ACTING PRESIDENT McGEE: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bill direct to third reading: Senate Print 5707, by the Senate Committee on Rules, an act to amend Chapter 20 of the Laws of 2001.

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: 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 Skelos.

SENATOR SKELOS: Madam President, if we could take up Calendar Number 1405, Senate 5707.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1405, by the Senate Committee on Rules, Senate Print 5707, an act to amend Chapter 20 of the Laws of 2001.

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

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

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT McGEE: The motion is made to accept the message of necessity. All in favor, 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.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1405 are Senators Brown, Dollinger, Duane, Hassell-Thompson, and Schneiderman. Ayes, 53. Nays, 5.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos.

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

ACTING PRESIDENT McGEE: There is

no housekeeping at the desk.

SENATOR SKELOS: Thank you, Madam President.

Following session, there will be an immediate conference of the Majority in the Majority Conference Room.

And there being no further business to come before the Senate, I move we adjourn until the call of the Majority Leader, intervening days being legislative days.

ACTING PRESIDENT McGEE: Conference of the Majority in the Majority Conference Room.

There being no further business to come before the Senate, I move we adjourn until the call of the Majority Leader.

(Whereupon, at 3:05 p.m., the Senate adjourned.)