NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

October 22, 2001

3:32 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT McGEE: The Senate will come to order.

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

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

ACTING PRESIDENT McGEE: The Reverend Peter G. Young, Blessed Sacrament Church, Bolton Landing, is here to give us the invocation.

REVEREND YOUNG: Thank you, Senator.

Let us pray. Dear God, we gather in the magnificent beauty of the autumn colors that prove Your creative greatness. We see the cycle of life prepare us for the dark days of winter, but then we enthusiastically welcome the budding flowers of spring.

May we remember this analogy of renewal as we contemplate the Ground Zero tragedy. The New York State spirit has been a history of our citizens overcoming difficult days to symbolize what it means to be an

Empire State.

We ask Your prayers on these Senators, that they might become Your instruments for the better days ahead. We ask You to bless them in Your name.

Amen.

ACTING PRESIDENT McGEE: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, October 21, the Senate met pursuant to adjournment. The Journal of Saturday, October 20, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Meier.

SENATOR MEIER: Thank you, Madam President.

On behalf of Senator Volker, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: Senate 5182.

ACTING PRESIDENT McGEE: So ordered.

SENATOR MEIER: Thank you.

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Madam President, if we could adopt the Resolution Calendar at this time.

ACTING PRESIDENT McGEE: All in favor of adopting the Resolution Calendar signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The Resolution Calendar is adopted.

Senator Skelos.

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

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Hoffmann, Legislative Resolution Number 3351, honoring Roosevelt Dean for his many contributions to the Blues community and to the City of Syracuse, New York, on October 28, 2001.

ACTING PRESIDENT McGEE: All in favor of adopting the resolution signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, there is a privileged resolution at the desk by Senator Montgomery. I ask that the title

be read and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Montgomery, Legislative Resolution Number 3359, commending the Albany Senior Center upon the occasion of its 30th Anniversary Luncheon Celebration on November 2, 2001.

ACTING PRESIDENT McGEE: All in favor of adopting the resolution signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, at 3:45 there will be a meeting of the Tourism Committee in the Majority Conference Room.

And the Senate will stand at ease until 3:45.

ACTING PRESIDENT McGEE: At 3:45, there will be a meeting of the Tourism

Committee in the Senate Majority Conference Room.

The Senate will stand at ease until 3:45.

(Whereupon, the Senate stood at ease at 3:35 p.m.)

(Whereupon, the Senate reconvened at 3:59 p.m.)

ACTING PRESIDENT McGEE: Senator Padavan.

SENATOR PADAVAN: Madam President, there is an immediate meeting of the Finance Committee in the Majority Conference Room.

ACTING PRESIDENT McGEE: Thank you, Senator Padavan.

There will be an immediate meeting of the Finance Committee in the Majority Conference Room.

(Whereupon, the Senate stood at ease at 4:00 p.m.)

(Whereupon, the Senate reconvened at 4:33 p.m.)

ACTING PRESIDENT McGEE: Senator Skelos.

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

ACTING PRESIDENT McGEE: Reports of standing committees.

The Secretary will read.

THE PRESIDENT: The Secretary will read.

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

As a member of the State Athletic Commission, Raymond Kelly, of New York City.

THE PRESIDENT: Senator Stafford.

Or Senator Goodman, excuse me, is standing.

SENATOR STAFFORD: I yield to

Senator Goodman.

SENATOR GOODMAN: Thank you, Mr. Chairman.

Mr. Chairman, it's a very special privilege and a pleasure for me today to speak on behalf of this nominee. Raymond Kelly is a preeminent law enforcement expert and, in addition to that, has an enormous background of general public involvement of great merit.

First of all, you should know that he's a graduate of the Harvard Kennedy School, and he's also a practicing attorney.

Mr. Kelly was president of an investigative group called Investigative Group International, a 100-person litigation support company specializing in complex investigations.

Prior to that, he served as a New York City police -- member of the police department for many years -- 31, to be precise -- ultimately rising to the rank of police commissioner, a post in which he served with special distinction.

He commanded the 32,000 members of the New York City Police Department with great

skill and gained the reputation of being a can-do administrator with great compassion and at the same time a very penetrating management understanding of problems at all levels of his complex department.

A veteran of the Vietnam War, Mr. Kelly retired as a colonel in the Marine Corps Reserves after 30 years of service.

He holds a Bachelor of Arts degree from Manhattan College, a J.D. from St. Johns University of Law, as well as a master's degree from New York University Graduate School of Law and a master's in public administration from the Kennedy School at Harvard, as stated earlier.

Now, you should know that in this sensitive post as chairman of the State Athletic Commission, in which he will be serving -- and it should be noted he will be the chairman, fortunately -- he takes on a very complex department with a substantial history of problems. For example, several boxers have been killed in the ring as a result of inadequate supervision by medical authority at ringside. And it's his

determination, I'm informed, to try to prevent this type of unfortunate development in the future, which I'm confident he'll be able to do.

In addition to that, Commissioner Kelly has served as the head of the United States Customs Service and, beyond that, became the undersecretary -- I want to get this exactly correct. He was subsequently promoted to a position -- I'll take a moment to make this precise -- as undersecretary for enforcement at the United States Treasury Department. There he supervised the Department of Enforcement of Bureaus, including the U.S. Customs Service, the Secret Service, the Bureau of Alcohol, Tobacco and Firearms, the Federal Law Enforcement Training Center, the Federal Financial Crimes Enforcement Network, and the Office of Foreign Assets Control.

In addition, he served on the executive committee and was elected vice president for the Americas of Interpol, the international police organization, from 1996 to 2000.

This is an exceptionally rich background consisting of experiences that most people have not had in several lifetimes. I think we're extremely fortunate that in addition to his other duties -- as, at the moment, chief of security for the investment firm of Bear Stearns and Company -- he has opted to provide the service which is inherent in the chairmanship of the State Athletic Commission.

Let me just say I've known Ray Kelly for a number of years. At the moment he is also serving on the special Senate - special committee on terrorism and means of combatting it, in which capacity he's made an exceptional contribution already and I think will continue to do so.

Madam President, we have a rare opportunity to elevate a man of astounding capacity and exceptional ability to a post in which he'll be able to make still further contributions to the commonweal.

I salute him most warmly and thank him for all that he's done in the past and express every confidence that with the passage

of this nomination by, I trust, unanimous support, we shall have a public servant given yet another significant responsibility which he'll carry out with typical distinction and integrity.

Thank you, Madam President.

THE PRESIDENT: The question is on the confirmation of Raymond Kelly as a member of the State Athletic Commission. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

And I'd like to acknowledge the presence of Mr. Kelly and his son, Jim, in the gallery.

Congratulations and best wishes to you.

(Applause.)

THE PRESIDENT: The Secretary will read.

THE SECRETARY: As a member of the Lake George Park Commission, H. Gordon

Burleigh, of Ticonderoga.

As a member of the Medical Advisory Committee, Tamton Mustapha, of Valatie.

As a member of the Advisory Council to the Commission on Quality of Care for the Mentally Disabled, Richard P. Johnson, of Schenectady.

As a member of the Board of Visitors of the Creedmoor Psychiatric Center, Mary Weeks MacLean, of Flushing.

As a member of the Board of Visitors of the Helen Hayes Hospital, David G. Welch, M.D., of Queensbury.

As a member of the Board of Visitors of the Hudson River Psychiatric Center, Marion Ostrander, of Kingston.

As a member of the Board of Visitors of the Mid-Hudson Psychiatric Center, Theodore J. Lewis, of Godeffroy.

As a member of the Board of Visitors of the Rochester Psychiatric Center, Martha R. Cucci, of Rochester, and Hilda R. Escher, of Rochester.

As a member of the Board of Visitors of the Staten Island Developmental

Disabilities Services Office, Frank L. Tellefsen, of Staten Island.

And as a member of the Board of Visitors of the Western New York Developmental Disabilities Services Office, Jessie B. Wells, of Buffalo.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move the nominations, please.

THE PRESIDENT: The question is on the confirmation of the nominees as stated by the Secretary. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominees are hereby confirmed.

The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following bill direct to third reading:

Senate Print 5816, by Senator Morahan, an act making an appropriation for the recruitment and retention incentive

program.

THE PRESIDENT: Senator Rath.

SENATOR RATH: Can we now take up Calendar 1489. Thank you.

THE PRESIDENT: Without objection, said bill is reported to third reading.

The Secretary will read.

THE SECRETARY: Calendar Number 1489, by Senator Morahan, Senate Print 5816, an act making an appropriation for the recruitment and retention incentive program.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

THE PRESIDENT: The bill is passed.

Senator Rath.

SENATOR RATH: Madam President, I understand there is a report of the Rules Committee at the desk. I ask that it be read

at this time.

THE PRESIDENT: The Secretary will read.

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

Senate Print 2075B, by Senator LaValle, an act to amend the Administrative Code of the City of New York.

Assembly Print 9061A, by the Assembly Committee on Rules, an act to authorize the State of New York.

Senate Print 5632, by Senator Gonzalez, an act authorizing the City of New York.

4468, by Senator Spano, an act to amend the Retirement and Social Security Law.

5777, by Senator Larkin, an act to authorize the Town of Chester, Orange County.

5778, by Senator Wright, an act to amend a chapter of the Laws of 2001.

5781, by Senator Velella, an act to amend the Retirement and Social Security Law.

5782, by Senator Marcellino, an act to amend the Labor Law.

5795, by Senator Maziarz, an act to amend a chapter of the Laws of 2001.

5805, by Senator LaValle, an act to amend the Education Law.

5801, by Senator Rath, an act to amend the Real Property Tax Law.

And 4668, by Senator Trunzo, an act to amend the Retirement and Social Security Law and the Criminal Procedure Law.

All bills ordered direct to third reading.

THE PRESIDENT: Senator Rath.

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

THE PRESIDENT: The motion is to accept the report of the Rules Committee. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The report is accepted.

SENATOR RATH: Madam President, if we could have the noncontroversial reading of Calendar Number 60, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 1147, by Senator LaValle, Senate Print 2075B, an act to amend the Administrative Code of the City of New York, in relation to health insurance coverage.

SENATOR DUANE: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1421, by the Assembly Committee on Rules, Assembly Print Number 9061A, an act to authorize the State of New York.

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, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

1477, by Senator Gonzalez, Senate Print 5632, an act authorizing the City of New York to reconvey its interest.

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

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1481, Senator Spano moves to discharge, from the Committee on Rules, Assembly Bill Number 8415 and substitute it for the identical Senate Bill Number 4468, Third Reading Calendar 1481.

THE PRESIDENT: The substitution is ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1481, by the Assembly Committee on Rules, Assembly Print Number 8415 -

SENATOR DOLLINGER: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1482, by Senator Larkin, Senate Print 5777, an act to authorize the Town of Chester, Orange County.

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

Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1483, by Senator Wright, Senate Print 5778, an act to amend a chapter of the Laws of 2001 as proposed in legislative bills Numbers S5443 and A8952.

SENATOR DUANE: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1484, by Senator Velella, Senate Print 5781, an act to amend the Retirement and Social Security Law, in relation to the improved benefit retirement programs.

SENATOR DUANE: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1485, by Senator Marcellino, Senate Print 5782, an act to amend the Labor Law, in relation to notice.

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, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

1487, by Senator Maziarz, Senate Print 5795, an act to amend a chapter of the Laws of 2001 as proposed in legislative bills Numbers A2709A and S1518A.

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, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1488, by Senator LaValle, Senate Print 5805, an act to amend the Education Law, in relation to return transportation.

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, 57.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 1490, by Senator Rath, Senate Print 5801, an act to amend the Real Property Tax Law, in relation to designating.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date as a chapter of the Laws of 2001.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1491, by Senator Trunzo, Senate Print 4668, an act to amend the Retirement and Social Security Law and the Criminal Procedure Law, in relation to park police.

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, 57.

THE PRESIDENT: The bill is passed.

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

SENATOR RATH: Madam President, can we please take up the controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 1147, by Senator LaValle, Senate Print 2075B, an act to amend the Administrative Code of the City of New York, in relation to health insurance coverage.

SENATOR DUANE: Explanation, please.

THE PRESIDENT: Senator LaValle, an explanation has been requested by Senator Duane.

SENATOR LAVALLE: Madam President, under current law the surviving spouse of a retired firefighter or a retired

police officer is entitled to continue health coverage at the group rate, or the spouse is allowed to continue the health coverage at the group rate for 18 months, under COBRA.

Under this legislation we are permitting the surviving spouse of a retired firefighter or a retired police officer to continue with the deceased's health insurance by paying 102 percent of the group rate, provided that the surviving spouse elects to continue with the health coverage within one year of the death of his or her spouse.

And the 2 percent is the amount paid to cover administrative costs. And that was negotiated at the time of the request for the home rule resolution in the City of New York.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President. If the sponsor would yield.

THE PRESIDENT: Senator LaValle, will you yield?

SENATOR LAVALLE: Yes.

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

SENATOR DUANE: Thank you.

In the existing law, the language reads that the health insurance coverage would be for the surviving spouses and domestic partners. But I notice in the new language that domestic partners are not included. And I'm wondering if the sponsor knows whether or not domestic partners are included.

SENATOR LAVALLE: I think the Mayor can make that designation, Senator.

SENATOR DUANE: Through you, Madam President, I'm just -- I don't mean to be obstreperous about it, and I was very complimentary of the Mayor when he proposed the domestic partner benefits legislation - in fact, voted for it.

But the way that legislation worked was in preexisting law, anywhere where "spouse" was, "domestic partner" would be added.

So I'm concerned that if this is new language and domestic partners are not there, though I'm sure the Mayor intended it to be thus, I'm wondering if, because it's actually not there, if that means that they

wouldn't be covered. Especially since this has to do with the health insurance plan which I believe is administered by the health and - pension and welfare plan and not necessarily by the city.

SENATOR LAVALLE: Senator, if I could, we could look at the legislation, page 2. You have the bill?

You want to go down to line 14 and 15: "The Mayor may, in his or her discretion, authorize the provision of such health insurance coverage for the surviving spouses, domestic partners, and children of uniformed" -- ba-DA, ba-DA, and it goes on.

And that's the current law. We're not changing that, Senator.

SENATOR DUANE: And through you, Madam President, just one final question.

THE PRESIDENT: Will you yield, Senator LaValle?

SENATOR LAVALLE: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR DUANE: And the City of New York has -- is supporting this legislation

and believes that to be the case as far as we know as well? Just to be absolutely sure.

SENATOR LAVALLE: Senator, in order for us to enact this legislation, we needed a home rule resolution.

This legislation would have been passed during the end of our regular session, but there was some confusion, time confusion with the home rule resolution, that did not get to us in time.

So -- and you will recall in my remarks that I said on the administrative expense, the 2 percent, that that was negotiated with the parties and the city at the time that the home rule resolution was passed.

So the answer is yes.

SENATOR DUANE: Thank you.

Thank you, Madam President.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, will the sponsor yield for one question?

SENATOR LAVALLE: Yes.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Through you, Madam President.

Senator LaValle, why do we make it dependent upon making the election within one year?

And the reason why I ask that question is what about a situation where the retired firefighter or police officer is married to a teacher? The police officer dies, they're covered by their own insurance coverage because they've got it themselves through their own employer, and yet they eventually retire and lose that benefit.

Shouldn't they be able to buy back into the police plan, since they're paying full premium plus this 2 percent administrative fee? Why limit it only to an election filed within a year?

SENATOR LAVALLE: I hate to encourage you, Senator Dollinger, but you have asked a good question. As you usually do.

Once again, that was part of the negotiations or the discussions with the City

of New York, as a condition to the home rule message resolution.

SENATOR DOLLINGER: Through you, Madam President, I appreciate Senator LaValle's response. I know he's carrying a bill that we're already committed to its text because of the home rule message, and hence if we depart from that text or change it we have to go back and get another home rule message.

It just seems to me that the situation I described is not unusual. That is, a retired police or firefighter is married to an employee of another part of our system or, frankly, even a private employer who has appropriate health insurance coverage so that, upon the death of her spouse, she can lock into her own plan.

But what happens when she loses her own coverage because she retires? It would seem to me that to have the ability to buy back into the city's health plan, when this bill, as I understand it, Senator LaValle, creates -- you're going to have to pay the whole premium and you're paying a 2 percent administrative charge on top; in essence,

you're paying like you were a private person -- it seems to me that to buy back into the favorable group rate that the police and fire retirees get is not a bad idea.

I would suggest to Senator LaValle that perhaps when we go back to the City of New York we tell them they don't need the one-year restriction, it may work a hardship for some and exclude them from potential health insurance benefits which this bill is broadly designed to achieve.

I'll vote in favor of it but hope that maybe we see some different language from the City of New York in the future.

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

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1481, by the Assembly Committee on Rules, Assembly Print Number 8415, an act to amend the Retirement and Social Security Law.

THE PRESIDENT: Senator Dollinger.

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

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

SENATOR DOLLINGER: Through you, Madam President -

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

SENATOR SPANO: Yes.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Through you, Madam President, my understanding is that according to the fiscal note attached to this bill, the change in the pension systems, the alteration that's in this bill will cost the City of New York of $12 million annually.

Could you tell me the date that the

home rule message was passed by the City of New York to incur the additional $12 million cost?

SENATOR SPANO: There is no home rule message.

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

THE PRESIDENT: Senator Spano, will you yield?

SENATOR SPANO: Yes.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Senator Spano, I see on the agenda from the Rules Committee a home rule message was received from the City of New York on June 11, 2001.

SENATOR SPANO: Let me amend my answer. We do have a home rule message, Senator Dollinger. Sorry, my notes were incorrect. We did receive one on June 7th.

SENATOR DOLLINGER: Through you, Madam President. Senator Spano, this bill commits the City of New York to spend $12 million more on a pension change that will

affect the City of New York. Since that home rule message was passed on June 6th, a lot has changed in the City of New York.

My suggestion to you is wouldn't it make better sense to go back and ask the City of New York whether this bill still has the priority of spending $12 million that it had in June, considering so much has happened between June and today's date?

SENATOR SPANO: Well, I think the real issue with this bill, Senator Dollinger, is that it's just an equity bill. It's one that basically says that if a New York employee is mandated to participate and to pay towards a retirement plan and they cannot receive the intended benefits of that plan, that they -- that they should not have to pay for it.

I think it's just a -- it's a very equitable solution. It is not an overly taxing hit to the New York City system. It's $12 million price tag. And we did receive, and I think it was an overwhelming majority of the City Council who expressed their support for the bill. Since then, we have not heard

from anyone from the City of New York of their opposition to the bill.

And I think it's one that we owe the employees.

SENATOR DOLLINGER: Through you, Madam President, if Senator Spano will yield to a question.

SENATOR SPANO: Yes.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Is this bill required to implement the terms of a collective bargaining agreement between the City of New York and one of its bargaining units?

SENATOR SPANO: No, it's not.

SENATOR DOLLINGER: Okay.

SENATOR SPANO: This was not a part of any collective bargaining unit, Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. And I thank Senator Spano for his kind response.

I'm actually going to vote against this bill. Not because I don't agree with

Senator Spano that it's a good idea to have equity for those in the pension system.

But, Madam President, I would suggest that a bill -- when we got a home rule message dated June 7th that says, We think it's a good idea to spend $12 million to create this notion of pension equity, that's a $12 million cost that at least according to the fiscal note is going to occur annually from this date forward.

I would suggest and I would urge Senator Spano as well as, I think, Assemblyman Vitaliano, who carries this bill in the Assembly, to go back and ask the City of New York whether the notion of equity that was present on June 7, 2001, is still as compelling today, on October 22nd, when we've had the intervention of the enormous, massive cost of the tragedy at the World Trade Center.

Madam President, I would suggest that a home rule message passed four months ago that says this is a good idea to spend our money this way should be reconsidered by the home rule body again before we act on it. And I would suggest that prudence would dictate we

send this bill and the home rule message back to the City of New York and ask them to give it another thought.

If, in the wake of September 11th, they still believe this bill is the right thing to do, I'm going to vote in favor of it. But under these circumstances, I think it's the wrong thing to do. It's time to rethink these issues because of what we know has transpired since June and today.

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

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 2. Senators Dollinger and Paterson recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1483, by Senator Wright, Senate Print 5778, an act to amend a chapter of the Laws of 2001 as

proposed in legislative bills Numbers S5443 and A8952.

SENATOR DUANE: Explanation, please.

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

SENATOR WRIGHT: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR WRIGHT: The bill before us is an amendment to Chapter 222. It was signed into law earlier this year by the Governor.

As you may recall when that bill was before the Senate, it provides for amendments to Article 10 that provide for an expedited siting process of electrical generating facilities whereupon the applicant demonstrates that there's a minimum reduction of pollutants of 75 percent.

Now, that first bill dealt with essentially air emissions. And by virtue of that, we are advancing an amendment to that chapter that would also include environmental impacts to aquatic systems or water.

So consequently, this amendment will provide the same standards. If there's a reduction of 75 percent, then they can be entitled to an expedited process as it relates to siting.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: Actually, I was concerned about the bill, but now that I have a little more information about it, it's a very good bill.

It's sort of an additional environmental constraint, in that I understand some of the plants that were going through this upgrading were taking in a considerable amount of water from the river, from the Hudson, and that was doing some potential damage to fish life and aquatic life. And this is another constraint upon them as they move ahead. It's another protection, environmental protection.

So it's a very good bill. And thank you.

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

Then the debate is closed.

Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the same date and in the same manner as a chapter of the Laws of 2001.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1484, by Senator Velella, Senate Print 5781, an act to amend the Retirement and Social Security Law, in relation to the improved benefit retirement programs.

SENATOR DUANE: Explanation, please.

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

SENATOR VELELLA: Yes, Madam President.

In 1995, the improved service retirement plans were enacted. At that time,

pursuant to an agreement between the city and the affected unions, plan participants paid the cost of the improved benefits at a rate of 4.35 percent of their salary.

In 1997, pursuant to an agreement between the city and the affected unions, this amount was reduced to 2.85.

This bill further reduces that amount to 1.85 percent as a result of an agreement reached by the city and the affected unions.

SENATOR DUANE: Explanation satisfactory.

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

Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, can I interrupt the roll call and just ask Senator Velella one other question about the finances of this?

SENATOR VELELLA: Certainly.

THE PRESIDENT: Senator, do you yield?

SENATOR VELELLA: Yes.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

Senator, was there a home rule message received on this bill?

SENATOR VELELLA: Yes, Senator, and it was received on 9/20, a few days after the terrible incident.

SENATOR DOLLINGER: Do you know when it was actually passed by the City Council in the City of New York?

SENATOR VELELLA: I'm sorry, what?

SENATOR DOLLINGER: Through you, Madam President, if Senator Velella will continue to yield to a question.

SENATOR VELELLA: Yes.

THE PRESIDENT: The Senator does yield. You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Do you know when it was passed by the City Council in

New York?

SENATOR VELELLA: We received it on 9/20. I would assume -- October 12th?

Okay, I'm sorry, it was passed on October 12th. I had the wrong date there. I thought it was 9/20. It was October 12th.

SENATOR DOLLINGER: Through you, Madam President, if Senator Velella will yield just for one other question so I can make sure I'm -

THE PRESIDENT: Senator Velella, will you yield for an additional question?

You may proceed, Senator.

SENATOR DOLLINGER: Just so I'm clear, Madam President, the home rule message was approved by the City of New York on October 12th; is that correct?

SENATOR VELELLA: That's what the desk informs me, and I have to be bound by what the desk tells me.

SENATOR DOLLINGER: Okay, I'll raise that as a point of order in a second.

Thank you, Senator Velella. I think I've got the answer to my question.

Madam President, how do I -- does

the desk have the home rule message? Could I -- by a point of order, could you -

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

SENATOR DOLLINGER: Through a point of order, Madam Chairman, and I'm not sure that's the proper protocol, but could you just tell me when the date of the home rule message is from the City Council in New York?

THE PRESIDENT: As Senator Velella indicated, it's October 12th, Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

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

Then the debate is closed.

Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

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

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

THE PRESIDENT: No, there isn't, Senator Skelos.

SENATOR SKELOS: If we could stand at ease, Madam President.

THE PRESIDENT: The Senate stands at ease.

(Whereupon, the Senate stood at ease at 5:17 p.m.)

(Whereupon, the Senate reconvened at 5:25 p.m.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MEIER: 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.

The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 5:26 p.m.)

(Whereupon, the Senate reconvened at 5:35 p.m.)

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees, I believe there's a report of the Rules Committee at the desk. I ask that it be read 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 5815, by the Senate Committee on Rules, an act to amend Chapter 405 of the Laws of 1999.

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 of the Rules Committee is accepted.

Senator Skelos.

SENATOR SKELOS: I ask at this time that we take up Senate 5815.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 1486, by the Senate Committee on Rules, Senate Print 5815, an act to amend Chapter 405 of the Laws of 1999.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator -- excuse me. Senator Dollinger, to explain his vote.

SENATOR DOLLINGER: Choking it back, Mr. President?

ACTING PRESIDENT MEIER: I'm choking back tears, I'm so overwhelmed to see you again this week.

SENATOR DOLLINGER: Nice to see you, Mr. President.

Mr. President, I rise just to vote against this bill and to extend my view that we've really reached a sad state of affairs in New York. Despite the best efforts of Senator Bruno and Assemblyman Silver and the Governor, we have again been unable to provide a spending plan for the people of this state.

There are some who say that the events of September 11th have radically altered what New York can do for the people of this state. I do not believe that those events should drastically call into question New York's priorities for the children of our state and the importance of their education or for the health care of the people in this state.

And it seems to me that we owe it to the people of the state, as we did in April

and May and June and July and August, before September 11th, we owe it to them even more in the wake of September 11th to prove to them that we can provide the leadership that this state needs.

And it seems to me the best way to do that is to take what we believe are the priorities of this state, to put them into a document, to send them down to the second floor with an overwhelming vote from this body. And if he refuses to sign it, the man who resides on the second floor, the Governor of this state, that we bring it back here and we override his veto and that we allow ourselves to participate in the vision for the future of this state.

I am no longer willing to be held hostage by this Governor. I'm not going to go back to the people of the 54th Senate District and tell them that they are held hostage when 211 of us can act in two-thirds of both bodies and set an agenda for the future of this state.

Mr. President, I'm going to vote in the negative. I think this lurching from week

to week and passing extenders is a concession that we cannot do our job. I am unwilling to concede that. I will be prepared to vote for a budget and I hope vote for a veto override when necessary. But until then, this is not the way to do business in the State of New York. And I refuse to send a message to the people of my district that this is an acceptable way to do business.

I vote no.

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

Announce the results.

THE SECRETARY: Ayes, 56. Nays, 3. Senators Dollinger, Duane, and Padavan recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could stand at ease at this time.

ACTING PRESIDENT MEIER: The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 5:40 p.m.)

(Whereupon, the Senate reconvened at 7:19 p.m.)

ACTING PRESIDENT MEIER: Senator Skelos.

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

ACTING PRESIDENT MEIER: No, there is not.

SENATOR SKELOS: Before we adjourn, there will be a conference of the Majority tomorrow at 1:00 p.m.

And Senator Smith?

ACTING PRESIDENT MEIER: Conference of the Majority tomorrow, 1:00 p.m.

Senator Smith.

SENATOR ADA SMITH: Conference of the Minority, 1:00 o'clock tomorrow.

ACTING PRESIDENT MEIER: Conference of the Minority tomorrow at 1:00 p.m.

SENATOR SKELOS: Mr. President, there being no further business to come before the Senate, I move we adjourn until the call of the Majority Leader. It's anticipated that we will have session tomorrow. In the event

we don't, intervening days being legislative days.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned, subject to the call of the Majority Leader. Intervening days, should there be intervening days, will be legislative days.

(Whereupon, at 7:21 p.m., the Senate adjourned.)