NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

January 23, 2002

11:05 a.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, January 22, the Senate met pursuant to adjournment. The Journal of Monday, January 21, 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 McGee, from the Committee on Alcoholism and Drug Abuse, reports:

Senate Print 96, by Senator Marcellino, an act to amend the Vehicle and Traffic Law;

391, by Senator Skelos, an act to amend the Vehicle and Traffic Law;

869, by Senator McGee, an act to amend the Vehicle and Traffic Law;

1166, by Senator McGee, an act to amend the Alcoholic Beverage Control Law;

2512A, by Senator McGee, an act to amend the Insurance Law;

3519, by Senator McGee, an act to amend the Vehicle and Traffic Law; and

5709A, by Senator Wright, an act to amend Chapter 519 of the Laws of 1999.

All bills ordered direct to third reading.

THE PRESIDENT: Without objection, all bills reported direct to third

reading.

Senator Skelos.

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

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

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Libous.

SENATOR LIBOUS: Thank you, Madam President.

I move to amend Senate Bill 5793A by striking out the amendments made on January 22nd and restore it to its original print, 5793.

THE PRESIDENT: So ordered, Senator.

SENATOR VELELLA: Madam President, can we please adopt the Resolution Calendar at this time.

THE PRESIDENT: All those in favor of adopting the Resolution Calendar please say aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The calendar is adopted.

Senator Velella.

SENATOR VELELLA: Madam President, I believe there's a privileged resolution at the desk by Senator Stachowski. Can we have the title read and move for its adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Stachowski, Legislative Resolution Number 3847, honoring John F. Schleifer upon the occasion of his designation as recipient of the "Educator of the Year" Award by the West Seneca Chamber of Commerce on January 26, 2002.

THE PRESIDENT: All in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Velella.

SENATOR VELELLA: Madam President, can we proceed to the noncontroversial calendar, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 10, by Senator Padavan, Senate Print 2711, an act to amend the Penal Law, in relation to making.

THE PRESIDENT: Read the last section.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 11, by Senator Leibell, Senate Print 3236, an act to amend the Penal Law, in relation to unlawful defilement of a water supply.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 14, by Senator Balboni, Senate Print 5823, an act to amend the Criminal Procedure Law, the Penal Law, and the Executive Law, in relation

SENATOR VELELLA: Lay that aside for the day.

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

THE SECRETARY: Calendar Number 15, by Senator Skelos, Senate Print 5849, an act to amend the Penal Law, in relation to the possession of disguised knives.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 26, by Senator LaValle, Senate Print 2589

SENATOR VELELLA: Lay that bill aside for the day, please.

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

THE SECRETARY: Calendar Number 31, by Senator Volker, Senate Print 6040, an act to amend the Tax Law, in relation to the imposition of sales and compensating use taxes by the County of Erie.

SENATOR PATERSON: Lay that aside.

THE PRESIDENT: The bill is laid aside, Senator.

THE SECRETARY: Calendar Number 38, by Senator LaValle, Senate Print 6042, an act to amend the Education Law, in

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

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

Senator, that completes the reading of the noncontroversial calendar.

SENATOR VELELLA: Madam

President, can we stand at ease pending the report of the Rules Committee.

We have some bills, we will have active bills debated, but many of the members are in the Rules Committee meeting right now that want to debate the bill. So we'll stand at ease pending the report of the Rules Committee.

THE PRESIDENT: The Senate stands at ease, Senator Velella.

(Whereupon, the Senate stood at ease at 11:11 a.m.)

(Whereupon, the Senate reconvened at 11:15 a.m.)

ACTING PRESIDENT MORAHAN: Senator Velella.

SENATOR VELELLA: Mr. President, there will be an immediate meeting of the Commerce and Economic Development Committee in the Majority Conference Room.

ACTING PRESIDENT MORAHAN: There will be an immediate meeting of the Commerce and Economic Development Committee in the Majority Conference Room.

SENATOR VELELLA: And if we can

return to reports of standing committees, I believe there's a report of the Rules Committee at the desk.

ACTING PRESIDENT MORAHAN: 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 6094, by Senator Maltese, an act to authorize certain voters.

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

ACTING PRESIDENT MORAHAN: All in favor of accepting the Rules Committee report say aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Nay?

(No response.)

ACTING PRESIDENT MORAHAN: The report is accepted.

Senator Velella.

SENATOR VELELLA: Mr. President, may we have the controversial reading of the calendar at this time.

ACTING PRESIDENT MORAHAN: The Secretary will read the controversial calendar.

THE SECRETARY: Calendar Number 10, by Senator Padavan

ACTING PRESIDENT MORAHAN: Can we have a little order in the house, please.

THE SECRETARY: Calendar Number 10, by Senator Padavan, Senate Print 2711, an act to amend the Penal Law, in relation to making citizenship document fraud.

SENATOR DOLLINGER: Explanation, please.

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

SENATOR PADAVAN: This proposal, Mr. President, would amend the Penal Law in relation to making citizenship document fraud in the first degree and second degree Class D and E felonies, respectively.

There is a problem of individuals having access to false documents -- birth certificates, driver's licenses, Social Security cards, and the like -- and having

access to many, many venues, not the least of which is social services, and certainly in many, many other areas.

This bill has been before us before, we have discussed it, and thanks to the members it passed last year 54 to 1.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 39. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 11, by Senator Leibell, Senate Print 3236, an act to amend the Penal Law, in relation to unlawful defilement of a water supply.

SENATOR DUANE: Explanation, please.

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

SENATOR LEIBELL: Thank you, Mr. President.

There has been, understandably, a great deal of discussion since the tragic events of September 11th on ways in which we can make our society more secure, make the people of this state feel safe, and protect the assets of this state.

The legislation which is before this house today is an attempt to do that, and in particular to address the need to protect our critical water supply.

I would note that this is not new to this house. Originally this was part of legislation I introduced in 1997 which was entitled the "Terrorism Prevention Act." This piece of that bill, addressing the water safety issue, was subsequently split off from the main bill, reintroduced, and in 1999 it was voted on here and passed, as well as in the year 2000 and 2001. It was not acted upon by the other house.

What this attempts to do, this legislation, is to define a defiling agent as any chemical, biological, or radioactive agent or substance capable, when introduced or placed into a water supply, of causing the sickness, physical injury, severe disfigurement or death of a human being, or causing irreparable harm to such water supply or causing a disturbance to the public peace.

Presently there is currently no crime which addresses the unlawful defilement of a water supply. Although other criminal conduct may cover such actions, such as criminal tampering, there is no direct criminal sanction for an activity that can cause such severe potential harm.

Because of the natural conditions and quantities consumed, water supplies are often publicly exposed and readily accessible to those who might wish to cause mass harm. This establishes a new Class B felony which would appropriately punish the poisoning or adulteration of our water supply and sends a strong message that we will take whatever strong measures are necessary to protect our

citizens and their vital needs.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR DUANE: Through you, if the sponsor would yield, please.

THE PRESIDENT: Senator Leibell, do you yield?

SENATOR LEIBELL: Yes.

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

SENATOR DUANE: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR DUANE: Could the sponsor tell me -- or tell us, I should say, what happens now if someone were to pour cyanide into a reservoir?

SENATOR LEIBELL: There would be no similar statute that would cover this.

SENATOR DUANE: Through you, Madam President, if the sponsor would continue to yield.

THE PRESIDENT: Senator, will you

yield for an additional question?

SENATOR LEIBELL: Yes, I will.

THE PRESIDENT: You may ask a question, Senator Duane.

SENATOR DUANE: Thank you, Madam President.

Does that mean that under present law if a person poured cyanide into a reservoir they would get off scot-free?

SENATOR LEIBELL: No. No, it doesn't mean that, Senator. There certainly would be some other regulation or statute that could apply, such as criminal tampering.

But there's not something that is directed towards the water supply, and nothing that would give a Class B felony sanction.

SENATOR DUANE: Through you, Madam President, if the sponsor would continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR LEIBELL: Yes.

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

SENATOR DUANE: What would the

additional penalty be for someone who pours cyanide into a reservoir under the proposed law?

SENATOR LEIBELL: I'm going to ask you to restate that. I couldn't hear you.

SENATOR DUANE: Through you, Madam President, what would be the additional penalty for someone who performed that act under the proposed legislation?

SENATOR LEIBELL: I can't say what it would be in addition to, because I don't know what other statute you would wish to apply if this occurred.

But under this statute, it would be the sentencing appropriate for a Class B felony, which I believe is 8 1/3 to 25 years.

SENATOR DUANE: Through you, Madam President, I'm just -- I'm a little confused. Under tampering

THE PRESIDENT: Excuse me, Senator Duane.

Senator Skelos.

SENATOR SKELOS: Thank you, Madam President. If you would excuse the interruption, there will be an immediate

meeting of the Crime Victims, Crime and Corrections Committee in the Majority Conference Room.

THE PRESIDENT: There will be an immediate meeting of the Crime Victims, Crime and Corrections Committee in the Majority Conference Room.

Again, excuse me, Senator Duane.

SENATOR DUANE: Madam President, just a point of order. If we could just delay that committee meeting, because I'm the ranker on it and I'm actually involved in this discussion here on the floor.

THE PRESIDENT: Senator Skelos, do you have an objection to delaying the committee meeting until Senator Duane finishes?

SENATOR SKELOS: What we'll do is we'll then call, instead, the Corporations, Authorities and Commissions Committee meeting in the Majority Conference Room.

THE PRESIDENT: Instead of the Crime Victims, Crime and Corrections Committee, the Corporations, Authorities and Commissions Committee will meet now in the

Majority Conference Room.

Ready, Senator Duane?

SENATOR DUANE: Yes, thank you, Madam President.

THE PRESIDENT: You may proceed with your question.

SENATOR DUANE: Under the tampering laws that are on the books now, what is the penalty for when you're convicted, when a person is convicted of tampering? Is it a felony? What degree is it?

SENATOR LEIBELL: It's a Class D felony, with a possible sentence of 2 to 7.

SENATOR DUANE: Through you, Madam President, just a clarification.

And this bill, this legislation also makes the poisoning the water a Class B felony?

SENATOR LEIBELL: B, a Class B felony.

SENATOR DUANE: So through you, Madam President, under present law someone could be convicted of a Class B felony, as it is, and under the proposed law a person could be convicted of a Class B felony?

SENATOR LEIBELL: It's a Class D felony.

SENATOR DUANE: Class E?

SENATOR LEIBELL: D.

SENATOR DUANE: D.

SENATOR LEIBELL: As in "Duane."

SENATOR DUANE: Then through you, Madam President, just because I want to make sure I know what I'm voting on

THE PRESIDENT: Senator Leibell, do you yield for an additional question?

SENATOR LEIBELL: Yes, I do.

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

SENATOR DUANE: So under present law if someone defiled, you know, the entire New York City water supply, under present law someone would only get 2 to 5?

SENATOR LEIBELL: Two to 7.

SENATOR DUANE: Two to 7? Is that -- I'm asking

THE PRESIDENT: I believe he answered 2 to 7.

SENATOR LEIBELL: Yes, it's a 2 to 7. That's what they would be found guilty

of.

SENATOR DUANE: Wow.

THE PRESIDENT: Senator Duane, do you have an additional question?

SENATOR DUANE: No, thank you, Madam President.

THE PRESIDENT: Thank you.

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

(No response.)

THE PRESIDENT: Then the debate is closed.

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 PRESIDENT: Senator Balboni, to explain your vote.

SENATOR BALBONI: Yes, Madam President.

This bill is something that Senator Leibell has brought to our attention and is a part of an ongoing effort to realize the

vulnerabilities of the existing infrastructure in this state. It is something that we take for granted, particularly those people who live in the City of New York.

The vulnerability of the watershed, the vulnerability of the water distribution systems have been subject to some criticism over the last couple of years. This is one of the first steps we have to take.

A B felony as a penalty for anyone who would try to defile water systems is based primarily on intent, as opposed to result, which is very important when you start getting into things like biological or chemical agents that can vary in terms of their toxicity.

This is a good first step. Hopefully we'll be doing more as we progress, perhaps even later next week in terms of the weapons of mass destruction legislation.

I support the legislation, Madam President. Thank you.

THE PRESIDENT: Senator Balboni, you will be recorded as voting in the affirmative on this bill.

Senator Duane, to explain your

vote.

SENATOR DUANE: Thank you, Madam President.

I just for the record want my colleagues to know that I have written to the home defense -- minister? Chair? Home defense -- Homeland Security Chief Tom Ridge, asking him to pay special attention our New York City water supply.

And I think that this is -- again, I can't imagine that someone that would defile the New York City water supply would only get 2 to 7. Maybe that's true under state law. But again, I think the federal government would probably take jurisdiction over this. I mean, maybe they would say: You know what, we're so busy, New York, why don't you take this case? But really, I think that the federal government would take care of it.

And I don't understand -- based on the other bill that we passed here after the September 11th attack, it would seem to me that this whole area of law would be covered there as well.

I'm going to vote in favor of it,

but I'm not convinced that it's a very necessary bill.

Thank you, Madam President.

THE PRESIDENT: Senator Duane, you will be so recorded as voting in the affirmative on this bill.

The Secretary will announce the results.

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 31, by Senator Volker, Senate Print 6040, an act to amend the Tax Law, in relation to the imposition of sales and compensating use taxes by the County of Erie.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, may we have an explanation on this bill.

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

Senator Breslin.

SENATOR BRESLIN: I'm wondering

if Senator Paterson would yield so I might ask

SENATOR PATERSON: Certainly.

THE PRESIDENT: Senator Paterson yields.

Senator Breslin, you may proceed.

SENATOR BRESLIN: Through you, Madam President, is there a home rule with this bill?

SENATOR VOLKER: Yes, Senator, there is. Although legally, as you know, the Senate rules -- as a matter of our own internal rules, we require that any sales tax bill have a home rule. This one has a home rule.

In fact, it had two of them, because they were so excited they did it a day before we actually introduced the bill. And then we said, All right, calm down, just wait till we get it -- and then we got another one. So we have two of them on this one. So we got them.

SENATOR BRESLIN: That satisfies me, and I will -- I intend to vote on this bill

SENATOR VOLKER: Madam President, if I might just say something.

THE PRESIDENT: Senator Volker, on the bill.

SENATOR VOLKER: Senator Brown, I think, is going to be back in just a minute. He would like to make a statement on this bill.

But let me just say that this is the Erie County sales tax bill, which we have passed as a temporary bill for something on the area of 17 years. I have asked the county legislature on several occasions if it might not be a bad idea to permanentize this.

But for various reasons -- and I just want to point out something, that I will -- what we do here when we do sales tax bills and enabling bills, these are not our taxes. That is, we just enable the County of Erie, for instance, or whatever county it is to put the sales tax on. If they choose not to, they don't have to.

Of course, the problem with this is that the budget is already in place with the tax money in it, so it's not likely that

they're going to do that.

But the point, I think, is that we do not enact these taxes; all we do is enable the various counties, which includes Monroe or whoever that we do, to enact this tax if they so desire.

The other thing that -- and Senator Brown was going to speak a little bit about the City of Buffalo. I would also point out that if the County of Erie were to choose to divide the tax something -- some way differently, they could do that, irrespective of what we do. And I only point that out here because it's really not our responsibility to make those kinds of decisions as to where the proceeds of the bill goes.

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

(No response.)

THE PRESIDENT: Then the debate is closed.

Read the last section.

SENATOR VOLKER: Madam President.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Could we just

hold this open for just a minute? Senator Brown is supposed to be here.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President. I was going to make the same suggestion.

Senator Brown is actually in a meeting right now. And as soon as he gets out, he'll be here.

Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: To accommodate the rest of the members, why don't we just vote on the bill right now. And perhaps we'll give Senator Brown a chance to make a comment when he gets here.

THE PRESIDENT: 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: Those recorded in the negative on Calendar Number 31 are

Senators Dollinger, Gentile, and Morahan.

Ayes, 46. Nays, 3.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Crime Victims, Crime and Corrections Committee in the Majority Conference Room.

THE PRESIDENT: There will now be a meeting of the Crime Victims, Crime and Corrections Committee in the Majority Conference Room.

Senator Maziarz.

SENATOR MAZIARZ: Thank you, Madam President. I would like unanimous consent to be recorded in the negative on Calendar Number 15, Senate Bill 5849.

THE PRESIDENT: You will be so recorded, hearing no objection, as voting in the negative on that bill, Senator Maziarz.

SENATOR MAZIARZ: Thank you.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, if we could return to standing committees.

If we could at this time take up Senate 6094, by Senator Maltese.

THE PRESIDENT: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Calendar Number 51, by Senator Maltese, Senate Print 6094, an act to authorize certain voters in military service.

SENATOR DOLLINGER: Explanation, please.

THE PRESIDENT: Senator Skelos.

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

THE PRESIDENT: Yes, there is, Senator.

SENATOR SKELOS: Move to accept the message.

THE PRESIDENT: All in favor of accepting the message of necessity please say aye.

(Response of "Aye.")

THE PRESIDENT: Opposed?

(No response.)

THE PRESIDENT: The message is

accepted.

Senator Maltese, Senator Dollinger has asked for an explanation.

SENATOR MALTESE: Thank you, Madam President.

This bill would authorize certain voters in military service to vote in the special election of February 12th. As we all know, there will be elections in various areas of the state on February 12th. This would authorize and provide for members in the military service to vote in that special election by absentee ballot.

Due to the horrific events of September 11th, many New Yorkers have been called into active military service or may very well be in the process of being called or may be called prior to Election Day of February 12th. This bill would essentially provide the same benefits that our prior legislation provided for the November election, enabling military voters to vote in the election.

And it would provide that they could apply for the ballots by telephone. And

it further authorizes the use of facsimiles so that they could vote -- obtain the ballot, obtain the application essentially in the same mail, put them in the mail and get them to the election board.

It also waives the seven-day requirements and continues the condition that the voter, the prospective voter can, on the outside of the envelope, provide for the fact that many of our military ballots were not postmarked prior to Election Day or prior to the day provided by law, and as a result the requirement for a valid postmark -- because many of the ballots are from APOs or fleet post offices -- provide that as long as a witness signs the outside of the envelope that it was in fact mailed prior to Election Day, it would be valid.

And it further provides, as in existing law, the law that we passed for the last election, which is still in effect until December 31st, that the statement can be inside the envelope with the actual absentee ballot.

THE PRESIDENT: Does any other

member wish to be heard on this bill?

Senator Dollinger.

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

SENATOR MALTESE: Yes.

THE PRESIDENT: Yes, he will yield. You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Senator Maltese, could you just explain to me how the facsimile transmission of the ballot will work?

SENATOR MALTESE: Madam President, my understanding is that the voter now, the military voter, can call the board of elections. The board of elections at that point in time can obtain a fax number from the prospective voter and fax both the application and the ballot to the military voter.

The military voter then must mail in the actual ballot and application to the board.

SENATOR DOLLINGER: Through you, Madam President, if Senator Maltese will yield to another question.

THE PRESIDENT: Senator, do you yield?

SENATOR MALTESE: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Does the statute currently, or anything in this law, require that the military voter fill out the fax copy, or does it allow the fax to be copied by the voter and then them to utilize a copy of the ballot?

Generally I think the rule in New York is we don't allow people to use copies of ballots. We send them an absentee ballot, and they fill out that big ballot with all those checks, with all the official notices on it.

I'm interested in finding out if you fax a ballot to someone, do they have to fill out the facsimile, which as you know comes on a -- usually on a piece of paper, or can they make a copy of that? Is there any way to authenticate the ballot as to what it was used for?

SENATOR MALTESE: Madam President, my understanding would be once they have a fax, there's no way of differentiating between a fax and a Xerox. I think either one can be used.

The fact of the matter is that what's received by the board would be the properly filled out, authenticated, with a statement that it was mailed prior to Election Day, and that would be, in all -- except for the fact that it wasn't the actual ballot and application from the board, it in all other respects would be exactly the same as the filled-out ballot and application.

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

THE PRESIDENT: Senator, do you yield?

SENATOR MALTESE: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR DOLLINGER: Just so I understand the process, Senator Maltese, how

does the board of elections know that the person who is applying by telephone, how do they know that they're in the military or they have a reasonable belief that they will be subject to military service at the time of the election?

How do they verify that information? Is it simply upon signing a verified statement by the voter themselves?

SENATOR MALTESE: Madam President, that's the fact. It would be a perusal by the receiving board that the ballot and application is in proper order.

The statement from the military person would have the affidavit that the person is either in military service or is in a position where they would be able to use and utilize the absentee ballot as a person in military service.

SENATOR DOLLINGER: Through you, Madam President, if Senator Maltese will yield to one more question.

THE PRESIDENT: Senator, do you yield?

SENATOR MALTESE: Yes, Madam

President.

THE PRESIDENT: He does. You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Senator, why not make this proposal, which seems to have passed the Senate previously, why not make it permanent?

Why is it just that we're creating, in essence, an unconsolidated law that gives the board of elections this direction and then what in essence we're doing is we're suspending the provisions of several portions of the Election Law just for this election?

Why not make this a permanent change in New York law if it has what appears to be the wisdom of some experience and also the wisdom of the Senate that this is the right way to handle it?

SENATOR MALTESE: Madam President, as a matter of fact, together with my Assembly counterpart, David Sidikman, we are indeed considering that very matter, based on the experience of the November election just past and probably taking into consideration any problems that develop.

Also, I am advised that the federal government is also contemplating federal legislation.

But I believe our legislation will be pretty much along the same lines as this bill, because as a practical matter the November election didn't produce any of the problems that had been foreseen and, by and large, despite a horrific state of emergency and circumstances where many people were in doubt or in transit, at the same time the system worked very well.

So we will, in fact, be considering a permanent change to the Election Law to do this very thing.

SENATOR DOLLINGER: Through you, Madam President, just one other question to Senator Maltese, if he will.

THE PRESIDENT: Senator, do you yield for another question?

SENATOR MALTESE: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: This bill

talks about the board of elections making a good-faith effort to make these ballots available. Why is that language necessary? It would seem to me that the board of elections is in the business of getting people to vote.

What's the possible consequence of including a "good faith" provision in here? Which I think, Senator Maltese, will be unenforceable as a practical matter and doesn't seem to make a lot of sense when, it seems to me, the whole mission of the board of elections is to make a good-faith effort so that everybody votes.

SENATOR MALTESE: Madam President, the purpose of that was simply to not mandate it on the part of the board of elections. We were hopeful that any close election would not be then put in jeopardy or have to go to the courts based on a mandate for the board that, in some cases, a board might not be able to comply with.

SENATOR DOLLINGER: Through you, Madam President, if Senator Maltese will continue to yield.

THE PRESIDENT: Senator Maltese, do you yield?

SENATOR MALTESE: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: I'm not sure that I fully understood the answer to the question, Senator Maltese.

We're placing a good-faith requirement that they get these ballots and these applications and they process them. I think certainly that doesn't create any liability on them if they fail to do it. We're not saying that somehow somebody gets an extended voting right.

I'm just not sure that I understand what you're trying to get at when you say "good-faith efforts to make these ballots and applications available." What are you referring to?

SENATOR MALTESE: Madam President, I'm simply pointing out the difference between mandating it absolutely in law and saying that the board of elections

shall comply immediately or the board of elections shall, within a certain time period, get a ballot or an absentee ballot or an application to the voter.

In this case, all that's required is a good-faith effort. And it's -- as Senator Dollinger has correctly pointed out, it's a matter of interpretation. And I'm sure that all the boards involved will in fact comply and as a practical matter have good-faith efforts to comply.

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

THE PRESIDENT: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I appreciate Senator Maltese bringing this bill to accommodate additional voters before the February 12th special election. I think it should be made permanent.

But, Senator Maltese, I would just tell you that your reluctance to require the boards of elections to do this -- and when you use the language, as you properly point out, "shall be authorized to transmit," if we think

it's a good idea, why not just tell them to do that anyway? Why not just authorize -- not only just authorize them, but mandate that they can use this procedure?

It seems to me, Senator Maltese, that the danger you may run into -- which I think the United States Supreme Court, in the famous case involving a couple of gentlemen running for president, once said that there's a statewide standard for due process.

And I would suggest, Senator Maltese, that if this is done in New York City at some point, or done in one of the counties in New York but not all of them, that the access to the ballot may be different and we may run into a due process problem of inconsistent approaches to elections inside the city of New York or, frankly, inside the state of New York if some boards of elections are transmitting this by facsimile and therefore meeting that goal of getting lots of people to vote by military ballot but other boards of elections are not.

You may run into an inconsistency in the way the boards of elections deal with

military ballots that could, frankly, create a due process problem in the state's governance of its elections.

I would suggest, Senator Maltese, that if we think it's a good idea, both with respect to military ballots and others, we ought to tell them what to do and require them to do it, and not simply authorize them to do it but force them to do it.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR CONNOR: In general, the concept of this is something that I support. I think the drafting of this is abominable.

For example, in two jurisdictions that I know about, Monroe County and Rockland County, absentee ballots -- and there may be others; I know Westchester perhaps, I think absentee ballots are -- and not by a technology I would endorse. In fact, one that I was quite against when we had the Voting Machine Commission back in 1985, I suppose it was, and we reported against it, thankfully.

That's the punch-card system.

Now, I don't understand how any jurisdiction that opted for the punch-card system could possibly fax the punch-card ballot to the military person and have them properly mark it. Remember those chads? You have to punch them out and then send it in.

It wouldn't fit in the system. You need -- the card has to be sized, it has to be read by the machine. The little chads have to be lined up to the reader.

Secondly, more importantly and more relevant, more relevant to February 12th, is I don't know how -- and New York City now has been using a mark-sense absentee ballot, machine-read. It's a paper ballot fed into a machine, and it reads the results.

How can you fax that? That ballot must be absolutely specified. The absolute specifications of the size of that ballot and each candidate or question on it must be calibrated very carefully so when you put it through the mark-sense reader, it reads it.

If you fax it, and the fax will shrink it, of course, and then it comes back

shrunk -- it could read a vote for Gore is a vote for Bush, or a vote for whomever is the opposite. Or, Madam President, most likely it will just reject the ballot.

So why are we setting up a system where on February 12th our military, who are off defending this country, are going to think they're sending in ballots to New York City that the machine will void because it won't be the mark-sense ballot?

No one can send a perfectly calibrated mark-sense ballot by fax. You can't do it. My colleagues, how many times do you get faxes and you think, Why is it so small? And your office personnel say: Well, you know, the fax machine shrinks it. It makes it come out the size of the fax that's receiving it.

This can't be done. This is this is a wonderful concept. This bill doesn't do it. These ballots won't count.

And, you know, do we need to fax the application? That's a good idea. That's a good idea because you can use any form of an application that complies with the statute.

You don't need the board's form.

Indeed, both the State Board of Elections and the New York City Board of Elections allow you to download off the Internet the application. Anybody can go in their computer, get on the Internet, download the application, fill it out and send it in.

I would even be in favor of letting a military person do that and fax in the completed application to get the return ballot.

I think we ought to mandate the boards of elections use overnight express mail to get the ballots out.

But I think when you're saying they're going to fax them, you're just setting up a situation that can't work. You're going to deprive these people of their franchise. You're going to deprive them of their franchise. You're going to create the opposite, opposite situation.

The other problem I have, Madam President, is this bill does not apply -- this bill does not apply to spouses or family members accompanying military personnel, who

under our law are entitled to a ballot. It says the military voter, the person in military service or who in good faith expects to be in military service.

Madam President, I think the family members accompanying a military person who's been assigned elsewhere ought to be covered under this. Why do we want to deny them from this opportunity to vote in these elections? I don't understand what the drafters could have been thinking.

Finally, Madam President, there's a section in this bill that appears to apply to all voters. The final section just says "a voter."

In fact, I'd like to read the final section: "For the February 12, 2002, special election, a voter may comply with the optional requirement that a witness date and sign the envelope," as provided in the amendments we did earlier -- and, by the way, those amendments were limited to military voters. This doesn't appear to be -- "by enclosing in the outer envelope accompanying the ballot a statement that is signed and dated by the

witness that the ballot was mailed not later than the day before the election."

Madam President, if the intention of this is to let any voter, any absentee voter have their ballot count, notwithstanding a postmark that indicates it was mailed late -- it could have been mailed late in New York City, in New York State -- based on a statement inside signed by their friend that says, oh, this was mailed on time.

I have no objection to this applying to military voters. But the language of this bill seems to be an attempt to allow -- and there could be, Madam President, some very close special elections. We've seen them before. We've certainly seen them before in one of the Senate districts that's at stake.

I shudder to think that we're allowing people the opportunity to slip in late absentee ballots after they see what the preliminary results are when the polls close.

Military voter, that's a different case. Somebody mailing an absentee ballot from Albany to New York City that has a

postmark of February 13th, but to suggest, as this does -- because it just says "a voter," it doesn't say "a military voter" -- to suggest that vote be counted, that vote cast in Albany, mailed in Albany on the 13th be counted in New York City in a February 12th election because inside is a statement from a witness that, oh, this was mailed on the 11th -- Madam President, I don't think we want to go that far. I really hope we don't want to go that far.

If we go that far, let's have a week of mailed balloting for everybody. Oregon does it. I don't recommend it; there's a lot of problems with it. But I don't think we want to go that far. And I suggest the drafters clarify this.

The other problem is, my colleagues from upstate, I urge you to consider what your absentee ballots look like. This bill assumes the two-envelope system that many and most of our jurisdictions use, that New York City uses. But a lot of upstate counties don't use a two-envelope system.

It assumes it when it says the

statement can be mailed in the outer mailing envelope. It assumes it when it says the application can be returned in an outer mailing envelope.

There are some counties in upstate New York that only use a single-envelope absentee ballot system. How this bill -- will it void the ballots there?

I mean -- Madam President, I suggest the Majority find a drafter that understands how the Election Law is actually applied in all the counties of New York State -- upstate, not just New York City and write a bill that meets the needs of military voters and their accompanying family members that I could proudly support because I know it won't disenfranchise people, the people it's designed to help.

THE PRESIDENT: Senator Morahan.

SENATOR MORAHAN: Thank you, Madam President.

Just to clarify a small point, Rockland County was mentioned. But Rockland County has informed me that they have converted from the punch to optical scan. And

I just wanted to mention that, inasmuch as my daughter is the commissioner of elections.

Thank you.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Madam President, I thank the Senator for that.

And I applaud Rockland County, because I think we've all seen punch-card ballots aren't good.

But, Madam President, my remarks apply to optiscan ballots. You can't fax an optiscan ballot. The fax process will reduce it, and you will get back a ballot that is not calibrated. When fed into the machine, it will either read an erroneous result or it will reject the ballot.

So it's good that Rockland got rid of those, but Rockland is not home free if this bill passes.

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

(No response.)

THE PRESIDENT: 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 PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 51 are Senators Brown, Connor, Dollinger, Duane, Hassell-Thompson, Hevesi, Montgomery, Onorato, Oppenheimer, Paterson, Schneiderman, Stachowski, Stavisky.

Ayes, 42. Nays, 13.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could return to reports of standing committees, I believe there are some committee reports at the desk.

THE PRESIDENT: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Alesi, from the Committee on Commerce, Economic

Development and Small Business, reports:

Senate Print 2190A, by Senator Alesi, an act to amend the State Administrative Procedure Act.

Senator Marchi, from the Committee on Corporations, Authorities and Commissions, reports:

Senate Print 4004, by Senator Marchi, an act to amend the Public Authorities Law;

4067, by Senator Marchi, an act to amend the Public Authorities Law and the Environmental Conservation Law;

4146, by Senator Marchi, an act to amend the Public Authorities Law; and

5260, by Senator Johnson, an act to amend Chapter 672 of the Laws of 1993.

Senator Nozzolio, from the Committee on Crime Victims, Crime and Correction, reports:

Senate Print 5851, by Senator Skelos, an act to amend the Correction Law.

All bills ordered direct to third reading.

THE PRESIDENT: Without

objection, all bills ordered direct to third reading.

Senator Brown.

SENATOR BROWN: Thank you, Madam President.

Madam President, colleagues, I want to thank you for affording me the opportunity to speak to Calendar Number 31, Bill Number S6040, by Senator Volker.

This, as you know, is a bill that has already passed this house to extend the additional 1 percent of the sales tax for Erie County, which I also support.

I just want to mention, though, that when this additional 1 percent of the sales tax was initially imposed in 1985, it was to assist the County of Erie with a $75 million deficit at that time. That deficit has long been paid off, and this additional percentage of sales tax is now an important part of Erie County's budget. It accounts for about 9 percent of Erie County's budget.

And as a former Erie County government department head, I understand the

importance of this additional 1 percent to the County of Erie. But I want to bring to your attention that right now the City of Buffalo is facing some difficult financial circumstances.

This year, again, the City of Buffalo is looking at a potential $40 million deficit. And one of the things that I have discussed with the Erie County executive is the potential of sharing just the growth in the additional 1 percent of the sales tax for a regional asset fund.

Many of the regional cultural assets in Erie County are located in the city of Buffalo -- the Philharmonic Orchestra, the Buffalo Zoo, the Buffalo Museum of Science, the baseball stadium, the hockey stadium, and other facilities that I believe, with the regional asset fund, could benefit all county residents.

The county executive of Erie has committed to looking at this proposal and other proposals to assist the City of Buffalo in the difficult fiscal times that Buffalo is facing right now, and I certainly appreciate

that.

Let me also, just in closing, thank Senator Volker for his tremendous advocacy on the part of Erie County, including the City of Buffalo, in the State Legislature. Certainly all of his efforts are very greatly appreciated by all of our citizens.

You will be hearing more about the city's fiscal issues in the coming weeks and months. And I'm hopeful that when some of these fiscal concerns of the City of Buffalo come to your attention, you will understand the importance of being supportive and trying to help Buffalo help itself through these difficult fiscal times.

Thank you, Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

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

SENATOR SKELOS: If you would recognize Senator Montgomery.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. I would respectfully request unanimous consent to be recorded in the negative on Calendar 14.

THE PRESIDENT: Without objection, you will be so recorded as voting in the negative on Calendar 14, Senator.

SENATOR SKELOS: I believe that bill was laid aside for the day.

THE PRESIDENT: Senator, that bill was laid aside for the day. So we will withdraw your vote, for the record.

SENATOR MONTGOMERY: Thank you.

THE PRESIDENT: Senator Fuschillo.

SENATOR FUSCHILLO: May I have unanimous consent to be recorded in the negative on Calendar Number 31.

THE PRESIDENT: Yes, Senator, you will be so recorded as voting in the negative.

Senator Skelos.

SENATOR SKELOS: Madam President, there being no further business, I move we adjourn until Monday, January 28th, at 3:00 p.m., intervening days being legislative

days.

THE PRESIDENT: The Senate hereby stands adjourned until Monday, January 28th, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 12:03 p.m., the Senate adjourned.)