NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 25, 2002

3:10 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

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: With us again today to give the invocation is the Reverend Peter Young, from Blessed Sacrament Church in Bolton Landing, New York.

REVEREND YOUNG: Let us pray.

God has given us many different gifts, but it is always Your spirit to guide us. There are many different ways of serving as Senators, but it is always You, O God, that have granted them to be used for the good of our New York State citizens.

God has gifted each Senator with their unique potential to help their constituents. Let us take a moment to thank God for our talents and our skills. God, we thank You for these gifts unique to each Senator.

Let us not be jealous of talent that we don't have, but rather let us rejoice in You, who have made us and dedicated our gifts to the good of our New York State citizens.

Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, March 24, the Senate met pursuant to adjournment. The Journal of Saturday, March 23, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR FARLEY: On behalf of Senator Trunzo, on page 23 I offer the following amendments to Calendar 375, Senate Print 5025, and I ask that that bill retain its place on the Third Reading Calendar.

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

SENATOR FARLEY: Madam President, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: Senate 1996A. That's on behalf of Senator Kuhl.

THE PRESIDENT: So ordered.

Senator Skelos, we have a substitution.

SENATOR SKELOS: Please make the substitution, Madam President.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 27, Senator Hannon moves to discharge, from the Committee on Health, Assembly Bill Number 3638A and substitute it for the identical Senate Bill Number 4359A, Third Reading Calendar 411.

THE PRESIDENT: The substitution is ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a privileged resolution at the desk that I've sponsored. May we please have the title read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Skelos, Legislative Resolution Number 4572, memorializing Governor George E. Pataki to proclaim March 25, 2002, as Greek Independence Day in New York State and honoring the Federation of Hellenic-American Societies of Greater New York.

THE PRESIDENT: The question is on the resolution. All in favor signify by

saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

SENATOR SKELOS: Madam President, I'd like to open the resolution for sponsorship. If anybody cares not to sponsor it, they should notify the desk.

THE PRESIDENT: All members who do not wish to be sponsors please notify the desk.

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 25, by Senator Leibell, Senate Print 2499A, an act to amend the Real Property Tax Law, in relation to providing.

SENATOR HEVESI: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 35, by Senator Alesi, Senate Print 473A, an act to amend the Education Law, in relation to requiring cardiac pulmonary resuscitation training.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 102, by Senator Hannon, Senate Print 2820A, an act to amend the Public Health Law, in relation to establishing a 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, 54.

THE PRESIDENT: The bill is passed.

Senator Skelos.

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

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

The Secretary will read.

THE SECRETARY: Calendar Number 108, by Senator Velella, Senate Print 67A, an act to amend the General City Law and the Penal Law, in relation to creating.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 173, by Senator Lack, Senate Print 1263A, an act to amend the Labor Law, in relation to direct sellers.

THE PRESIDENT: Read the last section.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 194, by Senator Volker, Senate Print 3679, an act to amend the Criminal Procedure Law, in relation to the disclosure.

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, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 203, by Senator Kuhl, Senate Print 2212, an act to amend the Agriculture and Markets Law, in relation to producer referendum under the Rogers-Allen Law.

THE PRESIDENT: 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, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 270, by Senator Balboni, Senate Print 849, an act to amend the Banking Law, in relation to the maintenance of assets.

SENATOR DOLLINGER: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 272, by Senator Farley, Senate Print 2964, an act to amend the Banking Law, the Education Law, and the Surrogate's Court Procedure Act, in relation to providing.

THE PRESIDENT: 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, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 292, by Senator Skelos, Senate Print 389, an act to amend the Insurance Law, in relation to policy coverage.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 180th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 323, by Senator Rath, Senate Print 6162, an act to amend the Local Finance Law, in relation to the issuance.

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, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 325, by Senator Johnson, Senate Print 6281, an act to amend the Local Finance Law, in relation to the period.

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, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 327, by Senator Larkin, Senate Print 1039, an act to amend the Vehicle and Traffic Law, in relation to the authorizing.

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

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, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 330, by Senator Trunzo, Senate Print 5027, an act to amend the Public Authorities Law, in relation to extending.

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, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 337, by Senator Saland, Senate Print 395, an act to amend the Family Court Act, in relation to evidence.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 418, by Senator Marcellino, Senate Print 392B, an act to amend the Penal Law, in relation to surreptitious video surveillance without consent.

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, 55.

THE PRESIDENT: The bill is passed.

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

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

We'll start with Calendar 108. I believe Senator Hevesi is at a committee

meeting and would like to debate Calendar Number 25.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 108, by Senator Velella, Senate Print 67A, an act to amend the General City Law and the Penal Law, in relation to creating the crimes of urinating or defecating in public.

SENATOR PATERSON: Explanation.

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

SENATOR VELELLA: Senator, this legislation enables a municipality to set up an urban commercial zone to regulate the conduct of individuals within that zone regarding lying down or sleeping on the sidewalks.

The second part of the bill would allow municipalities to make it a misdemeanor for a second offense, and a violation on a first offense, for intentionally urinating or defecating in a public place or on a public sidewalk.

And the third part prohibits

aggressive begging.

That's the same explanation that I have given over the last several years, Senator.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if Senator Velella would yield for a question.

THE PRESIDENT: Senator Velella, will you yield?

SENATOR VELELLA: Yes.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Senator Velella, last year I asked you about the crimes of harassment, menacing, disorderly conduct, laws that are already on the books that -- and I left one out, actually -- that I think -- accosting; it just came to me -- laws that I think already cover these types of circumstances.

With the distinct advantage of hindsight, thinking about what I asked you last year, have you had any further thought?

SENATOR VELELLA: Senator, I take

every question and every comment you make very, very important. And I give a lot of consideration to that.

And I have spent the last year looking at the vagrants of my city and looking at the beggars that aggressively annoy people, and I haven't found them deterred by the existing statutes. That's why we need this statute.

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 8. This act shall take effect on the first day of November.

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 108 are Senators Andrews, Breslin, Duane, L. Krueger, Paterson, and Senator Schneiderman. Also Senator Connor. Ayes, 49. Nays, 7.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 173, by Senator Lack, Senate Print 1263A, an act to amend the Labor Law, in relation to direct sellers.

THE PRESIDENT: Read the last section.

SENATOR DOLLINGER: Explanation, please.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, Senator Montgomery would like to debate that bill. If we could lay it aside temporarily. She's at the Education Committee meeting also.

THE PRESIDENT: The bill is laid aside temporarily.

Senator Smith.

SENATOR ADA SMITH: Thank you, Madam President. I request unanimous consent to be recorded in the negative on Calendar Number 108.

THE PRESIDENT: You will be so recorded, Senator.

Senator Duane.

SENATOR DUANE: Madam President, I would like to be, just to be a little unique, to be -- I would -- I request unanimous consent to be recorded in the negative on Calendar Number 194.

THE PRESIDENT: You will be so permitted and recorded, Senator.

Senator Santiago.

SENATOR SANTIAGO: I request unanimous consent to be recorded in the negative on Calendar Number 108, please.

THE PRESIDENT: You will be so recorded.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Yes, thank you, Madam President. I too would like to request unanimous consent to be recorded in the negative on Calendar 108.

THE PRESIDENT: You will be so recorded.

SENATOR HASSELL-THOMPSON: Thank you.

THE PRESIDENT: Senator Krueger.

SENATOR LIZ KRUEGER: Yes, Madam President, I would like unanimous consent to

be recorded in the negative on Calendar 194.

THE PRESIDENT: You will be so recorded, Senator.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could please take up Calendar Number 337, by Senator Saland.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 337, by Senator Saland, Senate Print 395, an act to amend the Family Court Act, in relation to evidence of child neglect.

SENATOR PATERSON: Explanation.

SENATOR SKELOS: Madam President, if we could lay that bill aside temporarily. I think we have members at committee meetings. So if we could just stand at ease pending the return of a number of individuals.

THE PRESIDENT: The Senate will stand at ease.

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: If we could call up Senator Saland's bill, Calendar Number 337.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 337, by Senator Saland, Senate Print 395, an act to amend the Family Court Act, in relation to evidence of child neglect.

SENATOR PATERSON: Explanation, please.

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

SENATOR SALAND: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR SALAND: Madam President, this bill is a proposal that deals primarily with the subject of an individual who is involved in or participating in a recognized drug rehabilitation program.

And what it proposes to do is to take it from part of the fact-finding considerations, which effectively create the status of an affirmative defense where someone is alleged to have neglected their child because of their dealing with or misusing a drug or drugs so as to impair their judgment

and their ability to care for their child, and to say that instead of voluntarily enrolling in a drug rehab program and have that considered during the course of the fact-finding, as I mentioned earlier, as an affirmative defense, we want to bring it to the end of the dispositional part of the proceeding and say that after the proceeding has been conducted -- after all, this is about neglect or abuse -- and after the case has run its course and a disposition about to be had, that at that point if in fact the parent of the child or guardian of the child that is determined to be neglected or abused has voluntarily engaged in some type of a drug rehab program, that at that point the court will make a determination as to the weight or value of that participation.

Assumedly, somebody who regularly attends such a program would find that the court would be predisposed to recognizing the participation and maintaining the family.

If, however, that person has a history of engaging in drug rehab program activity and then withdrawing from a

program -- perhaps withdrawing after, under the current law, a fact-finding hearing has resulted in the use of that drug rehab program as an affirmative defense -- the court would then be able to either not provide that kind of weight to the drug rehab program or effectively monitor the involvement in a drug rehab program and ensure that the person who is seeking to use it, as previously had been used as an affirmative defense, would in fact maintain the continuity within the program.

The bottom line being that this has been an abuse or a neglect proceeding and the idea is what serves the best interests of the child. And certainly to the extent that families can be reunited and a parent has a drug problem, what is of the utmost importance is that that parent continue regularly in some type of program.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: If I could interrupt for a moment, there will be an immediate meeting of the Rules Committee in

the Majority Conference Room.

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

Senator Paterson.

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

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Senator, I would imagine that the theoretical best interests of the child would be to be with the parent. That's not always the case, and that's why we have to have these proceedings.

But certainly, in the fact-finding phase of the proceeding, the ability to raise the affirmative defense that you are voluntarily seeking counseling for substance abuse, for alcoholism, in my opinion would certainly serve as an incentive to people who are wrought with that type of personal issue

and need this type of service.

What I'm afraid of is that otherwise -- in other words, to make your suggestion law, it would delay the inevitable confrontation where the parent has to take this action until later on. In other words, there's no real incentive to mention it early on in the procedure.

And since one of the real problems with substance abusers is that they don't recognize their problem and that they don't necessarily want to treat it -- and I know here that your interests and all of our interests should focus on the welfare of the child more than this problem. But isn't this problem in a sense an antecedent to the possible development of the child?

In other words, isn't it really that we would want to try to give the biological parent every possible opportunity to serve in that function in a way that doesn't create a safety problem to the child, rather than taking some of the actions that we might have to take later on in a further proceeding?

SENATOR SALAND: Well, let me just say two things in response to that, Senator Paterson.

You will recall a couple of years ago we did the ASFA legislation. At that time what we did is we recognized that certainly while family preservation was important, nothing was more important than the safety and well-being of a child. That, to some extent, really was a change in New York's law, because previously primacy was given to family preservation.

And while we still recognize the importance of family preservation, again, it's not where a child is at risk or his or her well-being is at risk.

What I would suggest to you would be that under the evidentiary section of the Family Court Act dealing with family offenses, under 1046, the law provides currently that "proof that a person repeatedly misuses a drug or drugs or alcoholic beverages shall be prima facie evidence that a child who is the legal responsibility of such person is a neglected child."

We have no desire to prevent somebody from rebutting that presumption by saying "I'm in a program and I'm being rehabilitated as part of that program." And by all means, they should have the opportunity to do that.

What I'm saying further, however, is that by merely saying that, that should not be used as a means by which you effectively give yourself, for lack of any other term - and it really doesn't apply -- it applies more in a criminal sense than in a Family Court sense -- but the equivalent of an immunity bath.

And what we are saying is as part and parcel of the court's consideration, when it goes to disposition, that's when it should consider -- that's when it should consider whether the person who's the respondent in the proceeding has in fact been in good faith voluntarily engaged and hasn't used it in effect as a shield to avoid a disposition that might result in the removal of the child or in some type of structured arrangement that might not be what the parent was hoping would be the

outcome.

SENATOR HANNON: Mr. President.

ACTING PRESIDENT MEIER: Senator Hannon.

SENATOR HANNON: May I interrupt for a moment to announce that there will be an immediate meeting, in the Majority Conference Room, of the Committee on Investigations, Taxation and Government Operations.

ACTING PRESIDENT MEIER: Immediate meeting of the Committee on Investigations, Taxation and Government Operations in the Majority Conference Room.

SENATOR DUANE: Mr. President.

ACTING PRESIDENT MEIER: Senator Duane, why do you rise?

SENATOR DUANE: Mr. President, I'm about to speak on this bill, and I was - I'm the ranking member of Investigations. I was hoping they could wait until I've finished debating and speaking on this bill.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, I think Senator Duane raises a very good

point. We've had this problem all day, that we just don't have members here because we are continuing to call committee meetings.

I'm certainly willing to yield to the Senator to conduct his questioning now of Senator Saland, if he chooses. But that means that he's not in the committee meeting, which I'm sure they would want him to be at. So I guess -

ACTING PRESIDENT MEIER: Senator Hannon.

SENATOR HANNON: We'll ask Senator Spano, the chair of that committee, to hold off and then take advantage of Senator Paterson's offer to ask Senator Duane if he would like to, with your concurrence, Mr. President, go now.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: Thank you, Mr. President. And thank you to the Majority and to my colleague Senator Paterson for their work just now on my behalf to be two places at one time. Which I wish I could, but I can't, so -

SENATOR SALAND: Can I just ask Senator Duane -- there's either something wrong with his mike or -- I'm having a problem hearing him.

SENATOR DUANE: Through you, Mr. President, it was said that there was a problem with the mikes last week. Is that still the -- all right, thank you. And I'm so tall, and it's so far down.

(Laughter.)

SENATOR DUANE: Actually, this will be on the bill, Senator Saland.

On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Duane, on the bill.

SENATOR DUANE: All right. All right. Calm down.

(Laughter.)

SENATOR DUANE: I previously have debated Senator Saland on this bill. And he does make his point of view about the purpose of this bill very clear. And I have a lot of respect for that.

But I just disagree with it. And I have said that before, but I do want to put on

the record again why I disagree with this bill.

My concerns have to do with making sure that a mother who enters into a recovery program has that counted in her favor. As I understand it, the way this bill is crafted, going into a recovery program is neither treated as a good thing nor a bad thing, it's just treated as a neutral element for the judge to be making a determination.

And therefore, if a woman decides to go into a drug or alcohol treatment program and she slips or she has a relapse, then that's counted against her. But her actually trying to recover is not counted for her.

And my understanding of drug and alcohol treatment programs is that sometimes it takes a while for the recovery to kick in, and often people don't make it the first time, don't make it in a 28-day program -- or now sometimes it's a two-week program -- and that recovery actually takes a bigger investment, both by the person and by the recovery -- and, by the way, our responsibility to invest in recovery programs.

So if it's neutral for someone to go into the program and if they have a relapse that's counted against them, then in a way they'd be better off not going into the program. So I think there's a disincentive to go into a recovery program.

Also, I'm concerned that in a way, sometimes the people that are brought forward on abuse and neglect don't have the resources, frankly, to hide the dysfunction that might be happening in their families.

But I think that there are many, many middle- and upper-middle-class families where one of the spouses has an alcohol or drug problem, yet they're not reported to the authorities, so they're not in danger of losing their children. And so if when they're in a recovery program they have a relapse, it doesn't really count for anything, even though the children would suffer the same or not suffer the same by the parent having the relapse.

So I'm concerned about the families that -- where the children are in this system and being brought to Family Court.

But really the thing that I am most concerned about is that we need to do everything we possibly can to encourage a parent with a drug or alcohol problem to go into a program. And by making that be something advantageous for them getting their children back, I think is very helpful.

Because remember, if a parent, if a mom is in a drug or alcohol treatment program, they have a relapse, then their children are taken away from them, there's no incentive at all, then, to recover, because the damage has been done and they'll -- and I'm sure that they're depressed, which is one of the things alcohol and drugs are used to cover up.

So at that point, if their children are taken away, there is no hope and there's no reason to go into drug or alcohol treatment. Because I'm sure that mom would fear that she's going to have another relapse and then that will be counted twice against her. So it would become sort of a vicious cycle where a mom has a lot, a lot of trouble to get her children back.

I mean, if I had my children taken

away from me, I think that would make it difficult for me to decide to not drink, because there's a certain hopelessness to having your children removed.

I understand that we're trying to save the childhood of children and what happens to them in families. But I think that instead of making -- instead of using the disincentive model to do this, I think that we need to focus on incentives for parents and especially moms to get their children back.

So I'm going to vote no on it.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Saland would continue to yield.

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Senator, I want to make sure that -- I just want to kind

of qualify this. This is what I believe that you said. And if you didn't, it's certainly acceptable.

But I thought that you said in your earlier remarks that you could understand and you could accept that someone might raise, in the disposition phase of this case, the fact that they are seeking treatment for their substance abuse. If that is the case, if you actually did indicate that, I think therein lies my problem with the legislation.

There's nothing in the law now, as I understand it, that creates a rebuttable presumption that you can raise the issue of volunteerism in any substance abuse and get any consideration for it. So the only consideration you can receive under the law right now is the affirmative defense that takes place in the fact-finding phase of the trial, which is that you are seeking this type of counseling.

Would you be willing to indicate in the actual legislation that down the line, in the disposition phase, that there be any protection for the respondent? Because if you

did, it certainly would cause one to view this legislation through a different spectrum.

I think your earnest attempt to protect the children was recognized. Senator Duane alluded to it as well. But I just think that if someone really is trying to drive an addiction out of their life, it might be something we might want to give some type of consideration to. Because just that decision, and the consistency of following through on it, might establish that the individual is assuming the full consequences of parenting.

SENATOR SALAND: Senator Paterson, there is no intention here, and it's certainly not my intention, to say that somebody within the fact-finding portion of the hearing cannot raise their participation in a drug rehab program.

What I am doing, however, or proposing to do with this legislation is to say that the mere fact that you raise it does not rebut the presumption under 1046 that says, as I read it before, and I'll read in part, "proof that a person repeatedly misuses a drug or alcoholic beverage shall be prima

facie evidence that a child of or who is the legal responsibility of such person is a neglected child."

What I'm saying is you can introduce it. It doesn't give you what I termed before a, quote, unquote, an immunity bath. And then when you get to the dispositional hearing, the new language would say that the court shall consider whether the respondent has enrolled in a recognized rehabilitative program and is participating therein in a regular and satisfactory manner.

And what I'm attempting to do is to say it's important to be involved in a rehab program where you have a drug or alcohol problem. You should not, however, in fits and starts have the ability to stymie the best interests of the child.

To me it's not unlike being stopped along a road where you're driving erratically and someone approaches you, a law enforcement officer, and wants to serve you with a ticket or a citation or charge you with driving while ability impaired or intoxicated, and you say, "Well, no, I'm in a rehab program. I'm taking

some type of course for my drinking and driving problem. Let me go."

It's certainly a consideration. But it should not provide some immunity from what is the underlying charge.

What this is about and what this section of the law is about is dealing with issues of abuse and neglect, Article 10. I don't want to deny somebody the right to either (a) become involved in a rehab program or (b) advise the court that they're involved.

I don't want it to be used as a means to stymie, as the present law provides, the continuation of a proceeding by asserting that as, in effect, an affirmative defense. I want the court to make that consideration.

I believe it's in the best interests of the child that a court make that consideration. And that, first and foremost, that should always be our concern.

ACTING PRESIDENT MEIER: Does any other Senator wish to be heard?

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would like to ask Senator Saland

a question.

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Yes, Senator Saland, you -- I'm trying to understand this, not being a lawyer. So please forgive me, I'm not probably going to be clear with my question. But I'll try.

You say that you will remove the assumption or presumption that one will not be presumed necessarily to be neglectful if they are enrolled in a program for rehabilitation. That aspect you are removing and putting that in essentially at the time of the disposition phase of the case.

I'm wondering why it's not sort of reversed, that in fact the presumption remains that you are not necessarily neglectful, that you are in treatment with the hope that you will be recovering, but that at the time of disposition -- in other words, you would leave

the action at the phase of disposition to determine the extent to which the treatment warrants a person's being considered in neglect or not.

Why do you want to remove some measure of protection from a person who may in fact be genuinely attempting to recover before the disposition phase?

SENATOR SALAND: I'm not removing the ability of a person to submit as part of their case that they were alleged to be neglectful because of their drug or alcohol abuse.

What I'm saying is that it does not in and of itself rebut the presumption or the prima facie finding, under the law as it stands now, that a person has been neglectful because they no longer have the ability to supervise due to their excessive use of drugs and alcohol.

And under the law now, if you come forward and say "I'm voluntarily involved in a drug and alcohol program," that in and of itself is enough to rebut that prima facie finding.

Now, I'm perfectly happy and believe that a person with that type of a problem should have the opportunity to present that as part of his or her case. I do not think, however, that that should be a means by which you stymie the ability to successfully consider whether all of the factors involved in a neglect case are such that a child should (a) be removed or (b) be put in some other type of supervised arrangement.

And when the guardian or parent comes forward and says, "I'm in the XYZ program," that has the ability and has served to accomplish the effective conclusion of a proceeding. Because that in and of itself rebuts the presumption. And that makes it extremely difficult to go further.

I'm saying let the court be the determinant of whether their participation is genuine, is it regular, are they involved. And I believe that the best interests of the child are served by doing that. So the parent or guardian still has the opportunity to allege that they're in a program, but the court is going to have the final say as to

whether their involvement is meaningful, if it serves to better the best interests of the child, whether in fact it's being used merely as some type of a subterfuge to get around what would otherwise be a finding contrary to the respondent's interest but perhaps in the best interests of the child.

I'm not eliminating it, I'm just moving it to another place in the law.

SENATOR MONTGOMERY: Mr. President, just on the bill.

ACTING PRESIDENT MEIER: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Yes, I understand -- the more we have this debate and discussion, the more I understand exactly what Senator Saland is trying to do. And I certainly agree with the intent that he has.

I do, however, wish that we could -- that the way to remedy the problem that he has identified is that he would propose a way of forcing the second phase even though there is a presumption or there is not a presumption of neglect.

In other words, if there were some

mechanism to make it an automatic requirement that in any case, that that case would be - would go before the judge, rather than having the presumption in fact cut off any further action that the state could take.

But having the ability to use this process to in fact encourage parents to engage or at least continue to engage in treatment I think is extremely important. In fact, I've had a number of instances where parents have said to me that they did not want to go into treatment because of the fear of losing their children.

So we have had these kinds of regulations where there was an automatic presumption of guilt, of neglect, children being removed from parents. And once people understand that that is what's going to happen, they don't want to go into treatment.

It also happens in cases of domestic violence. If a woman thinks that her children will be removed because she is victimized by domestic violence, she won't seek help.

So these kinds of -- these laws, be

they law or regulation, really in fact operate to discourage people from doing the very thing that we would like them to do.

So I'm going to continue to oppose this, because I just think that it defeats what Senator Saland actually would like to see happen. And I think that there is another way of doing it without automatically, up-front penalizing a person because they have an illness which happens to be drug or alcohol abuse.

So I'm going to vote no again.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson, and then Senator Krueger.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. If the sponsor would yield to just a couple of questions.

ACTING PRESIDENT MEIER: Senator Saland, do you yield for a question from Senator Hassell-Thompson?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HASSELL-THOMPSON: Thank

you, Mr. President.

Senator Saland, my question really is one for clarity. Is it your contention that the existing legislation says that the person who comes forward and voluntarily says that they are participating in a drug or alcoholism program automatically presumes that they are exempt from child abuse? Is that -

SENATOR SALAND: What happens is in the absence of any other evidence, by making that allegation, you've effectively defeated the prima facie presumption that I've referred to several times previously here.

SENATOR HASSELL-THOMPSON: Mr. President, if the Senator would continue to yield.

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HASSELL-THOMPSON: The word "allegation," could you explain how you meant the word "allegation" in the statement

that you just made?

SENATOR SALAND: Let me read the section, because I've read it in part and referred to having read it in part before. It says -- and this is the part that I've read before -- "Proof that a person repeatedly misuses a drug or drugs or alcoholic beverages shall be prima facie evidence."

Let me -- I'll read now the entire section, because I omit a portion. "Proof a person repeatedly misuses a drug or drugs or alcoholic beverages to the extent that it has or would ordinarily have the effect of producing in the user thereof a substantial state of stupor, unconsciousness, intoxication, hallucination, disorientation, or incompetence, or a substantial impairment of judgment or a substantial manifestation of irrationality, shall be prima facie evidence that a child of or who is the legal responsibility of such person is a neglected child."

And then it goes on to say "except that such drug or alcoholic beverage misuse shall not be prima facie evidence of neglect

when such person is voluntarily and regularly participating in a recognized rehabilitative program."

Now, we're not talking about somebody who may have had too much to drink on occasion, we're not talking about somebody who may have merely staggered down the hallway on occasion, we're talking about somebody who is hallucinating, somebody who's disoriented, somebody whose judgment is substantially impaired.

And I am saying that where you have people who fall into those categories, that in fact it should not be enough to defeat the prima facie finding or determination as it's set forth in our current law by merely saying "I have participated or am participating in a voluntary rehab program."

I am saying, however, that by all means you should introduce that, because the question of whether you've done it in good faith, the question of whether you are regularly participating is an important determinant that a court is going to have to rule on in determining what's in the best

interests of the child.

But to merely in and of itself be able to refute that prima facie finding in the law as exists today by saying "I'm in the program" in my opinion certainly does not serve the best interests of the child.

SENATOR HASSELL-THOMPSON: I'm still not able to get the answer to the specifics of the question that I'm asking, but I'll let that go.

But I would like, Mr. President, to speak on the bill.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson, on the bill.

SENATOR HASSELL-THOMPSON: Thank you.

Senator Saland, I have no disagreement with your findings. I also understand that you have had some experience with many of these cases. I would also like to offer, however, the fact that I also have had many years of experience, and I think that you will be -- it would be just disingenuous for any of us to believe that a person going into court merely says that "I am in a

program" -- and I think that's where you use the word "alleged." It's more than an alleged; they have to show proof to the judge, to the court, and to the court guardians that they are in fact in treatment.

So that prima facie -- in this case, it's more than prima facie. There is proof that has to be shown.

What I think becomes my issue is that we think of alcoholism and substance abuse treatment perhaps as a cure. Anyone who becomes an abuser of alcohol and substance abuse is never cured. They are in a constant state of recovery. There is no cure for alcoholism and substance abuse.

Therefore, by virtue of the fact that it is a constant and ongoing recovery process, there are always opportunities and disadvantages of relapse. And in the case of relapse, even though someone may have successfully completed a year, two years in a TC -- which is a treatment center -- for alcohol or substance abuse, even after two years, they are still always in a perpetual state of recovery. By virtue of that, relapse

is always possible.

By putting -- by changing the law in the way in which I believe your intent - which is a good one, and I don't question that. Because I've worked with families that in many cases I have suggested to them and to the courts that perhaps their children should be in a temporary custody situation because of their inability to give the kind of care that's possible.

But that is on a case-by-case basis. And many of the families who go into treatment -- because we have said on this floor, that we do not put sufficient money into substance abuse treatment programs, and that we are not giving the courts the kind of judiciary discretion that they need in order to be able to investigate and monitor these cases in the way that they do.

Then we then continue to shift the blame and the responsibility for rebuttal onto parents in most cases who have the least resources and least ability to rebut. And so that we find ourselves with hundreds of children being put into foster care with no

hope of being returned to families.

Part of why I must continue to vote no is that only until this Senate sees the relationship between the numbers of penal laws that we pass and the support services that families need in a budgetary process will I then believe that we're on the right track toward really trying to resolve the problems of our children.

But to penalize their parents and take away the only incentive that they have to keep families intact, and perhaps reason for continuing to stay in treatment, does not do that.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Krueger.

SENATOR LIZ KRUEGER: Mr. President, I'd like permission to speak on the bill.

ACTING PRESIDENT MEIER: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Well, I believe that Senator Saland has made some excellent arguments for his desire to change

our law.

I have to say where I think I disagree most strongly is in the bill analysis saying there are no fiscal implications of this bill either at the state level or the local level. To me, listening to this debate today, this proposed legislation is to some degree parallel to our decision in New York State to increase educational standards without providing additional resources for our educational system.

It's clear to me this bill would place more demands on our Family Court systems to extend proceedings and to increase the oversight responsibilities of the courts - the Family Courts that in my city are so overwhelmed that they cannot get attorneys to take cases.

It would put more demands on a system that does not have attorneys and will not pay the attorneys a fair rate to represent families in dire consequences. It will put more demands on our child welfare system to investigate participation in drug treatment and to assure that we have the increase

available in alcohol and drug treatment program slots that meets the requirements of this new law, since we're no longer going to make the presumption of voluntary participation.

It will also result in more children being kept in the foster care system longer, as these cases are evaluated and unfortunately, as I expect, backed up further and further in the Family Court system.

So I don't want to disagree with the Senator that this bill is intended to provide greater protection for children who are at risk, greater protection to children who otherwise might end up remaining in families where there are not the basic standards of care because of the substance abuse or alcoholism problem of the adults.

But I fear that the bill as laid out, without monies attached for an expansion in Family Court, in child welfare, and in drug treatment, will simply result in more children being backed up in the child welfare system.

And unfortunately, in my own city of New York, the assumption that taking a

child away from a bad situation in their home is going to result in their being put in a better and more protective situation is a false assumption, as we know from year in and year out of child welfare crises in the city of New York, and I believe throughout the state.

So while I do agree with the arguments you make in the bill that we want to ensure that the children of our state are protected and that their families, when they suffer from substance abuse and alcoholism, get the treatment they need, I fear that your bill will actually do more harm without financial commitments by the state than it will do good.

And that is why I'd like to explain my vote no on this bill.

Thank you.

ACTING PRESIDENT MEIER: Does any other Senator wish to be heard on the bill?

The debate is closed.

Read the last section.

THE SECRETARY: Section 4. This act shall take effect 120 days.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 337 are Senators Andrews, Duane, Hassell-Thompson, L. Krueger, Montgomery, Santiago, A. Smith, and Stavisky. Ayes, 51. Nays, 8.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Hannon.

SENATOR HANNON: Mr. President, can we go to the regular order, please.

ACTING PRESIDENT MEIER: The Secretary will continue to read in regular order.

THE SECRETARY: Calendar Number 25, by Senator Leibell, Senate Print 2499A, an act to amend the Real Property Tax Law, in relation to providing a tax exception.

SENATOR HEVESI: Explanation.

ACTING PRESIDENT MEIER: Senator Leibell, an explanation has been requested of

Calendar 25 by Senator Hevesi.

SENATOR LEIBELL: Thank you, Mr. President.

This bill adds a new section, 466C, to the Real Property Tax Law to provide a tax exemption on real property owned by members of volunteer fire companies or volunteer ambulance services in Putnam County.

Specifically, this bill would permit a member of a volunteer fire department or ambulance corps in the county to apply for and receive a real property tax exemption of 10 percent on any Putnam County property owned and occupied by such volunteer firefighter or ambulance corps member on his or her personal residence.

The difficulty has been in attracting and retaining the quality volunteer firefighters and emergency personnel that we need within the county. It is believed that this will help us maintain an effective emergency detection system. It will allow us to recruit, train, and maintain.

In the absence of these community-based volunteers, Putnam County

could be faced with a huge financial burden of paid departments or a dangerous reduction of services.

SENATOR HEVESI: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Hevesi.

SENATOR HEVESI: Will the sponsor please yield?

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

SENATOR LEIBELL: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you, Mr. President.

I voted for this bill last year. I understand full well what you're trying to accomplish here. I'm just trying to get a more accurate handle on a couple of things.

So my first question to you is, in Putnam County is there a professional fire department or ambulance corps?

SENATOR LEIBELL: They're all professionals. It's just that they're all

volunteer too. They're not paid.

SENATOR HEVESI: Thank you.

Mr. President, would the sponsor continue to yield?

SENATOR LEIBELL: Yes, Mr. President.

SENATOR HEVESI: Thank you.

Is the problem in Putnam County particularly acute, where there is a real threat that if you don't attract additional volunteers that you really will not be able to appropriately staff the ambulance and firefighting corps?

SENATOR LEIBELL: Well, first let me say that this is not the only time this sort of legislation has been done. There are two fairly recent examples in other counties. I believe Rockland and Chautauqua Counties have passed similar legislation in the last couple of years in this house, and they were enacted into law.

But, yes, it is a more unique situation, possibly, because it has become over the course of years a commuting area. The vast majority of our workers on any given

workday commute some substantial distances, whether it's to White Plains or New York City or elsewhere. Which leaves it more difficult to find volunteers. The commuting time for those people limits their ability to volunteer as members of ambulance corps and fire departments.

SENATOR HEVESI: Mr. President, would the sponsor yield to what probably will be a final question?

ACTING PRESIDENT MEIER: Senator Leibell, do you yield?

SENATOR LEIBELL: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you, Mr. President.

My understanding is that this legislation simply authorizes Putnam County, if they choose to do so, to offer this property tax break. That being the case, there is no fiscal impact to the citizens of the state of New York, and there's only a fiscal impact to the citizens in Putnam County

if they choose to do so.

And that being the case, why wouldn't we offer this option to every locality, every county in New York State?

SENATOR LEIBELL: It probably - it possibly should be. And maybe individual senators could look at doing this and see if it would work in their areas.

I can only speak to this area, which has requested it. And you're correct, it would not be a burden to the State Treasury, and it would be a local option.

SENATOR HEVESI: Okay. Thank you, Mr. President.

On the bill.

ACTING PRESIDENT MEIER: Senator Hevesi, on the bill.

SENATOR HEVESI: Thank you, Mr. President. I fully well appreciate what the sponsor is trying to do here. And I think it's a terrific idea.

But I also think it's a terrific idea not just for the volunteers who would give of their services and risk their lives in Putnam County, but everywhere else.

And I guess this issue is particularly important to me for two reasons. One is that Senator Rath had another well-intentioned piece of legislation that was a little bit more conspicuous in what it did, in that it provided a similar tax break for every locality except for the City of New York. This one just provides it for Putnam County, but the exclusion is nonetheless there.

And I'll tell you why this is important to me and why, though I voted for this last year, I have a difficult time voting for it again. In the wake of 9/11, we had such an incredible response of not just our professional firefighting units in New York City, but volunteers. In fact, the Forest Hills Volunteer Ambulance Corps, in my district, were one of the first responders. And when the South Tower collapsed, their rig was destroyed.

Now, by the grace of God, the members of that volunteer ambulance corps in my district, some of the members of whom I know personally, they survived. But how do I

now tell them that I'm going to vote for a tax break, a significant and worthy tax break, for somebody in some other county in New York State, but that they don't deserve it?

You know, so I'm left to grapple with the question that often we have to grapple with, do you vote no on an imperfect piece of legislation? I think I'm going to vote no in this case. Because I don't know how I would face these folks and tell them that it's okay to offer this benefit to certain individuals, but not to you.

And as well-intentioned as it is by Senator Leibell, and as deserving as I'm sure the volunteers in Putnam County are, not to simply offer this option -- which doesn't disenfranchise anybody else, doesn't hurt the State's Treasury, doesn't do anything negative -- that we don't include this in the bill is unfair.

And maybe I would have let it slide if this was the first time we were seeing a bill like this. But Senator Rath had a print where we had this exact same problem and didn't correct it. And so I have to really

make my thoughts known on this a little poignantly this time by voting no on the bill. We should extend this benefit for everybody at the local option.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: On the bill, please.

ACTING PRESIDENT MEIER: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: This is a very good bill, and a bill that I would suggest every member who has volunteer fire departments should ask their county if they are interested in also considering a bill similar to this.

I would suggest that Senator Hevesi might want to put in a bill where this would be available in the county of Queens. There's nothing to prevent us from putting in bills that would offer this as an option to those communities that wish to opt into it.

I can only say that we have experienced a serious decrease in the number

of volunteers. My village happens to be a hundred percent volunteer fire department. It is very difficult, when you are a commutation community and many people are going into the city, and the young people nowadays seem to have less interest in joining the volunteer fire departments because they have so many other burdens on their shoulders. Many of them have two jobs, and many of them have families, and it's just hard to fit everything in.

Even though I must admit that the community spirit has really increased since 9/11, and those communities that are in the southern and central part of Westchester actually have experienced, for the first time, a sizeable number of volunteers coming forward. That is not true in the northern part of Westchester, nor in Putnam, where your bill is.

But many people feel that, considering what had happened and that in many instances they lost friends or they lost family, they want to do something that they feel is important for their community. And

it's something rather of recent occurrence, and it has proceeded from 9/11. So we are seeing that at least right now.

But I don't know where we will be another year or two from now, when those heartwarming feelings and really desire to go beyond yourself and help other people and help your community, when perhaps that spirit is not so high.

So this is a good bill. It does help to -- I think it will help in attracting people. After all, our property taxes are so killer in our area that this might be of some benefit. And anything we can do to draw upon the younger people who heretofore did join our fire departments as volunteers, anything we can do to attract them is worth trying.

And I think this is a fine bill. And any other county that wishes to have a similar bill, any other legislator can put in a similar bill for their communities, their area. And it's -- after all, it's at local option, so it doesn't harm anyone.

I'll be voting yes.

ACTING PRESIDENT MEIER: Does any

other Senator wish to be heard on the bill?

The debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58. Nays, 1. Senator Hevesi recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 173, by Senator Lack, Senate Print 1263A, an act to amend the Labor Law, in relation to direct sellers.

ACTING PRESIDENT MEIER: Senator Hannon.

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

ACTING PRESIDENT MEIER: Lay the bill aside for the day.

THE SECRETARY: Calendar Number 270, by Senator Balboni, Senate Print 849 -

ACTING PRESIDENT MEIER: I'm sorry, Senator Stavisky.

SENATOR STAVISKY: Mr. President, I request unanimous consent on Calendar Number 108, Senate Print 00067A, in the negative.

ACTING PRESIDENT MEIER: Without objection, Senator Stavisky will be recorded in the negative on Calendar 108.

Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Yes, Mr. President. I would like unanimous consent to be recorded in the negative also on Calendar 108.

ACTING PRESIDENT MEIER: Without objection, Senator Montgomery will be recorded in the negative on Calendar 108.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 270, by Senator Balboni, Senate Print 849, an act to amend the Banking Law, in relation to the maintenance of assets.

SENATOR DOLLINGER: Explanation, Mr. President.

ACTING PRESIDENT MEIER: Senator Balboni, an explanation has been requested with regard to Calendar 270 by Senator Dollinger.

SENATOR BALBONI: Mr. President, this bill seeks to amend Section 202B of the Banking Law, which was created in 1960 for the purposes of requiring foreign banking corporations to maintain assets within the state.

This amendment seeks to drive monies from that regulatory and statutory system into a new type of investment from the foreign bank perspective, and that is programs that fund student loans and affordable housing; namely, the SALLIE MAE and the Federal Home Loan Banks program.

You will hear comments today from, I suspect, Senator Dollinger that will talk about his concern about who is allowed to now be the pledgeable asset for purposes of foreign banks. And I would just remind everyone here who's listening to this debate that this amendment does not affect the regulatory structure that is currently in

place, it merely changes the pledgeable assets for the purpose, the narrow purpose of foreign banking corporations.

And though there may be justifiable concerns about unaffiliated issuers, which I believe is the crux of the difficulty, nonetheless the regulatory scheme is not at issue with this particular legislation, because we use the same regulatory scheme that has been in place since 1960.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Through you, Mr. President, will Senator Balboni yield to a question?

ACTING PRESIDENT MEIER: Oh, I'm sure he will.

Senator Balboni, do you yield for a question from Senator Dollinger?

SENATOR BALBONI: Mr. President, I sought to forestall any of these questions with my analysis. Obviously, my analysis of the Senator's objections was not effective. Therefore, I will yield.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Thank you, Mr. President. It's only the first inning. The first pitch has just been thrown.

SENATOR BALBONI: Uh-oh.

SENATOR DOLLINGER: Senator Balboni, one of the things I'm trying to find out is, are state-chartered banks, are they now able -- do they have to make a pledge requirement to the Superintendent of Banks?

SENATOR BALBONI: I do not know. I assume they do.

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

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

SENATOR BALBONI: Yes, I do, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Do you know whether state-chartered banks, in filing a security pledge with the Superintendent of

Banks, can include unaffiliated issuers and their instruments in the pledge?

SENATOR BALBONI: Mr. President, through you. No, only because I didn't amend that section of law.

As you know, this section of law, 202B, only refers to foreign banking facilities. And therefore, we didn't look into the state banking or the -- I should say the domestic banking side of this.

And I might just ask, I'm really not quite sure of where you're going with the questioning. But that's -- the narrow perspective of this particular bill is what assets foreign banking institutions can use as pledgeable assets for the purpose of driving more money into student loans and affordable housing programs. Which I know, Senator, you think is a good idea.

SENATOR DOLLINGER: No question about that.

Through you, Mr. President, if Senator Balboni will continue to yield.

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

SENATOR BALBONI: I do, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Senator, you've suggested that you don't know whether state-chartered banks have to pledge these assets. Yet the memorandum that you offer in support of this bill says that state-chartered banks are at a marked disadvantage to federally chartered banks because of the small scope of securities that state-chartered banks are permitted to pledge.

Do you know what assets state-chartered banks are permitted to pledge? And if you don't, how could you make that statement in support of the bill?

SENATOR BALBONI: Mr. President, through you. No, I don't.

And I'll tell you why I don't. Because I don't do this for a living. But the guys at the Banking Department, they do. And the folks who invest in these products, they do. And that's where I got this idea from.

SENATOR DOLLINGER: Okay.

Through you, Mr. President, will the Senator yield to another question?

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

SENATOR BALBONI: I yield.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: This bill - in the bill memorandum you also suggest that foreign banking institutions may invest in SALLIE MAE and Federal Home Loan Bank securities.

SENATOR BALBONI: Mm-hmm.

SENATOR DOLLINGER: Is there anything that currently prevents them from doing that?

SENATOR BALBONI: No. And, Mr. President, through you, nor is that suggested by this particular amendment.

This particular amendment refers specifically to the characterization or the utilization of those investments towards the pledgeable asset requirement by the state law; again, Section 202B.

SENATOR DOLLINGER: Okay.

Through you, Mr. President, if Senator Balboni will continue to yield.

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

SENATOR BALBONI: I continue to yield.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: We went through this last time, and I just want to make sure I understand it now.

Who are the unaffiliated issuers that this bill will allow to be substituted for either Federal Home Loan Bank Board or SALLIE MAE or the other federally insured instruments that are required to be pledged now by foreign banks?

SENATOR BALBONI: Mr. President, through you. It depends.

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

ACTING PRESIDENT MEIER: Senator Balboni, do you yield?

SENATOR BALBONI: I do, Mr.

President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Would that include marketable securities that are not guaranteed for repayment by the federal government, the state government, or any other level of government?

SENATOR BALBONI: Mr. President, through you. That would include any of these unaffiliated issuers who meet the requirements of the regulators of the Banking Board, specifically, who, through the vote mechanism described in this section of law, would make the determination as to whether or not in fact these are proper and appropriate investments for the utilization of this -- against the pledgeable requirement of this particular section of law.

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

ACTING PRESIDENT MEIER: Senator Balboni, do you yield?

SENATOR BALBONI: Mr. President.

I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Would it include certificates of participation, known as COPs?

SENATOR BALBONI: Once again -

SENATOR DOLLINGER: Are you familiar with COPs and the way that it works? I mean, it's a nonrecourse guarantee from government that isn't backed by full faith and credit or by taxing revenue but is a conventional financing instrument sometimes used by government.

Could those be pledged as part of the assets?

SENATOR BALBONI: Mr. President, again, through you, it depends. It depends on who applies and what they find appropriate.

SENATOR DOLLINGER: Okay. Through you, Mr. President, if Senator Balboni would continue to yield.

ACTING PRESIDENT MEIER: Senator Balboni, do you yield?

SENATOR BALBONI: Mr. President,

I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Senator Balboni, could it include derivatives? Are you familiar with what derivatives are as a form of government financing?

SENATOR BALBONI: Mr. President, through you. Again, it depends.

And, you know, Mr. President, I would like to thank the Senator at this particular point in time for his attempts to educate myself as to the financial instruments available for this type of marketing.

I would also like to inform the body that I'm sure that Senator Dollinger will be holding a Financing 101 after session itself today, which I would ask for mandatory participation.

But as for the purpose of this particular amendment, again, my suggestion would be that let's not blur the lines between what is a regulatory requirement and duty and a statutory requirement and duty.

And what we are doing here, again,

for everybody watching at home and in the chamber, this is a bill designed to change the pledgeable assets universe to include products such as SALLIE MAE and the Federal Home Loan Bank issuances. And there are others also.

But once again, the filter through which those assets could wind up as being a part of the pledgeable asset requirement for a foreign bank will be the Banking Board's determination that they are in fact of the proper grade, that they have the proper scrutiny by the rating agencies, and they have the proper guarantees.

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

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: As for all of those who are watching back home, I think my wife and your wife are the only two who are watching, and they're the only ones who have an interest, perhaps, in this.

But let me explain why I'm going to vote against this bill again. I'm not opposed when a foreign bank comes to do business in

New York and the Banking Board in this state says: "Wait a minute, you're not from New York State, you're from a northern jurisdiction. If you're going to come in and do business with us, you have to pledge some assets that we can readily turn into cash for reasonable value. You have to pledge that for us in the event that something happens and your financial wherewithal is compromised, whether it's through liquidation or dissolution or receivership."

We require them to pledge this at the Bank Board. So the very first thing the Superintendent of Banks can do, if a foreign bank that does business in this state is in trouble, he can grab cash to claim part of the security that depositors or those who have funds deposited in a foreign bank might lose. So that's critically important to our banking system that we do that.

This bill does two beneficial things which I'm more than willing to buy into, Senator Balboni. Which is to take the Home Loan Bank Board issuance, all their debt, which is federally guaranteed, or SALLIE MAE,

the student loans -- those are all federally pledged as well. They are, in essence, just like the instruments that are described at length on page 1 of this bill: instruments guaranteed for payment by governments of any type in the United States. I'm perfectly willing to do those two things.

What I am unwilling to do, Mr. President, why I think this bill steps too far, is because it says despite the fact that we require foreign banks to give the best kind of security for our citizens' protection, this bill says that you can also include not only these government types of securities, but you can include those of any unaffiliated issuer. Who is the unaffiliated issuer?

With all due respect to Senator Balboni, I've been here for two years of debates and I've never heard a good definition of who is an unaffiliated issuer. What do they issue? What kind of commercial paper is it, and is it at the same level of security as all these government notes that we require that a foreign bank deposit as a condition of doing business in this state?

I would also suggest to Senator Balboni that there is one other flaw in your bill. You suggest that the Superintendent of Banks is going to review the value of that collateral before it's deposited, and that it has to meet certain standards. That's correct in part. Except if you read the bill, it says that the Superintendent has to say it's received the highest rating of an independent rating service designated by the Banking Board.

Which means it's not going to be done by the Superintendent, it's going to be done by a ratings service, whoever they may be. That's not the same thing as having the Superintendent do it.

And secondly, it says if the obligation is rated by more than one such service -- in other words, there are two services, Moody's or some other organization -- then the highest rating of at least two such services will dictate whether it can be used as an asset for the purposes of collateralizing their activity here in the State of New York.

Frankly, Senator Balboni, I get nervous when I see the word unaffiliated or affiliated issuer. I think about derivatives in the county of Orange in California. I wouldn't doubt that there are a number of other counties and governments that have speculated in non-government-backed instruments during the course of the last decade.

I don't want the Superintendent of Banks, who is otherwise requiring foreign banks -- these are banks that don't have a connection to New York. They come in, they start doing businesses, they start taking deposits from our citizens. We require them to put the best kind of security up so that our depositors are secure.

This bill steps away from that ironclad assurance that we will be able to recover against those banks. I think what we're doing, with all due respect, Senator Balboni, is we are diluting the power of the Banking Department in this state to provide adequate security for depositors here. I don't know of any rationalization for it.

I know that you've said it promotes affordable housing. I'm not quite so sure I see how that happens. I understand that this says they can go out and buy the debt instruments from agencies that are involved in affordable housing. I hardly think that will promote affordable housing.

I just believe that this bill steps away from our long tradition of having the most secure banking system in the nation. It's one of the things that has made us the financial powerhouse that we are. This bill is a step away from the notion that you can safely deposit your money in New York, whether you do it with a domestic bank or a foreign bank.

I'm unwilling to retreat from our system, which has stood us in good stead for the better part of two centuries.

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

The debate is closed.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect 120 days.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

SENATOR BALBONI: Unaffiliated issuer, for the record, was an amendment that was suggested by the Banking Department and refers to no self-dealing by the particular issuer. There's your definition, Senator Dollinger.

But I would charge you with the following responsibility. You have raised objections regarding this particular bill, but you've said you back the concept.

Mr. President, I suggest that Senator Dollinger should go over to the State Assembly and Aurelia Greene, who is the sponsor of this bill in that house, and take out that portion of the bill that he objects to, but nonetheless get them to move on this issue at all.

Because though you might not understand the efficacy with funding these types of programs, I assure you that the

people who get the loans for their first home and get their student loans from these programs surely do understand this investment, and they want this kind of money to go in there.

So unfortunately, I am frustrated, not so much that we have to do this bill again here, but because there is absolutely no movement on behalf of the State Assembly -- as you might imagine are other things, like the budget.

I vote in favor of it.

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

SENATOR DOLLINGER: Just to explain my vote, Mr. President.

ACTING PRESIDENT MEIER: I'm sure. Senator Dollinger, to explain his vote.

SENATOR DOLLINGER: Senator Balboni once again leaps from bill to budget with seeming aplomb, much like the cat always landing on its feet. So my plaudit to him.

But, Senator Balboni, I would suggest that this bill does not deal with the issue of affordable housing. This bill simply

says that the instruments from the Home Loan Bank Board can be pledged as security when foreign banks come to New York.

I still think that's a good idea. I'm willing to back the bill on that basis. But I still haven't gotten a definition, Mr. President, of who this affiliated issuer is. I think that's a scary notion, and let's not water down our security provisions in our banking institutions.

Thank you, Mr. President. I vote no.

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

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 270 are Senators Dollinger, Duane, and Paterson.

Ayes, 56. Nays, 3.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, are we through with the calendar?

ACTING PRESIDENT MEIER: Yes, that concludes the calendar, Senator.

SENATOR MARCELLINO: Thank you, sir. May we now return to the reports of standing committees.

I believe you have a report of the Rules Committee, and I ask that it be read.

ACTING PRESIDENT MEIER: That's correct.

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 6622, by Senator Kuhl, an act to amend the General Municipal Law.

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

ACTING PRESIDENT MEIER: All 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 Marcellino.

SENATOR MARCELLINO: Yes, Mr. President. At this time can we take up Senate Bill 6622, by Senator Kuhl.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 436, by Senator Kuhl, Senate Print 6622, an act to amend the General Municipal Law, in relation to the designation.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Can we continue with the other committee reports that

you have at the desk at this time.

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Kuhl, from the Committee on Education, reports the following bills:

Senate Print 4854B, by Senator Balboni, an act to amend the Education Law and the Public Health Law;

6301, by Senator McGee, an act to legalize, validate, ratify and confirm;

6359, by Senator Bruno, an act to adjust certain state aid payments;

And Senate Print 6458, by Senator Bonacic, an act to amend Chapter 447 of the Laws of 2001.

Senator Spano, from the Committee on Investigations, Taxation and Government Operations, reports:

Senate Print 240, by Senator C. Kruger, an act to amend the Alcoholic Beverage Control Law;

384, by Senator Skelos, an act to amend the Executive Law;

493, by Senator Marcellino, an act to amend the Tax Law;

1036, by Senator Larkin, an act to amend the Tax Law;

1246, by Senator Skelos, an act to amend the Tax Law;

1427, by Senator LaValle, an act to amend the Tax Law;

3451, by Senator Marchi, an act to amend the Legislative Law;

4180A, by Senator Spano, an act to amend the Public Lands Law;

4278, by Senator Velella, an act to amend the Alcoholic Beverage Control Law;

4691, by Senator Leibell, an act to amend the Public Officers Law;

5056, by Senator Saland, an act to amend the Tax Law;

6059, by Senator Volker, an act to amend the Alcoholic Beverage Control Law;

6161, by Senator Rath, an act to amend the Legislative Law;

6169, by Senator Balboni, an act to amend the Tax Law;

6103A, by Senator Alesi, an act to

amend the General Municipal Law;

6343, by Senator Seward, an act to authorize;

6444, by Senator Nozzolio, an act to amend the Tax Law;

And Senate Print 6518, by Senator Spano, an act to amend the Arts and Cultural Affairs Law.

All bills ordered direct to third reading.

ACTING PRESIDENT MEIER: Without objection, all bills directly to third reading.

Senator Marcellino.

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

ACTING PRESIDENT MEIER: We have three substitutions, Senator.

SENATOR MARCELLINO: Please make the substitutions, sir.

ACTING PRESIDENT MEIER: The Secretary will read the substitutions.

THE SECRETARY: On page 5, Senator McGee moves to discharge, from the

Committee on Alcoholism and Drug Abuse, Assembly Bill Number 60A and substitute it for the identical Senate Bill Number 2512B, Third Reading Calendar 56.

On page 9, Senator Morahan moves to discharge, from the Committee on Veterans and Military Affairs, Assembly Bill Number 7407B and substitute it for the identical Senate Bill Number 3720B, Third Reading Calendar 145.

And on page 26, Senator Morahan moves to discharge, from the Committee on Aging, Assembly Bill Number 2029 and substitute it for the identical Senate Bill Number 1376, Third Reading Calendar 403.

ACTING PRESIDENT MEIER: Substitutions ordered.

Senator Marcellino.

SENATOR MARCELLINO: Yes, Mr. President. Can you recognize Senator Breslin at this time for a motion to petition out of committee.

ACTING PRESIDENT MEIER: Senator Breslin.

SENATOR BRESLIN: Mr. President, I believe I have a motion at the desk. I

request that it be read and I also request that I heard on the motion.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Senate Print 1980, by Senator Breslin, an act to amend the General Obligations Law, the Civil Practice Law and Rules, and the Public Health Law.

ACTING PRESIDENT MEIER: Senator Breslin.

SENATOR BRESLIN: Mr. President, Bill 1980 is what has been commonly referred to as HMO liability. It's a consumer bill. It's a bill that would bring HMOs into responsibility for their actions relative to negligence.

Doctors can be sued, hospitals can be sued, nurses can be sued, even lawyers can be sued. Health maintenance organizations are trying to cut costs and generally do a good job. But when they substitute prescriptions, release someone early from a hospital, don't order necessary tests, all of which are done on a cost-cutting basis, they should be held responsible for their actions.

Each of my six years here I have introduced this legislation, and in each of those six years it has failed to come for a vote on this floor. Senator Velella has also introduced legislation comparable to the one that passed the Assembly 134 to 10 last year. It's incumbent on this body, the Senate, to come into the new century and to provide the kind of care and legislation necessary to protect patients.

Health care costs increased by just under 7 percent in the year 2001, the largest increase since 1993. What will that do? It will make HMOs try to cut corners further.

And it is important on us -- and remember, this doesn't increase costs, it makes the HMOs more accountable. And if you make them more accountable, they make the right decisions. And I urge this house to pass and approve this motion.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: With regard to Senate Bill 1980, please raise your hands. The Secretary will record those raising their hands.

The Secretary will read the results of those agreeing to the petition.

THE SECRETARY: Those recorded in agreement are Senators Breslin, Brown, Connor, Dollinger, Andrews, Duane, Hassell-Thompson, Hevesi, L. Krueger, Lachman, Montgomery, Onorato, Oppenheimer, Paterson, Sampson, Santiago, Schneiderman, A. Smith, M. Smith, Stachowski, Stavisky. Also Senator Gentile.

ACTING PRESIDENT MEIER: The petition is not agreed to.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, there being no further business, I move we adjourn until Tuesday, March 26th, at 11:00 a.m. sharp.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Tuesday, March 26th, at 11:00 a.m.

(Whereupon, at 4:45 p.m., the Senate adjourned.)