NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 15, 2002

3:12 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 this afternoon to give the invocation is the Reverend Dr. Claude A. Knight, from Vanderbilt Avenue Moravian Church in Staten Island.

REVEREND KNIGHT: The word of the Lord concerning Judah and Jerusalem:

In the days to come, the mountain of the Lord's house shall be established as the highest of the mountains, and shall be raised above the hills. All the nations shall stream to it, and many peoples shall come and say: "Come, let us go to the mountain of the Lord, the house of the God of Jacob, that he may teach us his ways and that we may walk in his paths."

For out of Zion shall go forth instruction, and the word of the Lord from

Jerusalem. He shall judge between the nations, and arbitrate for many peoples. They shall beat their swords into plowshares, and their spears into pruning hooks; nation shall not lift up sword against nation, neither shall they learn war anymore.

O God, in whom we live and move and have our being, as we gather in these sacred chambers, we will express our thanks for the United States of America, a place that we call home, a land where we can enjoy the freedom of movement, the freedom of free speech, and the freedom to practice our religion.

We thank You for the men and women who wrote our Constitution that ensures a democracy that gives every citizen a right to be heard, for the judicial system by which we are governed and the political system that allows us to change leaders and government by ballots rather than bullets and revolution.

Help us, gracious God, always to appreciate the rich heritage that is ours.

We especially pray at this time for our president and all those persons who have the awesome responsibility to make national

decisions. We pray for our governor and our senators and all government officials.

We would ask Your divine presence now on this Senate as it is about to go into another session of its deliberation. Give to our senators clarity of thought, openness of mind, and a resolve to do what is right for their constituents.

Finally, O Lord, we ask for Your peace, Your own shalom, in the Middle East and other places of political strife and unrest, and hasten the day when nation shall no longer lift up sword against nation, nor shall they study war anymore.

Lord, hear our prayer and grant our request. Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Friday, April 12, the Senate met pursuant to adjournment. The Journal of Thursday, April 11, 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 Hannon, from the Committee on Health, reports the following bills:

Senate Print 2452A, by Senator Hannon, an act to amend the Public Health Law;

3389, by Senator LaValle, an act to amend the Public Health Law;

3762A, by Senator Hannon, an act to amend the Public Health Law;

4317A, by Senator Hannon, an act to amend the Public Health Law;

5029, by Senator Hannon, an act to establish;

And Senate Print 6763, by Senator Hannon, an act to amend Chapter 884 of the Laws of 1990.

Senator Seward, from the Committee on Insurance, reports:

Senate Print 6025, by Senator

Seward, an act to amend the Insurance Law;

6370, by Senator Seward, an act to amend the Insurance Law;

6558A, by Senator Seward, an act to amend the Insurance Law;

And Senate Print 6722, by Senator Seward, an act to amend the Insurance Law.

Senator Hoffmann, from the Committee on Agriculture, reports:

Senate Print 1116, by Senator Morahan, an act to amend the Agriculture and Markets Law;

1330B, by Senator Hoffmann, an act to amend the Agriculture and Markets Law;

3555, by Senator Hoffmann, an act to amend the Agriculture and Markets Law;

6628, by Senator Hoffmann, an act to amend the Agriculture and Markets Law;

And Senate Print 6629, by Senator Hoffmann, an act to amend the Agriculture and Markets Law.

All bills ordered direct to third reading.

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

reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

On page number 30, I offer the following amendments to Calendar Number 513, Senate Print Number 6209A, and ask that said 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 MARCELLINO: Madam President, on page number 30 I offer the following amendments to Calendar Number 511, Senate Print 4786C, and I ask that said 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 MARCELLINO: Finally, Madam President, on page number 18 I offer the following amendments to Calendar Number 343, Senate Print Number 4893, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR MARCELLINO: Thank you, Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, I believe there are substitutions at the desk. If we could make them at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 29, Senator Libous moves to discharge, from the Committee on Mental Health and Developmental Disabilities, Assembly Print Number 1914A and substitute it for the identical Senate Bill Number 5511, Third Reading Calendar 502.

On page 30, Senator Maziarz moves to discharge, from the Committee on Environmental Conservation, Assembly Bill Number 7202 and substitute it for the identical Senate Bill Number 3772A, Third Reading Calendar 509.

And on page 31, Senator Bonacic moves to discharge, from the Committee on Finance, Assembly Bill Number 2975 and substitute it for the identical Senate Bill Number 2280, Third Reading Calendar 519.

THE PRESIDENT: The substitutions are ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a privileged resolution, Number 4905A, by Senator Ada Smith. Could we have the title read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator A. Smith, Legislative Resolution Number 4905, memorializing Governor George E. Pataki to proclaim April 15 through 21, 2002, as "Truth, Compassion and Tolerance Week" in New York

State.

THE PRESIDENT: 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.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 112, by the Assembly Committee on Rules, Assembly Print Number 9264C, an act to amend the Public Authorities Law, in relation to providing.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 313, by Senator Libous, Senate Print 2533B, an act to amend the Real Property Tax Law, in relation to the real property tax exemption.

SENATOR HEVESI: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 345, by Senator Maltese, Senate Print 6275A, an act to authorize the Mount Sinai Hospital to file an application.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 353, by Senator Farley, Senate Print 2006, an act to amend the Election Law and the State Finance Law, in relation to requiring proposition authorizing.

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 PRESIDENT: Senator Dollinger, to explain your vote.

SENATOR DOLLINGER: Madam President, just briefly.

This is a bill that I think I've voted against on every other occasion. And the reason is, as I've articulated before, we continue to do these bond issues and we don't take advantage of Senator Farley's wisdom by letting people see the real value of what we'd have to repay.

It strikes me, if we're going to do this, the best way to do it is just to attach this to all the bond issues that go through

this house.

Since I debated this with Senator Farley, I believe in 1994, we have never once done what Senator Farley has advocated. I look forward to that day, Madam President, when we do a bond issue, we send it out to the voters, and we actually put Senator Farley's wise bill into effect when it means something.

Until it really means something, Madam President, I refuse to vote for it. I'll vote no.

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

The Secretary will announce the results.

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

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 383, by Senator LaValle, Senate Print 2082A, an act -

SENATOR BRUNO: Lay it aside for

the day, please.

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

THE SECRETARY: Calendar Number 401, by Senator Marcellino, Senate Print 105, an act in relation to granting a retroactive senior citizen tax exemption.

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

Read the last section.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 411, by Member of the Assembly Canestrari, Assembly Print Number 3638A, an act to amend the Public Health Law, in relation to the establishment.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 415, by Senator Volker, Senate Print 207, an act to amend the Criminal Procedure Law, the Public Health Law, and the Family Court Act, in relation to the authorized destruction.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 429, by Senator Volker, Senate Print 4283, an act to amend the Criminal Procedure Law, in relation to proof of the commission of a previous sexual assault.

THE PRESIDENT: Read the last section.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 431, by Senator -

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 439, by Senator Bruno, Senate Print 6359, an act to adjust certain state aid payments to the Brunswick Central School District.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 470, by Senator Padavan, Senate Print 6411, an act to amend Chapter 890 of the Laws of 1982.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 490, by Senator Morahan, Senate Print 6287, an act to amend Chapter 631 of the Laws of 1987.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 491, by Senator Meier, Senate Print 6391, an act to amend Chapter 534 of the Laws of 2000.

THE PRESIDENT: Read the last

section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

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

SENATOR HEVESI: Madam President.

THE PRESIDENT: Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President. I rise to request unanimous consent to be recorded in the negative on Calendar 439, Senate Print 6359.

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

SENATOR HEVESI: Thank you, Madam President.

THE PRESIDENT: You're welcome.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time return to motions and

resolutions.

And I believe that there is a privileged resolution at the desk by myself and Senator Carl Kruger. I would ask that the resolution be read in its entirety and move for its immediate adoption.

THE PRESIDENT: Motions and resolutions.

The Secretary will read.

THE SECRETARY: By Senators Bruno and C. Kruger, Legislative Resolution Number 4906, condemning the ruthless, heinous acts of terrorism occurring today throughout the world with greater frequency and violence.

"WHEREAS, Freedom and the future security and peace of our state, nation, and the entire world is dependent upon the immediate halting of the cruel acts of terrorism currently being perpetrated without warning; and

"WHEREAS, Since the atrocities that befell our state and nation on September 11, 2001, all Americans have witnessed and been affected by the cruelties of terrorism and now deeply identify with any people who also

suffer under the threat and violence of terrorist attacks; and

"WHEREAS, Attendant to such concern, and in full accord with its long-standing traditions, it is the intent of this legislative body to condemn the ruthless, heinous acts of terrorism occurring throughout the world today; and

"WHEREAS, The residents of the State of New York have firsthand knowledge of the effects of terrorism, including the shocking loss of life due to a myriad of suicide bombings; and

"WHEREAS, Many New Yorkers have friends and relatives living in Israel today, and identify with the pain of loss which all Israelis are currently suffering due to increasing acts of violence in their nation; and

"WHEREAS, The people of New York State and the people of Israel share a united purpose -- the cessation of acts of terrorism; and

"WHEREAS, A national rally in solidarity with Israel and in support of the

war against terrorism will be held Monday, April 15, 2002, at the U.S. Capitol, Washington, D.C.; and

"WHEREAS, Tens of thousands of people from Jewish groups across the country will rally in support of Israel and to denounce Palestinian suicide bombings; and

"WHEREAS, Guest speakers will include former Israeli prime minister Binyamin Netanyahu, Nobel laureate Eli Wiesel, AFL-CIO President John Sweeney, and the relatives of two victims of Palestinian attacks -- one a 14-year-old Israeli boy who once lived in Silver Spring; and

"WHEREAS, Only through the united efforts of all nations will the senseless violence of terrorism end; now, therefore, be it

"RESOLVED, That this legislative body pause in its deliberations to condemn the ruthless, heinous acts of terrorism occurring today throughout the world with greater frequency and violence."

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Thank you, Madam

President.

My colleagues, we've heard the resolution on the floor. And I stand to just make an observation that today people all over this country, and by the tens of thousands, are in Washington, at the Capitol, supporting the president in his war against terrorism and his support for Israel and all that they are contending with from acts of terrorism.

Since 9/11 we can relate to the horror and the pain and the suffering that takes place needlessly when innocent people are literally slaughtered. And what is going on in Israel almost daily is something that is very, very difficult for we in a civilized society to even comprehend.

So it's terribly appropriate that we in this chamber just recognize, through the support in this resolution -- and we ask every member that's in this chamber that would want to be on this resolution to join us in this declaration of support for President Bush and the policies against terrorism, but especially for the support that we have for the people of Israel and the state of Israel.

And to just remember what they are going through, which is a daily and weekly manifestation of the insane horror of people who are just without scruples in inflicting pain on innocent people and are willing to take their own lives, as worthless as they are, to prove whatever point they think they're proving.

So, Madam President, I appreciate the support of our colleagues in this chamber in joining us in this resolution as we unify in support of Israel.

THE PRESIDENT: Thank you, Senator Bruno. Any member who does not wish to be included as a sponsor on this resolution please notify the desk.

Senator Kruger.

SENATOR CARL KRUGER: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR CARL KRUGER: I join today with my colleague Senator Bruno, and my partner in government, in supporting this resolution.

Today tens of thousands of people

are joining hands in a partnership in Washington to support President Bush's actions but, most importantly, to speak out on terrorism.

As we stand in the shadows of 9/11, here as New Yorkers and as Americans we have to pause and recognize the blood that is being lost by our brothers and sisters in Israel, and pledge our undying support to their cause because their fight for democracy is a fight for democracy all over this world.

Thank you.

THE PRESIDENT: 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 Bruno.

SENATOR BRUNO: Madam President, can we at this time have the controversial reading of the calendar.

THE PRESIDENT: The Secretary

will continue to read.

THE SECRETARY: Calendar Number 313, by Senator Libous, Senate Print 2533B, an act to amend the Real Property Tax Law, in relation to the real property tax exemption for voluntary firefighters.

SENATOR HEVESI: Explanation.

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

SENATOR LIBOUS: Thank you, Madam President.

This legislation before us would require the County of Broome to grant a partial, 10 percent property tax exemption to members of the volunteer fire companies and emergency ambulance squads.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: If Senator Libous would yield just for one question.

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

SENATOR LIBOUS: Yes, Madam President, I'd be happy to yield.

THE PRESIDENT: You may proceed,

Senator.

SENATOR OPPENHEIMER: This was raised by my colleagues on this side of the aisle a couple of weeks ago.

And of course I'm very supportive of this bill and think it might help very much in my communities which have volunteer firefighters. My own village is totally volunteer.

And the question that was raised on this side of the aisle was why could we not put in a bill that would make this available to everybody, every entity in the state of New York. Could you answer that?

SENATOR LIBOUS: Senator -- and through you, Madam President -- that certainly can be done. And I believe there are several bills in committee that are similar to that right now.

I know that this is something that has been requested by the county legislature in the County of Broome by home-rule message. It passed this house last year. And it's something that they've been pushing for.

So in this case, I'd like to move

this bill through. And then certainly I would be supportive, Senator Oppenheimer, of any such legislation that would look at it, as long as it wasn't considered a mandate.

Obviously the counties would want to request it, because we wouldn't want to be passing any undue mandates. Because it does have a fiscal note attached to it for the county.

SENATOR OPPENHEIMER: Absolutely.

Thank you, Senator Libous.

On the bill.

THE PRESIDENT: You may proceed, Senator Oppenheimer.

SENATOR OPPENHEIMER: This is a very good bill.

And I think I will draft something -- maybe with your help, Senator Libous -- that would apply to the entire State of New York. Because what is good for your county is good for my county, is good for other counties in the state. And we should make this available, a nonmandated item, at local option, and let the counties deal with it as they wish.

So I will be putting that in.

Thank you.

SENATOR HEVESI: Madam President.

THE PRESIDENT: Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President. I believe there's an amendment at the desk.

THE PRESIDENT: Yes, there is, Senator.

SENATOR HEVESI: Thank you. I'd ask that its reading be waived, and I'd like to be heard on the amendment.

THE PRESIDENT: The reading is hereby waived, and you may proceed on the amendment, Senator.

SENATOR HEVESI: Thank you, Madam President.

Colleagues, this is the second time that I am putting forth this amendment. We did this last week, the exact same amendment, to a bill that Senator Volker sponsored.

This amendment would substitute wording which essentially would provide the entire state of New York with the local option to go ahead and, if a municipality chose to do

so, provide a 10 percent property tax reduction to anyone who is a volunteer emergency service worker.

And while I understand Senator Oppenheimer's comments and Senator Libous's comments, Madam President, my confidence in everybody's comments is waning. Because everybody seems to think, yes, we should go ahead and support a statewide bill. And Senator Morahan sponsors such a bill, and I sponsor such a bill. And everybody says it's a good idea, we should do it for the entire state, we should do it for the entire state, we should do it for the entire state.

But, Madam President, this is the fourth bill this year, today's bill, that doesn't do it for the entire state, it does it only for certain counties. And it's particularly distressing since there are ten different bills that have been introduced that all provide this for certain counties and not for everybody else.

And everybody thinks it's a great idea to do it for the whole state, but this is the fourth time this session that we have seen

it only now for certain counties.

And while, again with great respect and great deference to the wonderful emergency service workers of Broome County and Erie County, for Senator Volker, and Steuben County, for Senator Kuhl, and everybody else, this is a good idea to do for everybody.

And if a municipality is unable to financially afford doing it, they should have the political courage to say "Though we have the option and have been granted this option by the State of New York, it's not a good time to do it, we'll do it when we have the money."

But for the counties that need more than anybody else to encourage individuals to become volunteers, under that legislation and the Morahan bill, they would be able to go ahead and do it right now.

The bottom line is this is good for everybody, and I don't believe that this should be done piecemeal. It's wrong to do it piecemeal. Everybody in the state who volunteers as an emergency service worker risks their lives. More than the certain municipalities that have been listed in the

individual bills have pressing needs in this area.

Please let's remedy this. This amendment that I bring today would allow the entire State of New York to have the option to do this locally. It needs to be done, Madam President, and I urge all of my colleagues to support it.

Short of that, I'm going to be voting no on Senator Libous's bill, though I think it's a perfectly good idea for his constituents to have this benefit afforded to them.

Thank you, Madam President.

THE PRESIDENT: Those Senators in agreement with the amendment please raise your hands.

The Secretary will announce the results.

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

THE PRESIDENT: The motion to amend is defeated.

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

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Hevesi recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 401, by Senator Marcellino, Senate Print 105, an act in relation to granting a retroactive senior citizen tax exemption.

SENATOR PATERSON: Explanation.

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

SENATOR PATERSON: Madam President, the explanation is satisfactory.

(Laughter.)

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

Senator Dollinger.

SENATOR DOLLINGER: Madam President, just call the roll and I'll explain my vote.

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 PRESIDENT: Senator Dollinger, to explain your vote, I presume.

SENATOR DOLLINGER: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR DOLLINGER: I apologize to Senator Marcellino. The bill was laid aside and my intention was simply, as I did last year, to vote against this bill.

And unfortunately, I think the trend of the State Legislature becoming the grand vizier, the czar of property tax exemption states, in this state is coming true. Here's a woman who appears to be clearly entitled to a senior property tax

exemption who should have one and who should have gotten it from her county assessor. We should give them the authority to rectify this problem.

And with respect to the Mount Sinai bill, which in a matter of moments I'm going to ask for unanimous consent to vote against, in that case their lawyer ought to be sued for closing the deal five days into the property tax year. Just a foolish, foolish, foolish move by his lawyer.

Once again, we're absolving lawyers of malpractice claims and we're acting like the grand czar of assessments throughout this state. We ought to take both of these matters, pass statewide legislation, cure the problem, change this rigid, inflexible tax status date. I know the assessors don't like it, but fairness would require that we do so.

Until we do, I'm going to vote no on this bill and in a matter of minutes ask for consent to vote no on the other one as well.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: To explain my vote, Madam President.

I just have to correct my colleague, who voted for this bill last year when it was before us. There is no county assessor that does this. In Suffolk County, where this person resides, the assessment is done by the town assessors. And she has a home-rule message from the Town of Huntington which would allow her to get the money that she is duly owed.

So this was a mistake made by the town assessor. So the legislation that we're talking about here would not necessarily help her.

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

Announce the results.

THE SECRETARY: Ayes, 56. Nays, 1. Senator Dollinger recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Dollinger.

SENATOR DOLLINGER: Madam

President, consistent with my comment earlier -- and I appreciate Senator Marcellino's clarification. But I'd ask for unanimous consent to be recorded in the negative on Calendar Number 345, S6275A, for the same reasons I mentioned earlier.

ACTING PRESIDENT McGEE: Without objection, so noted.

SENATOR DOLLINGER: Thank you.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 429, by Senator Volker, Senate Print 4283, an act to amend the Criminal Procedure Law, in relation to proof of the commission of a previous sexual assault.

SENATOR DOLLINGER: Explanation.

SENATOR VOLKER: I think I'd like to make the same argument that Senator Marcellino made before, it was so effective.

(Laughter.)

SENATOR MARCELLINO: I used the Balboni method.

(Laughter.)

SENATOR VOLKER: Madam President,

this is a bill that when we did sexual assault reform in 2000, which is now the law of this state, it was after a long negotiation and both houses agreed. And I think the vote was something -- I think it was 59 to 2, if I'm not mistaken.

This bill was put in immediately afterwards, by myself, and was the remnants of the Governor's program bill which did not become part of the sexual assault reform bill that passed both houses and was signed by the Governor.

Essentially, there's three parts to this bill. The main part, in my opinion, deals with the issue of the Molineaux Rule, which is called the recognition of bad acts by a person who has committed sexual assaults. In other words, if there are previous sexual assault convictions or, in this case, because of the way the Governor's bill was drafted, in this case sexual offenses that were alleged, and where there is certain proof involved - in other words, evidence of previous bad acts.

One of the reasons for that in sexual assault has to do with the fact that

very often the argument is between the accused and the accuser -- in other words, the victim. And it's a one-on-one crime that's difficult to prove, because it is the word of a victim against the word of the perpetrator.

So what the Molineaux Rule said is you can't use previous bad acts. Now, this bill is also limited by the fact, by the way, that a judge could rule that it could cause an undue hardship to the defendant.

The other two pieces of this bill relate to bail and to lenient sentences. And what this would do is allow the prosecutor the same authority as the defendant to appeal unduly lenient sentences and at the same time also to appeal unduly lenient bail.

In the memo, there's a case cited where a person had been involved in a number of crimes. The person that was attacked had gotten an order of protection that was broken, the person in ended up in jail, there was a bail appeal and the judge allowed the person out on bail. And within a few months, the victim was dead because the person who was bailed killed the victim.

So what this bill -- there are three ways that this bill would change the law. It would say that a person who commits an act of sexual assault and who had previous actions of sexual assault, those could be used in the case in general. It would allow for an appeal of an unduly lenient sentence and also allow for the appeal where the bail is considered to be unduly lenient.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Will the sponsor yield to a question?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT McGEE: Senator Volker, will you yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: Senator, I believe we've been through this bill a couple of times.

SENATOR VOLKER: Yes, we have.

SENATOR DOLLINGER: I just want to be sure I understand it again. This would

include all offenses, indicted or otherwise.

SENATOR VOLKER: Yes, but subject to the restriction that a judge could rule that the evidence would be inappropriate. The general consensus is that obviously if a person is found not guilty, then it would be assumed that that couldn't be used.

But the judge could rule that in the case of somebody who was charged with an offense, that that person could -- that offense could be put into evidence even though they weren't convicted of it.

SENATOR DOLLINGER: Thank you, Madam President. Just briefly on the bill.

ACTING PRESIDENT McGEE: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I believe I've spoken to Senator Volker a number of times about this bill, as have other members of the Democratic conference.

I continue to be concerned -- and I'm not opposed to, frankly, the whole other scope of the bill except the Molineaux provision, because it doesn't include what I think the safeguards are that Senator Volker

would perhaps even concede ought to be in the bill.

Which is if there's an offense which is potentially under indictment which was investigated by criminal authorities but they concluded that an indictment was not warranted, that would seem to suggest that they didn't believe they could meet the test of proving beyond a reasonable doubt that such a crime had been committed.

It's not the equivalent, Senator Volker, of a finding of innocence or lack of guilt. But nonetheless, it's a conclusion by a grand jury or maybe even prior to the offering of the grand jury that the prosecutor doesn't believe that he's got sufficient grounds to justify an indictment.

Yet despite all that, unindicted or even if considered by the grand jury and no bill -- in other words, there's either a prosecutorial decision prior to the presentation to the grand jury or there's a presentation to the grand jury and no bill returned -- nonetheless, that information, that evidence of a prior offense, could be

used or could be offered by the police and the prosecutors in a subsequent trial for the sexual offense, a similar sexual offense.

Which I assume is also part of the bill, that the Molineaux standard of relative comparative circumstances, modus operandi of the crime, would have to be similar in order to justify it.

But my point is, Madam President, that these are enormously prejudicial items to be considered in the context of a criminal trial. They radically change the way that these trials are presented.

They radically change -- just the possibility of presenting that evidence can radically change the defense strategy and radically alter the balance, the fine-tuning that Molineaux, when it came down from the Court of Appeals, tried to establish.

And that was putting reasonable restrictions on similar bad acts and instances in which they can be offered to prove a separate violation, to show propensity, to show motive and intent.

And I would suggest -- I understand

Senator Volker's point, and there's no question in my mind that Molineaux, in a very strict application, may result in some instances in prior bad acts that are very close together not being presented to the jury.

But in my view, this bill, this wide-ranging repeal of Molineaux, is not justified and could, especially in the area of sexual offense, work a terrible injustice. And for those reasons, Madam President, as I've reiterated in prior years, I will vote negative.

ACTING PRESIDENT McGEE: Senator Volker.

SENATOR VOLKER: Yeah, I just wanted -- if I might just answer that.

I know, Richard, you are aware that we are, in this bill, following the evidentiary rule that is patterned after federal Rule of Evidence Number 413 adopted in 1994, which allows evidence of this nature, and particularly in cases of the critical protection of the public from rapists and child molesters.

So I would point out that there is precedent for this rule. It's not as if we're just pulling this out of the air. The federal rules do provide for a so-called Molineaux-type situation.

So I just wanted to point that out.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 11. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 429 are Senators Andrews, Brown, Dollinger, Hassell-Thompson, L. Krueger, Montgomery, Paterson, Santiago, Schneiderman, A. Smith, and M. Smith. Ayes, 48. Nays, 11.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 431, by Senator Velella, Senate Print 5425, an

act to amend the Criminal Procedure Law and the Penal Law, in relation to aggravated criminal conduct.

SENATOR PATERSON: Explanation.

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

SENATOR VELELLA: Yes, Madam President.

This bill is a bill that is a Governor's program bill that creates the crime of aggravated criminal conduct. It makes a Class E felony of aggravated criminal conduct, which is an enhanced charge for misdemeanor offenses committed by habitual misdemeanor or felony offenders.

Under the present law in New York, a defendant may be convicted of an unlimited number of misdemeanors and incur little to no penalty. Under this legislation a defendant who within ten years prior to the date of the offense charged has been convicted of three Class A misdemeanors, three felonies, or a combination thereof, may be charged with the crime of aggravated criminal conduct and sentenced as an E felony offender.

ACTING PRESIDENT McGEE: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. Will Senator Velella yield for a question?

ACTING PRESIDENT McGEE: Senator Velella, will you yield?

SENATOR VELELLA: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR MONTGOMERY: Senator Velella, I'm trying to understand this legislation clearly. Is it your intention that if a person commits the fourth misdemeanor within ten years, based on your legislation -- oh, their third, okay.

So if they commit their third misdemeanor within ten years, according to your legislation, they will be punished as a Class E felon and will face up to four years in state prison?

SENATOR VELELLA: Yeah, when they are convicted the fourth time.

SENATOR MONTGOMERY: On the fourth time.

SENATOR VELELLA: After they've had three bites on the apple, the fourth time they would be convicted under a Class E felony. If they're found guilty. If they did it. If they didn't do it, they go home free.

SENATOR MONTGOMERY: Okay. All right. Thank you, Senator Velella.

SENATOR VELELLA: You're welcome.

SENATOR MONTGOMERY: Madam President, just on the legislation.

ACTING PRESIDENT McGEE: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Right.

My comment, in response to Senator Velella's bill, is to some extent related to an answer that comes to me right from his own memo, which states on the second page that there have been historic decreases in crime across New York State since 1995, according to the FBI. The crime rate in New York was 22 percent lower than the national average in 1998 -- that's the statistics in New York State -- with a 32.4 reduction in overall crime and a 35 percent decrease in violent crime since 1995.

So it says to me that we have a reduction in crime across the board, including in violent crime. Since 1995, it's been a consistent decrease in crime.

So now that we have begun to reduce the need for people to go into state prison because of X numbers of felony arrests and convictions and what have you, we are -- based on this legislation, we're now moving to convict people who have committed misdemeanors and use them, use those convictions of misdemeanors after a certain number -- Senator Velella says after three convictions of a misdemeanor, that person will be automatically punished as an E felon and will face up to four years in state prison.

So, Madam President, since our prisons are made up primarily of men and women of color, because the difference between the committing of an offense, including misdemeanors, which is pretty much even in terms of citizens of color and white citizens -- but the difference in people who end up being incarcerated for the exact same kinds of offenses is, by the time we reach

incarceration phases, it's 85 percent people of color.

So in my estimation, this legislation will feed into the unbalanced system of criminal justice that we have in our state, that's number one, and continue the mistake of punishing people with long prison sentences who have done very, very minor infractions. And those people, I will reiterate, those people will primarily be people of color.

So I'm voting against this legislation, against this trend, and I hope that I will have my colleagues who understand this issue and care very much about it who will join me in voting no.

Thank you.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

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

ACTING PRESIDENT McGEE: The bill is passed.

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

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

ACTING PRESIDENT McGEE: There is no housekeeping at the desk.

SENATOR SKELOS: Please recognize Senator Montgomery.

ACTING PRESIDENT McGEE: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. I would like to be recorded in the negative on Calendar 343.

ACTING PRESIDENT McGEE: So noted.

Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT McGEE: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Yes, I'm sorry. Madam President, I would also like to be recorded in the negative on Calendar Number 343. I didn't remember that it came back. I thought it was laid aside.

SENATOR PATERSON: Madam President, that bill is laid aside for the day.

SENATOR HASSELL-THOMPSON: For the day? Okay.

ACTING PRESIDENT McGEE: To keep the record straight, Calendar Number 343 was amended, was not passed today.

SENATOR HASSELL-THOMPSON: Thank you very much.

ACTING PRESIDENT McGEE: Thank you.

Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT McGEE: I don't believe there's any housekeeping at the desk, Senator Skelos.

SENATOR SKELOS: There being no further business, I move we adjourn until Tuesday, April 16th, at 3:00 p.m.

ACTING PRESIDENT McGEE: On motion, the Senate stands adjourned until Tuesday, April 16th, at 3:00 p.m.

(Whereupon, at 4:03 p.m., the Senate adjourned.)