NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 23, 2002

3:07 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 today once again is a gentleman who needs no introduction, the Reverend Peter G. Young from Blessed Sacrament Church, in Bolton Landing, to give the invocation.

REVEREND YOUNG: Let us pray.

When we meet in session, sometimes we stop listening and use our communication skills to advocate only for our own constituents' agenda. God, You want us to communicate with respect and care to each other, to each Senator in this chamber, so that we might show our New York State citizens and constituents our example of togetherness for the common good of New York State.

Help us to have open ears and hospitable minds, as we listen, as we share,

and as we build the community, instead of disunity, for New York State citizens.

Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, April 22, the Senate met pursuant to adjournment. The Journal of Sunday, April 21, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

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

Senate Print 6624, by Senator Bruno, an act to amend the State Finance Law;

7304, by the Senate Committee on Rules, an act to amend Chapter 405 of the Laws

of 1999;

And Senate Print 7305, by the Senate Committee on Rules, an act making appropriations for the support of government.

Senator Larkin, from the Committee on Racing, Gaming and Wagering, reports:

Senate Print 1663, by Senator Larkin, an act to amend the Business Corporation Law;

3897, by Senator Larkin, an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law;

4137, by Senator Larkin, an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law;

4662, by Senator Padavan, an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law;

4684, by Senator Larkin, an act to repeal Section 369E of the General Business Law;

5228, by Senator DeFrancisco, an act to amend the General Business Law;

And 7018, by Senator Larkin, an act to amend the Racing, Pari-Mutuel Wagering and

Breeding Law.

Senator Balboni, from the Committee on Water Resources, reports:

Senate Print 1711, by Senator Sampson, an act to amend the Environmental Conservation Law;

And Senate Print 6933, by Senator Balboni, an act to amend the Environmental Conservation Law.

Senator Fuschillo, from the Committee on Consumer Protection, reports:

Senate Print 801, by Senator Alesi, an act to amend the General Business Law;

5783, by Senator Skelos, an act to amend a chapter of the Laws of 2001;

6072A, by Senator Marcellino, an act to amend the General Business Law;

6741, by Senator Skelos, an act to amend the General Business Law;

6949, by Senator Velella, an act to amend the General Business Law;

And 7067, by Senator Spano, an act to amend the General Business Law.

Senator Lack, from the Committee on Judiciary, reports:

Senate Print 1389B, by Senator Lack, an act to amend the Estates, Powers and Trusts Law;

1916, by Senator Lack, an act to amend the Real Property Tax Law;

3000A, by Senator Alesi, an act to amend the General Business Law;

3366A, by Senator Lack, an act to amend the Estates, Powers and Trusts Law;

3707, by Senator Hannon, an act to amend the Lien Law;

5513A, by Senator Lack, an act to amend the Estates, Powers and Trusts Law;

6395, by Senator Velella, an act to amend the New York City Civil Court Act;

And Senate Print 6623A, by Senator Bruno, concurrent resolution of the Senate and Assembly opposing amendments to Article VII of the Constitution.

Senator Padavan, from the Committee on Cities, reports:

Senate Print 1720A, by Senator Sampson, an act authorizing the City of New York;

4001, by Senator Larkin, an act to

authorize the City of Newburgh;

6553A, by Senator Padavan, an act to amend the Real Property Tax Law and others;

And Senate Print 6772, by Senator Nozzolio, an act to amend the Administrative Code of the City of New York.

Senator Hannon, from the Committee on Health, reports:

Senate Print 3954, by Senator Velella, an act to amend the Public Health Law;

4089A, by Senator Hoffmann, an act to amend the Public Health Law;

4304, by Senator Spano, an act to amend the Public Health Law;

4989A, by Senator Fuschillo, an act to amend the Public Health Law;

6228, by Senator Spano, an act to amend the Public Health Law;

6327, by Senator Johnson, an act to amend Chapter 572 of the Laws of 1994;

6876, by Senator Maziarz, an act to amend Chapter 841 of the Laws of 1987;

6877, by Senator Maziarz, an act to amend Chapter 433 of the Laws of 1997;

6929, by Senator Hannon, an act to amend the Public Health Law;

And 7163, by Senator Stafford, an act to authorize certain health care professionals.

Senator Velella, from the Committee on Labor, reports:

Senate Print 6513, by Senator Nozzolio, an act to amend the Workers' Compensation Law;

And Senate Print 6713, by Senator Velella, an act to amend the Workers' Compensation Law.

Senator Maziarz, from the Committee on Aging, reports:

Senate Print 1917, by Senator Larkin, an act to amend the Real Property Tax Law;

6360, by Senator Velella, an act to amend the Real Property Tax Law;

And 7101, by Senator Maziarz, an act to amend the Executive Law.

Senator Rath, from the Committee on Local Government, reports:

Senate Print 1627, by Senator

Velella, an act to amend the Real Property Tax Law;

1842, by Senator Maltese, an act to amend the Municipal Home Rule Law;

2586, by Senator Fuschillo, an act to authorize;

2628A, by Senator Rath, an act to amend the Real Property Tax Law;

2654, by Senator Larkin, an act to amend the Real Property Tax Law;

3092, by Senator Stafford, an act to authorize;

3216, by Senator Saland, an act to authorize;

3901, by Senator Fuschillo, an act authorizing the assessor;

4017, by Senator Balboni, an act authorizing the assessor;

4943B, by Senator Leibell, an act to authorize the Town of Putnam Valley;

5391A, by Senator Wright, an act to amend the Real Property Tax Law;

5397, by Senator Meier, an act to authorize the Town of Verona;

5634, by Senator Kuhl, an act to

amend the Town Law;

5770, by Senator Johnson, an act to authorize;

5817, by Senator Hannon, an act to amend Chapter 283 of the Laws of 2001;

6172, by Senator Balboni, an act authorizing;

6361, by Senator Skelos, an act to authorize;

6384, by Senator Skelos, an act authorizing the assessor;

6387, by Senator Skelos, an act authorizing the assessor;

6388, by Senator Skelos, an act authorizing;

6417, by Senator Trunzo, an act in relation to authorizing;

6620, by Senator Skelos, an act to authorize;

6645, by Senator LaValle, an act to authorize;

6682, by Senator Balboni, an act to amend the Nassau County Civil Divisions Act;

6703, by Senator Leibell, an act authorizing;

And Senate Print 6724, by Senator Farley, an act in relation.

Senator Trunzo, from the Committee on Transportation, reports:

Senate Print 3830A, by Senator Larkin, an act to amend the Vehicle and Traffic Law;

4047, by Senator Trunzo, an act to amend the Vehicle and Traffic Law;

5672, by Senator Leibell, an act to amend the Public Authorities Law;

6068, by Senator Spano, an act to amend the Vehicle and Traffic Law;

6324, by Senator Alesi, an act to amend the Vehicle and Traffic Law;

6438, by Senator Nozzolio, an act to amend the Highway Law;

6534, by Senator DeFrancisco, an act to amend the Highway Law;

And 6781, by Senator Maziarz, an act to amend Highway Law.

Senator Kuhl, from the Committee on Education, reports:

Senate Print 1893, by Senator Kuhl, an act to amend the Education Law;

2648, by Senator Kuhl, an act to amend the Education Law;

3062, by Senator Kuhl, an act to amend the Education Law;

4154, by Senator Kuhl, an act to amend the Education Law;

And 6716, by Senator Kuhl, an act to amend the Education Law.

Senator Wright, from the Committee on Energy and Telecommunications, reports:

Senate Print 579A, by Senator DeFrancisco, an act to amend the Public Service Law;

3274, by Senator DeFrancisco, an act to amend the Real Property Tax Law;

6230A, by Senator Wright, an act to amend the Public Service Law;

And 6714, by Senator Wright, an act to amend the Public Authorities Law.

Senator Morahan, from the Committee on Veterans and Military Affairs, reports:

Senate Print 500, by Senator Morahan, an act to amend the Real Property Tax Law;

1536, by Senator LaValle, an act to

amend the Real Property Tax Law;

1764, by Senator Marchi, an act to amend the Executive Law;

1849, by Senator Maltese, an act to amend the Vehicle and Traffic Law;

1933, by Senator Larkin, an act to amend the Education Law;

3145, by Senator Morahan, an act to amend the Executive Law;

4165A, by Senator Morahan, an act to amend the Retirement and Social Security Law;

And 4737A, by Senator Morahan, an act to amend the Military Law.

Senator Saland, from the Committee on Children and Families, reports:

Senate Print 421, by Senator Skelos, an act to amend the Domestic Relations Law;

1368, by Senator LaValle, an act to amend the Domestic Relations Law;

3346A, by Senator Johnson, an act to amend the Criminal Procedure Law;

4230A, by Senator Saland, an act to amend the Domestic Relations Law;

6979, by Senator Saland, an act to amend the Domestic Relations Law;

7199, by Senator Balboni, an act to amend the Social Services Law;

And 7203, by Senator Balboni, an act to amend the Domestic Relations Law.

Senator Marcellino, from the Committee on Environmental Conservation, reports:

Senate Print 6210, by Senator Marcellino, an act to amend the Environmental Conservation Law;

6529, by Senator Larkin, an act to amend the Environmental Conservation Law;

6742, by Senator Marcellino, an act to amend the Environmental Conservation Law;

6743, by Senator Marcellino, an act to amend the Environmental Conservation Law;

6810, by Senator Johnson, an act to amend the Environmental Conservation Law;

7091, by Senator Marcellino, an act to amend the Environmental Conservation Law;

And Senate Print 7094, by Senator Marcellino, an act to amend the Environmental Conservation Law.

All bills ordered direct to third reading.

ACTING PRESIDENT MORAHAN: Without objection, all bills are ordered direct to third reading.

The Secretary will read.

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

As Commissioner of Human Rights, Evonne W. Jennings Tolbert, Esquire, of Roosevelt Island.

ACTING PRESIDENT MORAHAN: Senator Stafford is recognized to move the nomination.

SENATOR STAFFORD: Mr. President, it was indeed a pleasure today to have Evonne Tolbert come before the Finance Committee. She was prepared, she was articulate, enthusiastic, and most sincere.

She has a background that all of us would be proud of: a leading attorney in the litigation field in the private sector, as well as other work with the legal area in the private sector; was a member of the Dinkins

administration in that great city, the greatest city in the world with a population of more than a million people.

Also, Commissioner Tolbert has distinguished herself in the work that she's been doing in the Division of Human Rights.

So it is my pleasure to move her confirmation. And as we often say, but again I say it here today, we compliment the Governor on an excellent appointment. And when the commissioner is confirmed, I'm sure that this will be good for all of us, all of the people of this great Empire State.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Stafford.

Senator Dollinger, on the nomination.

SENATOR DOLLINGER: Thank you, Mr. President.

I rise today because although I can agree with part of what Senator Stafford said, I cannot agree with him in total. He described this nominee as passionate, enthusiastic, and prepared. And there's no

doubt about Commissioner Tolbert's passion. There's no doubt about her qualifications. There's no doubt about her enthusiasm.

But quite frankly, Senator Stafford, I can't tell whether she was prepared, because in my attempt to ask her a series of questions about the operation of this agency, about her twenty-month tenure as the acting or interim commissioner, my colleagues on the Senate Finance Committee decided it doesn't matter, we don't care, we're not concerned about those aspects of this nominee's credentials.

So they decided that they would silence me and take away my ability to ask questions. Senator Kuhl raised a point of order, stood up and said: "Well, this isn't appropriate. We can't ask questions of a nominee of the twenty months that she's been the interim commissioner. This doesn't affect her credentials."

I would suggest to Senator Kuhl, as I tried to in the Finance Committee, that that logic would suggest let's not ever ask anybody any questions about anything. I know that's a

way that some people choose to govern in this house, but it's not the way I choose to govern. It's not the way I think democracy should choose to govern.

I heard complaints in the Senate Finance Committee that I was the one who was holding up people from missing other meetings. I think I reacted then by simply saying, "Boy, democracy is just a time-consuming process. It's a horribly time-consuming thing." It takes a little bit of time, it takes a little bit of effort, it takes a little bit of preparation. You ask questions, you get answers, you react.

That's the way I always thought democracy worked. It worked that way in 1776 in Philadelphia. I'm not convinced it's ever worked that way in the ten years that I've been in Albany.

Let me tell you what I would have asked this nominee. I tried to ask her about the presentation of the 2000 budget, how much money she thought was necessary to make the agency work. Considering we're deliberating on a 2002 budget, I thought that was an

extremely pertinent question.

I attempted to ask her what she thought was necessary to run the agency in 2001, before September 11th. I didn't get an answer to that question. I attempted to ask her what the Governor's feeling was about this agency, since it has been historically chronically underfunded by this governor. I didn't get an answer to that.

I wanted to find out, and I told her that not only did I want to give her a forum for her views, for her passion, for her commitment on this issue, I wanted to give her a megaphone, if not a microphone, so she could blast the voice of justice across New York State.

But she can't do it without resources. I wanted to ask her what resources she needed to be able to do that. My colleagues wouldn't let me ask her that question.

I wanted to ask her about how many lawyers and administrative law judges had been hired by the department, the division during her tenure. They wouldn't let me ask that

question.

I wanted to ask her about the case tracking system that she talked about briefly. She mentioned it; I didn't. I wanted to find out whether a publication that I had read, which suggested that it was simply partnered with the Department of Taxation and Finance - no, I wasn't allowed to ask that question.

I simply wanted to find out from this nominee whether her experience had suggested that we ought to put more money to work in this agency so that it can do its job correctly. I wasn't allowed to ask that question.

Mr. President, I detest voting against nominees who appear to have the credentials that this one does. But from my point of view, I have been advocating for this agency for years that it be properly funded. I've made amendments on the floor of this chamber so that we would put our money where, thank heaven, this commissioner's voice already is, so that we would know how much money is necessary to give this commissioner the tools to do the job right and bring

justice to everyone.

For some reason, my colleagues on that side of the aisle are willing to silence me in attempting to get answers to those questions. I am left with no alternative, Mr. President, but to lodge my protest against the way this division has been funded for the last decade, both partly under Governor Cuomo and, yes, under Governor Pataki -- but, more importantly, how are we going to solve the problem.

Having been denied the opportunity to those answers, Mr. President, I am left with no other choice but to vote no.

ACTING PRESIDENT MORAHAN: Senator Hevesi.

Senator Stafford.

SENATOR STAFFORD: Mr. President, I'm sure Senator Hevesi won't mind. I'll be very brief, as I always am.

Senator, I think we're getting near the end of the session, because you and I seem to be having more communication. That's often the way.

I would just like to set the record

straight. I think the word "silenced" was a poor use of the word. That's my opinion.

And, secondly, I'm sure you'll agree that you can't point to one side or the other, as far as the aisle goes, as far as certain decisions being made today in the Finance Committee when certain judgments were made that I don't disagree with.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you.

Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President. On the nomination.

I'm going to support this nominee. And I voted yes for this nominee in the Senate Finance Committee meeting earlier this morning.

But I must say Senator Dollinger is right on the money with everything he discussed. The questions that he suggested just now that he wanted to have answered I want to have answered.

And let me just remind everybody what this is really about. This is about the

9,000 people out there right now who, because of the backlog in the agency, have to wait upwards of five years to get a disposition as to whether or not they can get some kind of redress, as they have alleged they have been discriminated against. That's what this is about.

And so the purpose here today is not to cause contention or be belligerent, the purpose here today is to -- a couple of things. One is to uncover whether or not the agency is adequately funded. That's pretty clear. The agency has not been adequately funded. The agency was not adequately funded, evidently, under the Cuomo administration or the Pataki administration. We're not concerned with placing blame, but we want to rectify the situation.

The other thing we want to do is try and find out -- and I was going to ask this question today -- exactly how much money do we need to place into the budget to reduce the backlog by hiring a certain number of additional staff. I mean, this is straight mathematics. We're all somewhat well versed

in this. If we have the numbers, we can come up with the amount of money that we need to reduce this backlog.

And I know that the backlog used to be worse, and it's getting better. But the fact of the matter is, this is a problem that can be solved by money. So often we say: "Well, you can't just throw money at the problem." This problem can be solved by money. If we know how much money we have to put into the budget to hire the additional staff, we can cut down the backlog. And the backlog is really unfortunate for people.

Now, a word about what happened in the Finance Committee. In the Finance Committee this morning, though in the past - and Senator Stafford pointed this out about a hearing that I had a number of questions on years ago where we went for well over an hour -- but this morning, for some reason, it was determined that somehow it was inappropriate to ask an individual who has been serving as the acting commissioner of an agency for several years about her budget request to the Governor.

Remember that the underlying premise here is that the Governor has not adequately funded the agency.

And so I believe what Senator Dollinger was getting at, and what I'm getting at, is we want to know that this nominee has been and will continue to be very aggressive with the Governor in lobbying, for her own agency, for the resources needed to accomplish the mission that her entire life's work indicates she is passionate about.

I mean, nobody questioned the character of this nominee. Nobody questioned her background. Everything seemed exquisite and exemplary. In fact, it seems to me that she's been disenfranchised by being such a wonderful advocate and being in such a position to effect positive change and not having the resources in order to do what she needs to do. It must be very frustrating for her.

And, one word in her defense, it must also be uncomfortable, as somebody who serves at the pleasure of the Governor, to come before a committee and essentially say "I

need more money, it's obvious to everyone, but the Governor hasn't given it to me." Very difficult for a nominee to say that.

But we weren't even able to place the questions, because for some reason members of the committee -- and Senator Stafford is right, it wasn't just on one side of the aisle, it was on both sides of the aisle. And that's very unfortunate. But because of that, we didn't have questions answered that were relevant questions. That's unfortunate.

I'm going to give this nominee the benefit of the doubt because of her background and because she speaks so passionately on these issues that if she had the resources she could adequately do what the agency needs to do. And I will give a leap of faith here that she will privately, as adamantly as she can, lobby the Governor for much more money for this agency.

And I don't want to hear that, you know, we're in bad fiscal times now and that's the reason why the agency is underfunded. Because only a few short fiscal years ago, we were flush with cash, with multi-billion

dollar budget surpluses, and this small agency, which only needs a fairly marginal increase in order to cut this backlog significantly, didn't get it.

So I think the Governor's commitment to funding the Human Rights Commission is clear. And I think that the nominee's passion about this is also clear. She needs the resources to do it.

I'm going to support this nominee, but I'd like the nominee privately, if she can't do it publicly, privately to please, please lobby the Governor as hard as possible and to request that this Legislature, the Assembly and the Senate -- because we're the ones who can make restorations to the Executive Budget, that we put the money back -- not back, that we put the money in for increases that can reduce this backlog.

Because if I've been discriminated against, I don't want to have wait up to five years, five years for some redress. That's wrong. Think about all these people. This is not about us in the Legislature. This is not really about the functioning of the Finance

Committee.

This is about the people who have been disenfranchised, where we have set up an appropriate forum and an appropriate structure and that structure is not working properly - not because of bad leadership, apparently, but because the money is not there to do the job that the agency is supposed to do.

And as a result, somebody may get the signal that it's okay to discriminate against people because it will take years and years to get through the process. And we don't want to send that message.

And to everybody sitting there who's a victim of discrimination, and everybody here, including the nominee -- who are articulated so beautifully her background growing up in a segregated community -- how important it is to continue the advances that she has made, that we all strive for, in this particular area. It's absolutely essential.

This is not about personalities. This is not about governance. This is about funding an agency that does a job that must be done. It's not being funded now, so the job

is not being done and people are being hurt as a result.

I support this nominee, but I hope she hears me and I hope the Governor hears me too.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Mendez.

SENATOR MENDEZ: Mr. President, I stand here today to support the nomination of Mrs. Jennings Tolbert. Everything has been said about her excellent background professionally, as the lawyer that she is, as well as within the corporate structure of the United States.

I want to clarify a couple of things. Of course there is a present backlog, but that backlog that exists at the moment has been reduced from over 17,000 cases -- over 17,000 cases -- in 1995, when the Governor took office, so that that backlog has been reduced by 50 percent.

On top of that, I really want to mention that since 1995 the Governor's budget has increased -- to the agency has increased

by 45 percent and staff by 14 percent. Yes, that agency needs more monies, but I also know that with the kinds of monies that they have received with Mrs. Tolbert as an acting commissioner, she has done wonderful things with the agency to the point that the Comptroller, Comptroller McCall, made an audit a couple of years ago, and of the six recommendations that he made to improve the agency's performance, he found that five of those recommendations were already implemented in the agency and the sixth one was in the process of being implemented.

So I want to mention as well that it was during Governor Pataki's administration that a suit that was placed in the Court of Appeals by the NOW organization. That suit was won during the Pataki administration in favor of the state.

But nevertheless, I think that we all should be very happy that a wonderful and highly qualified woman is going to be the commissioner today, hopefully, and that whatever happened before with -- we can all work together to improve the agency and give

our full support to the new commissioner and to the agency.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Mendez.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, thank you, Mr. President.

I want to state right here for the record, because I was asked by press this morning, and I've heard a number of different nominations where people, my colleagues acknowledge their relationship with a person who is being nominated. And I will just say here and now, for the record, that this is a very long-time friend of mine. So I want to set that aside as an issue.

The nominee for commissioner, Commissioner Tolbert, has talked this morning about her own experience. And the particular experience that she's had as a child growing up in the South, as a woman, as an African-American woman and all, I think have given her personally a very unique qualification for this particular job.

In addition, she talked about her commitment that this is not just a job but this is a mission for her, it's a commitment. And it's based on her own experience with discrimination on many levels, and for obvious reasons.

She also is -- by everyone's acknowledgment, she is extremely qualified and has proven in the many jobs that she's had, including private sector and government, that she is competent. So those issues are not in question.

She also spoke about the accomplishments that she has made, even though she was not -- there was no assurance that she would even finally be appointed by the Governor. But in her acting position, she has already worked to reduce the backlog by 39 percent, according to her own report.

She has instituted new systems, computerized the case process, and has gone across the state looking to address issues related to the discrimination of people in different areas. She's worked with businesses, with the private sector and the

public sector, as well as with the people that she intends to serve.

So I don't think there is any question about the competence, the commitment of this nominee.

I'm very -- I feel personally very strange about this, because I was the one that essentially, if you would say, called for the -- to move the nomination and cut off the debate. So my colleague, when he talks about people interrupting the democratic process, I must say I can't blame the Republicans today -- although I would like to, but I can't fully blame them today. We take full responsibility on our side for his grievance.

I will say, however, that I find it very interesting that I do not recall any nominee of the Governor's that will sit in a committee meeting and denounce the Governor's budget proposal. No matter what they may think, they will not, for obvious reasons, do that.

We do, however, very often, when we identify that there is a need for additional funding for any agency -- and we do that every

budget season -- we seek to add funding on the legislative side. And so I think that, to me, is the process that is appropriate for us.

And the questions that we raised, I believe, in terms of the issue of whether or not the agency is funded adequately should be addressed directly to the Governor, mano a mano, and we should not scapegoat this nominee because we do have a problem with the way in which the Division of Human Rights has functioned for years since I've been elected.

And so I agree with my colleague Dollinger that -- Senator Dollinger that we need to look at it, we should have a hearing. But I certainly disagree with the fact that we should scapegoat a woman who has expressed full and complete commitment to doing whatever she can and will continue to work with us.

But we have a problem with funding, and let's deal with that with the Governor as we always do.

Mr. President, I am happy to be able to speak on behalf of the nominee and certainly will be voting for her.

ACTING PRESIDENT MORAHAN: Thank

you, Senator Montgomery.

Senator Smith.

SENATOR ADA SMITH: Thank you -

ACTING PRESIDENT MORAHAN: Let me just interrupt you, Senator Smith.

There's a 15-minute rule on nominations on each side of the aisle. That side of the aisle has extended itself. We have extended it to almost 20 minutes.

But rather than be accused of shutting off debate or closing down or gagging people, we will allow you to speak. But, frankly, you will be last, Senator, to be recognized on that side.

SENATOR ADA SMITH: Thank you, Mr. President. I will be brief.

I do not want the credentials of this fine nominee to be clouded by our desire to ensure that an agency receive all of the necessary funding that it should have.

I was greatly impressed by the nominee's recollections of her childhood in Virginia. Having been born in Amherst County, Virginia, and having walked to the same kind of one-room schoolhouse, and having met those

same factors of discrimination, I can relate very well to what she was saying.

And I'm proud of her for being able to move forward and to become an attorney, and to become not only an attorney but one of renown who everyone has felt has done an excellent job in everything that she has touched.

She has a passion and a knowledge that we need in this state. And I look forward to seeing her move this agency out of the dark ages and to bring forth all of those new ideas so that all of the people who have made claims can be satisfied and the people of New York State can have a worthwhile commissioner.

Thank you. I will be voting in the positive.

ACTING PRESIDENT MORAHAN: The question is on the confirmation of Evonne E. Jennings Tolbert, Esquire, as Commissioner of Human Rights. All in favor of the confirmation signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN:

Opposed, nay.

(No response.)

ACTING PRESIDENT MORAHAN: The nominee is hereby confirmed.

Congratulations, Commissioner.

(Applause.)

ACTING PRESIDENT MORAHAN: The Commissioner is accompanied today by her husband, Dr. Jerome Tolbert; her brother, Spencer Jennings; her sister, Marion Boston; and other friends and relatives. Welcome.

The Secretary will continue to read.

THE SECRETARY: As Inspector General of the Office of the Metropolitan Transportation Authority, Matthew D. Sansverie, Esquire, of Malverne.

ACTING PRESIDENT MORAHAN: Senator Stafford.

SENATOR STAFFORD: Again, Mr. President, I said we had a very fine day today with nominees.

Matthew Sansverie came before us, he has an excellent -- has had excellent experience; indeed, has been in the Nassau

County District Attorney's office. He was in the Department of Law, in charge of the Criminal Prosecutions Bureau, also the Charities Bureau, very, very important in the Attorney General's office; and he also has been with the Battery Park Authority, internal control officer and associate counsel.

And also, Mr. President, I would emphasize that with the experience of Matthew Sansverie, we are going to have an inspector general for the MTA, when he is confirmed, a person who will do the job with dedication, with a tremendous amount of sensitivity, but one who realizes how important the mission is. And again, the state will be better off because of a fine public servant.

ACTING PRESIDENT MORAHAN: The question is on the confirmation of Matthew Sansverie as MTA Inspector General. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed, nay.

(No response.)

ACTING PRESIDENT MORAHAN:

Matthew Sansverie is now confirmed as inspector general of the MTA.

Congratulations. He's here today with his wife, Kristie.

(Applause.)

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: As a member of the State Board of Parole, William R. Crowe, of Kenmore.

ACTING PRESIDENT MORAHAN: Senator Stafford.

SENATOR STAFFORD: Mr. President, it's a pleasure to yield to Senator Rath.

ACTING PRESIDENT MORAHAN: Senator Rath.

SENATOR RATH: Thank you, Senator Stafford.

Mr. President, I am deeply honored to rise to nominate one of my constituents, Bill Crowe, who is in the gallery today, to the Parole Board, the State Board of Parole.

With Mr. Crowe today are his wife, Michela Downey Crowe, and daughters Bridget and Molly, who we are delighted to have here

with us today.

Mr. Crowe is someone I've known for a long time through my district. He's a graduate of our great Syracuse University here, and of course the University of Buffalo Law School, which always gives us a great deal of pride in Western New York.

But I think, as we're looking at the Parole Board, we're certainly looking at a board where we have to have someone who has a lot of experience, not only in the law, as Mr. Crowe does through his extensive private practice -- and well-respected practice, I might add, through the years -- but he has a number of other items that I'd like to mention.

Mr. Crowe was an assistant attorney general, and he served as an acting village judge in the village of Kenmore, an assistant Erie County district attorney, associate counsel presently to the Erie County Water Authority, and many years as a trustee of the village of Kenmore.

And I would submit to you that the Governor, in his wisdom, chose a person for

this job who has a broad reference of experience and will serve very well and with distinction in this.

It gives me a great deal of pleasure to place his name in nomination. Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Rath.

The question is on the confirmation of William R. Crowe as a member of the New York State Board of Parole. All in favor say aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed, nay.

(No response.)

ACTING PRESIDENT MORAHAN: Mr. William R. Crowe is hereby confirmed as a member of the New York State Board of Parole.

Congratulations, Mr. Crowe.

(Applause.)

ACTING PRESIDENT MORAHAN: Mr. Crowe is here today with his wife, Michela, his daughter Bridget and his daughter Molly. Congratulations to all.

(Applause.)

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: As a member of the State Board of Parole, Walter William Smith, Jr., of Clarence Center.

ACTING PRESIDENT MORAHAN: Senator Stafford.

SENATOR STAFFORD: Mr. President, I understand that this fine nominee did live in the Senator on my right, Senator Maziarz's, district, but he has moved to Clarence Center. And I believe that's in Senator Rath's district. So I'll let them decide -- well, I guess it's been decided.

(Laughter.)

SENATOR RATH: I'm up. You can follow me, George.

THE PRESIDENT: Senator Rath.

SENATOR RATH: Thank you, Mr. President. It is with great honor that I rise to place in nomination the name of Walter William -- better known as Bill -- Smith to a reappointment to the Parole Board for the State of New York. He has been a commissioner

since 1996, and the Governor, in his wisdom, has sent the reappointment over to us.

I might point out to you, as I said for my previous nominee -- and of course it looks like law and order is a big thing on the Niagara frontier. I guess it is, Senator Maziarz -- we've got people who are finding themselves distinguished and placed in positions of distinction by the Governor because they themselves are distinguished and will serve the State of New York very well in this role.

Bill Smith has also, besides being a reappointment, served on the Crime Victims Board of the State of New York and was in charge of the Buffalo Office of the CVB, including the investigators serving ten western New York counties. He also served as a special investigator in the Erie County Department of Social Services and graduated from the State University of New York.

And again, we're always glad to be able to note SUNY students and SUNY graduates whenever they are in the chamber, because we're particularly proud also of SUNY.

So it gives me a great deal of pleasure to present the name of Bill Smith as a reappointment to the Board of Parole.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Rath.

Senator Maziarz.

SENATOR MAZIARZ: Thank you very much, Mr. President. Thank Senator Stafford, the chair of the Finance Committee.

I want to rise to support the nomination of Bill Smith. I've known Bill for a number of years. The only bad thing I could ever say about Bill Smith was that he used extremely poor judgment when he moved out of my Senate district.

But he has been, for a number of years, a member of the Crime Victims Compensation Board. He understands the effect of crime on -- particularly on victims. And he's done a great job since 1996 as a member of the Board of Parole, and I know that he will continue. And Governor Pataki has made an excellent choice.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Maziarz.

The question is on the confirmation of Walter William Smith as a member of the New York State Board of Parole. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed, nay.

(No response.)

ACTING PRESIDENT MORAHAN: Walter William Smith is hereby confirmed as a member of the New York State Board of Parole.

Congratulations, Mr. Smith.

(Applause.)

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: As sheriff of Cayuga County, James C. Moochler, of Owasco.

ACTING PRESIDENT MORAHAN: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President. On the nomination.

Mr. President and my colleagues, a vacancy in the Cayuga County sheriff's

position was not something anyone planned for, but Governor Pataki's nominee to fill that vacancy could not have been better trained for this position.

Jim Moochler combines a lifetime of law enforcement experience with a keen knowledge and interest in his home county of Cayuga. The Governor's decision, Governor Pataki's decision to nominate Jim Moochler is one of credential, is one of experience, and is one in the best interests of Cayuga County.

Jim Moochler has served in many capacities, preparing him for this position. He himself is a career law enforcement professional, serving, after the Marine Corps, over 30 years as a member of New York's finest, the New York State Police, rising through the ranks and eventually becoming a major and troop commander for Troop B in New York State.

After that great record of service, one could expect an individual, after 30 years in a very stressful and yet important position, deciding to sit on the back porch and rock away for retirement. But that's the

last thing on Jim Moochler's mind. That he came home to the place where he grew up and was educated to serve in a variety of capacities that have been earmarked by just simply great community service -- service to his community, service to his county, service to the city of Auburn.

When there was a crisis in the city of Auburn needing a new police chief to serve on an interim basis, the call came out for Jim Moochler, and Jim Moochler was there and served with great distinction.

Similarly, when there was an issue of management within the city, because of retirements and passing on, that a city manager was needed, again, Jim Moochler was called upon and served with distinction as city manager for an interim basis to help in the management of a large city, the largest city in the central Finger Lakes.

Jim has also been elected as a county legislator, but most recently as a judge, serving as town justice for the town of Owasco in Cayuga County.

Jim has presented a variety of

experiences, a variety of qualifications that Governor Pataki recognized. And as usual in Governor Pataki's criminal justice appointments he really has served and found outstanding individuals, and Jim Moochler is in that category.

I'd also like to say that he's here today, with his wife, Aggie, who later this year they will be celebrating -- excuse me, last year, in September, they celebrated their 50th wedding anniversary, and now they're on their 51st year. So I want to congratulate the Moochlers for that outstanding accomplishment. It shows Jim's commitment to not just community but family.

And that I, along with Assemblyman Gary Finch, who represent Cayuga County -- and Assemblyman Finch is here today to support Governor Pataki's nomination -- Mr. President and my colleagues, it's an outstanding individual who I am very honored to support for this nomination. I move that Governor Pataki's nomination be accepted by the Senate.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank

you.

Senator Stafford.

SENATOR STAFFORD: Mr. President, I'm standing up more than usual. But when anyone has been commander of Troop B, I have to acknowledge them. I just can't believe that anybody can be troop commander up in our area and move to Auburn, or Cayuga County.

But on a serious note, I would just point out that Major Moochler was responsible, after Major Ambler left, for planning and commanding the State Police during the 1980 Olympics. And just a tremendous, tremendous job was done, and everyone was most impressed.

And I'm sure when he retires, he'll move back to Raybrook. You know, that's Troop B.

ACTING PRESIDENT MORAHAN: Thank you, Senator Stafford.

The question is on the confirmation of James C. Moochler as Cayuga County Sheriff. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed, nay.

(No response.)

ACTING PRESIDENT MORAHAN: James C. Moochler is hereby confirmed as Cayuga County Sheriff.

Congratulations, Mr. Moochler. He is here today with us with his wife, Agnes. Congratulations.

(Applause.)

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: As members of the Empire State Plaza Art Commission, Kate Johns, of Old Chatham, and Dolores Sarno, of Saratoga Springs.

As members of the Advisory Council on Agriculture, Daniel W. Sievert, of Burt, and Suzanne G. West, of Varyburg.

As members of the New York State Office of Science, Technology and Academic Research Advisory Council, Erland E. Kailbourne, of Williamsville, and Brian Ruder, of Ausable Forks.

As a member of the Citizens Policy and Complaint Review Council, Brian W. Cotter, of Rensselaer.

And as a member of the Board of Visitors of the Agricultural and Industrial School at Industry, Patricia A. Tantillo, of West Henrietta.

ACTING PRESIDENT MORAHAN: Senator Stafford.

SENATOR STAFFORD: Move the nominations.

ACTING PRESIDENT MORAHAN: On the nominations, all in favor say aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed, nay.

(No response.)

ACTING PRESIDENT MORAHAN: The nominations are carried. The nominees are confirmed. Thank you.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President.

On behalf of Senator Seward, I wish to call up Senate Print Number 5584A, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MORAHAN: The

Secretary will read.

THE SECRETARY: Calendar Number 18, by Senator Seward, Senate Print 5584A, an act to amend the Insurance Law.

ACTING PRESIDENT MORAHAN: Senator Fuschillo.

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

ACTING PRESIDENT MORAHAN: The Secretary will call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MORAHAN: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, I now offer the following amendments.

ACTING PRESIDENT MORAHAN: The amendments are received and adopted.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, are there any substitutions at the desk?

ACTING PRESIDENT MORAHAN: Yes, there are, Senator.

SENATOR MARCELLINO: Can we have that done, please.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: On page 24, Senator Balboni moves to discharge, from the Committee on Water Resources, Assembly Bill Number 10155A and substitute it for the identical Senate Bill Number 6594A, Third Reading Calendar 467.

On page 26, Senator Marcellino moves to discharge, from the Committee on Environmental Conservation, Assembly Bill Number 8683C and substitute it for the identical Senate Bill Number 4786D, Third Reading Calendar 511.

And on page 34, Senator Volker moves to discharge, from the Committee on Codes, Assembly Bill Number 9404A and substitute it for the identical Senate Bill Number 6131, Third Reading Calendar 612.

ACTING PRESIDENT MORAHAN: The substitutions are ordered.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, may we please adopt the Resolution Calendar, with the exception of Resolution 5043.

ACTING PRESIDENT MORAHAN: The question is on the adoption of the Resolution Calendar. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed, nay.

(No response.)

ACTING PRESIDENT MORAHAN: The Resolution Calendar is adopted.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, there is a resolution at the desk by Senator Breslin, Number 5043. May we please have it read in its entirety and move for its immediate adoption.

ACTING PRESIDENT MORAHAN: In the interests of time, we're going to read the title only and then recognize Senator Breslin.

The Secretary will read.

THE SECRETARY: By Senator

Breslin, Legislative Resolution Number 5043, congratulating the Voorheesville High School Girls Basketball Team and Coach Jon McClement upon the occasion of capturing the New York State Public High School Athletic Association Class C State Championship.

ACTING PRESIDENT MORAHAN: Senator Breslin.

SENATOR BRESLIN: Thank you, Mr. President.

I rise to honor Voorheesville High School, the Blackbirds, who have established a tradition of excellence not only in academics but in basketball as well. And they became Class C state champions this year. And they became Class C state champions with a team that consisted of mostly underclass people.

And the entire team, their coaches -- Jon McClement and the assistant coaches -- and parents were here earlier today. But because they have their academics and other activities, most of them had to return to school.

But we're honored today to have two of them who remained. One, Andrea Burch, who

was an All-State basketball player, was the most valuable player in the Federation tournament, and most importantly, because of her athletics and her academics, has received a full scholarship to Pace University to play basketball.

And with her is Catherine Nicholson. Catherine was the -- in the Federation, got the sportsmanship award. And again more importantly, Catherine will be back next year to lead Voorheesville once again not only to the State Class C Championship but the Federation as well.

And I'd like to have each of the young ladies stand and be recognized as part of that victorious team.

ACTING PRESIDENT MORAHAN: We welcome you to the chamber, and congratulations.

On the resolution, all in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed, nay.

(No response.)

ACTING PRESIDENT MORAHAN: The resolution is adopted.

Congratulations.

(Applause.)

ACTING PRESIDENT MORAHAN: Senator Marcellino.

SENATOR MARCELLINO: Yes, Mr. President. At this time can we have the noncontroversial reading of the calendar.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 318, by Senator Saland, Senate Print 5042A, an act to amend the Real Property Tax Law, in relation to providing.

SENATOR DOLLINGER: Lay it aside, please.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 338, by Senator Skelos, Senate Print 399, an act to amend the Family Court Act and the Criminal Procedure Law, in relation to the age of a child witness.

ACTING PRESIDENT MORAHAN: Read

the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President. I apologize for interrupting the reading.

But can we now call an immediate meeting of the Civil Service and Pensions Committee in the Majority Conference Room.

ACTING PRESIDENT MORAHAN: There will be an immediate meeting of the Civil Service and Pensions Committee in the Majority Conference Room.

The Secretary will read.

THE SECRETARY: Calendar Number 369, by Senator Rath, Senate Print 1452, an act to amend the General Business Law, in relation to the regulation of unsolicited

commercial electronic mail.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 511, substituted earlier today by the Assembly Committee on Rules, Assembly Print Number 8683C, an act to amend the Environmental Conservation Law, in relation to small lead fishing sinkers.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 3. This act shall take effect two years after it shall have become law.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Senator Dollinger.

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

I commend Senator Marcellino for this bill. I have two quick comments. One is, Senator Marcellino, I'm one of those guys who took those sinkers and closed them with my teeth around my fishing line. It may explain my conduct as -

SENATOR MARCELLINO: I was just about to say that.

SENATOR DOLLINGER: I saw it coming.

(Laughter.)

SENATOR MARCELLINO: It explains a lot, Senator.

SENATOR DOLLINGER: But the second thing, Mr. President, while this bill is going to help the fishing and the waterfowl in this state, I hope it calls our attention not just to the sinkers that weigh less than an ounce, but quite frankly the tons and tons and tons of lead paint that is on the walls of

residences in our city.

With all due respect, while we should have a protection program for lead for waterfowl and fish, frankly, the billion dollars that we need to invest in our rural, predominantly rural areas to solve the problem of lead-paint poisoning of our children, remains an outrage.

My hope is that this bill, the recognition in this bill of the danger in lead will not be forgotten, perhaps even at budget time, when this conference or at least this senator brings forward an amendment that says it's time for us to commit the financial resources to rid New York State of the problem of lead-paint poisoning in the homes of our children.

Thank you, Mr. President. I'll vote aye.

ACTING PRESIDENT MORAHAN: Thank you, Senator Dollinger.

Senator Oppenheimer.

SENATOR OPPENHEIMER: I certainly second what Senator Dollinger says.

And I also would like us to look

more closely at not just those lead fishing sinkers that are weighing one-half ounce or less, but, as the environmental movement has suggested, that we see what we can do to get rid of all the lead sinkers. There are certainly alternatives that are available, and we ought to keep all the lead out of our water.

I vote yes.

ACTING PRESIDENT MORAHAN: Thank you, Senator Oppenheimer.

Announce the results.

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

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 546, by Senator Stafford, Senate Print 6577 -

SENATOR MARCELLINO: Lay it aside for the day.

ACTING PRESIDENT MORAHAN: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 555, by Senator LaValle, Senate Print 1879, an act to amend the General Municipal Law, in

relation to creating.

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

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 566, by Senator McGee, Senate Print 4517B, an act authorizing the conveyance of certain state lands.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MORAHAN: The

bill is passed.

THE SECRETARY: Calendar Number 580, by Senator Larkin, Senate Print 6578, an act in relation to creating the Plattekill Library District.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 8. This act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 589, by Senator Padavan, Senate Print 1636, an act to amend the Vehicle and Traffic Law, in relation to prohibiting.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 90th day.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 590, by Senator Meier, Senate Print 2723, an act to amend the Vehicle and Traffic Law, in relation to authorizing.

SENATOR DOLLINGER: Lay the bill aside, please.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 591, by Senator Johnson, Senate Print 3796A, an act to amend the Vehicle and Traffic Law, in relation to proof of effectiveness.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 593, by Senator Trunzo, Senate Print 4597, an act to amend the Vehicle and Traffic Law, in relation to period of validity.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 600, by Senator Volker, Senate Print 135, an act to amend the Civil Practice Law and Rules, in relation to conducting depositions.

SENATOR DOLLINGER: Lay it aside, please.

ACTING PRESIDENT MORAHAN: The

bill is laid aside.

THE SECRETARY: Calendar Number 604, by Senator Balboni, Senate Print 851, an act to amend the Penal Law, in relation to increasing.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 12. This act shall take effect on the first day of November.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 620, by Senator Stafford, Senate Print 6091, an act to amend the Public Authorities Law, in relation to authorizing.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call

the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 623, by Senator Kuhl, Senate Print 1963B, an act to amend the Alcoholic Beverage Control Law, in relation to authorizing.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 2. This act shall take effect in 90 days.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 630, by Senator Alesi, Senate Print 6413, an act to amend the Alcoholic Beverage Control Law, in relation to the sale of soju at retail.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MORAHAN: The bill is passed.

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

Senator Smith.

SENATOR ADA SMITH: Thank you, Mr. President. I request unanimous consent to be recorded in the negative on Calendar Number 600, Bill Number S135.

ACTING PRESIDENT MORAHAN: That's been laid aside, Senator.

SENATOR ADA SMITH: Okay.

ACTING PRESIDENT MORAHAN: Senator Marcellino.

SENATOR MARCELLINO: Can we proceed with the reading of the controversial calendar.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 318, by Senator Saland, Senate Print 5042A, an act to amend the Real Property Tax Law, in relation to providing a tax exemption.

SENATOR HEVESI: Explanation, please.

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

SENATOR SALAND: Thank you, Mr. President.

Mr. President, this is a bill which has been requested by resolution of the Dutchess County legislature. And what it would do would be to provide for a real property tax exemption of 10 percent of assessed value to volunteer firefighters or volunteer ambulance personnel.

The tax entity that could permit that exemption could be the county or any of its cities, towns, or villages. And in order to qualify, you would have to have been a member of the fire company or ambulance

company for some five years.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President. I thank the sponsor for the explanation.

I believe there's an amendment at the desk.

ACTING PRESIDENT MORAHAN: There is an amendment at the desk.

SENATOR HEVESI: I would request that its reading be waived, and I'd like to be heard on the amendment, Mr. President.

ACTING PRESIDENT MORAHAN: The reading is waived, and we recognize Senator Hevesi on the amendment.

SENATOR HEVESI: Thank you, Mr. President. I thank the sponsor for his explanation.

You know, if I had a nickel for every one of these bills that we've passed this session, I'd have a quarter. This is the fifth time we've done one of these bills. And I don't know, I'm beginning to think maybe

it's me. Maybe my powers of persuasion aren't what I thought they would be.

And I'm a little bit confused, because everybody agrees with the comments that I've made, and some of the sponsors of these bills have actually said that they support Senator Morahan's bill. And I now sponsor the exact same bill. Nobody has said that this is a bad idea, and just about everybody has said, "Yeah, we should do it and extend it to everybody else." Yet these bills keep coming, one after the next after the next.

So again, Mr. President, the amendment that we have before us would simply extend this justified, logical, and necessary incentive, slash, reward to heroic members who volunteer for volunteer duty and volunteer ambulance corps and fire departments throughout the entire state of New York.

And, Mr. President, I'd like to just suggest that maybe I have failed here. Because it occurs to me, as I'm thinking why do we keep seeing these bills, that maybe I have failed to adequately persuade everybody

that the Morahan bill or my bill is a better option than this piecemeal approach. And maybe that's because every time I've spoken on one of these bills, I've made some brief comments, I've generally outlined what the problem is. And maybe that's my fault. Maybe I need to correct that.

So what I'll do here is I'll give the benefit of the doubt to when everybody says this is a good idea, we should do it, and I'll give the benefit of the doubt and I'll just have an expectation that we won't see any more of these and we'll see either no more of these but hopefully we will see my bill or Senator Morahan's bill on the calendar soon, and that will satisfy me. That will be my expectation.

If that doesn't happen, in order to redress what I believe is my own failure, I will take the full opportunity the next time one of these bills comes on, and I believe we have two hours on each bill to fully explore with the members of this house -- and this may not persuade anybody, but I'll have to give it a shot -- to fully explore all of the issues,

every single issue having to do with volunteer firefighters and volunteer ambulance workers in many, many counties throughout New York State, particularly in New York City, and get into a discussion of property taxes and why it's necessary to offer this incentive. And we can even talk about elasticity of demand, whether if you provide these incentives you will have a requisite increase in the number of people who are volunteering. And we'll have a full exploration of that.

I hope it doesn't come to that, because it seems obvious to everybody that we need to do this bill, but we don't see that. So I'll give the benefit of the doubt. And next time my failure, Mr. President, will be remedied through my efforts to further impress upon everybody the need to pass your bill, Mr. President, and the bill that I also sponsor.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Hevesi.

Will those senators in agreement with the amendment please raise your hands.

Announce the results.

THE SECRETARY: Those recorded in agreement are Senators Breslin, Brown, Connor, Dollinger, Gentile, Hevesi, L. Krueger, Montgomery, Onorato, Oppenheimer, Paterson, A. Smith, and Stachowski.

ACTING PRESIDENT MORAHAN: The amendment fails.

On the bill, read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MORAHAN: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 590, by Senator Meier, Senate Print 2723, an act to amend the Vehicle and Traffic Law, in relation to authorizing.

ACTING PRESIDENT MORAHAN: Read

the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 1. Senator Montgomery recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 600, by Senator Volker, Senate Print 135, an act to amend the Civil Practice Law and Rules, in relation to conducting depositions.

SENATOR PATERSON: Explanation.

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

SENATOR VOLKER: Mr. President, this is a bill that passed the Senate last year by a vote of -- well, I've got it here someplace -- I think it was 14 negative votes. In the year before, it passed with two

negative votes, I believe, 56 to 2.

But for the first time, and after the years that this bill had been in -- it had been in for three or four years -- the trial lawyers raised an objection, claimed that it might be used to -- against certain major witnesses.

We did some checking on this since then, by the way. And the concept of this bill, which was developed by the New York State Bar Association, and apparently - although I don't think the Office of Court Administration was directly involved, but they are working on legislation relating to conducting interviews by electronic means.

The concept is that in certain cases, and I'm sure they'd be very limited cases, with either the stipulation of the parties or upon a court order, depositions could be taken by telephone or other remote electronic means, to speed up court cases and to provide -- to avoid the necessity for additional expenses and things of that nature.

And I don't want to indicate, I certainly don't want to indicate that maybe

some of the trial lawyers were thinking that it would drop down some court time. But I've got to tell you, this legislation seems to me to be a commonsense approach to something which I understand, in talking to some attorneys who do this sort of litigation, almost all of them believe that it could be useful on an extremely limited basis.

I think the fear is, very honestly, is that maybe some judge would make an order against a major witness, which seems hardly possible, since the judge would be in a situation where he could probably overrule if you could show that there was some major witness who was being attempted to be deposed by telephone or by remote means.

I must be honest with you, I really think this is a good idea. As I say, let me point out to you that no one opposed this for a number of years, and the bill was around. And all of a sudden, last year, this issue came up. And I think it really came up because both the Bar Association and the Office of Court Administration are working on even more extensive bills in relation to the

use of electronic transfers and of using our new technology in dealing with some court cases.

But I think I understand the objection. I guess my response to those who say, Well, you might have a major witness deposed by telephone, even over the objection of the attorneys, it seems to me that we're saying that a judge couldn't see through the necessity for having the vast majority of people interviewed obviously on the witness stand or be part of the case itself.

This is in rare cases where you have people -- I would think mostly depositions where people, you know, from faraway places or whatever could be deposed and save a lot of money for the court and, frankly, for the attorneys themselves.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Senator Dollinger.

SENATOR DOLLINGER: I'm going to vote against this bill, as I did last year, Mr. President. I'm not quite sure how the whole thing works, because I've read the bill again today, but -

ACTING PRESIDENT MORAHAN: Excuse me, Senator. Are you explaining your vote?

SENATOR DOLLINGER: I was going to. I thought the roll had already been called.

ACTING PRESIDENT MORAHAN: Okay, we're not on the roll call yet.

SENATOR DOLLINGER: If we aren't, then, can I just comment on the bill? And then I'll waive my explanation.

ACTING PRESIDENT MORAHAN: Okay, on the bill.

SENATOR DOLLINGER: I'm concerned about giving away the home court advantage here in New York, quite frankly, Mr. President.

I've been involved in depositions with a witness in Argentina, of all places, in the last three months. And I have to admit we eventually did it by telephone, but it was

unbelievably cumbersome and difficult.

And the major reason, Senator Volker, although I understand all the reasons why this makes some sense, that one of the great difficulties we had is that we had both a language problem and, quite frankly, every time I kept asking questions I kept asking the notary public who was present in the remote location: "Is there anybody else in the room coaching the witness as to what he's replying?" And I was told no.

But quite frankly, I still don't believe it, because there would be pauses on the transcript followed by shuffling of documents, followed by testimony from the witness.

I think that this will sort of change the home court advantage and the rule of when someone comes into New York, does business here, they ought to be subject to suit, they ought to appear for depositions, they ought to appear for depositions live.

My guess is that routinely, as a matter of course, whenever there's a witness from an out-of-state defendant, there'll be an

application of the court to allow telephonic depositions for the convenience of witnesses. I think that will, in the long run, potentially increase the cost, increase the involvement of the courts and maybe not achieve the benefits that Senator Volker's legislation is designed to achieve.

For that reason, and because I believe that to do business here you should come here and pay the costs of litigation and appear here for depositions, I'm going to vote against this bill, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Dollinger.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Senator DeFrancisco, to explain your vote.

SENATOR DeFRANCISCO: Yes, I'm voting in the negative.

And a couple of comments. Those who have actually practiced law and have done depositions know that one of things you want to do is to learn about the witness, to see the witness talk, to see how they operate, to see how they're likely to testify, to get an valuation of whether you want to call this witness or how you cross-examine the witness. How you could get that information over a telephone is totally beyond me.

If it's an appropriate case for a telephonic deposition, the parties can stipulate to that. But to be forced into one is wrong.

Now, if there's some insinuation that the trial lawyers may not be in favor of this because of additional fees if the deposition goes on, I don't know. But I don't know of any plaintiff's attorney who happens to be called trial lawyers -- defense attorneys are not trial lawyers, they're just on the side that's right, apparently -- no plaintiff's attorneys that I know of ever delay the case. They want to get them going. The defense attorneys love to delay, because

the more time it goes, the more you wear out the other side.

So whatever the rationale is for this bill, we could do it by stipulation. But no litigant should be forced to do a telephonic communication if they're not in agreement.

ACTING PRESIDENT MORAHAN: Senator Volker.

SENATOR VOLKER: To explain my vote.

I'm confused. I must tell you, I suspect we're talking right over each other here. This bill really -- all this bill says is -- and, Senator DeFrancisco, you know this -- if somebody really wants to delay a case, one of the ways they could do it is refuse to stipulate and force the attorney to find some way to get a deposition from that person. Which if that person is from out of state or, as Richard just said, is out of country, is in a situation where they may not ever be able to get that person to come in and testify in the case.

All this bill does is try to say

that you can go before a judge and the judge -- this happens, by the way, if both parties won't stipulate. I mean, I guess I'm a bit confused because it seems to me that this sets a reasonable middle ground.

And I can't see attorneys -- and the attorneys that I know of, very few of them are probably going to stipulate to this stuff with the other attorney unless they see the same opportunity they see now, and that is to force their opponent into a situation where maybe they can't get any deposition at all. At least you've got a judge now that can say "No, you must bring the fellow in."

My personal opinion is I just -- I agree with you, the both of you, about personal depositions and about the witnesses and all that. I just don't think that this bill is going to interfere with that.

I vote aye.

ACTING PRESIDENT MORAHAN: Thank you, Senator Volker.

I'm going to ask the senators who are voting in the negative to raise their hands at this time.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes, Mr. President, to explain my vote.

I have tremendous respect for Senator Volker and his sincerity in this. But I must concur, as a former defense lawyer, with what Senator DeFrancisco has stated.

We have rules of jurisdiction. We have rules requiring counsel to be present, counsel to be admitted in certain states, to control in some respects where you bring litigation for the convenience of the witnesses, for the convenience of the parties. I have traveled to many exotic places doing disclosure and discovery, and it's not the greatest thing, the greatest part of a lawyer's job.

But it is absolutely clear to me that getting witnesses to do a live deposition as soon as possible very often is what brings a settlement in a case.

And I think that actually this could end up costing more, running up more legal fees, dragging cases out more, and preventing it. Because in my own personal

experience, there's nothing like getting the other side's main witness in a deposition - then you know what kind of a problem you've got.

So I'm voting no, I'm urging people to vote no. I think that if the parties stipulate, there's no reason to go beyond that. And the parties can stipulate at present. So I vote no and encourage a no vote.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 600 are Senators Andrews, Breslin, Brown, Connor, DeFrancisco, Espada, Hassell-Thompson, Hevesi, L. Krueger, Lachman, Montgomery, Onorato, Oppenheimer, Paterson, Sampson, Santiago, Schneiderman, A. Smith, M. Smith, Stachowski, Stavisky. Also Senator Dollinger.

Ayes, 38. Nays, 22.

ACTING PRESIDENT MORAHAN: The

bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President. May we take up Senate Print Number 7304, Calendar Number 727.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 727, Senator Stafford moves to discharge, from the Committee on Finance, Assembly Bill Number 11186 and substitute it for the identical Senate Bill Number 7304, Third Reading Calendar 727.

ACTING PRESIDENT MORAHAN: The substitution is ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 727, by the Assembly Committee on Rules, Assembly Print Number 11186, an act to amend Chapter 405 of the Laws of 1999.

ACTING PRESIDENT MORAHAN: Senator Marcellino.

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

ACTING PRESIDENT MORAHAN: Yes, there is.

SENATOR MARCELLINO: I move to accept the message of necessity.

ACTING PRESIDENT MORAHAN: The motion is to accept the message of necessity. All in favor say aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT MORAHAN: The message is accepted.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 1. Senator Dollinger recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, at this time can we take up Senate Print Number 7305, Calendar Number 728.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 728, Senator Stafford moves to discharge, from the Committee on Finance, Assembly Bill Number 11185 and substitute it for the identical Senate Bill Number 7305, Third Reading Calendar 728.

ACTING PRESIDENT MORAHAN: The substitution is ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 728, by the Assembly Committee on Rules, Assembly Print Number 11185, an act making appropriations for the support of government.

ACTING PRESIDENT MORAHAN: Senator Marcellino.

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

ACTING PRESIDENT MORAHAN: There is a message of necessity and appropriation at

the desk.

SENATOR MARCELLINO: Move to accept the messages of necessity and appropriation.

ACTING PRESIDENT MORAHAN: The motion is to accept the messages. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed, nay.

(No response.)

ACTING PRESIDENT MORAHAN: The messages are accepted, Senator.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 1 -

ACTING PRESIDENT MORAHAN: Senator Padavan, why do you rise?

SENATOR PADAVAN: When you get through with the roll call on this bill, if

you have -

ACTING PRESIDENT MORAHAN: Do you want to speak on this bill, Senator?

SENATOR PADAVAN: No.

ACTING PRESIDENT MORAHAN: The Secretary will announce the results.

THE SECRETARY: Ayes, 59. Nays, 1. Senator Dollinger recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Padavan.

SENATOR PADAVAN: By unanimous consent I'd like to be recorded in the negative on Senate Bill 7304 and Calendar Number 630, Senate Bill 6413.

ACTING PRESIDENT MORAHAN: Without objection, Senator Padavan will be recorded in the negative on Senate Bill 7304 and Senate Bill 6413.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, may we return to the reports of standing committees. I understand there are reports of committees at the desk.

ACTING PRESIDENT MORAHAN: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Leibell, from the Committee on Civil Service and Pensions, reports the following bills:

Senate Print 1783A, by Senator Farley, an act to amend the Retirement and Social Security Law;

2121, by Senator Kuhl, an act to amend the Education Law;

3202A, by Senator Farley, an act to allow;

4608A, by Senator Kuhl, an act authorizing;

5431B, by Senator Morahan, an act to amend the Retirement and Social Security Law;

6103, by Senator Farley, an act to amend the Retirement and Social Security Law;

6381, by Senator Farley, an act to amend the Retirement and Social Security Law;

6527, by Senator Kuhl, an act to authorize;

6849, by Senator Farley, an act to

amend the Retirement and Social Security Law;

6926, by Senator Leibell, an act to amend the Civil Service Law;

6952, by Senator Farley, an act in relation;

7141, by Senator Leibell, an act to amend the Retirement and Social Security Law;

And Senate Print 7215, by Senator Leibell, an act to amend the Administrative Code of the City of New York.

All bills ordered direct to third reading.

ACTING PRESIDENT MORAHAN: Without objection, all bills are moved to the third reading.

Senator Marcellino.

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

ACTING PRESIDENT MORAHAN: No, sir.

SENATOR MARCELLINO: There being no further business, I move we adjourn until Wednesday, April 24th, at 11:00 a.m. sharp.

ACTING PRESIDENT MORAHAN: On

motion, the Senate stands adjourned until Wednesday, April 24th, 11:00 a.m.

(Whereupon, at 4:40 p.m., the Senate adjourned.)