NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

June 12, 2002

11:11 a.m.

REGULAR SESSION

SENATOR PATRICIA K. McGEE, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT McGEE: The Senate will come to order.

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

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

ACTING PRESIDENT McGEE: In the absence of clergy, may we bow our heads in a moment of silence.

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

ACTING PRESIDENT McGEE: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, June 11, the Senate met pursuant to adjournment. The Journal of Monday, June 10, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Espada.

SENATOR ESPADA: Madam President, thank you. I wish to call up my bill, Print Number 6368A, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1247, by Senator Saland, Senate Print 6368A, an act to amend the Real Property Law.

ACTING PRESIDENT McGEE: Senator Espada.

SENATOR ESPADA: Madam President, I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT McGEE: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

SENATOR ESPADA: Madam President, I now offer the following amendments.

ACTING PRESIDENT McGEE: The amendments are received and adopted.

Senator Seward.

SENATOR SEWARD: Yes, Madam President. On behalf of Senator Marchi, on page number 51 I offer the following amendments to Calendar Number 1081, Senate Print Number 2021, and ask that said bill retain its place on the Third Reading Calendar.

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

Senator Seward.

SENATOR SEWARD: On behalf of Senator Leibell, Madam President, on page number 14 I offer the following amendments to Calendar Number 348, Senate Print Number 2362, and ask that that bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT McGEE: The amendments are received and adopted, and the

bill will retain its place on Third Reading Calendar.

SENATOR SEWARD: Madam President, on behalf of Senator Hoffmann, on page number 56 I offer the following amendments to Calendar Number 1162, Senate Print Number 7270, and ask that that bill retain its place on the Third Reading Calendar.

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

SENATOR SEWARD: And finally, Madam President, also on behalf of Senator Marchi, on page number 51 I offer the following amendments to Calendar Number 1083, Senate Print Number 2546, and ask that that bill retain its place on the Third Reading Calendar.

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

Thank you, Senator Seward.

SENATOR SEWARD: Thank you, Madam

President.

ACTING PRESIDENT McGEE: Senator Skelos.

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

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: On page 62, Senator Balboni moves to discharge, from the Committee on Transportation, Assembly Bill Number 69 and substitute it for the identical Senate Bill Number 7462, Third Reading Calendar 1336.

ACTING PRESIDENT McGEE: Substitution ordered.

Senator Skelos.

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

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 60, by Senator Marchi, Senate Print 4004A, an act to amend the Public Authorities Law, in

relation to increasing.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 43. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 104, by Senator Larkin, Senate Print 2655B, an act to amend the General Municipal Law and the Town Law, in relation to the continuation.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the 180th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 44.

ACTING PRESIDENT McGEE: The bill

is passed.

THE SECRETARY: Calendar Number 136, by Member of the Assembly Magee, Assembly Print Number 9599B, an act to amend the Environmental Conservation Law, in relation to nuisance wildlife control operators.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 322, by Senator Rath, Senate Print 6048B, an act to amend the General Municipal Law and the Insurance Law, in relation to the delegation.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 339, by Senator Balboni, Senate Print 850B, an act to amend the Family Court Act and the Domestic Relations Law, in relation to the issuance.

ACTING PRESIDENT McGEE: There is a home-rule message at the desk. Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT McGEE: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 382, by Senator Larkin, Senate Print 1966, an

act to amend the General Municipal Law -

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 385, by Senator Larkin, Senate Print -

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 407, by Senator Spano, Senate Print 4161, an act to amend the Labor Law, in relation to employer account.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 487, by Senator Nozzolio, Senate Print 3776, an act to amend the Correction Law, in relation to compensation.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 543, by Senator Seward, Senate Print 6370, an act to amend the Insurance Law, in relation to certain calculations.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect July 1.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 585, by Senator Rath, Senate Print 6729, an act to amend the Real Property Tax Law, in relation to apportionment.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 652, by Senator LaValle, Senate Print 3017A, an act to amend the Education Law, in relation to mandatory continuing.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect January 1, 2004.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46. Nays, 1. Senator Padavan recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 697, by the Assembly Committee on Rules, Assembly Print Number 8455, an act to amend the Real Property Tax Law, in relation to when a proceeding is deemed abandoned.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 703, by Senator Saland, Senate Print 3216A, an act to authorize the Town of Rhinebeck, in the

County of Dutchess.

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

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 763, by Senator Larkin, Senate Print 6529, an act to amend the Environmental Conservation Law, in relation to solid waste management facilities.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 180th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 773, by the Assembly Committee on Rules, Assembly Print Number 9030B, an act to amend the Retirement and Social Security Law, in relation to deposit.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 813, by Senator Rath, Senate Print 3819A, an act to amend the General Municipal Law and others, in relation to coordination.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 11. This act shall take effect January 1, 2003.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 853, by Senator Trunzo, Senate Print 7280A, an act to amend the -

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1047, by Senator Trunzo, Senate Print 6870, an act to amend the Highway Law, in relation to the use and recovery.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1068, by Member of the Assembly Tocci, Assembly Print Number 7063A, an act creating a temporary state commission on veterans employment.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1109, by Senator Kuhl, Senate Print 6653A, an act to amend the Tax Law, in relation to the tax on sales and compensating use tax.

ACTING PRESIDENT McGEE: Read the last section.

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

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1124, by Senator Saland, Senate Print 2849A, an act to authorize Thomas F. Salmon to transfer.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1139, by Senator Leibell, Senate Print 5286A, an act to amend the Retirement and Social Security Law, in relation to allowing.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1176, by Senator Maltese, Senate Print 7367A, an act to amend the General Municipal Law, in relation to benefits.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1181, by Senator Balboni, Senate Print 4021, an act to amend the Education Law, in relation to regulation.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1184, by Senator LaValle, Senate Print 5470A, an act to amend the Education Law, in relation to mandatory continuing.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect January 1, 2004.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47. Nays, 1. Senator Breslin recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1186, by Member of the Assembly Gunther, Assembly Print Number 9865, an act to amend the Education Law, in relation to the

practice.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1318, by Senator Velella, Senate Print 7334B, an act to amend the Retirement and Social Security Law, in relation to certain impairments.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1321, by Senator Padavan, Senate Print 2736, an act to amend the Education Law, in relation to certain tuition waivers.

ACTING PRESIDENT McGEE: Read the

last section.

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

ACTING PRESIDENT McGEE: Call the roll.

SENATOR DUANE: Lay the bill aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1322, by Senator Trunzo, Senate Print 4670, an act to amend the Highway Law, in relation to the power.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR DOLLINGER: Lay the bill aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1323, by Senator Marchi, Senate Print 6155A, an act to amend the General Municipal Law and the Retirement and Social Security Law, in relation to -

SENATOR DUANE: Lay it aside,

please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1324, by Senator Leibell, Senate Print 6776, an act in relation to special accidental death benefits.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1325, by Senator DeFrancisco, Senate Print 7171, an act to amend the Economic Development Law, in relation to regional advertising programs.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect on the first day of April.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1326, by Senator Leibell -

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

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

THE SECRETARY: Calendar Number 1327, by Senator Leibell, Senate Print 7263A, an act to amend the General Municipal Law and the Retirement and Social -

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1328, by Senator Morahan, Senate Print 7268A, an act to authorize the Town of Stony Point.

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

Read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1329, by Senator LaValle, Senate Print 7292, an act to amend the Executive Law, in relation to requiring.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 60th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1330, by Senator Bruno, Senate Print 7297, an act to amend the Tax Law, in relation to distribution.

ACTING PRESIDENT McGEE: There is a local fiscal impact note at the desk.

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1331, by Senator Morahan, Senate Print 7301, an act authorizing the Village of Spring Valley.

ACTING PRESIDENT McGEE: 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 McGEE: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1332, by Senator Nozzolio, Senate Print 7315, an act to amend the Parks, Recreation and Historic Preservation Law, in relation to designating.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1333, by Senator Padavan, Senate Print 7338, an act to amend the Parks, Recreation and Historic Preservation Law, in relation to the state park.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1334, by Senator LaValle, Senate Print 7358, an act to amend Chapter 534 of the Laws of 1993.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number

1335, by Senator Andrews, Senate Print 7429A, an act to authorize the International Baptist Church, Incorporated.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR DOLLINGER: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1336, substituted earlier today by Member of the Assembly Gantt, Assembly Print Number 69, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1337, by Senator Leibell, Senate Print 7465,

an act to amend the Retirement and Social Security Law, in relation to pension credit.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1338, by Senator Saland, Senate Print 7479, an act to amend the Criminal Procedure Law and the Executive Law, in relation to entry.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT McGEE: The bill

is passed.

THE SECRETARY: Calendar Number 1339, by Senator Rath, Senate Print 7486, an act to amend Chapter 537 of the Laws of 1997.

SENATOR HEVESI: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1340, by Senator Leibell, Senate Print 7493, an act to amend the Retirement and Social Security Law, in relation to providing.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1341, by Senator Skelos, Senate Print 7497, an act to authorize the assessors of the County

of Nassau and the Village of Rockville Centre.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1342, by Senator Volker, Senate Print 7509, an act to amend the Criminal Procedure Law, in relation to challenge.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1346, by Senator Leibell, Senate Print 7528, an act to amend the Retirement and Social Security Law, in relation to the maximum

payment.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1349, by the Senate Committee on Rules, Senate Print Number 7542, an act to amend the Tax Law, in relation to mortgage recording.

ACTING PRESIDENT McGEE: A local fiscal impact note is at the desk.

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT McGEE: The bill

is passed.

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

SENATOR SKELOS: Madam President, if we could go to the controversial calendar and start with Calendar Number 1318, by Senator Velella.

ACTING PRESIDENT McGEE: 1318. The Secretary will read.

THE SECRETARY: Calendar Number 1318, by Senator Velella, Senate Print 7334B, an act to amend the Retirement and Social Security Law, in relation to certain impairments.

SENATOR PATERSON: Explanation.

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

SENATOR VELELLA: Thank you, Madam President.

This is a bill which takes the presumption of an event happening and being caused by a work-related problem for female firefighters or firefighters.

As far back as 1992, it was recognized by this house and by the Assembly

and the Governor that during the course of their duties, firefighters are often exposed to unusual amounts of chemical products, compounds, and noxious gases. This has resulted in excessive incidents of mouth, throat, intestinal, and lung cancers, lymphatic cancers and leukemia, which can be related to the cause of their employment.

This bill removes the discrimination of female firefighters and gives a -- and allows presumptively that evidence of cancer, including neurological, breast, and reproductive system cancers would be presumed to have been caused by their employment and in the discharge of their official duties.

Of course, the presumption could be rebutted by the employer, who by competent evidence could introduce factors that would show that this was not in fact work-related.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Will the sponsor yield to a question?

ACTING PRESIDENT McGEE: Senator

Velella, will you yield for a question?

SENATOR VELELLA: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: Senator, I'm just intrigued. Why is the bill retroactive to June 30th of 1999? Has there been a substantial increase in the number of cases in the last years? Is there something about it why we'd make it retroactive to '99 versus '98?

SENATOR VELELLA: No, because that's when the problem had first manifested itself. And what we felt was since these cancers could be work-related, there were not a great number of female firefighters in the past. And for equity and for justice, we felt that we ought to extend this to those who have had this problem.

It probably would never have been done if nobody ever had these cancers that could be work-related, it was pointed out to us by the fire representatives. And these females operate under a discriminatory

practice, and we want to correct it.

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

ACTING PRESIDENT McGEE: Senator Velella, will you continue to yield?

SENATOR VELELLA: Yes.

SENATOR DOLLINGER: Senator, I understand the theory of this, and I understand that this is based on evidence that shows that there's a higher incidence of these cancers. If that were the case, why wouldn't we make it retroactive to 1980? Because women have obviously been in the fire service and been exposed to these risks. And why go back to just 1999? Why not take this beneficial bill and go back to a point where we could sort of date it with the emergence of -

SENATOR VELELLA: Senator, I would be happy to do that. But we have no reported cases of these types of cancers prior to the date that this bill would take effect.

If we had people who had those prior types of cancers and it could be work-related, I'd be happy to amend the bill.

But we don't know of any. And the only people I have that I can rely on are the officers and members of the firefighters associations that tell us this is the date that would be effective for them.

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

ACTING PRESIDENT McGEE: Senator Velella, will you continue to yield?

SENATOR VELELLA: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR DOLLINGER: Is the effective date, Senator, to deal with the emergence of the disease, or is it with the exposure to the carcinogens that have caused it?

SENATOR VELELLA: The effective date is to address a discriminatory practice this has prejudiced some female firefighters and has prejudiced their ability to get proper compensation for the injuries they sustained. And that is why we decided to put the bill in

and use that date, because we had no prior dates. So it would be as of that date.

SENATOR DOLLINGER: Through you, Madam President, again, just to clarify, if Senator Velella would yield.

ACTING PRESIDENT McGEE: Senator Velella, will you yield?

SENATOR VELELLA: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: In essence if the cancer is detected after June 30, 1999, this bill applies?

SENATOR VELELLA: Oh, absolutely.

SENATOR DOLLINGER: Okay. Nothing further, Madam President.

ACTING PRESIDENT McGEE: Any other Senator wishing to speak on the bill?

SENATOR VELELLA: Last section.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos.

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

And then if we could return to the controversial calendar, regular order.

ACTING PRESIDENT McGEE: Immediate meeting of the Rules Committee in the Majority Conference Room.

The Secretary will read.

THE SECRETARY: Calendar Number 382, by Senator Larkin, Senate Print 1966, an act to amend the General Municipal Law, in relation to reconstituting.

ACTING PRESIDENT McGEE: 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 McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50. Nays, 2. Senators Duane and Stachowski recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 385, by Senator Larkin, Senate Print 2123, an act to amend the General Municipal Law, in relation to establishing.

ACTING PRESIDENT McGEE: 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 McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50. Nays, 2. Senators Duane and Stachowski recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 853, by Senator Trunzo, Senate Print 7280A, an

act to amend the Canal Law, in relation to a Canal Adopt-A-Trail Program.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

SENATOR PATERSON: Explanation.

SENATOR ALESI: Lay the bill aside for the day, please.

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

THE SECRETARY: Calendar Number 1109, by Senator Kuhl, Senate Print 6653A, an act to amend the Tax Law, in relation to the tax on sales and the compensating use tax.

SENATOR PATERSON: Explanation.

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

SENATOR KUHL: This bill is the bill that would allow for the extension of a sales tax, which is currently 3 percent, in the County of Chemung, to 4 percent for a one-year period commencing December 1, 2002,

and extending through November 30, 2003.

The county seems hard-pressed, with the increasing costs of Medicaid, and needs this additional revenue to cover those costs. They think this is the appropriate way to do it. And so they have made this request of this legislator to authorize them the power to enact this additional tax.

ACTING PRESIDENT McGEE: Any other Senator wishing to speak on the bill?

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1176, by Senator Maltese, Senate Print 7367A, an act to amend the General Municipal Law, in relation to benefits.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take -

SENATOR PATERSON: Wait a minute. Explanation.

ACTING PRESIDENT McGEE: Just one moment.

Senator Maltese, I believe Senator Paterson has asked for an explanation on the bill.

SENATOR MALTESE: Yes, Madam President.

This is an act to amend the General Municipal Law in relation to benefits for employees of government entities performing emergency medical services in the City of New York who suffer any condition or impairment of health caused by diseases of the heart resulting in disability or death.

The bill in the Assembly is currently sponsored by Assemblyman Abbate.

The bill provides for a presumption that a disease of the heart was incurred in the performance of duty for EMTs and paramedics in the City of New York. The justification is that the presumption that a

disease of the heart was incurred in the performance of duty would allow EMTs and paramedics to go out on three-quarters disability pension without needing to prove that the disease was incurred on duty.

Currently, they must go through a series of exams and medical boards, and the burden of proof is on the members. So essentially this changes the burden from the member and gives them a presumption that it was incurred in the performance of duty.

The presumption granted through the bill is not absolute. It is a rebuttable presumption, and the pension board can make a case against it if they feel justified in doing so.

In addition, the members are all from competitive civil service lists. Prior to being hired, they must go through a physical exam which tests for diseases of the heart. Therefore, they start out healthy as far as the heart is concerned. The bill is limited to those members for whom that physical exam failed to reveal any evidence of such condition or disease.

Police, fire and corrections already have this same benefit. It seems only fair that EMTs and paramedics should get treated equally.

The bill sunsets in 2003. This is because the benefit for police, fire and corrections sunsets every two years and is slated to sunset in 2003 as well. The sunset was put in so that it would be fair and equitable and so that all together could be considered at the same time.

As far as the fiscal aspect, it is $50,000 in fiscal year 2002-'03, with the presumption of three individuals going out on this per year. And as the memo indicates, it is presumably a high estimate.

It would gradually increase to half a million dollars in fiscal year 2011-2012, assuming it was renewed in 2003.

ACTING PRESIDENT McGEE: Any Senator wishing to speak on the bill?

Read the last section.

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

ACTING PRESIDENT McGEE: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1321, by Senator Padavan, Senate Print 2736, an act to amend the Education Law, in relation to certain tuition waivers.

SENATOR DUANE: Explanation, please.

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

SENATOR ALESI: Madam President, may we lay that bill aside temporarily while the Rules Committee is meeting.

ACTING PRESIDENT McGEE: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 1322, by Senator Trunzo, Senate Print 4670, an act to amend the Highway Law, in relation to the power of the Commissioner of Transportation.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1323, by Senator Marchi, Senate Print 6155A, an act to amend the General Municipal Law and the Retirement and Social Security Law, in relation to benefits.

SENATOR DUANE: Explanation.

SENATOR PATERSON: Explanation, please.

SENATOR ALESI: Madam President, may we lay the bill aside temporarily while the Rules Committee is meeting.

ACTING PRESIDENT McGEE: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 1327, by Senator Leibell, Senate Print 7263A, an act to amend the General Municipal Law and the Retirement and Social Security Law, in

relation to increasing.

SENATOR DUANE: Explanation, please.

ACTING PRESIDENT McGEE: Senator Leibell, an explanation has been requested by Senator Duane.

SENATOR LEIBELL: Madam President, this bill provides for an annual 3 percent pay raise for all line-of-duty widows or widowers.

Specifically, this bill would amend Section 361A of the Retirement and Social Security Law and Section 208F of the General Municipal Law to extend the escalation of a cost of living increase of approximately 3 percent for all line-of-duty widows or widowers for the fiscal year 2002-2003.

It should be noted that since 1978 the Legislature has passed and the Governor has signed into law a cost-of-living increase and a one-year escalation for all New York State widows and widowers of police officers and firefighters who are killed in the line of duty.

ACTING PRESIDENT McGEE: Senator

Duane.

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

ACTING PRESIDENT McGEE: Senator Leibell, will you yield for a question?

SENATOR LEIBELL: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DUANE: Does this bill include domestic partners as well as spouses?

SENATOR LEIBELL: This bill does not. But there is a Rules bill that is in to discuss that issue. But this bill does not do that.

SENATOR DUANE: Thank you, Madam President.

ACTING PRESIDENT McGEE: Any other Senator wishing to speak on the bill?

Read the last section.

THE SECRETARY: Section 3. This act shall take effect July 1.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50. Nays, 2. Senators Duane and Paterson recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1335, by Senator Andrews, Senate Print 7429A, an act to authorize.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

SENATOR ALESI: Madam President.

ACTING PRESIDENT McGEE: Senator Alesi.

SENATOR ALESI: May we lay that bill aside temporarily while Rules is meeting.

ACTING PRESIDENT McGEE: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 1339, by Senator Rath, Senate Print 7486, an act to amend Chapter 537 of the Laws of 1997.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT McGEE: Senator Rath, Senator Paterson has asked for an explanation of Calendar Number 1339.

SENATOR RATH: Senator Paterson, this is a very simple bill. It's an extender authoring SUNY to extend bus contracts without going to bid publicly.

We did it a couple of years ago, and this is an extender.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. Will the sponsor yield to a question?

ACTING PRESIDENT McGEE: Senator Rath, will you yield for a question?

SENATOR RATH: Surely.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: Senator, as I understand this bill it says that if there's a current contract in effect with SUNY and the

amount of the increase in the contract on an annual basis is less than the Consumer Price Index, then there's no obligation to rebid the contract; is that correct?

SENATOR RATH: That's correct.

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

ACTING PRESIDENT McGEE: Senator Rath, will you continue to yield?

SENATOR RATH: Yes.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR DOLLINGER: Doesn't this cut off the possibility that if the contract were put out for bid it could substantially reduce the cost in a given year?

SENATOR RATH: I think the SUNY trustees have protocol that they need to follow here. And I don't think that's the case, inasmuch as they'd asked for this extender.

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

ACTING PRESIDENT McGEE: Senator Rath, do you continue to yield?

SENATOR RATH: Surely.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR DOLLINGER: How do they know whether they actually bring the price down unless they send the agreement -- the contract out for public bidding?

I assume the SUNY Board of Trustees sits down and says: We're satisfied with Bus Company X; the price that they've proposed for us for next year's busing is 2.5 percent, which is less than the Consumer Price Index.

What's the incentive for them to go out and find a cheaper way to do it? Which, as I know you would acknowledge, is beneficial to the taxpayer of this state.

SENATOR RATH: I would have to assume that inasmuch as they have asked for this extender, that they feel that they are getting the very best deal they can at this point.

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

ACTING PRESIDENT McGEE: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I guess as a general proposition I'm willing to buy the argument that Senator Rath makes, which is that the SUNY Board of Trustees probably think they're getting the best price.

I would suggest, however, that the whole purpose of public and competitive bidding laws is to find the least possible price for the best possible service.

And by extending this, what we're doing is we're giving the SUNY Board of Trustees the ability to sit there and say, Okay, so the price is less than the Consumer Price Index. That's not a bad deal. Let's take it and just flip the contract over with the current supplier from year to year.

That excludes new and innovative ways to do busing. It excludes new and innovative ways to reduce the cost to the taxpayer. I know that competitive bidding can be a cumbersome and at times difficult process for procurement. But it does have an enormous public benefit that I think we should be very

reluctant to ignore.

So despite my sense that this is a contract that may have some protections built in, I go back our fundamental old-fashioned conservative way of looking at it, and that is the way to find the best possible price for by the SUNY Board of Trustees or any public entity is to allow competitive bidding, even, if necessary, on an annual basis, Madam President.

I'm going to vote in the negative.

ACTING PRESIDENT McGEE: Senator Rath.

SENATOR RATH: Madam President, one more comment. The legislation is not -

ACTING PRESIDENT McGEE: Senator Rath, could you wait for just one moment.

Can we have some quiet, please?

Thank you.

SENATOR RATH: The piece of legislation before us does not foreclose the possibility of them going to competitive bid if they so choose.

Thank you.

ACTING PRESIDENT McGEE: Any

other Senator wishing to speak on the bill?

Senator Liz Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President. If the sponsor would yield to a question.

ACTING PRESIDENT McGEE: Senator Rath, will you yield?

SENATOR RATH: Surely.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

I'm fascinated by this discussion. Senator Rath, do you know how much money SUNY moves through contracts to bus companies per year that this potentially would impact?

SENATOR RATH: No, I can't tell you the amount that they use, the amount of - the dollar amount of their contracts.

SENATOR LIZ KRUEGER: Madam President, through you, if the Senator would continue to yield.

ACTING PRESIDENT McGEE: Senator Rath, will you continue to yield?

SENATOR RATH: Surely.

ACTING PRESIDENT McGEE: The

Senator continues to yield.

SENATOR LIZ KRUEGER: Thank you.

Senator, is this one centralized contract for bus service throughout the SUNY system, or does each campus go into its own bus contracts?

SENATOR RATH: Each campus does its own.

SENATOR LIZ KRUEGER: Madam President, if the sponsor would continue to yield, through you.

ACTING PRESIDENT McGEE: Senator Rath, will you yield for another question?

SENATOR RATH: Surely.

ACTING PRESIDENT McGEE: The Senator yields, Senator Krueger.

SENATOR LIZ KRUEGER: Thank you very much, Senator.

So as I read the bill, this originally was a contract that started in 1997, or the presumption is that they went for competitive bid in 1997. Now it's 2002, and they want the extension to not do a competitive bid again at their choice until 2007. That's correct?

SENATOR RATH: That's correct.

SENATOR LIZ KRUEGER: Thank you.

Madam President, if I could speak on the bill.

ACTING PRESIDENT McGEE: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

Colleagues, I have to agree with Senator Dollinger's analysis from a conservative fiscal perspective. This will mean -- although I understand Senator Rath's point that the CUNY system might elect to competitive bid prior to 2007 -- what we'd be doing with this bill is allowing the entire SUNY system to go without reevaluating, if they choose, the cost of bus transportation services on each SUNY campus throughout the state for an entire decade.

And certainly there are changes in the industry that have taken place throughout the state. I'm sure any number of my colleagues must know of companies that started up in their own counties within the last five years, and have to assume within the next five years even more companies might be attempting

to compete for the business of the state through contracts with SUNY.

So I guess I would urge that we do encourage the model for competitive bidding, because it both increases competition, it gives new opportunities for businesses throughout our state to be able to do business with the State of New York and, in this case, the state university system of the State of New York.

And that while it is, in fact, and I know from experience can be a headache to go through a competitive bid process under all of the requirements that we have for government entities, it seems to me obvious that we would want our state university system to maximize cost-effectiveness for transportation services and not to go an entire decade without having to look and evaluate new options and opportunities to both decrease costs and increase the universe of businesses the State of New York might be doing business with more cost-effectively.

So I will vote no on this bill. And again, I think it's just bad policy to

allow the state university system to go for an entire decade without evaluating the cost of bus services.

And while Senator Rath did not have an answer to the question how much money goes into bus transportation throughout the SUNY system, I have to assume we're talking multiple millions of dollars each and every year. And with this bill, if it becomes law, that would be a decade period without the State University of New York reevaluating whether in fact there are more cost-effective options.

And I would argue if they were successful in getting more cost-effective options, it would give them more money to put into their classrooms and into their faculty and into the services that students need that unfortunately we never have the money to meet all the requests for every year.

So I will vote no for the bill and urge my colleagues to vote no. Thank you very much, Madam President.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Madam President, just one other comment on the bill.

ACTING PRESIDENT McGEE: Senator Dollinger, on the bill.

SENATOR DOLLINGER: And I want to repeat for everyone something that Senator Krueger said that I think is critically important. These contracts, I think as Senator Rath acknowledges, are done on a campus-by-campus basis. There are many smaller campuses upstate that have smaller suppliers who provide those busing opportunities.

It seems to me that by putting this in place, we are discouraging small business. We are telling small entrepreneurs who look at the busing system and say, Gee, there's a better way to do it. I can do it with smaller buses, with jitney routes, with other options, with, I don't know, GPS, you name it. Whatever technology that they can use to reduce the cost.

The entrepreneur won't even try if he knows that a contractor already has the agreement locked down and the only thing that

the contractor has to do to stay under the radar screen of SUNY is to simply raise the annual cost by something less than the Consumer Price Index. And so what you have is a disincentive to entrepreneurial activity among small businesses.

And Senator Krueger makes another very good point. My guess, just my guess is that the transportation costs for the SUNY campuses are at least $25 million a year statewide. So my guess is that for a decade, if Senator Krueger is correct in predicting, we'll spend $250 million without finding out whether we're getting the best possible price and rewarding the best possible small-business entrepreneur.

I would suggest if you put all those nickels together, you pull all those dimes together, we're talking about real money here. And my sense is if we're talking about real money this is not ours but owned by the taxpayers and spent by SUNY, it should fall back on that good, old-fashioned, conservative tradition of competitive bidding to make sure we get our dollars' worth and our taxpayers

get it as well.

I'm going to going to join Senator Krueger in voting no.

ACTING PRESIDENT McGEE: Senator Stavisky.

SENATOR STAVISKY: If the sponsor would yield to really just one question out of curiosity.

ACTING PRESIDENT McGEE: Senator Rath, will you yield for one question out of curiosity?

SENATOR RATH: Sure.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR STAVISKY: Madam President, this legislation sunsets on June 30, 2002, about two weeks from now. And yet this bill was just introduced May 31, 2002. For something that's going to sunset, it seems to me that there ought to be enough preparation for discussion, et cetera, on such an issue.

SENATOR RATH: It seems that way to me too.

SENATOR STAVISKY: I'm sorry, I

can't hear you.

SENATOR RATH: It seems that way to me too.

ACTING PRESIDENT McGEE: Any other Senator wishing to speak on the bill?

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1339 are Senators Connor, Dollinger, Duane, Gentile, Hassell-Thompson, Hevesi, L. Krueger, Oppenheimer, Paterson, A. Smith, Stachowski, and Stavisky. Ayes, 41. Nays, 12.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1341, by Senator Skelos, Senate Print 7497, an act to authorize the assessors of the County of Nassau.

ACTING PRESIDENT McGEE: Senator Skelos, an explanation has been requested by

Senator Paterson.

SENATOR PATERSON: Withdrawn, Madam President.

SENATOR DOLLINGER: Madam President, if I could just be heard on the bill briefly.

I will consistently continue my pattern of voting no.

And I know Senator Skelos is still out there scouring Monroe County looking for a bill. He did find one for Senator Andrews, who of course has one that cropped up again today -- proof, proof that like West Nile virus it's spilled over the Nassau-Suffolk line into the City of New York, and the contagion is probably going to work -- I expect Senator Skelos will see a Westchester bill and then an Ulster bill. Before you know it, it might even come to Monroe County.

No, Madam President.

SENATOR OPPENHEIMER: Madam President.

ACTING PRESIDENT McGEE: Senator Oppenheimer.

SENATOR OPPENHEIMER: I would

urge our good Senator Dollinger to rethink this particular bill, because the Rosa Lee Young Childhood Center in Rockville Centre was founded by my sister.

So I thank you very much, Senator Skelos.

ACTING PRESIDENT McGEE: Any other Senator wishing to speak on the bill?

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53. Nays, 1. Senator Dollinger recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

We have some more bills to do. Can we be quiet while we do them? Thank you.

Senator Bruno.

SENATOR BRUNO: Madam President, can we return at this time to reports of standing committees. I believe there's a

report of the Rules Committee at the desk, and I ask that it be read at this time.

ACTING PRESIDENT McGEE: Reports of standing committees.

The Secretary will read.

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

Senate Print 3479, by Senator Stafford, an act to amend the State Finance Law;

3489, by Senator Volker, an act to amend the Criminal Procedure Law;

5063B, by Senator Saland, an act to amend the Public Officers Law;

6342, by Senator Padavan, an act to amend the Real Property Tax Law;

6946, by Senator Marcellino, an act to amend the State Finance Law;

7032, by Senator Oppenheimer, an act to amend Chapter 711 of the Laws of 1907;

7138, by Senator Saland, an act to amend the Executive Law and the County Law;

7350, by Senator Padavan, an act to amend the New York City Charter;

7373, by Senator Rath, an act to amend the Local Finance Law;

7480A, by Senator Wright, an act to amend the Public Authorities Law;

7524A, by Senator Skelos, an act to establish;

7548, by Senator Velella, an act to amend the Labor Law;

7551, by Senator Maziarz, an act to amend the Public Authorities Law;

7556, by Senator McGee, an act to amend Chapter 402 of the Laws of 1994;

And Senate Print 7588, by Senator Espada, an act to amend the Civil Practice Law and Rules.

All bills ordered direct to third reading.

ACTING PRESIDENT McGEE: Senator Bruno.

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

ACTING PRESIDENT McGEE: All those in favor of accepting the report of the Rules Committee signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The report is accepted.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time call up Calendar Number 1365.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1365, by Senator Espada, Senate Print 7588, an act to amend the Civil Practice Law and Rules, in relation to asset forfeiture.

SENATOR BRUNO: Is there a message of necessity at the desk?

ACTING PRESIDENT McGEE: Yes, Senator Bruno, there is.

SENATOR BRUNO: Move to accept the message.

ACTING PRESIDENT McGEE: All in favor of accepting the message of necessity signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The message is accepted.

Senator Bruno.

SENATOR BRUNO: Madam President, this bill before us changes what we always refer to in this state as the Rockefeller Drug Laws, that were passed decades ago in this state and at the time served a purpose, trying to get criminals off the street who were peddling drugs and using drugs.

It is time to reform the Rockefeller Drug Laws. We have before us a Governor's program bill. And this bill is the result of negotiations with us, with the Assembly, and we still have, I will share with you, some outstanding issues with the Assembly. But we are hopeful that in our passing this legislation, they pass, if that's where they are, where they are, then we can reconcile what apparent differences there are and get a law that the Governor will sign.

It's time to do this to help do

three things, really. And that's what is before us. One, increase the penalties for hardened criminals who use weapons in a violent way that's drug-related. We want to increase the penalties. Put them away and keep them away.

And for those who are nonviolent, first-time users, we want to create alternatives to incarceration, to try and rehab people.

And, third, we want to give judges some discretion in how they sentence, based on specific circumstances that are presented at the time of the trial and sentencing. So this is important.

I know all of us know of instances where people, first-time offenders, have been put away under the mandatory-sentencing part of the Rockefeller Drug Laws in a real cruel and harsh way.

I have personally, with Senators Volker and many of the others, appealed to the Governor three years ago on behalf of four women. And what prompted me was in reviewing their lives and what they did, they were

first-time offenders, nonviolent. They were mules. They were carriers.

And one of them was put away 25 to life -- as I recollect, had already served 15 years -- and had professed not even being aware of what she was carrying. I don't know whether she was aware or not; must have been. She was convicted. She was sentenced.

But the Governor in his wisdom granted pardons and let them out, three out of four, several years ago.

Now, in what we are proposing now becoming law, some of those people that are in jail now can appeal to have their sentences reviewed. And their sentences can be reduced up to fifty percent if they're nonviolent, first-time, in the judgment of those that will review. It appears just, it appears fair, it appears equitable.

At the same time, those people who are out there who will prey on the innocent, using minors to pedal drugs, crack, heroin, we want to put them away and we want to keep them away and get them off the streets because they are habitual, violent, hardened criminals

using innocent people who many times are in desperate situations, trying to help feed their families, and they have no other recourse, they think, other than to be led into a life of crime by these people.

Those people we want to punish, and we want to punish them severely. Not the minors, not those innocent people who are duped because of their life circumstances and trying to just survive in these challenging times that are before us.

So I appeal to all of you to recognize the Governor in his judgment, in his wisdom is proposing this bill that is before us. And I applaud the sponsor, Senator Pedro Espada, who will carry on the discussion on this critically important issue to all of us here in New York State, to everybody that is affected in some way. So that we are able to punish those that should be punished, rehabilitate those that need treatment. Rather than just put them away, we rehabilitate them.

And I'm proud to say that we added $1,400,000 to the Road to Recovery program, to

help rehab people who are in jail now or for the first time commit a crime, drug-related, trying to rehab them as an alternative. We got that in the budget, we here in the Senate. And that money will be used in the pilot program to help with parts of the Rockefeller Drug Law.

The Assembly has a plan and they have a program. And I'm told that, for openers, to institute everything that they have in the present bill would take over $200 million. It's not there, and it's not going to be there, and it's not going to happen.

So if they want to posture and do one-house legislation, that's their prerogative. But we are here appealing that we get a result. Let's get a result. Let's be reasonable. Let's be responsible. We are open, objectively, for what negotiation makes sense, to try and see what's before us become law.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Espada.

SENATOR ESPADA: Madam President, I rise to thank the Majority Leader and, indeed, the Majority Conference, the Governor, Mr. Chauncey Parker, the director of criminal justice for the State of New York, who has put an exhaustive amount of time into this process, in consulting with advocacy groups, in consulting with legislators in the Assembly, here in the Senate, in these chambers, and throughout the State of New York since his confirmation in February of this year.

Most particularly, I'd also like to, in advance of providing some specificity, like to thank Senator Volker for his guidance and support in this particular matter. And also Senator Sampson, who is a cosponsor of this bill. We acknowledge and we thank him.

There is a great deal of detail; indeed, often in these matters the devil is in the details. But before we get to that and before we get to a debate that must be had, the Majority Leader clearly stated the parameters and the urgency. This is a requisite, an indispensable start toward a

solution. It's something that we've waited 30 years for.

And in thinking about my comments last night, the thread that keeps this whole package together, despite its imperfection, despite the problems that will be identified, is the fact that (a) it is a historic and unprecedented attempt, a timely and necessary attempt by the Governor. That can't be debated. That is a fact. We've never had this opportunity in this house in 30 years to do this.

We've never had this opportunity in this state to do this. The mothers, the grandmothers, the parents, the children that have been separated from their loved ones have never had this opportunity to avail themselves of this relief.

But it is fairness, and it cuts both ways. Fairness is the cornerstone and the underpinnings of this legislation. Yes, there is a profound sense that the Rockefeller Drug Laws were harsh and created undue harshness on the lives of so many. The mandatories, the life mandatories for A-I,

A-II are out, replaced by determinate sentencing.

We have an obligation to provide early intervention and treatment, as delineated by Senator Bruno for those that want it, for those that deserve it. But we need to have, simultaneous with the availability of that treatment, we need to also have those individuals take responsibility first.

It was Chief Justice Judith Kaye's commission in the year 2000 that very clearly spoke to this. Treatment works. And it can work statewide, and it can work in a number of different contours and delivery models. But early acknowledgement of addiction and acceptance of personal responsibility are fundamental to a successful treatment outcome.

And so this legislation is fair. It provides for a continuity of what district attorneys and prosecutors have been doing. It provides for what many have called for in terms of judicial discretion to weigh in for first-time offenders, second-time offenders and, yes, even third-time offenders.

But also, it also takes a look at some of the loopholes. It takes a look and defines for the first time and gives force to these kingpins, these drug dealers, these big drug dealers that are out there masterminding, orchestrating, controlling, managing young people, managing what have been called "mules" to deliver, to deal that poison.

We want and we must have that loophole closed. We must put an enhanced sentence and fix that so that these people do go to jail. And they do go to jail and they do get a five-year sentence on top of the underlying drug offense.

It's tough, it's smart, it's necessary, it's fair. And if you do your drug dealing in our public parks, and if you do your drug dealing through the aid of our young people, we don't see a need for you to get relief through this kind of an approach. Fairness dictates that if you are so low as to deal through the aid of children, you are cognizant of the fact that these loopholes allow you to get away with it.

And so if you're 18 or under and

you're used in this fashion, kingpins will be responsible. They will be responsible.

Drugs and guns, drugs and guns are linked and create a violent outcome often. And so if you have a gun and you use it through this process of spreading this poison in our communities, you also deserve no compassion. Fairness dictates that you also get enhanced penalties.

You know, I'm sure all of us get calls from our neighborhood coalitions and civic groups that would like to band together, be empowered to do something about the drug problems that are coming out of private apartments and what have you in our neighborhoods. But it's -- the zone of protection can't be reached. It's out of reach. These groupings, these associations don't have standing in court.

This legislation provides for that standing and creates a wider zone of protection, about a thousand feet or so.

And so I could go on, and I'm sure that we'll talk for a while on this. But indeed, fairness, fairness to provide

treatment, early intervention, fairness to create a process of supervised delivery of assistance to those in need, fairness in terms of enhanced sentence, fairness in terms of getting away from the life maximum and creating something that is a standard statewide and does not allow the Parole Board to indiscriminately and perhaps unfairly arrive at different decisions for different offenders.

With that, Madam President, I thank you very much for the time and attention.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, would Senator Espada yield for some questions?

ACTING PRESIDENT McGEE: Senator Espada, will you yield for some questions from Senator Paterson?

SENATOR ESPADA: Absolutely, Senator Paterson.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR PATERSON: Thank you.

Senator, you were talking about the tragedy of using a child to transport drugs. But under the legislation, if a 15-year-old, for instance, contracted with another 15-year-old to do the same thing, they would receive the same penalty.

In other words, there isn't a clear enough delineation, from my view of the legislation, not only what the penalty is but who's actually hiring the young person to do it. If it's another young person, it's a little different. But it doesn't seem to augur well for that individual in the legislation.

Are you comfortable leaving it this way?

SENATOR ESPADA: This legislation, Senator Paterson, grabs the reality that exists in our communities. I don't know about your neighborhood. We share similar demographics and experience of those realities. We're talking about adults here. We're talking about adults. We're talking about an industry, an underground economy that we understand.

And we don't have situations, in my view, in the main that have that example as a part of the daily realities of drug dealing, selling in our communities.

SENATOR PATERSON: Madam President, if the Senator would yield for another question.

ACTING PRESIDENT McGEE: Senator Espada, do you continue to yield?

SENATOR ESPADA: I will continue to yield.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR PATERSON: The reality that we're talking about happens every day. You have younger people who actually hire other younger people to do this. And the problem I have with this legislation is the judges don't have the discretion to go beyond that scope and actually recognize that there's a difference between the 30-year-old employing a 15-year-old and another 15-year-old employing him.

But we'll go on to another question. In terms of the issue related to

the ability of the conditional expungement of the records for individuals who have -- that's offered in this legislation, it appears to me, Senator, that things are not always as they seem, all that glitters is not gold.

Who are the -- what are the exceptions in which the records of a person who was accused on some drug charge and then had the record expunged, would those -- would that information be made available to agencies or someone seeking that information?

SENATOR ESPADA: Well, you're absolutely right, those are conditional expungements. And the conditions are generally that if you commit another offense after you've been given an opportunity to get treatment and avail yourself of the compassion and the treatment opportunities in this bill, that information will become known to any and all, because indeed the expungement is conditional.

If I just might, on your comments, clearly we understand and we read from the same page. I mean, we are talking about folks 18 years or older.

And again, throughout this whole process, we can pepper holes into a lot of things. We pass budgets and all sorts of legislation that if we had our druthers and we had a universal and monopolistic hold on the truth, that we would craft it, I'm sure, 61 different ways and 150-plus on the other side.

The fact of the matter is that this is a very necessary prerequisite. And it stands as a whole. As a whole package, it stands as a start, as a movement forward in this process of reaching a long-deferred need to deal with the Rockefeller Drug Laws.

The expungement, by the way, is to reward people who have changed their lives and are not engaged in any more criminal activity.

SENATOR PATERSON: Madam President, would Senator Espada yield for another question.

ACTING PRESIDENT McGEE: Senator Espada, do you continue to yield?

SENATOR ESPADA: Let it roll.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR PATERSON: I'm not sure I

really understood the answer to the last question. If that is the case, something that we all understand, that there are probably imperfections in every bill, I'm not sure if I'm supposed to ask any more questions.

In other words, Madam President, what I'd like the Senator to explain to me is: What is the difference between a good bill and bad bill? I would assume that a bad bill would be that when you punched enough holes in the bill, you recognize that it actually doesn't cure a problem.

SENATOR ESPADA: We take them one at a time, Senator Paterson. Let me just say this is a good bill.

SENATOR PATERSON: Okay, let's take them one at a time. Would the Senator yield for another question?

ACTING PRESIDENT McGEE: Senator, do you continue to yield for another question?

SENATOR ESPADA: Absolutely.

Only to good questions. No, go ahead.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR PATERSON: Senator, isn't it true that if a person does not commit a further offense and received a conditional expungement that these records could be made available to agencies not because of any conduct of the defendant -- actually, the convicted person -- but actually it would sometimes weigh based on the type of job they were looking for? If they wanted to become a bus driver or a daycare worker or perhaps a healthcare worker.

Isn't that the way this bill reads?

SENATOR ESPADA: Well, you know, Senator Paterson, I'm involved on the front line of human service delivery, so I consulted with legal counsel, who informs me that you're wrong.

SENATOR PATERSON: Madam President, if the Senator would continue to yield for a question.

SENATOR ESPADA: Yes, sir.

ACTING PRESIDENT McGEE: He yields.

SENATOR PATERSON: My understanding of the legislation is that there

are exceptions to the rule involving conditional expungement. That in other words, later on, if the records are not necessarily destroyed and later on if an agency where the person applied for a position as a bus driver, for instance, wanted to seek whether or not the person had a conviction, that that information would be made available to them.

And I thought it was made very clear in the legislation. Perhaps your counsel could explain to me that it's not in the legislation at all.

SENATOR ESPADA: Well, if I might, through you, Madam President, again we get back to what is the point.

We provide conditional expungement, we provide the person with treatment, we provide them with the opportunity to live their lives in a positive manner, to reintegrate with their families, to avoid going to jail.

And without knowing absolutely that you're right or wrong -- and I'm speaking not as a legal counsel, but for myself, Senator Paterson -- I don't know what weight to give

that, because indeed the matter would be shared if you applied for a pistol license. The matter would be shared if you were perhaps applying for some kind of employment.

I am not in the position at this time to tell you every level of employment and agency that this information would be provided to. But I would concede that that conditional expungement would be triggered by someone violating the terms of their treatment and committing another additional offense.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, I'm not talking about whether or not anyone violates the conditions of expungement. I certainly would agree that a person that would get that kind of a break from society, that if they continued to commit offenses that that privilege would be taken away from them.

I'm talking about a person that didn't do it. I'm talking about a person that was given a conditional expungement and then finds out later on, after the big press

conference when they all stand around and say that we did this and we're so noble and we are reaching out to people and giving them this opportunity, for all of the credit that will be arrogated to those who drafted this legislation after they've said it -- and I know they're going to when this bill passes - later on, down the road, we find out that actually there are a number of agencies that could find the prejudicial information, that it does not really expunge the offense, and that the word "expunge" shouldn't be used at all, because it's available for a person to actually find out later if they apply for certain types of jobs.

And I'd like, if Senator Espada is willing to yield for another question, for him to clear that up for us once and for all, whether or not it's true or it's not true. It doesn't have to be Senator Espada. But somebody over there should know the answer to this question.

ACTING PRESIDENT McGEE: Senator Espada, do you wish to yield for the question?

SENATOR ESPADA: I would love to

yield to a question. I would like to focus in on what the question is. Can I have it repeated, please.

ACTING PRESIDENT McGEE: Senator Paterson, will you repeat your question?

SENATOR PATERSON: Does the expungement, Madam President, the conditional expungement eradicate the possibility of the individual having prejudicial information released about them later on? Does it, yes or no?

SENATOR ESPADA: Again, I don't like yes or no questions. But I'll refer to the part of the legislation -- I know lawyers like to do this, so we're going to be really technical and give you the legal answer.

And with respect to a conviction, the conditional expungement "pursuant to section 160.65 of the Criminal Procedure Law, shall not apply to any employer or governmental licensing body required or authorized by law to submit fingerprint-based inquiries to the Division of Criminal Justice Services. It shall also be an unlawful discriminatory practice under this subdivision

to act adversely to an individual for his or her failure to disclose a conviction that was conditionally expunged pursuant to Section 160.65 of the Criminal Procedure Law."

That's your legal answer, Senator Paterson.

SENATOR PATERSON: Madam President, if Senator Espada would yield for another question.

ACTING PRESIDENT McGEE: Senator Espada, will you yield for another question?

SENATOR ESPADA: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR PATERSON: We have to get on the same page here, Madam President. The Senator wanted me to ask a simple question, and then I couldn't get a simple answer. So we're going to move on to something else.

There is an opportunity in this bill for a redetermination of sentencing for individuals who are inmates right now. But again, when you look further into it and you read the actual bill, of the over 20,000 people who are in our institutions because of

substance abuse charges, you know how many would actually be eligible for this? 405. 405.

And this is roughly 2 percent of the inmates who are in our penitentiaries right now, because they are the only ones who are Class A felons.

Therefore, a number of people who are lower down on the totem pole who really just what we are calling "mules," who really are the types of people that Senator Bruno was talking about before, they won't even qualify for this review of their sentencing, will they, Senator?

SENATOR ESPADA: Your math is absolutely correct. I think those are the estimates we have, in the hundreds, yes.

SENATOR PATERSON: Madam President, if Senator Espada would yield for another question.

ACTING PRESIDENT McGEE: Senator Espada, will you yield for another question?

SENATOR ESPADA: Surely.

SENATOR PATERSON: My question is, why was there no consideration given to

individuals who actually committed lower offenses for the same treatment, that perhaps their sentences be reviewed at this point?

SENATOR ESPADA: You know, I think there's a premise, you know, that can't go unchallenged here. I mean, numbers are thrown around all the time. I'd like to throw out some important numbers as well.

You know, 90 percent of the felony-level controlled substance arrests involve charges, obviously, of selling or attempt to sell. And the overwhelming amount of these cases involving charges of selling or attempt to sell fall under what's called B Class felonies.

Now, these massive amounts of numbers that are cited all the time, only a small portion of the felony-level drug arrests result in sentences to prison. And over half of the arrests are disposed of in lower courts with a plea to a nonfelony, or even in a dismissal.

And so although, yes, we provide in this legislation for first-time offenders, for second-time Class B felony offenders, and even

repeat offenders to get treatment, we also provide the opportunity for someone who is in a Class B mode to get a determinate sentence.

And in essence, when we move to that, we have the possibility to reduce sentences, we have the possibility to have these people reunited with their families.

SENATOR PATERSON: Madam President, if Senator Espada would continue to yield.

ACTING PRESIDENT McGEE: Senator Espada?

SENATOR ESPADA: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR PATERSON: Senator, isn't it true that under this legislation the ability of prosecutors to control who is or is not eligible to receive drug treatment is solely contained in the prosecutor's discretion?

That, in other words, it will purely be the whim of the law enforcement community as to the determination as to who would be or would not be eligible for drug

treatment under the legislation?

SENATOR ESPADA: Senator Paterson, you know, one of the clear objectives in the Governor's program bill is to expand judicial discretion. And with the court-approved drug abuse treatment, it is in the hands and solely piloted by the judge. And judicial discretion there is paramount.

Of course, the prosecutors continue to have a role through DTAP and through the drug courts, and they're an indispensable part of this process. But I point you to the CADAT as an example, a widely available example, of judicial discretion working to relieve us of the harshness and to provide early intervention on treatment for those who qualify.

SENATOR PATERSON: Madam President, if the Senator would continue to yield.

SENATOR ESPADA: Yes.

ACTING PRESIDENT McGEE: Senator Espada -- he yields.

SENATOR PATERSON: That's all very nice. But in fact, the prosecutor still

has full discretion in terms of undermining the judicial discretion that's in another part of the bill.

See, this is my whole theory about this bill, is when you first hear it, it sounds great. And if you dig just a little, you start to find out that it isn't.

In reality, the prosecutor is the one that controls that destiny. So it in a sense almost obliterates the judicial discretion that Senator Espada was talking about.

And so my question is if we really wanted to do something about the Rockefeller Drug Laws, as dangerous as they were -- and by the way, I don't blame prosecutors. There are different types of pressures and anxieties that you feel. I used to work in such an office. But that's why we have a court, so that we can balance that with what are the needs of perhaps the defendant and also what is the objective reasoning of the judiciary.

And my question is, on an issue such as drug treatment, where other aspects other than law enforcement issues come in,

then why would we not be using that judicial discretion in that particular area? That's my question.

SENATOR ESPADA: Senator Paterson, you know, that this is one of the key balancing acts in this whole matter. Prosecutors control treatment options now, under current law. And what we do here is we take, again, we take a quantum leap forward to allow for options, to allow for judicial discretion.

But I point out that 75 percent - currently, right now, 75 percent of first-time drug felons are diverted from prison by prosecutors, through charge reduction, sentencing deferral programs, probation supervision, and drug courts.

So that's where we're at now. Some folks, some district attorneys are doing a better job than others. It is the prosecutors that pilot this under current law. We live with mandatories. We have lives for 30 years with the results of that. This moves us, this moves us more than you give it credit for, into a system where there are no lifetime

maximums, where there are treatment options.

And, yes, not enough is said about the folks that literally get away with peddling their poison, using minors, through new technologies on the Internet. And the other provisions of this that make our community safer and make the whole matter much fairer.

So yes, again, you could point to situations that would, in effect, keep us from ever having any movement forward, because the debate can only be isolated and polarized if you just want to move in one quantum leap to total judicial discretion. It simply won't happen, despite your desire -- or even mine - to see that kind of a system, perhaps. It simply won't happen.

And we come back to the essential merits of the matter, whether it's moving forward. In my opinion, this matter moves us forward into the right direction. It moves us into an active and hopefully prompt negotiation with the Assembly, where matters that you're pointing out will surely be taken up and hopefully compromised upon by

responsible people.

SENATOR PATERSON: Madam President.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: While I'm looking up the meaning of the word "quantum," I was wondering if Senator Espada would yield for another question.

SENATOR ESPADA: Let me help you. Yes. The answer is yes.

And "quantum," as used by Pedro Espada, Jr., Senator for the 32nd District, in my neck of the woods it means a whole lot better than where you're at now. Like more than automatically putting people into a life-sentence mode, more than denying all the folks that are impacted by this on a yearly basis, tens upon thousands of people -- giving them the option to get treatment.

It's a quantum leap in that if you use a gun to prey on our community, we're going to punish you. It's a quantum leap in that right now, there is absolutely no ability to get these major drug dealers, and they hide

behind their deadly deeds and management scheme by using young people.

So yes, the quantum leap is we're providing early treatment, we're doing away with the harshness, we are going to have determinate sentencing, we are going to have more protections and punish those that should be punished.

In my neck of the woods, that's a quantum leap from where we're at. That's the way I measure it.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, would Senator Espada be willing to yield for another question?

SENATOR ESPADA: Yes, sir.

ACTING PRESIDENT McGEE: Yes, he does.

SENATOR PATERSON: Senator, I want to give you an example on the issue we just talked about.

There's a decision made by the court to allow for drug treatment; the prosecutor doesn't like the decision, the

prosecutor appeals. Next case comes up, there's a decision not to grant drug treatment, the defendant can't appeal.

Is that a quantum leap?

SENATOR ESPADA: Well, first of all, factually, I would have to check whether factually that is correct. Not that I don't believe what comes out of your mouth, but you know how we have varying interpretations of statutes.

And I am reminded by learned counsel that there other remedies, legal remedies available to defendants, including Article 78 and other procedural matters, that you as attorneys would know grant the defendant perhaps more legal options than you perhaps stated in your remarks.

SENATOR PATERSON: Madam President, would Senator Espada yield for another question?

ACTING PRESIDENT McGEE: Senator Espada?

SENATOR ESPADA: Absolutely.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR PATERSON: So among those remedies that are not available would be the appeal. Is that true?

SENATOR ESPADA: We agree with Senator Paterson's assessment of the lack of ability to appeal.

Believe me, that answer was a lot longer in my ears. So we're definitely getting better here.

SENATOR PATERSON: Okay, then, Madam President, I'm going to quit while I'm ahead.

ACTING PRESIDENT McGEE: Thank you, Senator Paterson.

SENATOR PATERSON: On the bill.

ACTING PRESIDENT McGEE: Senator Paterson, on the bill.

SENATOR PATERSON: In 1970 Governor Nelson Rockefeller was running for reelection for what would become his third term as governor. His credo, his real campaign issue was the amount of drugs and the use of drugs around the state. For that, he spent a lot of money on commercials promising the public that there would be very strict

penalties for this type of thing.

At that type of time, we learned something about drugs, that they were a vile and vicious malady that turned family members against each other. People stole to support their habits. People would do anything to support their habits -- particularly heroin, which was a drug administered by needle, which was rampant in the inner cities of our state.

And then we found something, we found that you can't campaign human misery. It leaps ghetto walls. And we finding that there were starting to become just as many drug problems in Forest Hills and in Grove's Point as there were in the South Bronx and Central Harlem.

These had been issues that had riddled our communities for years. But because of the fact that the faces of those affected were now more diverse and were now reflecting the faces of all around the state, we decided to make a concerted effort to try to eradicate drug trafficking and drug use.

What we found was that there was some effect, but that we actually went from

12,385 people in our state penitentiaries and that that number sextupled. And that's not a prurient expression from the impeachment hearings, that means six times.

And so we then found that great numbers of individuals who were in our penitentiaries were there for nonviolent drug offenses. And it got to the point where even Senator Bruno came forward, along with Senator Volker and some others, just a few years ago to try to do something through the Governor's office to stop the situations where sometimes if you were even in the same vicinity with someone who was dealing drugs -- the girlfriend or someone, a person that inadvertently was transferring drugs and didn't know they were doing it would get 25 years to life at times.

So what we thought we were going to try to do was to recognize that we're dealing with an impinging on the concept of justice by the issue of a disease. And what we were going to try to do, those who talked about repealing the Rockefeller Drug Laws, was to really put into place something that's

workable, sensible, and achievable.

What we have is a bill that in my opinion is one small step for man and one quantum leap for prosecutors. We have a piece of legislation that in no way is going to limit the problems that many people who are incarcerated right now have, which is that they have an addiction problem more than that they are really lawbreakers. They made a mistake over a short period of time in their lives, became addicted, and then involved themselves in other activities that are criminal, that need to be punished, but are very much beyond their control.

When the Governor spoke on the last three years at his State of the State message about repealing the Rockefeller Drug Laws, we didn't think that he meant this. And that's why I would recommend all of my colleagues in the chamber that we can't support this legislation, because it is replete with hidden agendas that actually manifest the problem rather than cure it.

ACTING PRESIDENT McGEE: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Madam President.

This is indeed a proud day for the Senate and for the State of New York. And I applaud Senator Bruno for his leadership; Senator Espada, for his leadership in bringing there to the floor. And I'm especially proud of the fact that our Governor of the state that made this a major thrust of his administration this year.

I think it's very important for us to stop and reflect how we have come to this point in time and what a remarkable journey it has been for the Legislature and for government in general in this state.

I am reminded that several of the individuals who were sponsors of the original Rockefeller Drug Law have recognized that it did not do what they had hoped that it would, and even out of office they were brave enough, bold enough, and willing to admit that perhaps had not had all of the facts available to them at the time, could not with a crystal ball predict the future.

And these individuals, even out of

office, have continued to carry the crusade forward to change this law. And I believe that they should be credited for their pioneering actions in this area. One of them is a dear friend of mine, former Senator Doug Barclay. Another one is well known to everybody in this chamber, former Senator John Dunne.

And there are other people who were involved who may choose to speak on this, who were involved at the time that the Rockefeller Drug Laws went into effect.

Not often do we see a measure that has evolved over a 30-year time period and we have the opportunity to reflect the changes in our society in quite such an interesting manner. If you would stop and think about those days, it's important to note that at that time, during Governor Rockefeller's administration, alcoholism was considered a crime.

It was under Governor Rockefeller that alcoholism became classified as a disease. We now have come to recognize that drug use is often a disease as well. And the

activities of people in the drug world prey upon the addictive aspect of the disease. And, as Senator Bruno spoke so eloquently, people are exploited because of that addictive and sometimes hopeless manifestation caused by drugs in their lives.

Clearly, putting people behind bars in a correctional system that is primarily punitive is not the answer to the problems of addiction. When one considers also that we spend as much a year to put somebody behind bars as we would if we sent that same person to an Ivy League college for an education, it becomes even more clear that the answer is not punishment alone.

But certainly there is a need for punishment for those drug kingpins. Now we understand something that was not understood 30 years ago. Now we understand the modality of the people in the drug world and how they utilize young children, how they utilize desperate people, how they manage to hide their own actions in the most criminal and despicable manner and prey upon helpless people or hopeless people who will take the

brunt of their evil actions. Those are the people who need to be put away and put away for a good long time.

During this whole evolution of the awareness this country has about the drug culture, there has been another very interesting and sad side effect. In the last twenty or thirty years, guns have become increasingly identified with criminal activity, and never in a more heinous way than used in commission of a drug crime, where innocent victims have been sometimes mowed down by desperate individuals who are thinking that they are totally above any kind of legal responsibility or obligation.

But law-abiding gun owners have been tarnished in this process. The image of guns has been so fixed now for a whole generation as only a violent, negative, criminal tool that law-abiding gun owners have been, in effect, stigmatized.

And I hope that by squarely placing the stronger penalties upon drug-related crimes that utilize guns in some small way the law-abiding gun owners, collectors, sportsmen

will be given the respect that they deserve. And I anticipate that we will have an opportunity to revisit that particular aspect of this philosophical evolution in later debate in the future.

I'd like to acknowledge, as well as the Governor of this state and his leadership, his choice in the Division of Criminal Justice Services, Director Chauncey Parker, already referenced by Pedro Espada. Mr. Parker has taken very bold steps here, and we applaud him today as well.

I'd like to acknowledge the work of another individual, not in government service but well-known to many in this chamber, and someone who has helped to educate all of us about the importance of recognizing addiction, whether it be alcoholic or drug addiction, and that is Father Peter Young. And Father Young's work has been well-known for many, many years. He in fact was one of the people who helped convince Governor Nelson Rockefeller to change the statute, to take the lead in changing, decriminalizing alcoholism as a crime and labeling it as a disease.

And Father Young's work and his demonstrated success in creating drug treatment programs help serve as a model for what we can do as a state to put the priority where it needs to be placed.

This is indeed a proud day for New York State. I hope that the Assembly recognizes the important progress undertaken by Governor Pataki and by the members of this house. And I hope that we will be able to adjourn with an acceptable compromise, if it is not to be this bill. Indeed, I hope that the Assembly will very soon sit down with some meaningful recommendations for modest changes. Because there should be no excuse for us leaving this Capitol this year without the reform of the Rockefeller Drug Laws that are so long overdue.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Montgomery.

SENATOR MONTGOMERY: Yes, thank you, Madam President. If Senator Espada would yield to a question.

ACTING PRESIDENT McGEE: Senator

Espada, will you yield to a question?

SENATOR ESPADA: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR MONTGOMERY: Thank you.

Senator Espada, I only received this bill on my desk less than a half hour ago. And I have not been able to find the section where we delineate specifically that we are moving back to a judicial-discretion position, which is one of the key aspects that the advocates for Rockefeller Drug Law reform have been proposing.

I just can't find it in this legislation. If you could point it to me, I would like to study it.

SENATOR ESPADA: Through you, Madam President, I surely will, Senator Montgomery. But throughout this, there are a number of different ways that treatment can be obtained -- and of course the specific references will be provided to you -- drug courts, DTAP, and the CADAT program that we tried our best to describe wherein first-time

felony drug offenders, second-time felony drug offenders, and third-time felony drug offenders, with the consent of the DA in the latter case, could obtain treatment first.

So we would definitely provide the specific references to you, yes.

SENATOR MONTGOMERY: I would appreciate that, Senator Espada.

If you could continue to yield.

ACTING PRESIDENT McGEE: Senator, do you continue to yield?

SENATOR ESPADA: Yes.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR MONTGOMERY: Thank you.

Senator Espada, one of the issues that I note that Senator Paterson raised and I was trying to clarify for myself -- and maybe you could help -- the section where you deal with the expungement of records or records that have been expunged except in certain cases.

And I note that on page 8 of the bill, it seems to add language under this section that says "any prospective employer or

governmental licensing body which has, as required or authorized by state law, submitted a fingerprint-based inquiry" to DCJS.

Does that mean, then, that any time, even if your records are expunged, under this law, those are now open to any employer who requires fingerprints? In other words, the expungement has no relevance in this instance? Or am I talking about the wrong kind of record?

SENATOR ESPADA: In the first instance, Senator Montgomery, with respect to your first set of points, the answer is yes, in that this information will be available, with the referenced language on page 8.

I lost the second point you made.

SENATOR MONTGOMERY: My question is if in fact a person has received, for whatever the circumstances allow, an expungement of their records, does this language mean, then, that the exception of an agency being able to receive information despite the expungement is now any employer or governmental licensing body, as this language states?

In other words, does this open up your expunged records to any prospective employer or governmental licensing body which requires fingerprints?

SENATOR ESPADA: You read the language correctly, yes. Yes.

SENATOR MONTGOMERY: Okay. All right. So then no matter the expungement, it's still available, essentially? There is no such thing as being able to live with the expungement not really following you?

In other words, the expungement doesn't mean very much. Any time there is a requirement that fingerprints are part of your application for employment, those records are available?

SENATOR ESPADA: Senator Montgomery, there are any number of folks that apply for licenses that hold jobs, whether it be a police officer or many others, that live with this same burden. I wouldn't conclude, though, that the expungement or the condition of the expungement has therefore no value. That conclusion I can't agree with.

But that it is, in effect, as the

language dictates, yes. There are other people who apply for jobs who have to do the same things that have no prior convictions for drugs or anything else. Yes, that the expungement is of value for many other things that confront our lives.

SENATOR MONTGOMERY: But, Madam President, through you, if Senator Espada would continue to yield.

ACTING PRESIDENT McGEE: Senator Espada, do you continue to yield?

SENATOR ESPADA: Yes. Yes.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR MONTGOMERY: It's valid only where there is no requirement for fingerprinting.

If I can just ask another kind of question, Senator Espada, under the procedure for determining whether or not the court will consider -- would consider drug treatment - I'm on page 9, Senator Espada. Excuse me for the delay. I think we're still talking under the petition to conditionally expunge certain convictions.

On page 9, line 19, it says: "The prosecutor shall be accorded an opportunity to submit materials in support of the petition or to demonstrate that the interest of justice would not be served by granting the petition."

So what I'm reading in this section, it seems to me that it is -- the final word rests, again, with the prosecutor. So that even though you are petitioning the court and you may have fulfilled all of the requirements that you list in the legislation for being able to receive expungement, ultimately the prosecutor will be the last word.

In other words, they can -- the prosecutor would -

ACTING PRESIDENT McGEE: Senator Volker, why do you rise?

SENATOR MONTGOMERY: -- would be able to reject this -- your petition, and it is not appealable.

SENATOR VOLKER: Madam President, can I just interrupt? And I don't mean to interrupt you, Senator Espada.

But having worked on this section,

it is not the prosecutor, it is the court, Senator. Because that whole section pertains to the court.

And the reason it is not appealable is because obviously if you've had your opportunity to appear before a judge and had the decision in a case such as this, you would not normally allow an appeal. Unless, of course, you were able to find something absolutely wrong, a false statement or something. Which is abnormal, frankly, in these kinds of cases.

I would also point out, if I might, that the truth is the expungement does have value. It can't be used for future crimes; in other words, as a predicate-offender-type thing. But because of the severity of drugs, with licensing, it is mainly involved to make sure that a person with that penalty -- in a sense, is a penalty -- still remains only for licensing and only in certain cases for jobs.

And if you'll read, there's an antidiscrimination clause right in the legislation, so that -- to deal with the issue of whether somebody tries to use that

irresponsibly in determining a job opportunity or government licensing.

Excuse me, I didn't mean to interrupt.

SENATOR ESPADA: Thanks to Senator Volker, Madam President.

And clearly, you know, the fact is that there are some that would want to take the prosecutor out of all of this process. I don't think that's in our best interests.

No, as it pertains to this, as we just heard, as the language makes clear, there is no last word by the prosecutor. There is input into the court, and the court will deliberate, take input from all sides and make a decision.

SENATOR MONTGOMERY: Madam President, I'm sorry, I just -- I'm just only reading what I see in front of me. And it says: "The prosecutor shall be accorded an opportunity to submit materials in support of the petition or to demonstrate that the interest of justice would not be served by granting the petition."

So I don't know what that means.

Maybe I'm just misinterpreting this. It's but right here in black and white, Madam President.

ACTING PRESIDENT McGEE: Senator Montgomery, are you speaking on the bill or are you -

SENATOR MONTGOMERY: I still would like to ask Senator Espada if he would yield.

ACTING PRESIDENT McGEE: Senator Espada, will you yield?

SENATOR ESPADA: I will yield.

And if I may just add to that last point, I think -- again, I think when we read the language and we give an interpretation, I think we have to take a little responsibility, you know, for some conclusions here. And, yes, we are reading the same English language.

You're provided an opportunity to be heard. Both sides will be heard. It's as clear as -- I don't think anybody could make it any clearer, that we're simply petitioning the court, submitting information for consideration.

SENATOR MONTGOMERY: Thank you,

Senator Espada.

The other -- just one last point, I suppose. On the list of issues that can be considered in making a determination by the court, it says "any other relevant factor." You know, so in addition to circumstances and seriousness of offense and character of the petitioner and evidence of successfully completing drug treatment and so forth and so on, the last thing just says "any other relevant factor."

That seems to be really very, very highly subjective as to what is a relevant factor based on one judgement may -- what's relevant to one person make not be relevant to another person.

Doesn't that leave it entirely up to interpretation, and therefore anybody can use any excuses for denying this petition?

SENATOR ESPADA: If I might, through you, Madam President, relevance is a subjective matter. But it is the judge that will determine relevance, whether it's germane, what weight it gets.

And so, I mean, we're back to -- we

have to allow -- the bill allows for input, all relevant input, relevant to be a judgment made by the judge -

SENATOR MONTGOMERY: Exactly.

SENATOR ESPADA: -- weight, a determination to be made by the judge.

SENATOR MONTGOMERY: Madam President, if Senator Espada would continue to yield.

ACTING PRESIDENT McGEE: Senator Espada, do you continue to yield?

SENATOR ESPADA: Yes.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR MONTGOMERY: Senator Espada, the -- I wanted to just ask you a question regarding the issue of drug treatment and what happens to a person who is unsuccessful on the first try for their drug treatment program.

It says on page 35 in the bill, line 44, the bill talks about "Where the defendant's sentence of court-approved drug abuse treatment" -

SENATOR ESPADA: I'm sorry, I

didn't get the line. I'm sorry.

SENATOR MONTGOMERY: Line 44. Starting on line 44. "Where the defendant's sentence of court-approved drug abuse treatment has been revoked, any time the defendant has spent in treatment shall not be credited against the determinate term of imprisonment imposed."

So my question, Senator Espada, to you is, does that not prevent people from possibly wanting to enter the drug treatment program? Because even if they complete the drug treatment or they get pretty far along in it and somehow they -- as we know, anyone who knows anything about drug treatment, it usually takes more than one chance, more than one time, one try at successfully completing a drug program.

That person who does not successfully complete the program the very first time out in fact loses that time and has to then go back and serve a longer sentence, essentially, because -- in other words, they were sentenced to drug treatment, they failed at the drug treatment, so the time that they

spent in drug treatment is not allowed as part of their sentence any longer. So essentially you're extending their sentence.

Why would you want to do that? Why bother to go into drug treatment if, you know, if you can't make it the first time, you're going to extend your sentence?

SENATOR ESPADA: Madam President, I think, again, for the sake of clarity and fairness of interpretation here and the conclusions that are being reached, let me just first point out with respect to coerced drug treatment, again the findings of Chief Justice Judith Kaye, the New York State Commission on Drugs and the Courts, in their report of June of 2002. In referring to the treatment outcomes and the worthiness of it: "Obviously, a statewide approach to the delivery of coerced drug treatment to nonviolent addicts in every jurisdiction should be made available."

Now, it is recognized, it is recognized in the field these days that intensive supervision is a necessary component in terms of compliance. Developing the kind

of support mechanisms, whether it be for housing, for jobs, for any number of things that a case manager would be available to help. Compliance, a system of encouraging compliance is in place.

But that doesn't necessarily or should not necessarily be mixed up with the revocation issue. The revocation issue doesn't get triggered necessarily because someone has relapsed once, did not get a job, and is not fully compliant. It's a much more serious matter, again, subject to judicial review and determination.

SENATOR MONTGOMERY: Madam President, through you, if Senator Espada would continue to yield.

ACTING PRESIDENT McGEE: Senator Espada?

SENATOR ESPADA: Yes.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR MONTGOMERY: Yes, Senator Espada, I certainly agree with you wholeheartedly that, as Father Young has pointed out, and every other program, agency

that has provided, including the people in correctional services who provide treatment for inmates, former inmates, and reintegration services, the issue for them, as it is for us, is how do we provide the necessary supports for them, as you say. It must be treatment, must be housing, must be a comprehensive array of services that will help people to in fact be successful in moving on.

So my question to you is -- again, I can't find it in the legislation, so if you can point it to me -- what have we provided in your legislation as a mechanism to support just the comprehensive support programs and services that you speak of, that you know and say in your own words that are necessary and important in order to make this work?

Is there anything in this bill that refers to funding for that kind of service?

SENATOR ESPADA: Madam President, through you, the Governor estimates that when this legislative package is fully implemented that it will need about $41 million to fund. And you heard earlier when the Majority Leader, Senator Bruno spoke, that obviously

there is disagreement on exactly the amount of resources that would be necessary to get the job done as you want it done, as I want it done, as perhaps all of us want it done.

And so no, it is not clearly stipulated, because we don't know. We don't know. We don't have an agreement. Throughout this country we are getting evidence that suggests that obviously there will be savings that would accrue that we can use. But absolutely necessary is to have a wide range of options, whether it be through DOCS and improving the capacity to provide treatment for an inmate in an institution, to provide it in a residential setting, to provide it in a outpatient setting -- all of these things, whether we do it with or without the prosecutor's lead, whether we fund the early intervention and education programs that you and I know are needed in our schools to deal with young people, all of those things are possible. But there is no stipulated funding.

And I return to the prerequisite here -- or the requisite here is to get the ball rolling, is to, as I tried to explain to

Senator Paterson, to look at the positives here and to understand that this is not agreed upon and that we could spend all day picking it apart, and we have, and we should.

But the key thing, the key thing is for the first time in 30 years we have an initiative, we have a well-thought-out plan. We have a Chauncey Parker that has met with the advocacy community, that has met with legislators that have had thousands upon thousands of hours of input into this process. This is not just a press release. This is a well-thought-out plan, subject to interpretation, subject to agreement, subject to enhancements with good ideas.

But it is a start, Senator Montgomery. It is a start. And the overwhelming and most important thing that we could do here today is not keep this on hold any longer. It's been 30 years. The time has come. The time is now.

SENATOR MONTGOMERY: Thank you, Madam President. On the bill.

ACTING PRESIDENT McGEE: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Yes, thank you.

I certainly -- I agree with Senator Espada that we would hope that we could begin to discuss the issue of drug law reform in New York State with some level of sincerity and honesty and integrity, with the idea that we could come together and put together a package that really reflects our intent to change what we have lived with for over 30 years.

But I'm afraid, as so many other issues have been dealt with in this way, that we might end up with two plus two equals a bad 30 additional years. Two bad bills -- you know, we keep talking about it's a one-house bill, but I'm not so sure that the houses are far enough apart to make this meaningful.

So I think we need to discuss this issue, even though it's a one-house bill, because we need to talk about what is absolutely, in my opinion, my estimation, unacceptable. Because it really is not reflective of a well-thought-out and meaningful approach to reform.

Expungement is important because through this whole process the combination of the drug law that we have and the problem that we have with the proliferation of drugs, we've been unable to deal with the fact that so many communities are plagued with this disease. And the fact that between the arrest of people on the street and the incarceration, we end up with a system that is 90 to 95 percent people of color, black and brown people. So there is a racial implication to this, there is a class implication to this. And of course there is the criminal-activity issue.

We are creating, if we cannot somehow clarify the expungement issue -- and one of the reasons I spent so much time, Madam President, with Senator Espada on that, it's very important because we are creating, through this system, a permanent underclass that consists of primarily of black and brown, mostly men, in this state.

So we need to deal with expungement. Because if people are unable to go on with their lives, be able to get employment, be able to be licensed for some of

the licensed professions, be able to go to college because they are eligible for TAP funding or for some assistance, if all of that is eliminated, then there is no other way for us to view it and there is no other avenue for people to exist except in a permanent state of underclass.

So I think the expungement issue is critical. The treatment issue is critical. And if we continue to go with the system that we have where the district attorney has the last word on most of the issues, whether or not you can petition for expungement, whether or not you can remain in drug treatment, whether or not you can go to be in drug treatment, you can continue to be in drug treatment -- as long as we have a district attorney with the last word on all of those issues, we have a system that essentially does not work, is not fair.

And so it's very, very difficult for us to assume that this is just a one-house bill and we should not discuss it because it's not important. And in fact, this legislation will increase the number of people who are

going to end up in prison. And those people are, as they -- if the pattern continues, it's going to be 90 percent people of color.

So I'm very -- I'm disheartened that Senator Espada has not presented with us a legislation that we can take some heart in saying that this is clearly -- this legislation is not what Senator Dunne has been advocating for, it's not the legislation that the advocates across the state has been advocating for. This is not what people view as Rockefeller reform.

So that I'm not thanking the Governor, because this is really not what anyone has been talking about, and it's not what he promised in his State of the State message when he said he was going to look at Rockefeller reform and begin to do something about it.

So I'm very disappointed. And I certainly hope that, Senator Espada, when we go back to however the negotiations are going to go, I hope that you will look at this legislation very, very carefully to see how this is going to impact on your district and

my district and all of those areas where most of the inmates emanate from.

Is this really a legislation that is going to yield us 30 more years of a positive upward movement in terms of reform, or is this going to be worse, so that we're going to have even more and younger people from our districts ending up in the correctional facilities across this state because your legislation, because this proposal or a proposal like this came out of the Legislature under the guise of a Rockefeller reform law?

I'll be voting no on this, Madam President.

ACTING PRESIDENT McGEE: Senator Alesi.

SENATOR ALESI: Madam President, I'd like to speak on the bill, if I may.

ACTING PRESIDENT McGEE: Senator Alesi, on the bill.

SENATOR ALESI: This is a very controversial issue, as we all know. It's one that is not being dealt with in a similar fashion in the Assembly. It has come down

from the Governor, I think from the good faith and best efforts of the Governor and his office in response to the clamoring for some kind of change in the Rockefeller Drug Laws.

And as I sit and listen to the debate, it is becoming clear to me, as it should with everybody, that the focus is on treatment to some large extent. And as Senator Espada said in his earlier remarks, we must be looking at the whole bill, just as we do with a lot of legislation that we do here, whether it's the budget or any other highly controversial measure.

There are so many good things in this bill, and there are some things in this bill that could be improved upon. But I think that the effort here, as Senator Espada has said so clearly, is that we must bring this to the floor. And we have, by way of the Governor's office, something that we hope will at least bring the Assembly into the debate so that we can deal with this issue, so that we respond to those people who want reform and at the same time understand that there are people who are very concerned about reforms.

Part of my concerns about reforming the Rockefeller Drug Laws don't center on what seems to have been so far the centerpiece of our debate, and that is treatment. I'm entirely in favor of treatment as the front line of defense against people who have drug addiction, who will continue their drug addiction if they're not treated, and who will then, because of their addiction, become part of the criminal justice system.

It only makes sense that if we can treat people, that we do it. This bill provides a number of ways that treatment can be given to people.

This bill also, to my chagrin, doesn't recognize that low-level drug users, people who have been convicted of a small amount of drug usage, are part of the problem of this very nefarious industry that we have not just in this country but worldwide.

You cannot feel sympathetic for someone who is part of a system that is a constant drain not only on our economy, not only on our police, not only on our military, a constant drain on our schools, our property

values and therefore the ability of our cities and municipalities to operate effectively because property taxes go down. The drains on our hospitals, drains on our medical services.

The people that are at the very bottom of the drug trade, at the very broadest base, are the ones that we need to get treatment to. I don't disagree with that. But my concern is that in this legislation we seem to be overly sympathetic to people that are part of the conspiracy of drug trade on a 24/7 basis.

And if you understand anything about what makes a business succeed, you'll know that, for example, a bakery cannot exist without somebody growing the wheat, it can't exist without somebody transforming that wheat into flour, it cannot exist without somebody baking it into loaves of bread or distributing it or wholesaling it or, finally, getting it down to the retail level where it is sold one loaf at a time.

And my concern here is the overemphasis and perhaps a little too much sympathy for those people who are selling on a

day-to-day basis but who are the essential ingredient for the success of an industry that is destroying and has destroyed and unfortunately will continue to destroy the fabric of our society.

Yes, treatment is vitally important, and I agree with that. Education is vitally important for prevention. But I also believe that when we have made those attempts and we have tried to do it as effectively as possible -- and I believe that the Governor's bill does try to do that effectively, it does try to provide treatment effectively -- that we should not come back and say those people who have failed to be treated, those people who have turned their back on the opportunity because of an addiction should not also be known as accomplices in every death on every street corner of an innocent bystander or someone else who has been involved in the drug trade.

They're accomplices. Just as the kingpin is an accomplice in this whole operation, they are accomplices every time someone has to sell their body to be able to

provide themselves with the money to feed their addiction. Low-level users, possessors, and sellers are accomplices in every murder that is a result of the drug trade, and make no mistake about that.

So when we're focusing on nonviolent drug dealers and nonviolent drug possessors, let us not fool ourselves here. In the rush to sympathize with these people and offer them treatment and forget the fact that if treatment doesn't work, if treatment hasn't done its job and if education hasn't prevented this, that those people who are involved at the very broadest base of the drug trade are exactly the same people, just as much as the kingpin, who are guilty of pulling the trigger when a young child is killed because he is a bystander, they're just as guilty of putting someone on a street corner selling themselves, they're just as guilty as someone who has millions of dollars in nontaxable income that undermines and destroys our economy on a daily basis as the kingpin, as the major distributor, as the provider of the raw goods, as the wholesaler, and as

anybody else involved in this.

You cannot run a bakery if you don't have someone providing the wheat, the flour, the transportation, the distribution, the wholesaling, and the retailing. You cannot have a successful business if you don't have someone selling on a day-to-day basis.

And the main intent of the Rockefeller Drug Laws originally was to focus on that person selling on a day-to-day basis. It's not just three-quarters of an ounce, it's three-quarters of an ounce 24 hours a day, seven days a week, 365 days a year, multiplied by thousands and thousands of people.

Do we need to treat them? Yes. Do we need to educate them in advance? Yes. My concern here is that in reducing some of the penalties, and in fact even offering people who have already been sentenced an opportunity to have a reduced sentence, that we're sending a message that if you're a low-level dealer that you're not really a problem.

The message we should send, and very emphatically, if we do anything with the Rockefeller Drug Laws, is that if you are a

low-level dealer that you are just as much a murderer as the drug kingpin.

I'll be voting for this bill, Madam President, but I'll be voting with those very serious concerns that I have. And emphasizing the fact that I personally do not believe that anyone who is involved in any way at any level of the illegal drug trade is involved in something that is nonviolent. And if I have any opposition to this bill at all, it is the use of the word "nonviolent."

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Liz Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President. If the sponsor would yield to a question, through you.

ACTING PRESIDENT McGEE: Senator Espada, will you yield for a question?

SENATOR ESPADA: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR LIZ KRUEGER: Thank you, Madam President. This has become such a complex debate, and it's such a an important

bill and such a complex bill. And I have to tell you I would love the opportunity to vote for reform of the Rockefeller Drug Laws before we go home this year.

I don't think I'll be able to do that today, because I don't think we have a bill that's the reform that we need. But I need to go back to some of the basics that I think we raised before.

Just to clarify, Senator Espada, you agreed before with a question from I believe it was Senator Paterson that this bill would only impact 405 out of approximately 22,000 people who were currently in the New York State prison system for A-I nonviolent drug felonies?

SENATOR ESPADA: No. As it relates to the A-I's, the answer was in the hundreds. As it relates to that category of offense, yes.

SENATOR LIZ KRUEGER: Right. So it was -- I'm sorry, Madam President, through you, if the sponsor would continue to yield.

ACTING PRESIDENT McGEE: Senator Espada, do you continue to yield?

SENATOR ESPADA: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR LIZ KRUEGER: Thank you, Senator.

So assuming, again, we're talking about several hundred. I believe you said before the number was 405 before. Maybe it's 350, maybe it's 450. Again, there's 22,000 - or it's my understanding, and you may have different numbers, that we have 22,000 low-level, nonviolent felony offenders in our prison system today who are either there under categories A-I, B, C, or D.

But your bill only deals with changing the sentencing options for people in jail who are A-I -- again, those few hundred -- in relationship to the 22,000?

SENATOR ESPADA: Well, first of all, again, I don't know how much degree of responsibility we have for throwing around numbers. But I'm not going to split hairs and get into I have 18,000, you have 22,000. The issue is bigger than getting the absolute

number right.

There are about 600 or so A-I's who would be impacted as a result of this determinate sentencing. A-I, A-II, right now we're talking life. We're talking life. We're doing away with life as a maximum.

I don't know -- and we could pander, we could politicize, and we could do responsible -- you know, produce responsible queries and what have you, and arguments, but let's get this right. I mean, we are moving, the proposal recommends, from an indeterminate sentencing scheme to a determinate sentencing scheme. And to use a person that has been in jail, sentenced to 15 to life or 25 to life - as Senator Bruno indicated in his opening statements, he sought a pardon or clemency for three or four individuals.

The fact of the matter is that if this proposal was in place, someone who's an A-I or A-II category, their sentence could be reduced by fifty percent. And if you have, through merit, bonuses and good behavior, earned additional time off, you could get out in 7.1 years. And if you're in that category

now, you could petition the court for resentencing.

So I don't want to, in a broad brush, you know, indicate that as we go down through these categories that there's no impact. There is definite, clear impact in these proposals on As and A-I's. There is very clear impact on the Bs or those that get plea-bargained from As to Bs and on down. The provision of treatment is clear and real in this legislative package.

SENATOR LIZ KRUEGER: Madam President, if the sponsor would continue to yield to an additional question.

ACTING PRESIDENT McGEE: Senator Espada, will you continue to yield?

SENATOR ESPADA: Yes.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR LIZ KRUEGER: Thank you, Senator Espada.

I don't think you and I have any disagreement over the value within the bill for the 400 to 600 people that you were so articulately describing the advantages for. I

think I was trying to point out that it doesn't address the issue for the other 21,400 to 21,600 other people in the prison system, that this quote, unquote, reform won't address.

But I do think the numbers are important, and I disagree with you there.

I'm curious, Senator, I received no fiscal unanimous on this bill. Have we looked at the savings projected from your own bill versus the cost?

Senator Bruno, when he opened up discussion today, talked about a million dollars for the "Road to Rehab" program that were put in by the Senate. He announced, and I have not seen the Assembly's fiscal note, that the Assembly plan will cost $200 million a year. I don't know that number either. But 1 million, 200 million, we're not really nitpicking or fine-tuning, we're clearly in very different places.

So my question is, what are the projects costs and savings from this bill? Because this is a dramatic rewriting, as you yourself have said, of both the criminal drug

laws in this state and the creation of new discretion by DAs and judges and changing formulas for how long people will be penalized, both shortening the sentences and, as we heard from other senators, in a number of circumstances lengthening the sentences that people go to jail for.

So I think that the fiscal costs and savings here is really a critical determinant of the pluses and minuses of your legislation.

SENATOR ESPADA: I would agree with the importance of analyzing cost savings and analyzing the type of appropriation that it would take to get us to accomplish the various objectives in this legislative package. I'll get to that point in a second.

But again, I think a responsible retort on my part requires that I just challenge you just a little bit on your insistence on concluding (a) that there is no impact or little impact within this package with respect to As, Bs, and the whole flow of it.

Again, the offender groups as they

fall into those categories, and as you follow the sentencing ranges that are being recommended -- I could share this with you, Senator, but take my word for it. If you're one of these individuals here in the B categories under this kind of determinate sentencing, you benefit. You benefit from being in that kind of scheme of sentencing as opposed to what is currently in effect.

The Governor has indicated very clearly that he expects substantial savings. The Governor has indicated very clearly that he is committed to doing what is necessary to finance this legislative package so that the objectives therein get done. People throw around in negotiations -- as you know, we just got through passing a $90 billion budget. We're talking millions here in savings, perhaps, when it's fully implemented.

I don't know, I think we need to have a cost estimate study. That will be absolutely important. Advocate groups, others have proffered those. I've read them, you've read them. There is clearly a savings that will accrue.

The appropriation, we'll have to give that some thought. Clearly, the Governor, again, is on record as saying that he will fund what is necessary to get the objectives met that are included in this legislation.

SENATOR LIZ KRUEGER: Madam President, if the sponsor will continue to yield, through you, please.

ACTING PRESIDENT McGEE: Senator Espada, will you continue to yield?

SENATOR ESPADA: Yes.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR LIZ KRUEGER: Senator Espada, thank you for your answer.

I'm still confused. So the Governor's -- this is, I thought, the Governor's program bill as well as your own bill. So you said the Governor has made a commitment fiscally to cover the costs of this bill.

Does the Governor's program bill have fiscal notes or a fiscal analysis or a commitment of money separate from the Senate

version we're seeing today?

SENATOR ESPADA: We do not.

SENATOR LIZ KRUEGER: Thank you.

Madam President, if the sponsor would continue to yield.

ACTING PRESIDENT McGEE: Senator Espada, do you continue to yield?

SENATOR ESPADA: Yes.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR LIZ KRUEGER: Thank you, Senator Espada.

So we don't have numbers from the Governor or a real commitment. We do, I believe -- again, I'm a little fixated on the numbers here. I think that Rockefeller drug reform requires a plan that will address a large population throughout the state, many of whom are in fact our constituents in the city of New York, you and I, and as Senator Montgomery was highlighting before from specific communities.

My numbers show that approximately 8700 people per year are likely to enter the prison system under low-level drug offenses of

the categories covered by your bill.

And thank you for your clarification before. Yes, I wasn't challenging that there were changes in your law that affected B, C, and D at sentencing; rather, that it didn't affect B, C, and D for people who were already in the system, only A-I.

Do we believe that we will have adequate resources to provide drug treatment alternatives for some percentage of 8700 new people per year? Again, for myself, under the assumption that there's no new money yet and there's no commitment by the Governor in his bill, what do we think is going to happen to those 8700 people under your bill absent a commitment of expansion of services and treatment programs at the front door?

SENATOR ESPADA: You know, Senator, we are in an election year. A lot of the problems that we hear with the numbers - and yeah, I think numbers are important too - is there is, on the one hand -- I'm not saying you, there is on the one hand a school of thought that says drive up the numbers that

are not impacted, drive up the numbers that won't get serviced by this.

The Governor has been very clear. He will take whatever is required to get the objectives of providing treatment, of providing for lower sentencing and a support system for reentry, of providing the kind of educational and early intervention resources, and of providing enhanced, yes, enhanced penalties for those that deserve it that must get it. It doesn't get to the point that perhaps Senator Alesi wants it to, but it addresses it for the first time.

The question of resource allocation is one that is important. The Governor in an election year has made this foremost commitment to the entire state of New York, in clearly articulating that he will fund it. You and I will have our opportunity to contribute some thoughts to that. Obviously it has to come through here. But be assured, I take his word for it.

SENATOR LIZ KRUEGER: Madam President, if the sponsor would continue to yield.

ACTING PRESIDENT McGEE: Senator Espada, will you continue to yield?

SENATOR ESPADA: Yes.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR LIZ KRUEGER: Thank you.

Senator Espada, of course it is an election year. And I personally would love to be able to go home saying that I voted for Rockefeller Drug Law reform. I think it's a fundamental and important issue. Again, I'm not convinced we have that yet.

You now suggest to me that I should simply trust the Governor because it's an election year. Again, we have a legislative duty and responsibility in both houses to ensure that legislation we pass is real and meets the need.

And you mentioned driving up numbers. I'm not trying to drive up numbers. I'm trying to find out what the numbers are here. What are the real numbers, what will be the real costs?

And to repeat myself from another debate, I'm starting to wonder whether I

should have run for State Senate in Missouri, because I constantly find myself in the situation of having to ask the question: Well, show me. I can't take things on faith and trust.

Senator Montgomery stated that the Governor made certain commitments in his State of the State address. We're being asked to pass legislation where the money, in theory, to provide the services under the legislation will happen later, not in attachment with the legislation, and after we've already passed our budget for the state year.

So again, I can't accept the answer, I'm afraid. So I will ask the question again. What will happen if we don't increase the availability of drug treatment services within the context of this law? Because from my own experience in the city of New York, and in participating on the Committee on Substance Abuse and Alcoholism, I know that we don't have enough slots in the city of New York.

So I worry and wonder what your response is. If we're going to pass this law

without increasing the availability of treatment beds and slots within our communities in the city of New York, will we in fact be in a situation where people with drug problems who face criminal charges get access to drug treatment slots while other people who want and need drug treatment but are not facing criminal felony charges will be turned away at the door?

Because I don't think we believe that's in the best interests of the state of New York. That in fact would result in people, perhaps with the assumption earlier on in their drug problem, or before they have been involved in, you know, a larger, grosser process of participation in the criminal trade, will have had no opportunity to move into treatment before having to even hit our courts.

So again, do we have any evidence that we are going to increase the availability of drug-treatment slots and beds to match the intent of this legislation?

SENATOR ESPADA: Madam President, through you, I want to go back to something

you said, Senator, again, which cannot go unchallenged. The conclusion you reached for me (a) you have no license to do that, but you did, and God bless you. But the fact of the matter is that when I said it's an election year, I didn't say by the rhetoric that's being put out in the press releases.

(A) This is not a press release, this is a serious package that's being delivered for our consideration.

(B) What I did say was that those that oppose the governor in an election year should not use the occasion to prevent or distort because it is an election year. That's what I'm saying. And that let's deal with this legislative package, let's read it, let's deal with it, let's digest it. And, yes, let's advocate so that we're clear that there are enough funds.

And I ask those that have been asking the questions, have you met with Chauncey Parker?

SENATOR LIZ KRUEGER: No.

SENATOR ESPADA: Have you seen him in action? Have you gotten the

transcripts and the information that has been secured through the thousands upon thousands of hours that have been invested in consultation with the provider community, with the advocacy community concerning the treatment models and agreements on treatment models that would be effective, whether they be from -

ACTING PRESIDENT McGEE: Excuse me, Senator Espada.

Senator Padavan.

SENATOR PADAVAN: Madam President, I think we're getting very close to the two-hour limit, are we not?

ACTING PRESIDENT McGEE: Yes, we are.

SENATOR PADAVAN: And we do have about six more people who want to be heard.

Now, in courtesy to those senators, I would hope that you could cut short your questions and express any other thoughts you may have during the roll call.

Because we do want to have these senators be heard, and there's only ten minutes left.

SENATOR LIZ KRUEGER: Madam President, I'd be happy to respect Senator Padavan's request and give my time to additional senators. Thank you very much.

ACTING PRESIDENT McGEE: Thank you, Senator Krueger.

Senator Espada, do you wish to continue?

SENATOR ESPADA: The point is, to round it out, there is a commitment to providing the resources, the requisite resources to get the objectives that have been delineated here and contained in this legislation, unequivocally, yes.

ACTING PRESIDENT McGEE: Thank you.

Again, I remind you, Senator Dollinger, we're nearing the two-hour limit.

SENATOR DOLLINGER: Thank you, Madam President. I accept the challenge. I'm only going to be about two minutes.

I'm going to vote against this bill. Let me tell you why.

First of all, you can't have a bill that increases demand for drug treatment

across this state and doesn't put one single penny, not one penny, to work for drug treatment.

Senator Bruno said at the start the Assembly bill which proposes drug treatment that would cost $200 million, there's no money there for that. There's one simple reason why there's no money there, and that's because this house does not have the will to put $200 million into drug treatment.

It's not a question of there being no money there. There is money, and there could be money available if this house had the will to put it to work. This bill will never work without an increased investment in drug treatment.

Two, this bill in my opinion does almost the completely wrong thing. It only allows the highest level of drug offenders to go back in and have their sentences reduced. What about all those B, C and D felons, all those intermediate felons who payed an enormous price because of their drug addiction and have been in jail without drug treatment for a lengthy period of time? The B, C, and D

felons are the people we ought to be turning our attention to.

And who are those people? They're largely Hispanics and African-Americans. About 95 percent of the people in prison for drug offenses on those levels are people of color.

It seems to me that if we don't do that, we're going to allow a very select few of the worst of our drug felons to get relief from this bill, but the people who really had drug addiction problems, whose behavior resulted in their criminal activity, will never get the benefit of it. That's not fair.

I'll close on one other note and make it very simple. Senator Hoffmann, Senator Bruno, and of course Senator Espada have said this is an historic day that we finally get to debate this.

This, in my opinion, is a day of tragedy, a tragic failure of policy in this state when we put the Rockefeller Drug Laws into place and the tragic failure never to recognize that they had failed. We should have had this debate ten years ago when I

first came here, and people who had been locked in jail because of their addiction would not still be suffering a cruel and unjust punishment because of their sickness.

I'm not going to vote in favor of this bill. It needs a lot more work. And I appreciate what others have done to bring it to the table. But this is not a day of history. This is a day, in my opinion, where we acknowledge failure and resolve this bill does not rectify that failure, more needs to be done.

I'll vote no.

ACTING PRESIDENT McGEE: Thank you, Senator Dollinger.

Senator Paterson, Senator Padavan is next on the list.

SENATOR PADAVAN: I defer to you, Senator Paterson.

SENATOR PATERSON: No, mine is just a point of order, Madam President.

I think that we should clarify to Senator Krueger and others that there is no time limit on our debates. There is a point two hours into the debate where, if someone

moves to close the debate, they can. But this being the historic day that I've now heard three senators refer to, I just wanted to make it clear that at a time like this I would think we'd discuss this issue until we're all satisfied that we've reached a decision.

ACTING PRESIDENT McGEE: Thank you, Senator Paterson.

Senator Padavan.

SENATOR PADAVAN: I'll defer to the next speaker, Madam President.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

I echo Senator Paterson's sentiment that this is such an important issue, we really should not move to close debate prematurely. We can spend a few more minutes here today to deal with issues that have cost others many, many years of their lives.

On the bill, Madam President.

ACTING PRESIDENT McGEE: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: There is a

level of fundamental dishonesty about the charade we're engaged in here. We cannot take our votes on this legislation, our debate on this legislation out of the context of what is happening outside the walls of the Capitol.

Let's be honest. There is a movement in this state to reform the Rockefeller Drug Laws. There is a more powerful and significant organizing effort than there has ever been.

I'm proud to have worked with the Drop the Rock Coalition, to have stood with the Mothers of the Disappeared organizing to reform these laws. And the name of that group really says all that you have to say about the significance of this issue: the Mothers of the Disappeared, women whose children have been in jail so long that they basically lost touch with them.

Former advocates for the Rockefeller Drug Laws, including Senator Dunne, have spoken up. Judges have spoken up. Religious organizations have spoken up. We have momentum now to reform these laws. For us to then come to the end of session and put

out a bill that does not provide substantial reform, that none of the advocates support, and that we know the Assembly is never going to pass is fundamentally dishonest.

We need to work with this coalition if we're serious about doing something. If we're not serious about doing something, then let's just tell our constituents we're not serious.

If we really want to expand drug treatment, if we really want to reduce unjustifiably long sentences, if we really want to check the power of prosecutors in situations where there is currently no restriction and no check, let us pass a true reform bill.

This is not that bill. This would in many situations actually increase sentences for offenders beyond what the current law does. This bill makes it so difficult to get into drug treatment -- yeah, there's some provisions for drug treatment. You can become eligible for drug treatment, and then the judge can decide you don't get it. There are stiff requirements to get it.

And I would also particularly like to point out one provision that is as big a poison pill as you can put in a bill to submit to the Assembly. And I'm speaking on page 23, Section 23, subsection 2. This law allows a prosecutor to appeal a sentence "on the ground that such sentence was unduly lenient."

That does not exist anywhere in the criminal law of New York. You can appeal if the judge violated the law. You cannot appeal just because you think the sentence is unduly lenient. And a defendant certainly doesn't have the right to appeal just based on the fact that they think the sentence was too harsh.

This is fundamentally unjust. This is something we know will never pass the Assembly. This is something that distorts the process of our courts and that we should not be passing here today.

I think we should stay here and debate this bill and get everything out on the table, and I don't think we should adjourn this session and leave Albany until we've responded to the hundreds of thousands of

people who have organized around this state to rectify a fundamental injustice.

And this is not an injustice that was caused by a natural disaster or corporate misconduct. This is an injustice that was caused by us. It was caused by the New York State Legislature, the government of the State of New York.

And I think it will be truly a disgraceful situation if we do not stay here today and stay here next week and stay here until we address this issue this year.

I vote no. I urge everyone to vote no. Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President.

In the interests of time, unfortunately, I cannot ask the sponsor any questions. So on the bill, I just would like to make a couple of comments.

Number one, the sponsor has stated that the bill will restore judicial discretion in the sentencing of drug offenders by

increasing the opportunities for such offenders to be diverted into treatment programs.

As someone who has worked in the substance abusing community for 25 years, I wish that it were that simple. Under current laws, prosecutors have the option to send drug offenders to into drug courts, DTAP, other types of drug alternative programs.

Unfortunately, drug courts and DTAPs are not available throughout the state. Where they do exist, if this bill becomes law, they will continue to operate. But in those parts of the state where they do not exist, nothing will happen.

But this bill adds another option where DTAP and drug courts are not in operation, this court-approved drug treatment, or CADAT, which permits the judge to override a reluctant prosecutor to divert a drug offender into treatment. This is a good step.

But then the bill takes a giant step backwards. It gives the prosecutors the right to appeal any drug treatment diversion discussion made by a judge.

I thought we were giving the authority in drug cases to the judiciary. Why, then, should we give a prosecutor the right or the opportunity to appeal this decision? This undermines the judge's efforts to divert drug offenders into treatment. It should be removed, and discretion should continue to lie with our judges.

The main question here is what will the million dollars pay for. In the drug treatment community, one community could more than absorb one million dollars. I would have asked the Senator in his judgment, since it's his judgment that this hinges on, what does he think a million dollars will pay for? Will it increase the numbers of beds and slots that will become available? Will it supplement the costs of methadone or other alternative medications? Will it create more drug-free programs? Will it increase the numbers of drug court programs across the state?

A million dollars is a tremendous insult to a discussion, more or less, to the people to whom we professed to be trying to help.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President. Listening to a lengthy debate, I'll try to be as brief as possible.

I taught in the New York City school system, as most of you know, for twenty years. I was a dean of students during about 15 of those 20 years and had to deal with young people on a firsthand level who were involved in sometimes trading and sometimes using and sometimes both.

Users like company. It's a cancer. It grows. If I'm a casual user, I spread it around because I want more friends around me. I don't want to do it alone, I want to have friends with me. So I spread the cancer to my colleagues and to my friends. If I'm a dealer, I want more people to sell to, so I spread it around. And I provide incentives for people.

There are ads on television right now where you see people: "I didn't think I was murdering a judge." You know, "I was just

buying something, you know, for kicks. I didn't know I was contributing to the death of a judge, to the death of a police officer, that I was contributing to international terrorism."

We know terrorists use the drug trade to finance their nefarious deeds. This is how they get their resources in many cases.

When Senator Alesi said these are not nonviolent situations, these are. They're contributing to violence by their very actions. They may not think so, but they are. They're destroying lives.

Treatment facilities. Talk to anyone involved in treatment, and each and every one of them will tell you if the person involved doesn't have the desire to get well, they never will succeed. Sometimes you have to give them a kick in the rear end to make them succeed.

And if jail time or lengthy jail time will provide them with that incentive, I'd rather do treatment than jail, then I will go into treatment. That may work. I don't know if it will, but it may provide them with

some incentive.

On their own, most of them don't go voluntarily. If anyone is out there telling me that most people go into treatment voluntarily and that they are seeking the service, then how come the failure rate is like three-quarters to 80 percent who go in, come out untreated and go back and back and back again?

We are talking this thing to death. We are talking and people are dying. We had school governance talk, talk, talk for years, mayor after mayor after mayor until this house passed a bill that was criticized by the other side of the aisle intently that it was a one-house bill, it was no good, it was never going to work. The Assembly didn't move. We now have a school governance bill passed because this house acted.

I suggest to you, ladies and gentlemen, we have to act. It's time to move. The bill is flawed. Senator Espada has said this is not a perfect piece of legislation. I have yet to read one. I have yet to read anything that's perfect in this place. We're

human beings, and by definition we have flaws.

However, it is time to move. And this house is taking the first step. The Governor is to be credited for being willing to take the first step. The financing can be worked out. The savings can be worked out. All of that can come later. Let's move. People are dying, and it's necessary for us to make the corrections. Now is the time.

This is the first step. Let's move. Let's stop the talk. Let's stop the political gamesmanship that's been going on here. Let's move. This is too serious to fool around with.

I vote aye on this bill, Madam President.

ACTING PRESIDENT McGEE: Senator Connor, to close for the Minority.

SENATOR CONNOR: Thank you, Madam President.

First of all, I want to acknowledge and congratulate Senator Bruno for his statement three years ago that he was open to reforming the Rockefeller Drug Laws. I think that was a significant -- at least from a

political perspective, a significant breakthrough.

Although we're not there yet. Obviously, we don't have a negotiated bill. As my colleagues have set forth, there is much in this bill that makes it a poison pill in terms of actually becoming law.

Madam President, I was surprised that the sponsor acknowledged that it wasn't a perfect bill. In my experience, Madam President, sponsors of one-house bills always describe their bill as perfect. From their perspective, it is. It's when we negotiate and get the final product that there's always a little bit disappointment on both sides of the issue that it's not perfect.

I would suggest, Madam President, I think every bill that I've filed is perfect. I know there may be 209 or 210 legislators who would disagree with me. And we're here, and we do compromise.

So that rather surprised me. It's like negotiating against yourself, Madam President.

The problem with this bill is it

doesn't really accomplish what there is widespread consensus among New Yorkers ought to be accomplished. The provisions of the bill that I certainly have no problem with, the enhanced, increased sentences for certain categories of kingpins, dealers who exploit children, repeat violent offenders, use of a firearm -- I think there's consensus that we ought to enhance those penalties.

It's when we get into changing the sentencing structure, changing the way we deal with nonviolent drug offenders that we have a problem. Frankly, Madam President, this bill still leaves too much power in the hands of district attorneys when it comes to whether or not a defendant will be diverted into treatment. It places a burden on the defendant in appealing that, to prove by clear and convincing evidence that that particular defendant is appropriate for diversion.

In excluding certain categories of offenders -- i.e., people with a prior felony conviction -- not violent, a prior nonviolent felony conviction -- I think we overlook a lot of people we ought to be putting into

treatment.

No defendant, unfortunately -- the defendants, the mules, the people who sell to support their own habit often end up with a series of nonviolent convictions precisely because they haven't undergone treatment, yet they haven't been caught with a sufficient quantity to get any substantial prison sentence. I think we ought to include them. That category of defendant ought to be eligible in this program.

The change in the sentence structure, I think at the high end, at the high end is an important reduction of time that people have to serve. But I think when you get into the B and C felony categories, you actually are going to have some people doing more time in jail for a particular crime than you would have before, assuming defendants in same or similar circumstances.

For example, you know, under current law, people who are convicted of possessing a relatively small quantity of drugs can be sentenced to an indeterminate sentence of two-and-a-half to seven years.

The judge picks exactly where that falls.

Under this bill, if you look at the grid, that same person would get six years as a definite, determinate sentence. Six years. They get out in a little under six years because of good time. But on average, I suggest that that sentence is far more severe, a far more severe prison sentence than is now inflicted on that same category of defendant.

Madam President, as I've said in prior debates over criminal justice matters, I agree, parole doesn't work very well. Parole supervision is difficult, at best, to keep up, given the number of defendants who get paroled. And I've generally supported fair determinate sentencing schemes that still leave discretion with the judge.

That wasn't a conservative idea on the federal level. I remember 24 or 25 years ago when Senator Kennedy was the chair of the Judiciary Committee in the U.S. Senate and he proposed and held hearings around the country and actually passed a federal determinate sentencing law.

The point is, though, when you have

determinate sentencing you have to look at that grid of sentences, so to speak. And under the grid here, further down, lower-level offenders will actually do considerably more prison time than they do now. I don't see how that's a step in the right direction.

The other thing I think we have to do if we're going to have an honest effort at true reform that involves recognizing the importance of treatment for nonviolent defendants is we have to put money into it.

The Assembly bill makes a reasonable estimation of the number of correction beds that will be reduced due to reform of the drug sentencing laws, converts that money into availability for treatment beds.

I think that ought to be in any bill. We ought to know what are we buying. Are we going to have sufficient resources for treatment beds? Are we going to reduce unneeded correction beds? Are we going to stop making sentencing schemes a full-employment project for certain parts of the state and have a rational system that

affords the possibility of treatment?

Madam President, we've talked in this country, in this state for decades now about the war on drugs. Whatever it has been that we have been doing, that's not a war that anybody thinks has been won. And a new approach is certainly appropriate.

But we do have to recognize that while there may be expenses involved, that at the end of the day there are enormous savings in terms of the human lives saved, families saved and, yes, a great decrease in the cost of crime. Because lots of crimes -- and I'm not talking about violent crimes, because I think we need to still be tough on that and make those distinctions.

But a lot of nonviolent theft crimes we all know are done because they're feeding a drug habit, the perpetrator is feeding a drug habit. We have to get at that and do it straightforward and honestly.

This bill has no chance in the Assembly because of all the things that we've heard in this debate. It's an attempt to appear to foster real reform. It's called

reforming the Rockefeller Drug Laws, but in terms of meeting all of the needs and objections that people, advocates have spent -- and you know, Madam President, the advocates, when we talk about advocates in this case, we're talking about a lot of public-spirited, concerned people. We're talking about people, frankly in a different sense, but supporters of change in the judiciary, among judges who have had to sentence people to prison under the Rockefeller Drug Laws.

The law books are replete with judges absolutely deploring the fact that they are forced to sentence people one-time offenders, mules, low-level people to extraordinarily lengthy prison sentences. We have a former colleague of ours who has taken the lead in reforming this.

We're not talking about advocates in this sense, Madam President, like in some other things that if we're dealing with an insurance bill or a bill with economic impacts. The advocates here are not a special interest group.

The advocates here are absolutely concerned, committed New Yorkers who see a far better way to deal with this and who recognize that this Legislature, in perpetuating this scheme all these years, has failed in our responsibility as legislators to, one, address the problem of drugs; two, do it in a way that makes sense and that leads, at the end of the day, to a better situation for all New Yorkers.

Mr. President, I'm urging a no vote for this bill. I look forward to real negotiations that bring back not a perfect bill, but a bill that can become law.

Thank you.

ACTING PRESIDENT MORAHAN: Senator Padavan.

SENATOR PADAVAN: Mr. President, will you acknowledge Senator Espada, who, along with Senator Volker, will close for the Majority.

ACTING PRESIDENT MORAHAN: Senator Espada.

SENATOR ESPADA: Thank you, Senator Padavan, Mr. President.

Let me just acknowledge that all that's been said about the harsh Rockefeller Drug Laws, they were indeed a drive for punishment. But let's also be honest and acknowledge that Governor Pataki's initiatives that have been debated here today are a drive to treatment. We have learned a great deal over the last thirty years, and those lessons are incorporated in the proposals that are proffered here today.

Also, let me thank my colleagues here in this protracted but very necessary debate for the debate, for their questions, comments. They're taken as good-faith attempts to impact on this whole process.

Rest assured that the Governor is very, very, very, very serious about making a financial commitment. No, we're not talking about a million dollars. We're talking about whatever is reasonably necessary, we will do.

And we also must end by indicating that Senator Connor has make quite a case for why this bill is so necessary. Because indeed it has been too long. The time is now. Paralysis, no action, is the worst thing we

could do. There's no one, no one out there that has been impacted by this that would suggest, after a thorough and reasonable assessment of what is before us, that we should not act in favor of moving forward.

I urge and invite all of my colleagues to take this historic move forward and vote yes. Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Volker.

SENATOR VOLKER: Mr. President, I'll try to be as brief as I possibly can.

I'll be the first to admit to anyone that this is a little bit of an emotional issue for me. I was there in 1973. And I read all this, if you'll excuse me, nonsense in the paper about what happened back in '73. And I will be very brief except to say to you what happened to Nelson Rockefeller is he had decided back in 1970 -- and I think one of the people here talked about that. I remember it very well -- that he was going to deal with the drug menace.

And in typical Nelson Rockefeller

style he picked up a handful of money, what at that time would have been probably -- it was about $80 million, which is the equivalent today, probably, of about $10 billion, if you look at the budget at that time, and he threw it at the drug problem.

He set up -- they set up all these methadone clinics all over New York City and Buffalo and all over the place. They became one of the best sources of drugs in the entire state. It was an incredible failure. They tried just treatment, and it didn't work one iota. In fact, it made the drug problem much, much worse.

So the next thing was he came up with an extremely draconian plan. Part of the plan was that if you grabbed a drug dealer - I'm trying to remember what the amount was it. It seems to me it was $5,000 per drug dealer. I remember saying to my colleagues in the Assembly at that time that for $500, I would imagine, you could probably bring in, better dead than alive, people that had drugs stuffed in their pockets. And the person would collect a whole bunch of money because he

acquired drug sellers. In other words, that is ridiculous.

I only mention that. There were other things in that bill. I opposed, vehemently, the Rockefeller Drug Law in 1973. And you know, there doesn't seem to be an understanding. At any rate, the Rockefeller Drug Law that finally was voted into law later on that year -- by the way, much to the chagrin of then Nelson Rockefeller, because he felt it was a huge defeat for him the way it was amended. You can imagine what it was like before we amended it.

He was very unhappy with me, to say the least. And I will only say that there is some theory that that's the reason I'm in the Senate, because my days in the Assembly shortened.

But in any case it has been, to me, something that I have watched over the years. And I read the mythology in the paper on a regular basis that we're amending the Rockefeller Drug Laws. But this doesn't do enough to amend the Rockefeller Drug Laws. Every single person in jail under the

Rockefeller Drug Laws is affected by this bill, every single one.

I guess you could say there's over a thousand; it depends. I used to say 400 and some. Because the A-I's is the only real part of the Rockefeller Drug Laws that's truly left. There was some change to the A-II's. There's been changes all over the place.

When you talk about low-level drug dealers, that's not the Rockefeller Drug Laws. That was changed a long, long time ago. And you can argue over how we should do it, whether, you know, we should use definite sentencing, in -- but that's not the Rockefeller Drug Laws. The people that are in jail under the Rockefeller Drug Laws are the A-I's and in certain ways the A-II's. And there's truth to that.

And, frankly, in this bill every one of the people in jail in that category gets the opportunity to have their sentences reviewed. And a new sentencing structure does reduce -- and by the way, the one key element I would like to say in this bill is you will find no place in this bill that says life.

One of the things that used to bother me, in a sense, was that a person who went to jail, and deservedly so, on drugs, could get a longer sentence than a person who was in jail for murder. That always bothered me. Now, that could still happen but it would have to be on a definite sentencing kind of thing. In other words, somebody who really is a bad person.

This nonsense, if you'll excuse me, that we have this multitude of nonviolent drug offenders in jail is just -- it's a myth. In fact, we're having trouble finding enough people to go to shock incarceration, because we call them reasonably nonviolent. That means they've committed some violence, but they're not real bad violence. I mean, it's just -- there's just this huge mythology. And the numbers of inmates has been falling off rather dramatically.

We believe, right now, those of us who have studied this issue -- and by the way, speaking of reports, everybody's asking for reports, you're going to get one. We've been waiting for Mr. Parker to get us the bill.

We're coming out with a study that we did, the committee did, the staff did, that shows the progress of the drug laws over the years, shows the number, the tremendous decline in the numbers of less violent inmates in the prison system.

It's a fascinating -- I admit to you I didn't realize it until I really looked at it. I think New York, frankly, is a huge success story in criminal justice. The crime rate is down more than anyplace in this country. The prison population is falling off. We probably are treating more people per capita -- I don't know for sure, because nobody knows for sure -- per capita than any state in the union. Certainly more than California.

California at one time had 40,000 inmates, just as we did, back in 1980. They now have something in the area of 165,000 people -- 165,000 people, and still climbing. And here we are, and we've dropped from 72,000 now to about 66,000, 67,000, somewhere in there. And we're still falling. Which is good.

What we hope to do, by the way, with a bill like this and with the system that's set up here, is to allow people to be treated not only in the community but also in prison, because we're going to get some room, the way things are going. We're shutting down -- by the way, the argument against upstate prisons, that people are saying, well, you guys are building this so you could have employment and all that? We're shutting down all the SHUs, virtually, the old prison pieces are being shut down. And not without some problems with the correction officers and so forth.

Although the interesting thing about it is, in all honesty, you look around this Capitol and you'll find out why we're not laying off more correction officers. They're doing security all over this place. I mean, I told the union people when they came in, I said -- they're complaining, and I said: "What are you complaining about?" I said we can't -- I said if you think that the correction officers are going to be -- we need them. They're part of our security. I mean,

we're spending a ton of money on security through the homeland security stuff. And it's got to be done. I mean, I think you agree. In New York City, here, and all over.

The reason I can only say -- and you can argue all you want about letting people out of jail and all that. And Senator Espada I think has done a really good job of pointing out the importance that this bill does in dealing with treatment.

The DAs, by the way, do not support this bill. They don't oppose it, but they don't support it because this is a significant reduction in their authority. There's no question about it.

It does move toward more court-appointed treatment. And according to our studies, as opposed to the Assembly bill, which I call a jail break, we feel that as many as 3,000 people that are in jail right now would be eligible for drug and alcohol treatment. I say drug and alcohol.

And to be perfectly honest, there is one provision in this bill that everyone should understand goes beyond the bill. I

don't know if it was mentioned in the debate; I didn't hear it. This bill does give the prosecutor the ability to appeal bail. Not just for drug offenses, for all offenses. All offenses. DAs do like that, by the way. I just want it to be clear, because we've done that in the past -- or this house has. The other house hasn't passed it. But I think you should know that.

Let me just finally say, I've been around here -- this is my 30th year. And I tend to agree with you. I know the politics of this. We all know the politics of it. And it's hard to deal with the difference between political philosophies. My only problem is I like to deal with the facts. The facts are we have moved a long way, in my humble opinion, towards getting our streets cleared of drugs.

Have we done it? No, of course we haven't. And it seems like every time we just about get into the position to be able to do it, something like Ecstasy comes along. Or some other manufactured drug. It's horrendous.

And I was out there in the streets

fighting marijuana and heroin. And of course cocaine just flooded our -- cocaine was the killer. I mean, there's no question. When I was there, as I say -- the thing I always, by the way, complain about marijuana, you have to understand. Marijuana, the problem with it was not even so much the marijuana itself, it was the cash flow for heroin. It was the cash flow. The way in which they bought the heroin, which was much more expensive, was to sell the marijuana. And the Mob and all the rest of the people then used it.

Let me just finish by saying that Senator Espada's bill does go a long way toward dealing with the problem of drug trafficking. Is it the be-all and end-all? There's nothing that I know of that probably we can do that's the be-all and end-all. But I just want to tell you -- and I understand the politics of the gubernatorial election - that this bill, a similar bill to this is going to pass both houses and eventually be signed into law.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 65. This act shall take effect November 1, 2002.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

SENATOR PATERSON: Party vote in the negative, Madam President.

SENATOR PADAVAN: Party vote in the positive.

THE SECRETARY: Ayes, 37. Nays, 20. Party vote, with exception.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Duane.

SENATOR DUANE: Thank you, Madam President. To explain my vote.

SENATOR PADAVAN: The bill is adopted.

ACTING PRESIDENT McGEE: I'm sorry, Senator Duane, it was a party vote and the bill has passed.

Senator Padavan.

SENATOR PADAVAN: Madam President, we have no objection if Senator Duane wishes to explain his vote.

However, we would ask that, in the spirit of keeping this day moving, that you keep it brief.

ACTING PRESIDENT McGEE: Thank you, Senator Padavan.

Senator Paterson.

SENATOR PATERSON: No. Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you.

Senator Duane.

SENATOR DUANE: Thank you, Madam President.

This -- I can't vote for this bill. It's really no good. Although I have to in all honesty say that the Assembly bill, the previous Assembly bill that was on the table wasn't very good either. And the compromise bill is also terrible, the Assembly compromise bill.

Just on the Governor's bill, merit time, good time is totally eliminated for everybody, and that's on page 4 of the bill. What kind of a reform is that?

You know, like none of the bills

that are being negotiated use a disease model. None of them really address the problem of why -- of drugs and violence. It's really capitalism, it's supply and demand. And these bills, none of them do anything to address that.

You know, a lot of families are going to have a lot of false hope if they hear that we're passing a reform of the Rockefeller Drug Laws, because very few incarcerated people will actually be affected by this legislation. That's particularly true of the Governor's bill, but also of the Assembly bill and the Assembly compromise. All three of these bills just seek to replace bad drug policy and bad drug laws with more bad drug policy and more bad drug laws.

I hope that people will go back and look at the Minority task force report on the hearings that we had on the Rockefeller Drug Laws, because I think that that goes an awful lot further in actually reforming the drug laws.

And I also -- I take exception to Senator Volker saying that the SHUs are not

being used. We just built a whole new prison that's only SHUs. And every prison I've ever gone into, the SHUs are filled. So -- in fact, the policy seems to be if there's an empty bed in a SHU, put someone in it.

ACTING PRESIDENT McGEE: Senator Duane, you've expired on the two minutes. How do you vote?

SENATOR DUANE: Yes, thank you, Madam President. I'm voting no on this bill, and I believe I'm going to be voting no on the bill if it comes to us in the Assembly compromise form.

ACTING PRESIDENT McGEE: Thank you, Senator Duane.

Senator Lachman.

SENATOR LACHMAN: On another issue.

ACTING PRESIDENT McGEE: Another issue.

SENATOR LACHMAN: Madam President, I rise to ask unanimous consent to be recorded in the negative on Calendar Number 1339, Senate Number S7486. Thank you.

ACTING PRESIDENT McGEE: Without

objection.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. I also rise to request unanimous consent to be recorded in the negative on Calendar 1339, Senate 7486.

ACTING PRESIDENT McGEE: Without objection.

Senator Gentile.

SENATOR GENTILE: I too, Madam President, ask unanimous consent to be recorded in the negative, on Calendar Number 1109.

ACTING PRESIDENT McGEE: 1109, without objection.

Senator Dollinger.

SENATOR DOLLINGER: Madam President, if we're recording votes, I request unanimous consent to be recorded in the negative on Calendar Number 60.

Thank you, Madam President. There may be another one, but I'll get to that.

ACTING PRESIDENT McGEE: Without objection.

Senator Morahan.

SENATOR MORAHAN: Yes, Madam President. Could we return to the regular-order reading of the calendar, please.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1321, by Senator Padavan, Senate Print 2736, an act to amend the Education Law, in relation to certain tuition waivers.

SENATOR DUANE: Explanation, please.

ACTING PRESIDENT McGEE: Senator Padavan, an explanation has been requested by Senator Duane.

SENATOR PADAVAN: Madam President, this particular proposal, legislative form, was patterned after a program that was in effect a number of years ago during the '70s and '80s at John Jay College of Criminal Justice.

In an effort to provide an opportunity for generally young police officers to advance their careers, heighten their level of expertise through college degree programs, and to help them get into

that curriculum and to begin perhaps the attainment of a college degree, we are proposing that these courses be provided by SUNY or CUNY in the manner articulated in the bill.

SENATOR DUANE: Explanation satisfactory.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

SENATOR MORAHAN: Madam President, could we please return to Calendar 1335.

ACTING PRESIDENT McGEE: Calendar 1335. The Secretary will read.

THE SECRETARY: Calendar Number 1335, by Senator Andrews, Senate Print 7429A, an act to authorize the International Baptist

Church, Incorporated.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Madam President, I'll waive the explanation from my colleague Senator Andrews. I understand this bill.

I again point out that the - apparently the inoculation is failing, the epidemic continues. Partial property tax exemptions are sweeping from Nassau and Suffolk through the rest of Long Island. They'll eventually be in Westchester and Monroe. It just continues a problem.

Let's have a bill that does this statewide and allows everything to partake of it. It would be very easy to do.

No, Madam President. With all due respect to my colleague.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT McGEE: The bill is passed.

Senator Paterson.

SENATOR PATERSON: Madam President, the alert body here did take note that that is the first bill Senator Andrews has passed, and we'd like to congratulate him.

ACTING PRESIDENT McGEE: Congratulations, Senator Andrews.

(Applause.)

SENATOR PATERSON: And we're still waiting for the day when I pass a bill.

But while we're waiting, I would like to be recorded in the negative on Calendar Number 1184, after tutelage from Senator Padavan.

ACTING PRESIDENT McGEE: Without objection.

Senator Dollinger.

SENATOR DOLLINGER: Could I likewise have unanimous consent to be recorded

in the negative on Calendar Number 1184, Madam President.

ACTING PRESIDENT McGEE: Without objection.

SENATOR DOLLINGER: Thank you.

ACTING PRESIDENT McGEE: Senator Morahan.

SENATOR MORAHAN: Yes, Madam President. Could we return to Calendar 1323 and lay it aside for the day.

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

Senator Morahan.

SENATOR MORAHAN: Could we return to motions and resolutions.

ACTING PRESIDENT McGEE: Senator Fuschillo has a motion.

SENATOR FUSCHILLO: Thank you, Madam President.

On behalf of Senator Hoffmann, I wish to call up Senate Print Number 4142, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 204, by Senator Hoffmann, Senate Print 4142, an act to amend the Agriculture and Markets Law.

ACTING PRESIDENT McGEE: Senator Fuschillo.

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

ACTING PRESIDENT McGEE: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: Senator Fuschillo.

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

ACTING PRESIDENT McGEE: The amendments are received and adopted.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, on behalf of Senator Kuhl, I wish to call up Calendar Number 970, Assembly Print Number 9980.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 970, by Member of the Assembly Schimminger, Assembly Print Number 9980, an act to amend the General Business Law.

ACTING PRESIDENT McGEE: Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, I now move to reconsider the vote by which the Assembly bill was substituted for Senate Print Number 6332 on May 8th.

ACTING PRESIDENT McGEE: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: Senator Fuschillo.

SENATOR FUSCHILLO: Madam president, I now move that Assembly Bill Number 9980 be committed to the Committee on Rules and the Senate bill be restored to the order of Third Reading Calendar.

ACTING PRESIDENT McGEE: So ordered.

Senator Fuschillo.

SENATOR FUSCHILLO: I now offer the following amendments.

ACTING PRESIDENT McGEE: The amendments are received and adopted.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, on behalf of Senator Hoffmann, on page number 44 I offer the following amendments to Calendar Number 978, Senate Print Number 1741, and ask that said bill retain its place on Third Reading Calendar.

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

Senator Morahan.

SENATOR MORAHAN: Madam President, is there a privileged resolution at the desk by Senator DeFrancisco?

ACTING PRESIDENT McGEE: Yes, there is.

SENATOR MORAHAN: May I ask that the title be read and move for its adoption.

ACTING PRESIDENT McGEE: The

Secretary will read.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution Number 6079, congratulating the Syracuse University Men's Lacrosse Team upon the occasion of capturing the 2002 NCAA Championship.

ACTING PRESIDENT McGEE: The question is on the adoption of the resolution. All in favor will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Morahan.

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

ACTING PRESIDENT McGEE: There is no more housekeeping at the desk, Senator Morahan.

SENATOR MORAHAN: Then there being no other business before the Senate, I move that the Senate stand adjourned until

tomorrow morning, June 13th, at 11:00 a.m.

ACTING PRESIDENT McGEE: On motion, the Senate stands adjourned until Thursday, June 13th, at 11:00 a.m.

(Whereupon, at 2:40 p.m., the Senate adjourned.)