NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

June 17, 2002

3:20 p.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, Sunday, June 16, the Senate met pursuant to adjournment. The Journal of Saturday, June 15, 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: Thank you, Madam President.

Amendments are offered to the following Third Reading Calendar bills:

On behalf of Senator Hannon, page 7, Calendar 141, Senate Print 2505A;

On behalf of Senator Leibell, page 11, Calendar 277, Senate Print Number 3251;

Also on behalf of Senator Leibell, page 11, Calendar Number 278, Senate Print Number 5259A;

On behalf of Senator Marcellino, page 15, Calendar Number 370, Senate Print Number 1969B;

Also on behalf of Senator Marcellino, page number 20, Calendar Number 520, Senate Print Number 2383E;

On behalf of Senator LaValle, page

21, Calendar Number 554, Senate Print Number 6692;

On behalf of Senator Velella, page 25, Calendar Number 658, Senate Print Number 3954;

On behalf of Senator Hannon, page 27, Calendar Number 691, Senate Print Number 3707;

On behalf of Senator Marcellino, page number 30, Calendar Number 768, Senate Print Number 7094A;

On behalf of Senator Leibell, page number 38, Calendar Number 923, Senate Print Number 7213;

On behalf of Senator Seward, page number 40, Calendar Number 941, Senate Print Number 5524B;

On behalf of Senator Leibell, page number 40, Calendar Number 943, Senate Print Number 6701.

I now move, Madam President, that these bills retain their place on the order of third reading.

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

bills will retain their place on Third Reading Calendar.

Senator Espada.

SENATOR ESPADA: Thank you, Madam President.

On behalf of Senator Hannon, page number 43, Calendar Number 988, Senate Print Number 4622A;

On behalf of Senator Leibell, page number 51, Calendar Number 1138, Senate Print Number 5283;

On behalf of Senator Leibell, page number 57, Calendar Number 1326, Senate Print Number 7253;

On behalf of Senator Marcellino, page number 58, Calendar Number 1355, Senate Print Number 6946;

On behalf of Senator Padavan, page number 58, Calendar Number 1358, Senate Print Number 7350;

On behalf of Senator Hannon, page 41, Calendar Number 965, Senate Print Number 4352;

And on behalf of Senator Balboni, page 18, Calendar Number 466, Senate Print

Number 6505.

We now move that these bills retain their place on the order of third reading, Madam President.

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

Senator Velella.

SENATOR VELELLA: Madam President, there will be an immediate meeting of the Banks Committee in the Majority Conference Room. Would you please announce that.

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

Senator Meier.

SENATOR MEIER: Thank you, Madam President.

On behalf of Senator Morahan, I wish to call up his bill, Print Number 6106, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The

Secretary will read.

THE SECRETARY: Calendar Number 221, by Senator Morahan, Senate Print 6106, an act to amend the Volunteer Firefighters Benefit Law.

ACTING PRESIDENT McGEE: Senator Meier.

SENATOR MEIER: 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, 48.

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

ACTING PRESIDENT McGEE: The amendments are received and adopted.

Senator Meier.

SENATOR MEIER: Thank you, Madam President.

I now wish to call up Senator LaValle's bill, Print Number 2589, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The

Secretary will read.

THE SECRETARY: Calendar Number 26, by Senator LaValle, Senate Print 2589, an act to amend Chapter 554 of the Laws of 1996.

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

ACTING PRESIDENT McGEE: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT McGEE: Senator Meier.

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

ACTING PRESIDENT McGEE: The amendments are received and adopted. Thank you, Senator Meier.

SENATOR MEIER: Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Maziarz.

SENATOR MAZIARZ: Thank you, Madam President. On behalf of Senator Saland, please place a sponsor's star on Calendar

Number 67.

ACTING PRESIDENT McGEE: So ordered.

Senator Maziarz.

SENATOR MAZIARZ: Thank you, Madam President.

I wish to call up Senate Print 7180, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1262, by Senator Balboni, Senate Print 7180, an act to amend the Public Authorities Law.

ACTING PRESIDENT McGEE: Senator Maziarz.

SENATOR MAZIARZ: 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, 48.

ACTING PRESIDENT McGEE: Senator Maziarz.

SENATOR MAZIARZ: I now offer the following amendments.

ACTING PRESIDENT McGEE: The amendments are received and adopted.

Senator Maziarz.

SENATOR MAZIARZ: Thank you, Madam President. I wish to call up Senate Print Number 7453, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1280, by Senator Volker, Senate Print 7453, an act to amend the Civil Practice Law and Rules.

ACTING PRESIDENT McGEE: Senator Maziarz.

SENATOR MAZIARZ: 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, 48.

ACTING PRESIDENT McGEE: Senator Maziarz.

SENATOR MAZIARZ: I now offer the following amendments.

ACTING PRESIDENT McGEE: The amendments are received and adopted.

Senator Maziarz.

SENATOR MAZIARZ: Thank you, Madam President.

I wish to call up Senate Print 1236A, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 902, by Senator Trunzo, Senate Print 1236A, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT McGEE: Senator Maziarz.

SENATOR MAZIARZ: Madam President, I 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, 51.

ACTING PRESIDENT McGEE: Senator Maziarz.

SENATOR MAZIARZ: I now offer the following amendments.

ACTING PRESIDENT McGEE: The amendments are received and adopted.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

On behalf of Senator Nozzolio, I move to amend Senate Bill Number 2672C by striking out the amendments made on May 15th and restoring it to its original previous print number, 2672B, Calendar Number 214.

ACTING PRESIDENT McGEE: So ordered.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, on behalf of Senator Morahan I wish to call up Calendar Number 335, Assembly Print Number 7733B.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 335, by Member of the Assembly Tocci, Assembly

Print Number 7733B, an act to amend the Public Health Law.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: I now move to reconsider the vote by which this Assembly bill was substituted for Senator Morahan's bill, Senate Print Number 4023B, on 3/19.

ACTING PRESIDENT McGEE: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: I now move that the Assembly Bill Number 7733B be committed to the Committee on Rules and Senator Morahan's Senate bill be restored to the order of the Third Reading Calendar.

ACTING PRESIDENT McGEE: So ordered.

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

ACTING PRESIDENT McGEE: The amendments are received and adopted.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, I'd like to call up my own bill, Print Number 5551, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 137, by Senator Marcellino, Senate Print 5551, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: 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, 51.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: I now offer the following amendments.

ACTING PRESIDENT McGEE: The

amendments are received and adopted.

SENATOR MARCELLINO: Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you, Senator Marcellino.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President. I wish to call up Senate Print Number 7144A, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 983, by Senator Farley, Senate Print 7144A, an act to amend the Public Health 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, 51.

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, I wish to call up Calendar Number 661, Assembly Print Number 228C.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 661, by Member of the Assembly Grannis, Assembly Print Number 228C, an act to amend the Public Health Law.

ACTING PRESIDENT McGEE: Senator Fuschillo.

SENATOR FUSCHILLO: I now move to reconsider the vote by which the Assembly bill was substituted for my bill, Senate Print Number 4989A, on 5/31.

ACTING PRESIDENT McGEE: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT McGEE: Senator Fuschillo.

SENATOR FUSCHILLO: I now move that Assembly Bill 228C be recommitted to the Committee on Rules and my Senate bill be restored to the order of Third Reading Calendar.

ACTING PRESIDENT McGEE: So ordered.

Senator Fuschillo.

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

ACTING PRESIDENT McGEE: The amendments are received and adopted.

SENATOR FUSCHILLO: Madam President.

ACTING PRESIDENT McGEE: Senator Fuschillo.

SENATOR FUSCHILLO: I wish to call up Senate Print Number 2964, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 272, by Senator Farley, Senate Print 2964, an act to amend the Banking Law and others.

ACTING PRESIDENT McGEE: Senator Fuschillo.

SENATOR FUSCHILLO: 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, 51.

ACTING PRESIDENT McGEE: 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, I wish to call up Senate Print Number 439, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 47, by Senator DeFrancisco, Senate Print 439, an act to amend Chapter 912 of the Laws of 1920.

ACTING PRESIDENT McGEE: Senator Fuschillo.

SENATOR FUSCHILLO: 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, 51.

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 Rath.

SENATOR RATH: Madam President, are there any substitutions at the desk?

ACTING PRESIDENT McGEE: Yes, there are.

The Secretary will read.

THE SECRETARY: On page 6, Senator Leibell moves to discharge, from the Committee on Rules, Assembly Bill Number 10239 and substitute it for the identical Senate Bill Number 2365, Third Reading Calendar 113.

On page 14, Senator Farley moves to discharge, from the Committee on Rules, Assembly Bill Number 4247A and substitute it for the identical Senate Bill Number 2307A, Third Reading Calendar 347.

On page 23, Senator Hoffmann moves to discharge, from the Committee on Rules, Assembly Bill Number 746 and substitute it for the identical Senate Bill Number 536, Third Reading Calendar 621.

On page 41, Senator Farley moves to discharge, from the Committee on Rules, Assembly Bill Number 7907B and substitute it for the identical Senate Bill Number 5378C, Third Reading Calendar 969.

On page 52, Senator Stafford moves to discharge, from the Committee on Rules, Assembly Bill Number 9860 and substitute it for the identical Senate Bill Number 6316,

Third Reading Calendar 1151.

On page 56, Senator Brown moves to discharge, from the Committee on Rules, Assembly Bill Number 9422A and substitute it for the identical Senate Bill Number 5780A, Third Reading Calendar 1289.

And on page 60, Senator Maziarz moves to discharge, from the Committee on Rules, Assembly Bill Number 10731A and substitute it for the identical Senate Bill Number 6721A, Third Reading Calendar 829.

ACTING PRESIDENT McGEE: Substitutions ordered.

Senator Rath.

SENATOR RATH: Please recognize Senator Padavan.

ACTING PRESIDENT McGEE: Senator Padavan.

SENATOR PADAVAN: Madam President, thank you very much.

I'd like to just take a few moments out of our time here today to make you aware that we are joined in the chamber by some very, very superb people.

This house and our colleagues in

the Assembly and the Governor and others over the period of this session have done many things to acknowledge the events of 9/11 and its aftermath, the bravery of so many men and women and what they did to inspire all of us. And in response, we have done many things to acknowledge that.

Today we're joined by one category of brave men and women who responded to that emergency, the emergency medical technicians in the employ of the City of New York. They're led here today by Patrick Bahnken, who is the president of their union. They're also joined by two ladies, two very brave ladies, Mrs. Virginia Quinn and Mrs. Cecilia Lillo, both of whom lost their husbands on that terrible day.

And they're here in Albany to heighten our sense of awareness. Meeting them is an honor and a privilege, but also a sobering time, once again, as we've had so many of them in this chamber.

And so I'd like you all at some point in time to say hello to them, thank them, and in any way you see fit to express

your feelings relevant to their sacrifice and their efforts on behalf of all New Yorkers.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you, Senator Padavan.

On behalf of the New York Senate, may I say welcome to our chambers. And thank you so much for all the heroic acts that you have done. We share in your sorrow and we praise you for your commitment to those you serve. Thank you so much for being here.

(Standing ovation.)

ACTING PRESIDENT McGEE: Senator Rath.

SENATOR RATH: Madam President, may we please have the noncontroversial reading of the calendar.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 37, by Senator LaValle, Senate Print 4889A, an act to amend the Education Law and others, in relation to the State University health care services and facilities.

SENATOR PATERSON: Lay it aside,

please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 149, by Senator Leibell, Senate Print 5082B, an act to amend the Highway Law, in relation to the designation of the Sergeant Albert Ireland Memorial Highway.

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, 51.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 158, by Senator Skelos, Senate Print 425A, an act to amend the Agriculture and Markets Law, in relation to detection dogs.

ACTING PRESIDENT McGEE: 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, 51.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 249, by Senator Wright --

SENATOR PATERSON: Lay it aside, please.

SENATOR RATH: Lay it aside temporarily.

ACTING PRESIDENT McGEE: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 371, by Senator Velella, Senate Print --

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 445, by Member of the Assembly Morelle, Assembly Print Number 1539, an act to amend the Tax Law, in relation to providing.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 614, by Senator Fuschillo, Senate Print 6454, an act to amend the Penal Law, in relation to criminal impersonation.

SENATOR RATH: Madam President, lay it aside temporarily, please.

ACTING PRESIDENT McGEE: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 639, by Member of the Assembly Tocci, Assembly Print Number 1682, an act to amend the Education Law, in relation to the qualifications.

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, 51.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 677, by Member of the Assembly Ortiz, Assembly Print Number 6038, an act to amend the Administrative Code of the City of New York, in relation to the custody.

SENATOR HEVESI: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 680, by Senator Larkin, Senate Print 4137B, an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law and the Mental Hygiene Law.

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, 51.

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.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 901, by Senator Marcellino, Senate Print 6947A, an act to amend the Navigation Law, in relation to providing an exemption.

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. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 949, by Senator Hoffmann, Senate Print 6913A,

an act to amend the Agriculture and Markets Law, in relation to the inclusion.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 989, by Senator Lack, Senate Print 5669B, an act to amend the General Obligations Law.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 60th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT McGEE: The bill

is passed.

THE SECRETARY: Calendar Number 1029, by Senator Skelos, Senate Print 7153B, an act to establish the Mill Brook Library Funding District.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 13. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1043, by Senator Johnson, Senate Print 5825B, an act to amend the Vehicle and Traffic Law, in relation to creating.

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, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1045, by Senator Volker, Senate Print 6663B, an act to amend the Highway Law, in relation to designating a portion of the state highway system.

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, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1053, by Senator Morahan, Senate Print 7322A, an act to amend the Public Authorities Law, in relation to the use of monies.

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. Nays, 1. Senator Spano recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1060, by Senator Hannon, Senate Print 7289A, an act to amend the State Technology Law, in relation to facilitating.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 10. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1112, by Senator Spano, Senate Print --

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1114, by Senator Nozzolio, Senate Print 7196A, an act to amend the Tax Law, in relation to the imposition.

SENATOR PATERSON: Lay it aside.

SENATOR RATH: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 1170, by Senator Lack, Senate Print 4090A, an act to amend the Real Property Law, in relation to the real estate agency disclosure form.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 3. This act shall take effect January 1, 2003.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1193, by Senator LaValle, Senate Print --

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1231, by Senator Stafford, Senate Print 7001B, an act making certain findings and determinations.

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

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number

1245, by Member of the Assembly Magnarelli, Assembly Print Number 9648, an act to direct the Department of Health.

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, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1257, by Senator DeFrancisco, Senate Print 7414B, an act relating to the establishment and extension.

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

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, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1289, substituted earlier today by the Assembly Committee on Rules, Assembly Print Number 9422A, an act to amend the Highway 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, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1310, by Senator DeFrancisco, Senate Print 4925, an act to amend the Civil Practice Law and Rules, 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, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1314, by Senator Lack, Senate Print 6508, an act to amend the Judiciary Law and the Uniform Justice Court Act.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 5. This act shall take effect April 1, 2003.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1344, by Senator Saland, Senate Print 7515, an act to amend the Social Services Law, in relation to protection.

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, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1345, by Senator Velella, Senate Print 7519, an act to amend Chapter 19 of the Laws of 1994.

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 1360, by Senator Wright, Senate Print 7480A, an act to amend the Public Authorities Law, in relation to contracts.

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, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1361, by Senator Skelos, Senate Print 7524A, an act to establish the Hewlett Harbor Library Funding District.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 12. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

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

SENATOR RATH: Thank you, Madam

President. May we now have the controversial reading of the calendar.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 37, by Senator LaValle, Senate Print 4889A, an act to amend the Education Law and others, relating to the State University health care services and facilities.

SENATOR RATH: Lay the bill aside temporarily.

ACTING PRESIDENT McGEE: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 371 --

SENATOR RATH: Madam President, there will be an immediate meeting of the Rules Committee.

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

Senator Rath.

SENATOR RATH: Thank you. Proceed.

ACTING PRESIDENT McGEE: The

Secretary will read.

THE SECRETARY: Calendar Number 371, by Senator Velella, Senate Print 3663A, an act to amend the General Business Law.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT McGEE: Senator Rath.

SENATOR RATH: Madam President, can we lay that aside temporarily.

ACTING PRESIDENT McGEE: The bill will be laid aside temporarily.

THE SECRETARY: Calendar Number 445, by Member of the Assembly Morelle, Assembly Print Number 1539, an act to amend the Tax Law.

SENATOR PATERSON: Explanation, please.

SENATOR RATH: One moment delay, Madam President.

ACTING PRESIDENT McGEE: Senator Rath.

SENATOR RATH: Madam President, may we stand at ease for a moment.

ACTING PRESIDENT McGEE: The Senate will stand at ease for a moment.

(Whereupon, the Senate stood at ease at 3:50 p.m.)

(Whereupon, the Senate reconvened at 3:51 p.m.)

ACTING PRESIDENT McGEE: Senator Rath.

SENATOR RATH: Madam President, if we could return to the reading of the controversial calendar and please take up Calendar Number 677, by Senator Nozzolio.

ACTING PRESIDENT McGEE: The Secretary will read Calendar Number 677.

THE SECRETARY: Calendar Number 677, by Member of the Assembly Ortiz, Assembly Print Number 6038, an act to amend the Administrative Code of the City of New York.

SENATOR LIZ KRUEGER: Explanation.

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

SENATOR NOZZOLIO: Madam President, who requested the explanation?

SENATOR RATH: May I interrupt one moment, Senator Nozzolio.

Senator Hevesi had requested a

discussion on the floor, and he has left the floor temporarily. So we're going to lay this aside temporarily.

But you have another bill on the agenda, and if the clerk could go to that next Nozzolio bill, which is number --

ACTING PRESIDENT McGEE: 1114, ma'am?

SENATOR RATH: I'm sorry, Madam President, that's laid aside for the day. If we could stand at ease temporarily.

SENATOR PATERSON: Madam President.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Before we stand at ease, with your able guidance as the chair, and with the acting Majority and Minority leaders both being of the same gender, I thought that on Women's Health and Wellness Day that we would have the Senate entirely run by women, and hopefully we'll get out of here on time this week because of that fact. Thank you.

(Laughter.)

ACTING PRESIDENT McGEE: What a wise observation. Thank you, Senator Paterson.

(Whereupon, the Senate stood at ease at 3:54 p.m.)

(Whereupon, the Senate reconvened at 3:55 p.m.)

ACTING PRESIDENT McGEE: Senator Rath.

SENATOR RATH: Madam President, if we could take up Calendar Number 853, by Senator Trunzo.

ACTING PRESIDENT McGEE: The Secretary will read Calendar Number 853.

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.

SENATOR LIZ KRUEGER: Explanation, please.

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

Excuse me. Could we just move that gentleman in front of you off to the side a little bit. There we go. Thank you.

SENATOR TRUNZO: Madam President, this bill establishes the Canal Adopt-A-Trail Program, a program modeled successfully --

ACTING PRESIDENT McGEE: Excuse me, Senator Trunzo. It's very difficult for the Secretary to transcribe or hear you.

Could we have some quiet, please. Thank you.

Thank you, Senator Trunzo.

SENATOR TRUNZO: Madam President, this bill establishes a Canal Adopt-A-Trail Program to reduce and remove litter and debris and to enhance the appearance and maintenance of the canalway trails and related facilities.

ACTING PRESIDENT McGEE: Read the last section.

Senator Paterson.

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

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

SENATOR TRUNZO: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR PATERSON: Madam President, in these types of situations where we perhaps would want to indemnify volunteers for their actual work, I'm wondering why you wouldn't use that course of action rather than to completely expunge the liability that would accrue to the municipality. Because by doing that, there's no standard of care for the municipality.

In other words, it would almost encourage the use of volunteerism rather than paid employment, because then the municipality actually can shield itself from lawsuits.

SENATOR TRUNZO: Madam President, what this bill does is it really mirrors the same legislation we have so far for the Transportation Law, Section 14-29, which adopts a highway program. For the same reason, the General Municipal Law, Section 277, adopts a municipal park, shoreline and roadway program. And for the Parks and Recreation Shoreline Preservation Law, Section 325, which adopts a beachfront program. And EnCon Law Number 9-113, which adopts a natural resource stewardship program.

And this is exactly the same as those bills, which are now law, but doing it for the canal trail system. So really, you know, it's something that's already been done.

I realize that the trial lawyers are opposed to the bill, but it's been approved by the New York State Council of Mayors as an important factor.

But since it is mirrored against -- as to all the other legislation that's already on the books, there doesn't seem to be any reason to have to change this one.

ACTING PRESIDENT McGEE: Senator Liz Krueger.

SENATOR LIZ KRUEGER: Thank you. If the sponsor would yield to an additional question.

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

SENATOR TRUNZO: I will yield.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR LIZ KRUEGER: Thank you, Madam President.

Senator, I'm new to the Senate, as

you know, so I was not here when those other laws were passed. I'm curious, has there been any experiences to date that in fact there's a problem with having an immunization clause as opposed to the indemnity model?

SENATOR TRUNZO: Not to our knowledge, Senator. Everything has been working very well.

SENATOR LIZ KRUEGER: It has been working very well. Thank you.

Madam President, if the sponsor would yield to an additional question.

ACTING PRESIDENT McGEE: Senator Trunzo, will you yield for an additional question?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR LIZ KRUEGER: Thank you, Madam President.

SENATOR TRUNZO: It's hard to hear when they open this door.

SENATOR LIZ KRUEGER: I know. Yes, you can tell the noise pattern here.

Senator, why -- because you

apparently are familiar with the past precedents, why did we go down the road of immunization completely instead of indemnifying people? Why did we choose that course?

SENATOR TRUNZO: Evidently it was done at individual different times. And this has been requested by the Thruway Authority now that oversees the canal system in itself, who realized that this was on the books. And there are volunteers working there, that they wouldn't be liable for any of that stuff.

So the others didn't happen all at one time. So evidently it's a piecemeal deal. And fortunately, all the other agencies that are involved in this trail type of program have accepted it, and there's been no real -- any reaction that there has been any real problem.

And as a result, the canal system, which is now covered by the Thruway Authority, also wanted the same coverage.

SENATOR LIZ KRUEGER: Madam President, if the Senator would continue to yield to one more question.

ACTING PRESIDENT McGEE: Senator Trunzo, will you continue to yield for one more question?

SENATOR TRUNZO: Yes, one more question.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR LIZ KRUEGER: Thank you, Senator Trunzo. I'm just wondering whether there's something different about this bill because we're involved with canals.

So just for my understanding, if I was a volunteer under this program and I were to drown because of some negligence by someone who was involved with the government overseeing this program, there would be no mechanism for me to -- or not me, of course, if I drown, but for anyone in my family to get resolution through the courts under this situation?

SENATOR TRUNZO: If there's negligence on the part of the Thruway Authority or the Canal Authority, then yes, they would still be liable, you know, for whatever lawsuit you might want to put

together on that.

But for the general cleanup and some of that stuff that is not the responsibility of the Authority, they're just doing their work, you know, that's the way they're protected all the way along the line, and no problems.

SENATOR LIZ KRUEGER: Thank you, Senator.

Thank you, Madam President.

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 call.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52. Nays, 2. Senators Duane and Paterson recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Rath.

SENATOR RATH: Madam President,

if we could take up Calendar 677, by Senator Nozzolio.

ACTING PRESIDENT McGEE: The Secretary will read Calendar Number 677.

THE SECRETARY: Calendar Number 677, by Member of the Assembly Ortiz, Assembly Print Number 6038, an act to amend the Administrative Code of the City of New York.

SENATOR HEVESI: Explanation, please.

ACTING PRESIDENT McGEE: Senator Nozzolio, an explanation has been requested by Senator Hevesi.

SENATOR NOZZOLIO: Thank you, Madam President. I'd be glad to try to answer Senator Hevesi's questions.

This measure preserves the very important security function of our state prisons, ensures its integrity by ensuring that we are not able to privatize that security function. It will be nontransferable. It's a total government responsibility. Its purpose is to ensure the security of prison facilities in New York City.

We've established similar legislation at the state level and very much believe that this is imperative for the city correctional officers and all correctional policy, that in effect the security function is never to be given way to the profit motive.

ACTING PRESIDENT McGEE: Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President. Would the sponsor please yield?

ACTING PRESIDENT McGEE: Senator Nozzolio, will you yield for some questions?

SENATOR NOZZOLIO: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR HEVESI: Thank you, Madam President. Through you.

I agree with Senator Nozzolio and what I believe is the premise of this bill as stated in the memo and as stated by Senator Nozzolio. And I agree, I don't want to see any nongovernmental entity in charge of the operations of prisons within the City of New York. I think we can agree on that.

But I do have a few questions regarding the specifics of the bill. So let me begin by asking if Senator Nozzolio is aware that the City of New York is opposed to this legislation and whether he has read the city's memo in opposition.

SENATOR NOZZOLIO: Madam President, I am aware of the city's opposition. And, yes, I have the city's memo opposing a portion of the measure.

SENATOR HEVESI: Thank you, Madam President. Would the sponsor continue to yield?

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

SENATOR NOZZOLIO: I'll be happy to yield.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR HEVESI: Thank you, Madam President.

Essentially, if I can summarize, the city presents two arguments in opposition to this bill. The first is that they wish to retain the flexibility to actually go ahead

and privatize the services that we're talking about, to take correction officers and the functions that they perform and put them in the hands of privately hired, presumably for-profit entities. I disagree with the city's opposition on that count.

However, they oppose this bill for another reason that I do have some real concerns about, and that is their contention that the legislation doesn't simply say that correctional services must be maintained by a governmental entity, but that specifically that anybody who supervises or manages inmates has to be a member of the uniformed service. And that this presents a problem for a variety of reasons.

Could you tell us, please, why you don't believe that that presents a problem?

SENATOR NOZZOLIO: Madam President, I welcome the chance to go into this in further detail, if nothing more than to provide history during this deliberation as to what our intentions are in passage of this measure.

The measure does not intend in any

way to prevent drug treatment and other types of services provided to inmates that may be provided by non-security-oriented personnel, by those with a broader background or schooling or training in potential service -- in services that would inure to the treatment and rehabilitation of inmates.

I may add that those -- Madam President, could I have some order, please.

ACTING PRESIDENT McGEE: Will you kindly take your conversations outside the chamber so that the debating members can hear each other.

Thank you.

SENATOR NOZZOLIO: Thank you, Madam President.

That there are many instances today in the state system and in the city correctional system where inmates are provided services, and those services are provided by non-security-oriented personnel. Some may be out on parole, or in a lesser-oriented confinement and receive services, particularly in the area of drug rehabilitative services.

It should be underscored that those

inmates are still within the purview of the security function of the correctional facilities. That function is by no means diminished by the provision of those services. And for the record, that it is important to understand that there are security personnel responsible for the administration of those inmates until their final discharge date.

That what I'm hoping to bring light on is the fact that Senator Hevesi's concerns, as I'm hearing them, are that the provision of non-security-oriented services may be somehow impeded by this legislation. I believe that concern, Madam President, is certainly an important one. And that I believe this legislation gets over that hurdle because, in practice, security personnel are assigned to individual inmates until their discharge date.

We're saying that those security personnel are to forever be the responsibility of the state government -- in this bill's case, the city government -- and that that security function should never be farmed out, privatized, subcontracted for.

But the other services, the

services that are normally provided and that we hope in large case will be expanded, in terms of drug rehabilitative services in particular, that we're not suggesting in any way that those services are falling under the purview of this legislation.

SENATOR HEVESI: Thank you, Madam President. Would the sponsor continue to yield?

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

SENATOR NOZZOLIO: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR HEVESI: Thank you, Madam President.

The sponsor has hit on my exact concerns. And I'm gratified that he and I share now two of the three concerns I have of this bill. One is that nobody other than the municipal entity should be running the operations at a correctional facility. Number two, that the officers in that correctional facility should be uniformed officers. And,

number three, that we don't intend to preclude non-security-related individuals who are performing ancillary services to inmates, we don't want to preclude those individuals from performing those services.

My problem, Madam President, is that I'm not -- though Senator Nozzolio and I agree on all these positions, I'm not sure the legislation actually accomplishes that.

And so let me just draw your attention to the actual language of the bill, Senator Nozzolio, and if you could then expand for me on how it is that we don't specifically preclude these nonsecurity personnel.

The legislation simply says "The duty of maintaining the custody and supervision of persons detained or confined by the Department of Corrections shall be performed solely by members of the uniformed force and shall not be delegated, transferred or assigned in whole or in part to private persons or entities." That's all it says, Madam President. There's no exception for anybody else.

And let me just -- before I give

the Senator a chance to respond, here's what my concern is. It's not that I don't take Senator Nozzolio's word for it. The City of New York, in their memo of opposition, has said the following, that there are a number of individuals who are directly responsible for the supervision of inmates that are not uniformed members, including the commissioner, the deputy commissioner, fleet maintenance personnel, food service and building maintenance workers, who the city says directly supervise inmates and provide job training skills, and additionally the department employs a number of civilian counselors and legal coordinators who supervise inmates during their participation in various programs and services.

That being the case, if they do supervise, they would be precluded, under this very simple bill, from performing their services unless they are uniformed members. And that is my concern.

Could you address that, please, Senator Nozzolio?

SENATOR NOZZOLIO: Madam

President, through you, I hope I can address Senator Hevesi's concerns.

That there have been other examples in law where we have stated that the policy of this state shall be that even local jails, like New York City's -- but certainly we passed legislation, in the instance of Westchester County, that Westchester County, under the laws, in terms of civilian personnel are certainly that today, and they were that before the prohibition of privatization was put forward.

But I think that we need to focus on the words "supervision" and "custody." And frankly, the security portion of supervision and custody is something that is sacrosanct, we agree on, and that that is the intention of this legislation, to focus on those with direct supervision and custody.

That the scenarios presented relative to the commissioner -- by the memo. Not by Senator Hevesi, but by Senator Hevesi's reference to the memo provided by the city -- are actually extreme, at best, and absurd, frankly, in my view, in that they go to the

nth extreme. And that the overall supervision, certainly you could draw the intention that this must be, if you took it to the extreme, the governor of the state or the mayor of the city, in effect, would also be under the supervision -- or the inmate would be under the supervision of those employees.

Frankly, we're not even close to going there through this legislation.

SENATOR HEVESI: Madam President, would the sponsor continue to yield?

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

SENATOR NOZZOLIO: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR HEVESI: Thank you, Madam President.

I might agree in the case of the governor or the mayor being ultimately responsible for supervision of prisoners, because they are the entity or individual who appoints the Corrections Commissioner. But the commissioner certainly, undeniably, is in

charge of the supervision of inmates, as are his civilian appointees, the deputy commissioners.

And when the City of New York says in its opposition memo that a slew of workers, while providing ancillary services to inmates, directly supervise the inmates, and the legislation does not carve out any exception for individuals whose primary responsibility are other than direct supervision of inmates, I can certainly conceive of a scenario where somebody brings a lawsuit suggesting that those substance-abuse workers, being nonuniformed personnel, are not in compliance with this section of the law.

And I'm trying to preclude that from happening, and I think you are too.

So let me ask my final question here, Madam President. There is a simple way to resolve this. It would be just to simply amend this language here to provide an exception for individuals whose primary purpose is not to provide direct supervision of inmates but who have some other primary purpose, be that social services or what have

you.

And in that case, I think we will ensure that we don't have the problem that I'm envisioning here. Would you consider that?

SENATOR NOZZOLIO: Madam President, I am concerned that Senator Hevesi's suggestion may weaken the force of this legislation, in the sense that if we begin tampering with the security issue, then I believe there may be additional loopholes which could allow, unintended by this Legislature, but could allow opportunity for the thing we're trying to prevent here, and that is the privatizing of the security function of our correctional facilities.

I would rather suggest that, as Westchester County had given us an example, that the statutes of Westchester County prohibit -- excuse me, require that the commissioner of corrections is a civilian, in a sense. That that local-law approach, to me, makes much more sense.

That we're providing the opportunity here for a policy judgment that the state is saying no privatization of the

security function of our prisons. That there certainly could be laws locally that the -- a civilian, if necessary, be in certain leadership roles. That I think in terms of the administration of programs, that those civilian counselors, who may end up being in some way privatized through outpatient services, halfway houses, other antidrug programs that are allowed. The monitoring of those inmates still must be, under this statute, under our policy, the monitoring of those inmates in terms of their supervision and security, must be done so by those government employees.

We're ensuring that those inmates do not escape. We're ensuring that any possible damage from their escape which the city could be liable for is entrusted upon people with the security function foremost in their mind, as dedicated public servants. As opposed to private-sector employees, who are generally motivated by companies with obvious private-sector motives, and that's the profit motive.

So to summarize, Senator Hevesi, I

think your suggestion certainly is one that I appreciate the opportunity to lay out a history for anyone who wishes to interpret this law. But frankly, I believe that any further refinement may do just the opposite of what you and I would like to see happen, and that is the prohibition about privatizing any security function of our city and state correctional facilities.

SENATOR HEVESI: Thank you.

ACTING PRESIDENT McGEE: Senator Hevesi.

SENATOR HEVESI: On the bill, Madam President.

ACTING PRESIDENT McGEE: Senator Hevesi, on the bill.

SENATOR HEVESI: Thank you, Madam President.

I thank the sponsor for his deliberative comments about the legislation. I agree with almost everything that Senator Nozzolio said, with the one exception that I don't believe that some of the things that he said actually manifest themselves in the legislation.

It's one of these situations where I'm a little bit disappointed in the legislative process. I mean, it's pretty clear that we would be able to -- I could write one sentence that would carve out the exception to make sure that what Senator Nozzolio is trying to preclude and what I'm trying to preclude doesn't happen, irrespective of any situation in Westchester. But we don't do it.

It's just -- I don't know why we don't do it. It doesn't -- it can't hurt. And I guarantee I can write a sentence that carves out the exclusion that doesn't weaken the intent -- which I support, I fully support. I don't want to see privatization of correction officers whose primary function is supervisory in our facilities. I don't want to see that. Senator Nozzolio doesn't want to see it.

But this one is pretty clear, Madam President. This legislation says that anybody who has custody -- maintains, as one of their duties, the custody and supervision of inmates, that those individuals have to be

uniformed personnel.

And at the same time, we have the City of New York directly contending that there are a slew of individuals within the system who have as their responsibility the duties of supervising and maintaining inmates, even though their primary focus is not that, and those individuals are nonuniformed personnel.

So you could have this situation. I don't want to see a lawsuit, I don't want to see a situation where somebody winds up saying that the City of New York is not doing what it should be doing, we cannot have drug counselors, we cannot have people providing vocational skills unless they're in uniform.

So regardless of what happened with respect to Westchester County -- and I don't know, I don't remember voting on a bill to enable Westchester to do that or how it works in Westchester. And even if all that is true, the fact that nobody has challenged the Westchester law on the particular points that I'm making doesn't mean that this legislation wouldn't be challenged on similar grounds.

And since I represent constituents in New York City in whose interest it is to ensure that individuals who are nonuniformed personnel sometimes afford services to inmates though they are not in a uniform, and I don't want that to stop on behalf of my constituents and those inmates -- because 98 percent of all inmates get out, and we want to provide them with services -- I'm going to oppose this bill, Madam President.

Even though I do applaud Senator Nozzolio for his stated intention and rebuke the City of New York for half of their stated intention. Because I do believe that New York City, certainly as espoused under Rudy Giuliani, wanted to go ahead and privatize direct correctional services: guards, officers. I disagree with that. That's a bad idea. And in fact, Senator Nozzolio has an excellent example in his memo in support of why you don't want to do that.

You should look to privatize services in government to turn a savings wherever possible, except where it can cost people their lives -- police, fire, maybe even

services that are directly related to the economy of a city, such as sanitation. Certainly corrections, where correction officers perform heroic duty, they are unsung heroes, and they are in the line of fire directly all the time, we want these people to be as well-trained as possible.

And so I don't want to have privatization of these guards, even though the City of New York may actually want to do that. So I'm going to vote against this bill, though I support its central premise, because I'm voting against it on a technical measure that I hope could be corrected. I don't know why it wouldn't be.

But I commend Senator Nozzolio for bringing this legislation.

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, 56. Nays, 1. Senator Hevesi recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 37, by Senator LaValle, Senate Print 4889A, an act to amend the Education Law and others, relating to the State University health care services and facilities.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT McGEE: Senator LaValle, an explanation has been requested by Senator Paterson.

SENATOR LAVALLE: Thank you very much.

Madam President, in 1998 this body passed legislation that was signed into law by the Governor that became Chapter 363. That legislation dealt with the three SUNY hospitals in the state of New York: State University at Stony Brook, Downstate Medical Center, and Upstate Medical Center in Syracuse.

That legislation gave greater

flexibility to the university hospitals to allow them to enter into different contracts in providing health care insurance to the HMO insurance policies. And so this legislation takes that a step further.

One of the major provisions of this legislation would allow and defines some of those contracts, talking about networks and other kinds of arrangements that the university hospitals can enter into.

As everyone knows, unless a hospital can enter into a broad panoply of contracts, it cannot bring into its hospital the kinds of patients that it needs to sustain that particular hospital. University hospitals heretofore have been placed at a disadvantage.

This legislation also removes some of the disadvantages that our university hospitals have in purchasing agreements and the way it pays its employees or can increase their employee salaries, whether it be nurses or other technicians that work at a hospital. And also how we deal with certain titles within the civil service system.

And so this really is what we call SUNY Hospital Flex II. Because we did SUNY Hospital Flex I in 1998, and that was signed into law, as I had indicated.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, with the distinct advantage of being aware of the plight that has constricted many of the hospitals financially, would the learned Senator from Suffolk County yield for a few questions?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT McGEE: Senator LaValle yields.

SENATOR PATERSON: Senator, I understand that the limitations on contracts for legal services, program -- strategic planning and operations has been raised from $75,000 to $500,000 and that the limit for products would be at approximately $2.5 million.

SENATOR LAVALLE: That's correct.

SENATOR PATERSON: Then I guess my question is with that dramatic an increase,

why was it the thinking at this particular time to go to those limitations rather than, in a sense, incrementally, to make sure that there would be compliance all the way through?

SENATOR LAVALLE: Senator, that's really a very easy question, because it goes right to the issue of equipment, an MRI or other kinds of technical equipment, and having the ability to purchase that equipment very, very quickly.

And so that's why that -- while that number sounds like a very high number, it really goes to the issue of technology and the kinds of equipment that are being used in hospitals today and being able to acquire that equipment very, very quickly.

If you were to talk to any of the administrators of the three SUNY hospitals and have them take you through the length of time and the process and the procedures that they have to go through, it's like walking on hot coals. And more importantly, it denies our constituents of receiving the most state-of-the-art, up-to-date services and equipment that they can have in a quick way.

SENATOR PATERSON: Madam President, I pretty much agree with everything Senator LaValle said, although I would have said it was like walking in water.

But if the Senator would yield for another question.

SENATOR LAVALLE: Yes, sir.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR PATERSON: Senator, the contracts require approval by the State Comptroller's office anyway. So with that being the case, does it really make a significant difference what the limitations are in these particular situations? Do we really have to expand the limit to the amounts that you have crafted in the legislation?

SENATOR LAVALLE: Senator, it's my understanding -- and we had, as you would understand, discussions with the agencies, we had -- with the university hospitals and so forth. What happens, it is at least our hope, that cookie-cutter procedures would be set up and there would be almost a preapproved situation. So that if I come in and I say I

want to buy a Paterson MRI, that would jump-start and move through very, very quickly. Why that doesn't take place today, I can't answer that -- which I'm trying to read your mind -- as a follow-up question.

But that's my understanding. The comptroller would still be involved, but we would have procedures established and it would be almost preapproved and move through the system in an expedited manner.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, thanking Senator LaValle for the answers to both questions, the stated one and the metaphysical one, I wanted to know if he would yield for another question.

SENATOR LAVALLE: Yes.

ACTING PRESIDENT McGEE: Senator LaValle yields.

SENATOR PATERSON: Senator, there's a concern, as there always is in these types of situations, that this sort of action is really a prelude to vast privatization of the actual industry. Clearly, from your

previous answers, I don't think you have that concern. I was just wondering if you would elaborate on that for me.

SENATOR LAVALLE: Senator, I'm sorry, could you -- you had your back to me, and I could not hear that.

SENATOR PATERSON: Well, Madam President, I was instructed to look at you, and I --

SENATOR LAVALLE: If you could just speak up a little.

SENATOR PATERSON: Okay. My question was just simply whether or not there's a concern about the privatization of the whole industry as a result of raising these limits. Privatization.

SENATOR LAVALLE: Yeah, I understand.

We have gone through -- if you read the legislation, we have gone through it very, very carefully with the unions who are involved to make sure that the issue of privatization, both insourcing and outsourcing were dealt with, that there were proper protections for them. So I really do not have

those kinds of concerns.

And I think if we look at, on page 4, lines 10 to 16, that is language that we put in there very precisely for that kind of protection in terms of the privatization issue.

ACTING PRESIDENT McGEE: Senator Dollinger.

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

ACTING PRESIDENT McGEE: Senator LaValle --

SENATOR LAVALLE: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: Senator, do I understand that this bill says that a contract for services, for legal, operation review, program review, and engineering up to $500,000 in a calendar year would not be subject to public bidding?

SENATOR LAVALLE: That is correct, Senator.

SENATOR DOLLINGER: And through

you, Madam President, if the sponsor will continue to yield.

SENATOR LAVALLE: Yes.

SENATOR DOLLINGER: The execution of a joint purchasing agreement for up to $2.5 million for goods would also not be subject to public bidding.

SENATOR LAVALLE: Yes. I just went through that with Senator Paterson, and the answer to that is also yes. And the answer, the yes answer for that was the dialogue that he and I had because of equipment and the cost of this expensive equipment, the technological equipment that are needed in hospitals.

So that's why that amount, while it seems very, very high, really is not.

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

SENATOR LAVALLE: Yes.

ACTING PRESIDENT McGEE: Senator LaValle continues to yield.

SENATOR DOLLINGER: But as the bill is drafted, Senator LaValle, it doesn't

distinguish between buying an MRI or other piece of sophisticated equipment; it would also apply to toiletry supplies or paper goods or any other types of goods that were being purchased by the hospital. Is that correct?

SENATOR LAVALLE: Yes, that is true also.

Senator, if you recall, if I might, my introductory remarks talked about allowing our university hospitals to be competitive, to be competitive both in the contracts that they enter into with HMOs but also with peer institutions in and around them that are not State University hospitals.

And so if they need to be competitive, this is -- the provisions in this bill, in SUNY Hospital Flex II, really puts them on a par with their peer institutions and their competitors.

SENATOR DOLLINGER: I think I've got it, Madam President. Again, I thank Senator LaValle both for his candor and for his description of what this bill tries to do with the SUNY hospitals.

However, Senator, I think I'm going

vote against this bill, and let me tell you why.

First of all, I agree with you that the question of the future of the SUNY hospitals is a critical one for New York. But I'm not convinced about how that question should be answered. Because, when we unshackled our hospital industry six years ago and we said it's time to go out and compete, one of the critical questions was to what extent is the government going to compete with other not-for-profit agencies and for-profit hospitals in the marketplace for health care.

And the question that was in the back of my mind was, to what extent is the State of New York going to use tax dollars to influence that competition?

If the State of New York is going to be sponsoring hospitals like the SUNY hospitals, and if those hospitals are going to go out and service the general public in competition with other not-for-profit hospitals or even for-profit hospitals, it seems to me that one of the things that that introduction of government money to help one

of the competitors can have the effect of skewering the competition between hospitals as they seek to expand their markets, as they seek to provide try to provide quality health care at the most reasonable cost, which was the goal, I think we all agreed, when we opened the hospital system to competition in 1996.

When we did that, it seems to me that we did it with the knowledge that the public hospitals would get tax dollars and they would use those tax dollars in a way that we could circumscribe. And the important circumscription of the process was that we would use the old-fashioned, conservative public bidding laws to require that the hospitals go out in the marketplace on a continuous basis and look for the best possible supplier at the lowest possible cost.

Last week when we did this on Senator Rath's bill about bus transportation, you may recall I argued at the time that when we eliminated the public bidding laws for bus transportation what we did is we locked ourselves into long-term agreements and what

we would do is discourage entrepreneurs from coming up with new ideas to service bus transportation.

I would suggest, Senator LaValle, that what this bill does by, in essence, removing public bidding from the hospitals is it encourages them to enter into long-term agreements which will have the effect of generally increasing the cost over time and, two, it will discourage -- in this highly competitive, new business of healthcare, it will discourage new suppliers, new entrepreneurs from coming to the hospitals with better ways to do the same old thing. Which, in my opinion, is what efficiency in healthcare in the future is going to be all about.

I would suggest that those new entrepreneurs are going to be discouraged from engaging in that kind of entrepreneurial activity if they don't get a chance to publicly bid for goods contracts that could be as high as $2.5 million.

I think you're correct, Senator LaValle, when you talk about those major

pieces of equipment like MRIs. And there may be some justification at the high end for doing that. But this bill is so broad it says that for provision of all goods. That could include paper goods, it could include syringes, it could include latex gloves, it could include a whole gamut of potential services.

I am not willing to let the taxpayers of this state continue to put money in the SUNY hospitals with the understanding that their provision of services are not going to be subject to the public bidding laws. It seems to me that that's a fundamental mistake.

And it also seems to me that while it may give them flexibility in how they want to deal with new services, when we decided to put the public hospitals in play and put them into competition with their not-for-profit peers, we said that there will be -- we're giving them public dollars to compete. We're altering the field of competition.

But when we did that, we did it with the understanding that one of the conditions of taking public money is you had

to comply with the public rules, and the foremost of which is public bidding that will require the best possible service at the best possible cost.

Senator LaValle, I agree that our hospitals should get more flexibility. And I think that the issue of where the future of the state hospitals are vis-a-vis their not-for-profit cousins in this rampant competition, the healthcare business, is a fascinating and, in my opinion, almost philosophical question about the future of healthcare and where it goes. But my personal opinion is so long as they take tax dollars, we ought to be assured they're getting the best service for the best possible price.

This bill steps away from that idea. And for that reason, I'll vote no.

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

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: Those recorded in the negative on Calendar Number 37 are Senators Dollinger, Hassell-Thompson, Hevesi, L. Krueger, Oppenheimer, and Stavisky. Ayes, 52. Nays, 6.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 445, by Member of the Assembly Morelle, Assembly Print Number 1539, an act to amend the Tax Law, in relation to providing.

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.)

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

SENATOR DUANE: Could you repeat what bill this is? I'm sorry.

ACTING PRESIDENT McGEE: This is Calendar Number 445.

THE SECRETARY: Ayes, 57. Nays, 1. Senator Paterson recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could return to reports of standing committees, I believe there's a report of the Rules Committee at the desk. I ask that it be read.

ACTING PRESIDENT McGEE: The Secretary will read.

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

Senate Print 98B, by Senator Marcellino, an act to amend the Tax Law;

1797, by Senator Kuhl, an act to amend the Workers' Compensation Law;

2078, by Senator LaValle, an act to amend the Environmental Conservation Law;

2136A, by Senator Spano, an act to authorize;

2578A, by Senator Stachowski, an act to amend the General Municipal Law;

2613A, by Senator Stafford, an act in relation;

2893C, by Senator Volker, an act to amend the General Municipal Law;

3392, by Senator Padavan, an act to amend the Vehicle and Traffic Law;

3719B, by Senator Morahan, an act to amend the General Business Law;

3798B, by Senator Marchi, an act to amend the Business Corporation Law;

4360A, by Senator Hannon, an act to amend the Public Health Law;

6176B, by Senator Nozzolio, an act to amend the Judiciary Law;

6348, by Senator McGee, an act to amend the Town Law;

6621A, by Senator Larkin, an act to authorize;

6795, by Senator Maziarz, an act authorizing;

7192, by Senator Leibell, an act to amend the Eminent Domain Procedure Law;

7205, by Senator Fuschillo, an act to amend the Penal Law;

7226B, by Senator Velella, an act

to amend the Workers' Compensation Law;

7357, by Senator Trunzo, an act to amend the General Business Law;

7489A, by Senator Skelos, an act to establish;

7630, by Senator Hoffmann, an act to amend the Penal Law;

7631, by Senator Spano, an act to amend the Criminal Procedure Law;

7645, by Senator Balboni, an act to amend the Penal Law;

7657, by Senator Bruno, an act to amend the Insurance Law;

And Senate Print 6725B, by Senator Rath, an act to amend the Executive Law.

All bills ordered direct to third reading.

ACTING PRESIDENT McGEE: Senator Skelos.

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

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The report is accepted.

Senator Skelos.

SENATOR SKELOS: Madam President, would you please call up Calendar Number 249, by Senator Wright.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 249, by Senator Wright, Senate Print 6077, an act to amend the Public Officers Law, in relation to access.

SENATOR PATERSON: Explanation.

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

SENATOR WRIGHT: Thank you, Madam President.

The bill before us this afternoon amend the Public Officers Law in providing access to information with certain state agencies. The bill exempts certain agency information relating to electric, natural gas,

steam, or telecommunications systems or infrastructure from the public access.

This would add a Section K to a list of exemptions that are already there, and reflects an awareness and understanding of what we're now dealing with since September 11th, the sensitivity of information that is routinely supplied to state agencies overseeing the respective industries of energy and telecommunications.

The bill is supported by not only the industry but also the Business Council, the Utility Labor Council, and I guess, to quote the New York State AFL-CIO: "It would seem, therefore, the bill in question is a no-brainer."

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, 58.

ACTING PRESIDENT McGEE: The bill

is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, would you please call up Calendar Number 614.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 614, by Senator Fuschillo, Senate Print 6454, an act to amend the Penal Law, in relation to criminal impersonation.

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, 58.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, would you please call up Calendar 1112, please, by Senator Spano.

ACTING PRESIDENT McGEE: The

Secretary will read.

THE SECRETARY: Calendar Number 1112, by Senator Spano, Senate Print 6806, an act to amend the Public Officers Law, in relation to records obtained.

SENATOR PATERSON: Explanation.

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

SENATOR SPANO: Yes, Madam President.

This is a bill that would expand the list of protected records that are available under the Freedom of Information Act and that would expand the prohibition for records that would allow potential lawbreakers to avoid detection or endanger the lives of law enforcement personnel.

That would be the existing language. What it would do is add the list of sensitive records under the Freedom of Information Law to that exemption.

ACTING PRESIDENT McGEE: Senator Duane.

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

ACTING PRESIDENT McGEE: Senator Spano, will you yield for a question from Senator Duane?

SENATOR SPANO: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DUANE: Under current law, aren't exceptions to FOIL already provided for criminal investigations, law enforcement, and threats to public safety?

SENATOR SPANO: Under current law, yes, Senator Duane.

There are exceptions for if a person's life is in danger or if it's part of an ongoing investigation. But there's nothing under current law that would cover suspected terrorism. That's what this bill would do.

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

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

SENATOR SPANO: Yes.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR DUANE: Would investigating terrorism fall under the definition of criminal investigations?

SENATOR SPANO: What this would add would be suspected terrorism. So if there's an ongoing investigation on terrorism, that would cover under the current statute. But suspected terrorism does not.

So what we're talking about, Senator Duane, is making sure that we do not hand over a blueprint to potential terrorists for collection of materials on nuclear facilities or bridges or telecommunications systems or the like.

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

SENATOR SPANO: Yes.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR DUANE: Aren't criminal investigations launched against suspected criminals?

SENATOR SPANO: Yes, criminal investigations are launched against suspected

criminals. But the information that would be easily attainable would no longer be attainable once we pass this bill.

So that information that I discussed relative to our railways and bridges and tunnels, important information like that would no longer be subject to the Freedom of Information Law.

SENATOR DUANE: And through you, Madam President, if the Senator would continue to yield.

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

SENATOR SPANO: Yes.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR DUANE: Is not a terrorist considered to be a criminal?

SENATOR SPANO: I would certainly consider a terrorist to be a criminal, absolutely.

SENATOR DUANE: And through you, Madam President, if the sponsor --

SENATOR SPANO: A coward, many things.

SENATOR DUANE: Would the sponsor continue to yield?

SENATOR SPANO: Sure.

ACTING PRESIDENT McGEE: He does.

SENATOR DUANE: Is there a definition of "terrorist" or "terrorism" in the legislation?

SENATOR SPANO: We don't define terrorism in the law. What we want to do here is leave it up to the state agencies to use their discretion. So that ongoing information that's collected on any type of facility that could potentially be a problem in our community, like Indian Point, we want to make sure that information is not given through the websites on the makeup or the information on Indian Point.

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

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

SENATOR SPANO: And -- I'm sorry, Senator Duane, the information that we did pass after the September 11th attack does

define terrorism in the law.

ACTING PRESIDENT McGEE: Senator Duane.

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

ACTING PRESIDENT McGEE: Senator Spano, would you continue to yield?

SENATOR SPANO: Yes.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR DUANE: In your legislation, is that definition of terrorism -- or that bill, for that matter -- referenced?

SENATOR SPANO: We don't specifically reference it in this legislation. But it is now a term of art, as it was in Senator Balboni's legislation that was passed in October.

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

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

SENATOR SPANO: Yes.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR DUANE: Then if terrorism is defined as a matter of art, I believe you said -- or a term of art, I'm sorry.

SENATOR SPANO: Not a matter of art. I'll leave the art up to you, Senator Duane.

SENATOR DUANE: Then I'm not sure, would each agency, would each FOIL officer be required to reference the previous legislation? Or would it be left up to their own idea?

SENATOR SPANO: What we would be going by would be Senator Balboni's bill that -- and I'll just read one sentence out of it. It's "with the intent to intimidate or coerce a civilian population."

That would be the term of art that we discussed that is the law in New York State as it's defined in Senate Bill 7645 that was passed back in October.

SENATOR DUANE: And through you, Madam President, if the sponsor would continue

to yield.

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

SENATOR SPANO: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DUANE: And will each agency have a person responsible for applying the definition of terrorism for each request?

SENATOR SPANO: Each agency will continue, as they have today, to have a FOIL officer who will make the determination.

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

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

SENATOR SPANO: Yes.

ACTING PRESIDENT McGEE: He does.

SENATOR DUANE: The legislation that you referred to is legislation which previously had passed the Senate?

SENATOR SPANO: The legislation that I discussed, Senator, was Senator Balboni's bill that he had introduced.

Language from that bill was included in the October statute.

SENATOR DUANE: Thank you.

Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator Duane, on the bill.

SENATOR DUANE: I do not understand why we need to have this kind of sweeping change and concentration of power in the Executive.

I think, though this is a very short bill, that the wording is very, very vague, extremely vague. And potentially government agencies would be able to restrict the release of information as it or the Executive sees fit. It doesn't matter whether it's this Governor, who I know is concerned, very concerned about terrorism, or any governor in the future. The loophole is so broad that virtually any request could be denied.

I can only imagine that we will be tying up the state with lots and lots of litigation because I don't think that under this legislation the courts would be able to

interpret the bill satisfactorily. And I think on that basis we stand a good chance of having this legislation called unconstitutional.

You know, I know that earlier today Senator Wright had a piece of legislation on the floor, but it seems that maybe the parts of Senator Wright's bill -- parts of Senator Wright's bill are actually included in this bill. However -- so I don't see why we need the section dealing with power plants, et cetera, that Senator Wright talked about in this bill unless we're sort of doing a crapshoot to see which one the Assembly might pass.

I think, though, that during these difficult times we have to be extremely careful about how we craft legislation, because many of the actions that we take as a result of what happened on September 11th, particularly when they, as I say, seem very vague and open to broad interpretation and perhaps are unconstitutional, don't do us a good service. I think that we really need to reach out to civil libertarians and those that

use research materials, people in academia, librarians, members of the press to find outside out what their concerns are on this bill. There may be a need to tighten up our FOIL requirements, but this bill is just way, way overblown.

You know, the one thing that makes our system of government so special and important and such an example to the rest of the world is that in our country, citizens are guaranteed access to information on how it is that our government is functioning. And I understand that we want to fight the war on terror. But I think that we're going down a slippery slope and we're starting to enact policies which will have the unintended policy of taking away the very thing that we have to hold most dear, and that is our civil liberties.

So I think that the way our FOIL laws are presently crafted are quite sufficient. Any way you look at it, a terrorist is a criminal. Already, agencies have the power to deny information that could lead to a criminal act, including the act of

terrorism. And I'm very, very concerned that people that just want to review documents and journals or maps very, very innocently could be denied the ability to do so. And I think ultimately that hurts our government far more than practically anything else that can happen. We have to make sure that we have a free and open society, and this bill takes too much away from that.

So on that basis, I'm going to urge my colleagues to vote no, because we cannot pay such a high price in the war against terrorism.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you, Senator Duane.

Any other Senator wishing to speak on the bill?

Senator Dollinger.

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

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

SENATOR SPANO: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: Senator, I understand -- this is a point that Senator Duane raised, but I want to make sure I understand it.

What is the difference between suspected terrorism and potential terrorism? Why would we have a statute that says suspected or potential? There obviously is something different. Could you tell me what the difference is?

SENATOR SPANO: What we have -- the reason that both definitions were put into the law, into the proposal, is so that we could expand the amount of information that would in fact be exempt. Where -- it would be in addition to suspected, it would be potential.

As Senator Duane mentioned, this -- he claims this threatens our free and open society. I happen to disagree, respectfully. We've already paid a price on September 11th, and legislation like this will make sure that we do maintain a free and open society.

So if you want to narrow the bill, you could take "suspected" out or "potential" out, but that's not our motivation here today.

Our motivation is to do exactly what, with all due respect to you, Senator Dollinger, you probably don't want us to do, which is to create the exceptions in the law to make sure that this information is not made public.

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

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

SENATOR SPANO: Yes.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR DOLLINGER: Let me give you an example, Senator Spano, and you tell me if it would be immune from disclosure under this bill. What if the issue was the evacuation for the Indian Point nuclear power plant in Westchester County? Should that plan for evacuation be exempt from disclosure, the public would never know what the evacuation

plan is?

Because that might be -- certainly there's been lots of discussion about suspected or potential terrorism against nuclear power plants. I would assume that the evacuation plan, knowing what the evacuation plan is, might be important to someone who wants to damage the plant or threaten people around the plant.

Wouldn't that be immune from disclosure under this bill?

SENATOR SPANO: It's certainly not the intent of the passage of this bill to inhibit the public's ability to know what the evacuation plan is for Indian Point.

It's safe to say -- I mean, that's part of the procedures that are in place to protect the health and safety of the people of that region. So when a Freedom of Information request comes in requesting that type of information, certainly it's not going to be viewed as suspected or potential terrorist activity.

SENATOR DOLLINGER: Through you, Madam President, if Senator Spano will

continue to yield.

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

SENATOR SPANO: Yes.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR DOLLINGER: Thank you, Madam President.

But, Senator, you've obviously read the public press accounts about the potential for terrorism against nuclear power plants. You, I've no doubt, are well aware of the issue that's been raised with respect to Indian Point. Certainly the evacuation plan, if a terrorist knew that, it might be considered suspected terrorism if someone wanted to know what the evacuation plan was.

There's nothing in this bill that says public health or public safety should guide an exception to this broad and sweeping exemption, is there?

SENATOR SPANO: There's an appeal process in the statute, Senator Dollinger, that we do not change, an appeal process that sets forth the number of days after a written

request is in and ends up with an Article 78 proceeding that if someone feels that they've been denied information that should be made public to them.

On your hypothetical in terms of the nuclear plant, I don't think that's a relevant concern. That's certainly not something that we're talking about denying that type of information, denying access to.

SENATOR DOLLINGER: Again through you, Madam President, if Senator Spano will continue to yield.

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

SENATOR SPANO: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: But, Senator Spano, I mean there has been lots of public discussion about the potential for harm to nuclear power plants, including Indian Point. And it seems to me that the evacuation plan would be part of what a potential or suspected terrorist might want to know.

If it's classified as such, if the

evacuation plan is classified as being either part of a suspected or potential terrorism, there's nothing in this bill that says the public need for safety and health information outweighs the terrorist exemption. You have no balancing test in this bill.

You say if it's terrorist-involved, it's exempt from disclosure; isn't that correct?

SENATOR SPANO: I think it's a -- the commonsense approach here is no one in their right mind would ever say that we're not going to disclose the provision of an evacuation plan to the residents of adjoining areas of a nuclear plant.

I think the issue here is that we need to enhance and protect public safety. We're creating new criminal offenses, increasing penalties on this statute, as well as the rest of the package we'll be passing today. And I think we need just to give the power of law enforcement -- the power to law enforcement and also take away some of the information that we arbitrarily give to potential terrorists.

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

ACTING PRESIDENT McGEE: Senator Spano --

SENATOR SPANO: Yes.

ACTING PRESIDENT McGEE: He continues to yield.

SENATOR DOLLINGER: Senator, are you familiar with the dispute over KI, potassium iodide pills that are used to combat the effects of radiation sickness around nuclear power plants? Are you familiar with that?

SENATOR SPANO: Yes, I am.

SENATOR DOLLINGER: Will the sponsor continue to yield, Madam President?

SENATOR SPANO: Yes.

ACTING PRESIDENT McGEE: The sponsor yields.

SENATOR DOLLINGER: Would the amount of KI pills, the potassium iodide pills available for distribution to the general public -- that would clearly be something that a terrorist who was attacking the plant would

want to know, because if there weren't a lot of pills available, the terrorist of course has the ability to foment more terror through the threat of an attack on the plant.

Is it your opinion, under this bill, that the public could find out how many potassium iodide pills are available for Indian Point or for Ginna or for any other nuclear power plant in the vicinity of those plants, under this bill as it's drafted?

SENATOR SPANO: Senator Dollinger, I think you are raising issues that are near bizarre. No one in their right mind would look to deny information that is going to protect the health and safety of the people of this state. What we're looking to do is protect the citizens of New York State against potential harm in the future.

There's no state agency that would be covered under this statute that would inhibit the people's ability to protect themselves, and what we want to do is enhance that ability with the passage of this bill.

SENATOR DOLLINGER: Final question, Madam President.

ACTING PRESIDENT McGEE: Senator Spano, will you yield for the final question?

SENATOR SPANO: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: Certainly any suspected terrorist or potential terrorist would want to know the cost of the consequences of their act of terrorism. That's one of the effects of terrorism. It creates costs, it intimidates taxpayers, it frightens people because it's expensive.

In your opinion, would the cleanup costs for the World Trade Center be immune from disclosure in this since they were part of an investigation relating to terrorism? So the public wouldn't know how much it ended up actually costing and couldn't find out from their government what it cost?

SENATOR SPANO: I would -- I would say that that type of information on the face of it would not be the type of information that would be subject to this bill, as long as it's not determined to be sensitive or deliberative in nature.

I think if -- on that specific question, I don't see any reason why that would be information that would be exempt.

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

ACTING PRESIDENT McGEE: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Senator Spano has a very optimistic view of this broadly drawn statute. In response to questions, he's suggested that there's a public health and safety exception to this broad disclosure.

I would just ask everybody to read the bill. There's no public health and safety exception. There's no public health and safety balancing of the public's need for health and safety information versus this suspected or potential terrorism threat.

Two, with all due respect to Senator Spano, the Indian Point nuclear power plant's evacuation plan will not be disclosed under this bill, because anyone who would be a suspected or suspicious or potential terrorist would want to know what the evacuation plan is. Someone would classify that as

unavailable under what I believe is this new version of an Official Secrets Act.

Lastly, the cost of overtime to clean up the World Trade Center. It seems to me that that's exactly what the public should find out, how costly was this horrible act of terrorism? Under this bill, I have no doubt someone will say that's part of the monitoring or investigating of suspected or potential terrorism. And the public would be told: Guess what, it's none of your business. We in government know what it cost, but you in the public aren't entitled to know.

I would suggest look at the Governor's schedule, look at the schedule of public officials here. We could be a target of potential terrorism. Would our schedules be immune from disclosure? Could the Governor not produce his schedule so the public knows what he does on a given day?

It seems to me that this bill is so broadly written as to suggest anytime someone in government says guess what, we're monitoring, we're investigating or we're preparing for terrorists, you, the public

can't find out what that information is all about. Even though the taxpayers pay the salary of the people making the decision, they pay the money to cover the expenses, they pay for the investigation, they pay for the monitoring, they pay for the preparing. It's all their money we're spending. But when they ask what are we getting for it, the answer is none of your business, it's an official secret of the State of New York.

We now have a list of official secrets. Anytime we in government suggest that someone is suspected or there's a potential for terrorism, we're not going to tell the public how we're spending their money. I would suggest, ladies and gentlemen, that this is Big Brother in its finest form. This is someone suggesting that we the government are much smarter than our people and we don't have to tell them what we're spending their money to do. I would suggest that that is Orwellian in its conception.

We have a real problem with terrorism. The best solution in a democracy is to tell people as much as we can about how

we spend their money so that they can make a judgment about us, they can make a judgment about our enemies, they can make a judgment about the costs associated with their life and what it takes to protect them.

Madam President, I think this is a foolhardy endeavor to create a New York State Official Secrets Act. It shouldn't go any further.

ACTING PRESIDENT McGEE: Senator Balboni.

SENATOR BALBONI: Madam President, I rise in support of the legislation and point out to the body that the key to understanding this particular provision is to read the current section of law of Section 87 of the Public Officers Law. This is not that new or not that big an expansion. Taken out of context, as Senator Dollinger has done, this seems to be a Big Brother provision. It is in fact not the case at all.

Right now there are subjective decisions made on whether or not police officer records should be revealed, investigations of a criminal act should be

revealed. And any time there is the chance of a safety issue arising, then a public record can be denied open access. That's current law.

What this says now in the investigation -- which is why you have "suspected" and "potential" in the bill -- of the act of terrorism, that will also now fall into that category of information, as with a criminal investigation.

This is not Big Brother. You know what this is? This is Jim Kallstrom, the director of public security in this state, standing on the floor of this Senate, through Senator Spano, saying this is the bill we need the most. Because that's exactly what he said when he left his post a month ago. He said the best thing that we can do as a Legislature is to pass this bill.

This is not about Big Brother. This is about letting our law enforcement and military personnel do their job. And if you think it's the first time anybody makes a subjective decision about what information will be released and what will not, you're

wrong. Read Section 87.

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 immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator Dollinger, to explain his vote.

SENATOR DOLLINGER: Just briefly to explain my vote and respond to Senator Balboni.

I couldn't disagree more. This is all about government deciding what information it has that it has acquired with the taxpayers' money and that it is not going to disclose to the people who are paying its bills.

I would suggest the solution to the problem of terrorism is not less documentation and less openness and less public participation, but more of all three. I vote no.

ACTING PRESIDENT McGEE: Senator Breslin, to explain his vote.

SENATOR BRESLIN: Not to be repetitive, Madam President, this bill makes us less of a democracy. This bill has already been covered properly in law and defined properly in law. This bill makes it so general that agencies will be allowed to cover up their mistakes, cover up their wrongdoing.

And accordingly, I vote in the negative.

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1112 are Senators Breslin, Brown, Connor, Dollinger, Duane, Hassell-Thompson, L. Krueger, Onorato, Santiago, Schneiderman, A. Smith, and Stavisky. Ayes, 47. Nays, 12.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Morahan.

SENATOR MORAHAN: Yes, Madam President. Will you pull up Calendar Number 1383, by Senator Fuschillo.

ACTING PRESIDENT McGEE: The Secretary will read Calendar 1383.

THE SECRETARY: Calendar Number 1383, by Senator Fuschillo, Senate Print 7205, an act to amend the Penal Law, in relation to false personation.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 4. 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, 59.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Morahan.

SENATOR MORAHAN: Madam President, would you now address Calendar 1385, by Senator Trunzo.

ACTING PRESIDENT McGEE: The Secretary will read Calendar 1385.

THE SECRETARY: Calendar Number 1385, by Senator Trunzo, Senate Print 7357, an

act to amend the General Business Law, in relation to restrictions on employment at airports.

SENATOR DUANE: Explanation, please.

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

SENATOR TRUNZO: Madam President, this bill complements federal law by requiring criminal histories, background checks on certain airport employees that are not subject to sufficient review under the current federal regulations.

By closing this loophole, this added protection will help to ensure that New York commercial-passenger airports will be the safest in the nation.

ACTING PRESIDENT McGEE: Senator Duane.

SENATOR DUANE: Thank you, Madam President. I didn't catch what the -- through you, Madam President, if the sponsor would yield.

ACTING PRESIDENT McGEE: Senator

Trunzo, will you yield for some questions?

SENATOR TRUNZO: Yes, I will.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DUANE: What is the loophole in federal legislation?

SENATOR TRUNZO: I didn't quite hear your question, Senator.

SENATOR DUANE: If I may repeat, Madam President.

ACTING PRESIDENT McGEE: You may.

SENATOR DUANE: The sponsor referred to a loophole in federal law on airport security. And I'm wondering if he would just describe what that loophole is. I didn't catch it.

SENATOR TRUNZO: Well, the federal law does not address persons employed in the sensitive areas of the airport. That's the areas between the screening of the check-in and from there to the actual boarding of the plane itself.

In other words, other employees like concession-stand employees, restaurant employees, and other employees that they're

not covered under the federal regulation, this bill will cover those. That they will have to have a history background on them as well.

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

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

SENATOR TRUNZO: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DUANE: If I understand what the sponsor has said, he says that employees at concession stands from the check-in area to the boarding gate are not covered by federal law now, with background checks and fingerprinting?

SENATOR TRUNZO: That's right. Currently they're not covered in the federal law.

And this would just close that loophole by protecting anybody between the screening gates and the boarding pass that works there at the airports so that they would have a criminal background check on them.

That's the whole basis of this legislation.

And it affects all the airports in the state of New York. And similar legislation is presently being proposed in the New Jersey Legislature so that they can also pass the same type of a bill to cover JFK, LaGuardia and Newark airports that come under the Port Authority jurisdiction.

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

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

SENATOR TRUNZO: Yeah.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR DUANE: Under this legislation, does that mean that the federal government has basically erred on its laws regarding fingerprinting and background checks of employees in airports?

SENATOR TRUNZO: I don't believe so. No, it doesn't cover them under the federal law.

And that's what we're trying to do,

is to close that loophole. Because those employees that have access to the airport, within the sensitive area of the airport, will have to go through fingerprinting and a history of their -- you know, especially if they have a felony and other types of crimes that may be falling under the jurisdiction of the -- that are also covered under the federal law.

So it's the same thing as the federal law except, as I say, it covers those employees that are in that sensitive area, as it's known.

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

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

SENATOR TRUNZO: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DUANE: I just want to ask the question again, and I think it's basically a yes or no. Did the federal government err when it did not require these

employees to have background checks and fingerprinting?

SENATOR TRUNZO: I would say yes, they did err in not having the background check on these people as well. For whatever reasons; I don't know why Washington didn't do it.

But we in the state of New York want to make sure that all passengers are covered and are protected before they enter a plane.

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

ACTING PRESIDENT McGEE: Senator Trunzo, would you continue to yield?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR DUANE: If an employee at Starbucks, for instance, had committed a crime in their early twenties and had served their probation or had served time and then they're paroled, would that mean -- under this legislation, wouldn't that mean they couldn't

work at a Starbucks, they'd have to be let go from their job?

SENATOR TRUNZO: In the legislation, anyone who has been convicted of a felony within the past ten years would be subject to the full exclusion of not being an employee of the airport.

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

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

SENATOR TRUNZO: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DUANE: Actually, Madam President, I think I'll speak on the bill.

Thank you.

ACTING PRESIDENT McGEE: Senator Duane, on the bill.

SENATOR DUANE: Thank you, Madam President.

You know, I think that what happens in our airports is a federal issue. I don't think we should create a system whereby

New York State airports have a different policy than, you know, Connecticut airports or Colorado airports. I think that what we need to have are uniform standards on background checks and fingerprinting of employees in airports.

There are, you know, tens of thousands of employees of fast-food restaurants and gift shops and all kinds of little stores in airports who never go anywhere near restricted areas. You know, my experience in airports is even the maintenance people who clean up near the boarding gates are subject to the federal regulations.

Now, if we do need to take this kind of draconian background check, fingerprinting rules and regulations, and potentially render lots and lots of American citizens, or New Yorkers, in this case, unable to be employed in airports, well, I think we have to take a closer look at that, particularly since these folks don't go anywhere near restricted areas, as I've said.

Also, who is going to incur the cost of the fingerprinting? Will all

employees have to pay their own fingerprinting costs? And who is going to pay for the background checks? And is the State of New York willing to incur the cost of doing the background checks and the fingerprinting checks on all of these employees? I don't really see any of these areas covered in the legislation.

I understand why, you know, we may here in New York particularly be concerned about terrorism. After all, we were the subject of an attack. But this is a federal issue. And if we are going to take this on as the state, then at the very least we need to have a hearing and call in the heads of the franchises that do business and bring in the representatives of the unions who may have workers there, bring in the management of the airports to find out how they're going to handle this. I think we need to talk to the associations that represent the passengers.

You know, I think that, you know, for this bill to pop out of the Rules Committee on such an important issue -- and, as I say, which is really a federal issue -- I

don't think is the right thing to do.

So I'm very, you know, concerned about it. And in a way, I guess I could vote for it to send a signal that maybe not enough is being done on the federal level. But I'm not convinced that not enough is being done at the federal level on terrorism and what happens in airports.

So I'd be interested to know, for instance, what they do in Israel or what they do in some of the European airports. Are those employees subjected to fingerprinting and background checks? I don't know the answer to that.

So I think until we have the answers -- this is an important issue, and maybe it's something that we should do. But I don't think we should do this without having a lot more information and also hearing from the federal government about how their present regulations are working.

Thank you, Madam President.

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

SENATOR HEVESI: Madam President.

ACTING PRESIDENT McGEE: Senator Hevesi.

SENATOR HEVESI: Thank you. Would the sponsor yield for one question, please?

ACTING PRESIDENT McGEE: Senator Trunzo, will you yield for one question, please?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR HEVESI: Thank you, Madam President.

If the sponsor could tell us which nonviolent felony offenses which are referenced in the bill on page 3, Section 6, subsection B, which nonviolent felony offenses would serve as a preclusion to employment if the background check determined that an individual had a history that included an conviction for one of these offenses.

SENATOR TRUNZO: Well, some of these items are not in the legislation itself. And subsection six of the bill -- the memo that comes from the Governor's office says

that a person is disqualified if he or she had been convicted within the previous ten years of a felony --

SENATOR HEVESI: I'm sorry, Senator, I can't hear the answer.

ACTING PRESIDENT McGEE: Senator Trunzo.

SENATOR TRUNZO: "Subsection six sets forth a list of state and federal crimes that disqualify a current prospective employee from working in the sterile area of an airport. Generally, the person is disqualified if he or she has been convicted within the previous ten years of a violent felony offense; any felony involving assault, homicide, sex crimes, kidnapping, criminal mischief, arson, larceny, burglary, robbery, forgeries, false statements, criminal impersonation of a police officer, narcotics, marijuana, weapons use and possession, organized crime, money laundering, terrorism; an offense in another jurisdiction which includes all of the essential elements of the foregoing offenses; any federal offense that disqualifies employees assigned to work in the

aeronautical area of an airport under current federal law; or an attempt or conspiracy to commit any of the foregoing offenses."

That's in the Governor's memo. This is a Governor's bill.

SENATOR HEVESI: Thank you very much.

Thank you, Madam President.

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 on the 90th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1385 are Senators Hassell-Thompson, Paterson, and Santiago. Ayes, 56. Nays, 3.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Paterson.

SENATOR PATERSON: Madam President, may I have unanimous consent to be

recorded in the negative on Calendar Number 1112.

ACTING PRESIDENT McGEE: So ordered.

I'd like to take a pause in today's deliberation, if we might, and everyone in the chamber, if they would like to join me in wishing Senator Mary Lou Rath happy birthday.

Happy birthday, Senator Rath.

(Applause.)

ACTING PRESIDENT McGEE: And while we celebrated Friday as Flag Day, I might also say that a gentleman standing in front of us who's served us so well, Tom Testo's birthday was on Friday.

Happy birthday, Tom.

(Applause.)

ACTING PRESIDENT McGEE: Senator Morahan.

SENATOR MORAHAN: Madam President, could we please take up Calendar 1387, by Senator Hoffmann.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number

1387, by Senator Hoffmann, Senate Print 7630, an act to amend the Penal Law, in relation to creating the crime of agri-bioterrorism.

SENATOR DUANE: Explanation, please.

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

SENATOR HOFFMANN: Thank you, Madam President.

In those dark days following September 11th, all the members of the Senate who chaired individual committees I'm sure reflected, as I did, on what our responsibility would be within our own unique areas of activity to address the changes that this nation was going through.

I'm proud to tell you that there were many people in other parts of the United States who also wanted to join us in addressing the issue of terrorism as it affects or could potentially affect agriculture.

I'm a proud participant in two national organizations, one through the National Conference of State Legislators, the

other one through the Council of State Governments, that both have task forces on this area. And several of our colleagues in this house, notably Senator Volker and Senator Balboni, have also worked extensively in the area of terrorism and in bioterrorism and agri-bioterrorism in particular.

So what you see before you today reflects the work of many people and the hope of many more people that we would never face criminal acts such as the ones we describe, but that we are prepared with penalties to prosecute swiftly and to the maximum extent of the law anyone who would ever dare to commit one of these acts.

New York State, as most of you realize, proudly boasts agriculture as its number-one industry. We are made up not of large corporate farms but of small family farms, many of which do not have extensive security systems on them, all of which have at one time or another chemicals or poisons or activities that could be altered, tampered with, or modified in some way so as to cause harm to the animals or the crops on that farm.

Rarely has this ever been a problem in our country or in our state, but we want to be sure that anyone or any foreign entity that wishes to destroy some facet of our agriculture understands that it will not happen without significant peril in New York State.

This is the first law of its kind to be passed in the United States. And I can assure you that there are people watching today in other states and in Washington that will be anxious to see the reaction to this Senate measure, and there will be others that will be following suit swiftly.

New York City is very close to the heartland or the large population centers of many other communities in the United States. In fact, from the city of Syracuse, located centrally in New York State, we are often fond of saying our agricultural activities help to feed the people in virtually half of the United States and in Canada. Indeed, in only a day's drive you can reach one-half of the population of the United States and Canada from Syracuse, New York.

Therefore, our agricultural products have an increasing importance in our nation's national security. New York is number three in milk production. We are number two in apples. We are in the top five in many market vegetables, including cabbage, sweet corn and cucumbers. And we are growing in other areas.

Interestingly enough, Long Island many of you think of as a suburban area attached to New York City. Long Island is the largest per-capita-production area in the state in terms of gross receipts, the largest per-capita receipts in Long Island for agriculture in Long Island.

So it is a statewide industry, and it must be protected. This bill before us today seeks to address squarely several distinct possibilities which could occur under a terrorist act.

It deals, number one, with the deliberate, genetic alteration of a plant life used for human consumption that would make it toxic or unsuitable for human or livestock consumption.

It deals also with any intentional modification or introduction of an animal pathogen which would be capable of causing death in livestock or rendering their by-products unsuitable for human consumption.

Third, it deals with intentionally defiling, corrupting or altering any farm or food product with the intent to cause injury or death in humans or animals.

And, finally, it deals with the intentional manufacture, design, or alteration of a genetic material which would cause the production of a pathogen, virus or bacteria capable of disrupting or destroying a food or farm product.

Clearly, what we are attempting to do with this bill is to address, at each step of the food production process, the possibility of somebody or some people deliberately causing harm to that food or any process involved in the production of that food which could cause severe damage or fear to people in this state or any other state.

It would change the law in such a way that all of the areas that I've just

described would be subject to a Class B felony punishable by 8 1/3 to 25 years.

There are some people who might wonder why we would need to codify the law in this way and think that perhaps other statutes already exist that would deal with some of these crimes. The answer is no, they would not. And it would take creative prosecution in order to assign different facets of the law to these types of crimes. And in most cases, if one wanted to prosecute under existing statutes some of these activities, they would be limited to only criminal mischief, is the likely catch-all, with punishment as a Class D felony of only 2 1/3 to 7 years.

So by going to a Class B felony for each one of these actions, we believe that we have created the appropriate framework given the distinction in law that is deserved by any crime of agri-terrorism or agri-bioterrorism.

I'm very proud of what this Senate has done in this area. This is one part of a larger piece of antiterrorism measures. And again, Madam President, I assure you that the eyes of the nation are watching us as we move

in this bold direction. And I commend all of my colleagues who have worked in this area for their generous support and hard work.

ACTING PRESIDENT McGEE: Senator Duane.

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

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

SENATOR HOFFMANN: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DUANE: Is there an Assembly sponsor for the bill?

SENATOR HOFFMANN: Madam President, at the present time we're in the negotiations with the Assembly on this bill.

ACTING PRESIDENT McGEE: Senator Duane.

SENATOR DUANE: Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator Duane, on the bill.

SENATOR DUANE: I'm very opposed

to agri-bioterrorism, I just want to make that clear. And I probably will vote for this bill.

However, I can't imagine that this is not a federal issue. Particularly if, as the sponsor has said, food from the Central New York area is exported all throughout the United States and into Canada.

It seems to me that agri-bioterrorism is the purview of the federal government. If that is not the case, if right now under federal law and state law people could go and commit acts of agri-bioterrorism, well, that is a terrible thing. I just -- I'm very skeptical that a person could get off under federal law statutes by committing an act of agri-bioterrorism.

I know that this is an important issue. One would think that as important an issue as this, which I guess has been an important issue from before September 11th, with the various livestock diseases that we saw go through Europe last year, I would think that if this is such an important issue that

we might have had a committee hearing on it and not just rush it out on Rules.

But as with so many bills here in the Legislature, everyone seems to forget in January that the legislative session actually ends in June. So -- which leaves us six months to actually call in people to discuss this kind of legislation, find out what the federal statute is which might be covering it; indeed, to even see whether anyone in the Assembly is interested in introducing a companion bill. But what do I know, I've only been here for four years.

So I'll vote for this because I don't want to be responsible for casting a vote, you know, like I'm for agri-bioterrorism. But I really think that this is a federal issue. And if it's not, then we certainly need to have a hearing on what's happening with it in this state.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you. If the sponsor would yield for a question.

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

SENATOR HOFFMANN: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR SCHNEIDERMAN: Senator, I have a question about Section 4 of this bill, which criminalizes the manufacture, design or alteration of genetic material to result in a virus or bacteria capable of disrupting or destroying food or a farm product.

Is it true that that would not require that anyone actually disrupt or destroy a food product but just manufacture a bacteria that is theoretically capable of it?

SENATOR HOFFMANN: I'm sorry, Madam President. Could Senator Schneiderman rephrase that question for clarity? I want to make sure I understood it.

SENATOR SCHNEIDERMAN: Through you, Madam President. The way I read Section 4, it criminalizes designing a bacteria or virus that is capable of disrupting or destroying food or a farm

product. There is no requirement that section that it actually destroy or disrupt food or a farm product; isn't that true?

SENATOR HOFFMANN: Madam President, that is the way the legislation reads, that is correct.

SENATOR SCHNEIDERMAN: And through you, Madam President, has anyone spoken to people in the biotech industry -- which in my district we're making a big effort to promote biotechnology -- about what effect this section would have on their business?

ACTING PRESIDENT McGEE: Senator Hoffmann.

SENATOR HOFFMANN: Madam President, it's fairly clear to those in the biotech industry that intent is a very important aspect in research.

If the intent is to create a genetically modified or engineered gene for hybrid corn production that will withstand certain pests, that, according to the industry and academic standards, is considered to be a reasonable and a laudable goal and appropriate scientific research.

There are many, however, who would dispute that because they are fearful of any kind of genetic engineering. However, when there is research done that is purely negative, with no positive benefit, it is clear, then, that the intent is to cause some major harm. And indeed, it could be cataclysmical harm within the agricultural field.

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

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

SENATOR HOFFMANN: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR SCHNEIDERMAN: Thank you.

I appreciate the concern for the harm that might be done. But when a statute criminalizes the intentional manufacture of something that is capable of harm, where it might also be capable of a lot of good, that criminalizes a whole area of research, does it

not, for products that may be capable of either harmful or beneficial effects?

SENATOR HOFFMANN: Madam President, Senator Schneiderman is making an assumption here that does not fit within the statute as we have it before us, within the bill before us.

The bill is very clear that the intent of the research would be purely negative. It is not an equivocal question. I see no reason why Senator Schneiderman would be contemplating something that could be harmful but also could be very good. We are dealing strictly with something that has been designed within a laboratory that would purely harm agriculture. There is no comparable example of something that could be considered very good but would have a negative aspect.

Moreover, I would like to say, Senator Schneiderman, that at Cornell, which is to many people the foremost land grant college in the nation and one intensely involved in this field, there is a widespread degree of support for this legislation and a willingness to accept the responsibility that

scientists have to do only that type of research which would benefit the people to whom they answer.

They are very concerned that anybody would think of them as some kind of mad scientists creating the ultimate destroyer gene. In fact, they want to be very clear in stating how very positive their research is, and any kind of rogue laboratories out there that might be operating differently are subject to their scorn.

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

ACTING PRESIDENT McGEE: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I do have a concern, because one of the largest developing biotech facilities in the state and indeed in the country is in Upper Manhattan, being developed in association with Columbia Presbyterian Hospital.

And when I see something that suggests that a product that is capable of harm would be criminalized, it does raise a concern. We know from the history of science

that products such as rocket technology, which have tremendous benefits for the space program, are also capable of tremendous destruction. All the experiments with nuclear power and nuclear energy; again, something that is capable of great good and great harm.

So I would urge that as we move forward on this -- and I know this is legislation that has been worked on for quite some time. I've heard Senator Balboni speaking about it at length for what seems to be an inordinate period of time. And the intention behind this is clearly very positive. But I think we have very careful, and I think with some minor alterations in language we could resolve this problem.

I just don't want anyone to feel that as soon as they get involved with research that could potentially be used for a harmful purpose that they feel that they're all of a sudden in danger of indictment. And that is my concern, Madam President, with this provision of the bill.

Thank you.

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.)

ACTING PRESIDENT McGEE: Senator Duane.

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

Like with -- or I should say as with so many of these bills that we've seen today and bills that we saw earlier this year and last year, I just don't see the circumstance where there would be a case of bioterrorism or, for that matter, any kind of bioterrorism or terrorism at all where the U.S. Attorney would say: You know what, we're kind of busy. New York, why don't you just take this one. You know, we're so busy with other things and, really, agri-bioterrorism -- you know what, New York, why don't you do this one?

I just don't see that happening,

that the federal government is going to step aside and say: Gee, you know what, New York, why don't you take a shot at this one.

So, I mean, I'm voting for this bill with -- you know, I just -- I almost feel -- well, I don't know why I should feel any less ridiculous than anybody else here. But I'll vote for it.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Duane, do you vote in the affirmative?

SENATOR DUANE: With the ridiculousness of it, yes.

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Morahan.

SENATOR MORAHAN: Could you please take up Calendar 1388.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1388, by Senator Spano, Senate Print 7631, an act to amend the Criminal Procedure Law and others, in relation to creating the crimes of

criminal possession of a chemical.

SENATOR HEVESI: Explanation.

SENATOR MORAHAN: Is there a message of necessity at the desk, Madam President?

ACTING PRESIDENT McGEE: Yes, there is a message of necessity at the desk, Senator Morahan.

SENATOR MORAHAN: Move for its adoption.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The message is adopted.

Senator Spano, there's been a request for an explanation.

SENATOR SPANO: Madam President, this is a Governor's omnibus antiterrorism bill. It's a bill that is modeled on federal law. It does a number of things, and I'll

highlight a few of them.

It creates the new crimes of criminal possession and the use of a chemical or biological weapon. It creates a new crime of money laundering for terrorism. It creates a new crime of conspiracy to commit terrorism and eliminates the statute of limitations for prosecution for all terrorist offenses.

It also allows -- authorizes law enforcement officials to obtain eavesdropping warrants that would be permitted under roving interceptions of communications.

ACTING PRESIDENT McGEE: Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President. Would the sponsor please yield?

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

SENATOR SPANO: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR HEVESI: Thank you, Madam President.

I, as my colleagues do, probably agree with every provision in here. And it

appropriately criminalizes and deters and is punitive for the behaviors that are outlined in the bill.

But I do have a real concern that echoes what Senator Duane was talking about. Which is, what is the circumstance whereby the state or state prosecutors would be prosecuting these cases, as opposed to the federal government? It's not splitting hairs. We'd really like to understand the situation that would result in the utilization of these statutes.

SENATOR SPANO: There have been a number of times when we have in fact passed bills here, whether it be on stalking or hate crimes or assault weapons -- I mean, we do it all the time -- and if the federal government as well as the state government are going to prosecute, let it happen.

That would be my opinion, Senator Hevesi.

SENATOR HEVESI: Madam President, will the sponsor continue to yield?

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

SENATOR SPANO: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR HEVESI: Thank you, Madam President.

To my knowledge, there is no federal hate crimes legislation. And when we passed the gun control package two years ago, one of the five things that the legislation did was criminalize assault weapons that were currently illegal under federal law so that the state law would mirror the federal law.

And the explanation at the time that was afforded to us was that this was necessary because -- and I believe this -- that federal prosecutors had been overburdened to the extent that they were not prosecuting some of the cases for weapons possession. So there was a real need for it.

But I cannot conceive of a situation, not just in this bill -- and I'll support this, I'm not going to vote against it -- in this bill or, frankly, in Senator Hoffmann's bill with agri-bioterrorism where the federal government wouldn't be prosecuting

the cases.

And I guess my one concern here is we do get held up to a certain level of scrutiny, our actions here. And if it's viewed that everything we're doing is essentially perfunctory or political or without real value, it's just a gesture, it doesn't reflect well on this body. So I'll support this.

But my question to the sponsor, since he has kindly agreed to yield, again, is there any circumstance where a federal prosecutor would defer to a state prosecutor who would then use the statute we're passing today to prosecute one of these crimes?

SENATOR SPANO: I think what we have to do is view these crimes as being so heinous type of crimes that we should have as many laws on the books in New York State that would work in concert with the federal law enforcement authorities so that we can both tackle this problem.

SENATOR HEVESI: Mr. President, on the bill.

ACTING PRESIDENT MARCELLINO:

Senator Hevesi, on the bill.

SENATOR HEVESI: Thank you. I don't want my comments to be misconstrued, that I don't believe we need to crack down as hard as humanly possible. And I commend Senator Spano for bringing this legislation.

Maybe the one real value that we have to this discussion, this discourse, is that we raise public consciousness and perhaps compel the federal government, in cases where federal statutes may be deficient, to plug some holes.

Short of that, it's difficult to see how we're going actually to utilize these statutes. But I don't see a reason to vote against it. Not the ideal policy-making process, but nonetheless, if there ever could be, conceivably, a situation where somebody could be prosecuted under one of the sections here, then I guess it's better that we pass this than we don't.

So I commend Senator Spano for bringing the legislation, and I'll be voting yes.

ACTING PRESIDENT MARCELLINO:

Senator Lack.

SENATOR LACK: Thank you, Mr. President.

I rise because of some of the comments I've just heard. The last time I checked, we call this country the United States of America. And the reason we do is that we're a federated democracy from the bottom up. And that is the states, by coming together, created the federal government. And that, in and by itself, is the first reason that we have a bill such as Senator Spano is promulgating on this floor this afternoon.

Examples of the opposite, for example, is the country of Brazil, which is a federated democracy from the top down. That is, the central government in Brazil contains in its federal constitution every provision that would pertain to state government as well. We don't do that. The states, quite frankly, get together and have granted the federal government certain powers.

And, Senator Hevesi, you should know that the federal government in fact does have a hate crimes legislation, civil rights

legislation. And you've seen time and time again when states fail, in their own penal statutes, to move forward, there are criminal sanctions brought by the federal government. That's a violation of civil rights, and that has worked time and time again.

These two types of sections that Senator Spano is proposing this afternoon would work totally with federal legislation. And I think it's a great step forward, and I congratulate Senator Spano for doing it. And I think, in terms of combinations with existing federal statutes, it's exactly what we should be doing at this time, particularly as a result of September 11th.

ACTING PRESIDENT MARCELLINO: Senator Farley.

SENATOR FARLEY: I just want to rise in support of Senator Spano's bill.

The Banking Committee held hearings on money laundering a few years ago, and it was --

ACTING PRESIDENT MARCELLINO: Excuse me, Senator.

Can we have a little quiet in the

house, please.

SENATOR FARLEY: The Banks Committee held hearings on money laundering a few years ago, and it was very interesting to note that particularly in New York, much money laundering is only a misdemeanor, which they don't even bother to prosecute because they're so busy with felonies.

And the federal government is somewhat overwhelmed in the amount of work that is involved with money laundering, and it goes on particularly in some of the states that have got quite a drug culture.

And I think that if we could bring into effect our law enforcement and our courts to assist in this area, you're going to put a real crimp into terrorism and into -- because they are very much into money laundering.

Thank you.

SENATOR HEVESI: Madam President.

ACTING PRESIDENT McGEE: Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President.

One would have thought I had spoken

out against this bill, or that I was not familiar with the form of government that we have in this country which establishes concepts of federalism. Both of those things are not true.

And if Senator Lack was in the chamber, I would inform him that while we do have a federal hate crimes law, the federal hate crimes law does not include sexual orientation and it does not include disability. In a case like that, it is more than appropriate for a state to enact its own more expansive, more inclusive legislation to protect its citizenry.

But this case, where I simply asked Senator Spano to conceive of the notion, to articulate the situation whereby the federal government would not prosecute for a terrorist case, was a legitimate question. And to be honest with you, there was no example that was offered.

So I don't know why anybody would believe that it was an inappropriate question or that I was not familiar with government or what have you. That's just silly.

I'm voting for this bill. But if somebody can give me a reason why the state would prosecute in this case or in an agri-bioterrorism case, as opposed to the federal government, I'd like to know. It's a legitimate question.

If there's an issue, as Senator Farley points out, with money laundering, perhaps that would be a legitimate reason. That's why I'm supporting this bill. I'm not sure.

So I'll be voting yes. But, you know, to have this righteous attitude with me on the floor I believe really is inappropriate.

I'll be voting yes for this bill, Madam President.

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

Read the last section.

THE SECRETARY: Section 35. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Morahan.

SENATOR MORAHAN: Yes, Madam President. Will you now call up Calendar 1389, by Senator Balboni.

ACTING PRESIDENT McGEE: The Secretary will read Calendar Number 1389.

THE SECRETARY: Calendar Number 1389, by Senator Balboni, Senate Print 7645, an act to amend the Penal Law, in relation to creating the crime of cyberterrorism.

SENATOR DOLLINGER: Explanation, please.

ACTING PRESIDENT McGEE: Senator Balboni, an explanation has been requested by Senator Dollinger.

SENATOR BALBONI: Madam President, by way of explanation, permit me to make a comment for the background of this legislation.

As we finish consideration of several bills dealing with terrorism, I rise to add my voice of concern, concern that the

issue before us today is not being taken seriously in this Capitol.

Now, without question, the war on terrorism is going to be directed from Washington, D.C., not from Albany, New York. And maybe that is why so many people believe that the State of New York does not play a role in this issue.

More pointedly, the State Assembly and, more directly, members of that house have said to me that "Terrorism is simply not a front-burner issue for us." I would like to remind the Speaker that though the war on terrorism might be directed from Washington, when one of our constituents dials 911 the phone is picked up here in this state.

Take, for example, the weapons of mass destruction bill that Senator Spano just debated. For six months I had been involved with this house and the Governor and the Attorney General and the state agencies in negotiating that bill. Nothing from the Assembly. They refuse to engage. Perhaps the Assembly leadership believes that outlawing weapons of mass destruction, cyberterrorism,

and agri-terrorism won't make us safer. So the question becomes, will they hurt us?

That question was asked of Senator Spano: Why do a state law? I'll give you a reason. There are 7,000 reasons why we should do state laws on these crimes. Because that's the number of local and state law enforcement personnel. Know what the number is for the federal government officers? 700. That's why we adopted the assault weapons bill in this state, because there weren't enough federal marshals to enforce the federal law.

It's about prevention, ladies and gentlemen. Prevention. Before September 11th, people looked up the chain of government when it came to prevention and response. What we have learned now is that's not -- the federal government is not going to be the first responders. The September 11th attack began with the New York City Police Department and the Fire Department and the EMS and ended with them.

The bills that were articulated in the Senate's Task Force on Local Emergency and Preparedness, prepared by Senator Jim Seward

as the chair, outlined just one slice of the issues attendant to the issue of terrorism. This is a huge, broad spectrum of ideas.

And ladies and gentlemen, you know what we shouldn't be doing here today? We shouldn't be taking an issue, looking at it, coming up with a solution and then moving on. We are at war. Do we need reminders? Look in the press. Look in the press about the guy in Chicago who wants to do the radiological bomb. There are terror threats that come across our airwaves every day that many of us do not know. And it's only been nine months. Have we moved on that fast? Are we so myopic in our own view of our lives and what we're doing, so self-absorbed not to recognize the threats that are there in front of us?

I've had the opportunity to travel to Washington and to travel around this nation and to talk to other legislators on this issue. Washington, D.C., is completely focused on this issue. Almost every single agency has some part of its day spent dealing with terrorism. What are we doing? Contrast what Washington is doing versus what we're

doing. The silence, my colleagues, is deafening.

Perhaps the real reason why we're not dealing with this issue is because we simply want to move on. But frankly, the gloom and the darkness associated with this issue is not something we want to deal with. And perhaps we believe that if we dismiss it, it will go away and things will be safer.

I am of the opposite view. If we don't make this a priority this year, next year and the years after that, then something bad will happen and we won't be as prepared as we can be. Generations of Americans came before us and made incredible sacrifices. And here we sit, perhaps in the afternoon before something horrible. The residents of this state pay us to lead, not to stick our heads in the sand and pretend that an issue is not going to occur.

Ladies and gentlemen, I know in my heart that if anybody in this chamber could have done anything to stop the events of September 11th, they would have. We would have moved heaven and earth. But here we sit,

and we are doing nothing. Thank God for the debate today. At least we got a chance to talk about the issues. But unfortunately -- and God forbid it takes another event to get us refocused on this issue.

Now to the bill. The bill, to my knowledge, is one of the first of its kind in the nation. It creates the crime of cyberterrorism. It takes an existing section of law in the Penal Law that talks about computer crimes and says that when those computer crimes are done in the furtherance of a terrorist activity, using the same language that was discussed with the Spano bill, coercing a public -- a governmental entity, then it becomes terrorism.

The second section of the bill is new. It talks about a new form of attack which just happened, by the way, last Thursday. It's called a denial-of-service attack. The way this is done is remote computers around the world or in your neighborhood focus on one site and bombard it, inundate it with bits of information and requests. And they send millions of pieces of

information, and the system is overwhelmed and inundated and cannot work.

What happened Thursday, Fox News, ABC News, their sites were attacked and almost brought down from a cyberattack that they believe originated in China.

The last piece on this is if you read the literature on asymmetrical warfare, unconventional warfare -- and that's what we're talking about, nonconventional warfare, warfare conducted by terrorism -- they say that what will happen is there will be a physical attack -- the placement of a bomb, the use of a weapon of mass destruction -- but right before that, there will be a cyberattack.

The last thing I just want to point out is there are a whole host of different articles on this issue which point out the possible targets, including the Centers for Disease Control, the nation's financial network, computer networks that run electrical grids and dams and water treatment plants, and the nation's communication networks.

In 2001, cyberattacks caused

$12 billion in damage and economic losses. And such attacks were successful in penetrating security systems at an airport in Massachusetts and at a dam in Arizona, causing shutdowns of both facilities but no loss of lives and no long-term damage.

This bill recognizes a real threat. And it's the first time that we actually put into statute a denial-of-service attack.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Onorato.

SENATOR ONORATO: Madam President, will the Senator yield for a question?

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

SENATOR BALBONI: Yes, I do, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR ONORATO: Senator Balboni, I wholeheartedly support the concept of this piece of legislation about creating the crime.

But you've raised a very, very serious concern for me, is we're going punish them after the crime is done, and we're dealing now with terrorism. What in your bill will prevent it from actually happening when you're starting to deal now with computers?

I'm not talking about putting up a barricade with tanks to prevent it. Now you're talking about the electronic age. What in the bill addresses the prevention of such a thing happening?

SENATOR BALBONI: Madam President, I thank the gentleman for his question. This is the concern of many people in the media and otherwise, as to why are we focused on penalty-related provisions.

In reality, if you talk to law enforcement personnel, the allocation of resources are predicated upon the establishment of a crime. In other words, if there's a cyberterrorism crime, then law enforcement in this state, particularly if it's identified as a real threat, will allocate more resources to try to detect and prevent that attack.

That's the whole purpose behind this. It's not simply about putting somebody in jail. It is about signalling to the law enforcement community that this is a priority, that this is a threat and this is something that should be investigated and stopped before it occurs.

ACTING PRESIDENT McGEE: Senator Dollinger.

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

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

SENATOR BALBONI: Yes, Madam President, I do.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: The answer to Senator Onorato's question was there's nothing in this bill that will prevent an attack. Isn't that the right answer? That's the direct answer to his question.

This is penalties for things after the attack, the denial of service attack occurs. Isn't that correct?

SENATOR BALBONI: Who are you asking?

SENATOR DOLLINGER: You. Senator Balboni, if he would yield.

There's nothing in this bill that contains any mechanism for prevention. This is -- like so much else we write, this says if you do it, we're really going to punish you. Isn't that what this bill says?

SENATOR BALBONI: Madam President, in order to answer the gentleman's question, there is nothing in any law that is written in any form of government that would prevent anything. We don't know who is going to do what crime. So therefore, do we not have statutes on murder because we can't prevent it?

How do we construct our entire legal and law enforcement system? We identify priorities and threats. Then we assign the dollars and programs necessary to law enforcement to go out and investigate, detect, and prevent, hopefully, those crimes from occurring. That's no more or less than what we're doing here.

ACTING PRESIDENT McGEE: Senator Dollinger.

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

SENATOR BALBONI: I continue to yield, Madam President.

SENATOR DOLLINGER: Senator Balboni, do you have any evidence that anybody anywhere on this planet who is going to engage in a denial-of-service attack who is doing it as a terrorist would sit down and say "I'm not going to do that because it's a felony in New York"? Have you ever heard anybody say that anywhere in this planet?

This is a terrorist we're dealing with, someone who doesn't like to abide by rules, who's willing to put their life at risk. They're going to not do it because we've passed a bill?

SENATOR BALBONI: Madam President, by way of answer to you, Senator Dollinger, your question goes to the very role of what the Legislature can do in this regard. And if it is your belief that we have no role

to play in the war on terrorism, you're welcome to that perspective.

I disagree. We are not -- as I said before, we are not going to be able to direct the war on terrorism. But listen to what the President said. Every single citizen in this nation has been called to arms. Whether it's being more vigilant in your neighborhood as to what's going on -- and, by the way, for the people listening, that's not that far-reaching a concept, because in reality many, many crimes are stopped by people who see something happening in their neighborhoods. The best way to stop crime is to know what's going on in your communities.

The same thing goes with terrorism. The terrorists of 9/11 lived in our communities for years prior to their criminal acts. Some of them had been caught speeding. Some of them were on foreign student visas. And yet they were never picked up.

What this does is it signals a priority for this government and for our law enforcement community, which is over 7,000 police officers. That is a massive amount of

resources that can be directed towards any particular threat.

Now, in the federal government they have set up a task force on cyberterrorism. There is a cyberterrorism security agency. They have identified it as a major priority. We should also.

ACTING PRESIDENT McGEE: Senator Dollinger.

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

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

SENATOR DOLLINGER: We'll get back to that issue to what we can do to address the issues that you raised at the start of your speech.

SENATOR BALBONI: Excuse me, Madam President. Can I just correct the record?

ACTING PRESIDENT McGEE: Just one moment, Senator Dollinger.

SENATOR BALBONI: I misread the memo and my information. It is not 7,000 law

enforcement community officers, it's 70,000. Sorry, 70,000.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Senator Balboni, just a question. You raised a couple of issues about New York's role in this process. Since September 11th, have the police in the state of New York arrested single terrorist or anyone under suspicion of terrorism? Do you know whether -- New York State Police. This is the New York --

SENATOR BALBONI: I don't know the answer to that. And neither do you.

SENATOR DOLLINGER: Isn't it true, Madam President -- let me ask another question, if Senator Balboni would continue to yield.

ACTING PRESIDENT McGEE: Senator Balboni, will you suffer another question from Senator Dollinger?

SENATOR BALBONI: Yes.

ACTING PRESIDENT McGEE: Isn't it actually true, Senator Balboni, that everybody that's been detained and everybody that's been

arrested has been arrested by the federal government, that you know of? Isn't that correct?

SENATOR BALBONI: I don't have -- well, first of all, Madam President, I will forgive my colleague for adopting the cross-examination style, because I know he doesn't intend it. He's merely a trial lawyer who kind of folds back into that colloquy style. So we'll ignore the "answer this, yes or no, otherwise the judge is going to rule you out of order."

So in response to your question, I don't know who has been arrested in relation to terrorism and who has not. Because as you know, an arrest in and of itself is not public knowledge, necessarily. A conviction --

SENATOR DOLLINGER: And certainly that's true with detainees as well. There are thousands of people who have been detained and we don't even know where they're --

ACTING PRESIDENT McGEE: Gentlemen. Gentlemen.

SENATOR BALBONI: Senator Dollinger, if you wish to object to the

federal government's policy of detainees, I suggest you run for Congress.

But right here we don't have a detainee policy. What we have is a crime detection and prevention policy that will be furthered and better aided through the adoption of measures like this one.

SENATOR DOLLINGER: Through you, Madam President, if the sponsor will continue to yield just to one clarifying question. I want to make sure I didn't miss something.

ACTING PRESIDENT McGEE: Senator Balboni, will you take one clarifying question?

SENATOR BALBONI: Yes, Madam President, I do.

ACTING PRESIDENT McGEE: The Senator will take one clarifying question.

SENATOR DOLLINGER: Senator Balboni, you said we were at war. Did I miss something? Did the United States Congress declare war on someone that I missed? I mean, you know the definition, as a lawyer. Did I miss something? Did the United States Congress declare war on some nation or some

group of people that I missed by a vote, a Congressional resolution? Which is, of course, the only way that the United States of America, a democracy, can declare war on anybody. Did I miss something?

SENATOR BALBONI: Madam President, by way of answer -- I realize that the gentleman's question to me is rhetorical and he doesn't really expect an answer. By way of answer, let me just point this out. This is symptomatic of the inaction here in this Capitol, where we would rather nitpick, point to technicalities as opposed to seeing the bigger picture.

Here in the chamber this afternoon we saw the face of the war on terrorism. You want to go ask those fire officers sitting over there whether or not they're engaged in a war? You want to ask the men and women who are fighting in Afghanistan whether they're engaged in a war? You want to talk to the victims' families and ask them whether their loved ones were taken in a war? Or do you want to stop and say no, no, no, war doesn't apply because it wasn't declared in a legal

manner? An attack is not an attack, a war is not a war.

You know who I take my direction from, Senator Dollinger? I take it from President George Bush, as the commander-in-chief of this nation's armies. And you know what I'm here to do? I'm here to support him and his efforts as we go forward.

And I believe that the actions we take today, if we could get the Assembly to focus at all on this issue, would add to that effort. Not solve it, not prevent it, not make it go away in a quick fix, but rather be a part of a building effort that hopefully will last for years.

SENATOR DOLLINGER: On the bill, Madam President.

ACTING PRESIDENT McGEE: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I'll just offer a couple of comments on the particulars of the bill and then just respond to something that Senator Balboni said.

I find it interesting that this bill focuses only on units of government.

Senator Balboni, I would suggest you include businesses that are related to government. Because one of the things that will happen under this bill as it's drafted is it doesn't affect the subcontracting of work in computer networks.

My personal opinion is if you want to accomplish that, you've got to add, you've got to expand the definition to not only include governments but affiliated businesses, private businesses that perform public services.

You've got a phrase in here called delayed-time critical computer operations. I would suspect there are only a handful of people on the planet who know what that really means. You ought to include a definition in that so that it makes it clear.

The other thing is, Senator Balboni, your definition about when you increase the penalty based on the dollar value of the damages, you say -- it says "intentionally alters or destroys computer data or computer programs so as to cause damages to the computer tampered with or any

other computer."

Frankly, Senator Balboni, forget the computers. The computers only cost a couple of thousand dollars. What you're really talking about is the consequence to the financial system when they have to shut down the business for a couple of days to clear up their computer network. The cost of the loss to the computers is minuscule to compared to the loss of business opportunities and others. Factor those in.

But through you, Madam President, the reason why I asked the questions about Senator Balboni is that I think one of the dangers in a situation like we have today is that war is going to be exploited. When you nitpick on a bill or when you raise questions about federal versus state jurisdiction, some people said: "Get with the program, Dollinger, we're at war with a group of terrorists."

I would suggest that the proper response is we have a public-safety crisis in this nation. It is brought by our enemies who are clearly out to destroy our way of life.

That is the given. The question is, how do we prevent them from doing what they want to do?

I would suggest, Senator Balboni, there is no terrorist on this planet who wants to accomplish computer destruction, who wants to tamper with our style of life who will ever sit down and say: Oh, my God, it's a felony in New York, I'd better not do it.

What I would suggest, Senator Balboni, rather than focusing on picture-book criminal penalties that we can all write about in our newsletters, let's put our money to work and let's come up with a grant to prevent computer tampering. Let's sponsor an institute that will come up with ways to prevent this kind of denial-of-service attack. Let's put our money to work so we accelerate the R&D to prevent this from happening.

The best thing we can do, in my opinion, in the war against terror is to be prepared, to work on prevention. And most importantly, while we're doing that, let's not sacrifice the vigorous debate about public issues and things like federal versus state jurisdiction and the concept of war and

whether it's war or whether it's a fight against terrorism. Technical things that sometimes the public mixes together, but we, you and I, as good lawyers know are critical distinctions for our democracy.

I'm going to vote, actually, in favor of this bill. I don't mind the concept. But to suggest that this is the issue that will somehow stop computer terrorist attack, I don't think it's going to do that.

And I'll add one other comment, Madam President. I think it's unfair to suggest that the Speaker of the Assembly is not concerned about terrorism. Certainly a man who had terrorism occur in his backyard is as concerned about it as any of the 211 members in this Legislature.

I will say one thing about the Speaker. He does believe that a minimum wage for every New Yorker, fair rights for farmworkers, unemployment insurance and benefits, a women's health and wellness bill, that those bills are as important to the future of the quality of life in New York, so that we have a high quality of life in

New York that's worth defending.

I would suggest the Speaker's heart, driven by that concern, is in the right place. He and the Assembly voted on a series of terrorism measures in October to deal with this problem. To suggest that because he doesn't buy on this bill or the agri-terrorism bill or other steps that have been advanced solely in this house that he is somehow soft on terrorism, as it seems to have been suggested, is grossly unfair.

ACTING PRESIDENT McGEE: Senator Duane.

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

It was said no earlier that no legislation would ever prevent crime, but actually that's not true. My inclusive Dignity for All Students Act actually would go a long way towards preventing crime. And I would ask my colleagues to look at it because it is a crime-prevention piece of legislation that will make our schools safer for all students regardless of race, religion, sexual orientation, gender identity, gender,

religion, disability, et cetera. So there is such a thing as preventative legislation, and that's just one example.

Under the Senator's reasoning, a person need not bother to go to China to plan Internet terrorism, one need only go to New Jersey and plan it or Delaware to plan it. Because from the way he describes it, it's only in New York State where these laws would be taking effect.

I also -- it is a state authority to pick up somebody for speeding. But I don't think that it would be particularly helpful, nor would it have been helpful to run someone, perhaps of Arab descent, who had been stopped for speeding through some kind of computer database to predict whether or not they're going to be a terrorist. Although that is a state function. And perhaps that is what we should be sticking to, are state functions.

You know, most of us have voted for most of these bills, with varying degrees of questioning about it. But most of us voted for the bills. But, you know, let's be honest. Already, under the law now, under

present law, I can't imagine but that these acts are already illegal. Not to mention under federal law. And so if you go back to the China-New Jersey-New York-Delaware discussion that I raised earlier, that's why we need federal standards. That's really the only way that we're going to be able to effectively fight terrorism.

And, you know, if this -- if these pieces of legislation are so very important -- and I believe that the war on terrorism is extremely important -- why are these bills coming out of Rules? Are these new concepts in the past couple of weeks? Or did we know about these concepts as of January? Why didn't we have hearings? Why couldn't these questions have been raised publicly instead of here when people were stammering because they don't know the answer to some of the questions that were raised?

The reason that we have hearings on things is so that people can raise questions. I mean, it was said that there was a task force. Well, if this issue is so very important, then why did we use a task force

and not our committee process? Aren't our committees capable of addressing these issues? Or is it really just the reason for having task forces is to exclude certain members of this body from the discussion?

You know, I'm looking at these bills for the first time today. And, you know, I -- like the Speaker, it's my district that was the one that was so horribly devastated by the September 11th attack. Although I don't think it was particularly about my district, I think it was an attack on the people of the United States. And I think all of us together share the same concern to try to make it so nothing like that ever, ever happens again in this nation.

You know, the question was asked: Well, what can the state do? Well, you want to know what the state can do? The state could provide benefits, line-of-duty death benefits to domestic partners of those who were killed in the line of duty on that day. That's something that we don't do in this house.

We could keep the simpler Medicaid

application. That helped an awful lot of people. That would continue to help people.

There's a lot of work that needs to be done on unemployment benefits. My district, the small businesses in my district need assistance.

You know, when you talk about the task forces that we've been having, the task forces excluded a large number of members of this body, many of whom were most directly affected. I'm not saying that other parts of New York State weren't affected by September 11th. Of course, they were. But I think an argument could be made that there were some particular problems that happened in New York City as a result, and yet most of the New York City members of this body were excluded from that task force.

But you want to know what other things the state could do? We could expand benefits for Chinatown and the Lower East Side. They've been excluded from equal benefits to those in other parts of Lower Manhattan.

There are lots and lots and lots

and lots and lots and lots of things that the State of New York could do to help remedy the terrible problems which occurred as a result of September 11th.

Maybe there is a place to create laws that punish terrorism as a result of that, and I'll be voting for this one, as I voted for most of the others of these bills. Maybe there is a place. But I would like to have had a forum to discuss with the feds and with civil libertarians, with DAs, with defense attorneys, with constitutional experts, with people from academia about what it was that we needed in terms of terrorism laws. But sadly, we were denied that opportunity.

So I'm going to vote for this bill, but I think we have lots of work to do for the people of the State of New York. And I'm sorry, but these terrorism bills just don't do the trick.

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 on the first day of November.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator Fuschillo, to explain his vote.

SENATOR FUSCHILLO: Yes, Madam President. Madam President, thank you very much.

And just briefly let me just stand up and say, to Senator Balboni, thank you. Because you heard in the explanations on the bills, the focus is still not there. Somebody talked about oh, this is just good for your newsletter. Well, I just heard a political speech talking about unemployment benefits and domestic partnership benefits.

It's not about that. It's not about you. It's not about anybody here. It's about what Senator Balboni's vision has for New York State, and that's prevention. And nobody else is talking about it. Everybody else is making excuses about it. But I see the federal government doing something every

single day after 9/11.

Three years ago, I attended a meeting with Senator Balboni and he talked about bioterrorism. And you know what? They laugh. They said, "What are you, crazy? It's never going to happen." He never foresaw what was going to happen on 9/11. And you're not going to foresee what happens in the future.

But we're giving New York State law enforcement authorities the measures to go after people. And it's about protecting the 18 million New Yorkers in New York State.

Senator Balboni, you heard a lot of rhetoric on the floor here today. But on behalf of my family and the residents of New York State, thank you for what you're doing with bioterrorism in this state.

ACTING PRESIDENT McGEE: Senator Saland.

SENATOR SALAND: To explain my vote, Madam President.

Madam President, I heard a significant portion of debate on this bill as well as on the last bill. And to be perfectly candid, I am somewhat astounded by those who

would say that the state has no role in dealing with issues of terrorism, that the state has no role in attempting to combat terrorism, that the state has no role in trying to bring justice to those who have engaged in acts of terrorism.

I have had the opportunity to meet on several occasions with Governor Ridge, who is, as everybody here knows, the director of the Office of Homeland Security. And I can tell you very unequivocally that, unlike any other federal entity that any of us have ever dealt with, Governor Ridge is reaching out to states.

And I think in part it represents the recognition that the federal government does not have the ability to deal single-handedly with the events of terrorism that could be rained upon this country. They do not have the resources. They do not have enough judges. The Justice Department doesn't have enough prosecutors. They do not have law enforcement to put in the street.

They know full well that the only way, the only way we can combat terrorism is

by dealing jointly in partnership, by maximizing our resources, by working cooperatively. This is not the time for territoriality. This is not the time for the kinds of elitism that we have seen demonstrated, I fear far too often at the federal level in dealing with criminal justice issues.

The states are where the rubber hits the road. The federal government realizes that. And the federal government wants to work cooperatively with us. They would do nothing to discourage us from putting forward the kinds of legislation that Senator Balboni has put forward today, some of my other colleagues have had on this calendar earlier. In fact, they would encourage it.

And I commend you, Senator Balboni, and I know that you've worked on this issue long and hard. I know you've also worked with the National Conference of State Legislators on their task force on homeland security. I think you've done well for the people of the State of New York by bringing this legislation forward. I vote aye, Madam President.

ACTING PRESIDENT McGEE: Recorded in the affirmative.

Senator Duane.

SENATOR DUANE: Thank you, Madam President. I didn't hear anybody --

ACTING PRESIDENT McGEE: Are you rising to explain your vote, Senator Duane?

SENATOR DUANE: And that could be the only reason I would rise, Madam President.

ACTING PRESIDENT McGEE: Well, very well, then. Senator Duane, to explain his vote.

SENATOR DUANE: Thank you, Madam President.

ACTING PRESIDENT McGEE: You're welcome.

SENATOR DUANE: I did not hear anyone in this chamber say that there was not a role for the state in the war on terrorism. Unless I'm mistaken, I did not hear anyone say that.

In fact, I heard an awful lot of people say an awful lot of things that the state could do in the war on terrorism, and also to make the lives of those who have been

victimized by terrorism a little bit easier.

I don't know why there's an objection to some questioning on what the appropriate role of the state is in the war on terrorism. I know we're not supposed to ask questions of that. Of course, there aren't any committee meetings where we could have questions on that. But if we have to question on the floor, then so be it. There's nothing wrong with that.

Most of us voted for most of these bills. Most of us believe that there is a role for the state. And in addition to the areas covered by the bills today, there are other areas where the state could be of assistance.

Thank you, Madam President. I'll be voting yes.

ACTING PRESIDENT McGEE: Senator Duane in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Smith.

SENATOR ADA SMITH: Thank you.

Madam President, I request unanimous consent to be recorded in the negative on Calendar Number 1385.

ACTING PRESIDENT McGEE: So recorded.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time call up Calendar Number 1390.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 1390, Senator Bruno moves to discharge, from the Committee on Rules, Assembly Bill Number 11723 and substitute it for the identical Senate Bill Number 7657, Third Reading Calendar 1390.

ACTING PRESIDENT McGEE: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1390, by the Assembly Committee on Rules, Assembly Print Number 11723, an act to amend the Insurance Law and the Public Health Law.

ACTING PRESIDENT McGEE: Senator Bruno.

SENATOR BRUNO: Madam President, on this bill that is before us, this is not anything that is strange to anyone in this house. This is the bill that we've been referring to as the Women's Wellness, the Women's Health Bill. It's been a while getting to the floor in this final, agreed-on form. But like a lot of good things in life that take a while to get here, it's here.

And this really is a critically important day for all people here in New York State -- women especially, but all people, because we're talking about something that is important in prevention by early detection of preventable, in many instances, diseases, and, when not preventable, when it's detected early, treatable.

So we're talking about saving lives. And the Senate, then, has been there over and over. When we talked about the reconstructive surgery and made that part of the healthcare package. When we talked about the elimination of drive-through mastectomies

and childbirth. We've been there with the screening for breast cancer, cervical cancer, early screening.

So this expands the coverage in so many critical ways for the women of this state, critical ways. In breast cancer screening, cervical cancer, osteoporosis, creating accessibility to OB-GYN rather than having to be referred from a family practitioner. And, of course, the making available contraceptives. Other than for religious organizations where their main function is religious and where they employ people where contraceptives are against their beliefs and their religion, and we've created an exemption for that.

So I want to really applaud the Assembly for joining, and with the Governor, who has been partnering in this all the way.

I especially want to acknowledge all of the women's groups that have been out there, and the other interested groups that have helped what we're doing here become reality. Because it is important. And we appreciate their diligence, their patience,

their persistence in helping really in making this happen today.

Our chairs, when we formed this Committee on Women's Health and Wellness, Senator Bonacic, Senator Rath, who really celebrates her birthday today -- and that's an added bonus today for our doing this today. What a birthday present for Senator Rath.

And to all of the members on this committee, all of the members in this chamber that have participated over these years to get us to where we are today. This is something we can be proud of, something that we have done together. We here in the Senate, both sides of the aisle, all the outside interests, with the Assembly and with the Governor.

So again, we're grateful to the chairs, Senators Bonacic and Rath, grateful to the committee, all the staff support and all the people who are out there helping make this great thing happen here in this chamber now.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you, Senator Bruno.

Senator Bonacic.

SENATOR BONACIC: Thank you, Madam President. This has been a three-year struggle. And I do believe it's worth it. You're going to have the most comprehensive women's healthcare package, not only in New York but in the United States. It restores equity and fairness between men and women when it comes to healthcare coverage. And I believe that you will see other states in the nation imitate what we are doing here today.

Our State Board of Health indicates that there are about 1,100 women a year that die from breast cancer. I believe as a result of this legislation, with early detection and prevention, we will see those numbers go down. And with early detection, some women will continue to die with breast cancer, but hopefully they can live longer and enjoy a better quality of life.

Osteoporosis, bone density. I've been told, I don't know if it's factually true, but we may be the first state in the nation to cover this testing for women, where it strikes women eight times greater than men

with bone weakness.

And last but not least, the access to contraception. I believe that this will diminish unwanted pregnancies and help diminish painful abortions.

Now, these things do not happen by yourself. We had some very powerful institutions and very powerful people resist this legislation from day one. And if it was not for our Majority Leader, Joe Bruno, my fiercest ally -- my fiercest ally -- and my colleagues who stood with us when this heavy artillery was coming at us for the last three years, this is something that would not have gotten done. So I say to you, Leader, and my colleagues, thank you.

Mary Lou Rath, my partner in this, who was with us all the time, Mary Lou, to you I say thank you.

To the advocacy groups, especially the women who are up here in the gallery, who never lost their passion, their commitment, their motivation for over three years, I say thank you.

I also want to thank both sides of

the aisle in both houses, and Deborah Glick, who carried this bill in the Assembly. And it would be so tempting to get involved in the politics of the sexes. But she tried to keep it focused, and she tried to keep it professional. And she did, and I thank her for that.

Last but not least, I want to thank the press. Because it was the press who continually wrote editorials that held both houses' feet to the fire to be accountable, to do something real and not get comfortable, engage in the politics of pandering, that we do something real.

And this bill, I understand, passed the Assembly about an hour ago. I understand that the Governor will sign it as soon as he gets it.

And, you know, one other thing I notice. When we have these late budgets, it goes later and later in the year, we have philosophical differences, we have geographical differences, we have political differences, we have partisan politics. And in that environment, it's extremely difficult

to do things that are real, legislation of public policy that affects the people of the State of New York.

But when we rise above that stuff and we do something like we are doing today, for each and every elected official in both houses, it's got to make you feel good and it's got to make you feel proud. But for the men and women of the State of New York, today it's got to make you feel great.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Madam President.

And thank you, Senator Bruno, for your unwavering commitment to this issue, for appointing two distinguished chairs of this committee to see it through to the very end.

I'm very proud today to rise as a member of the New York State Senate and say what a great, great achievement this is for all of us.

And we've all seen the statistics. Minority women die at a disproportionate

percentage from diseases like cervical cancer and breast cancer because they lack early detection. They simply do not have the same access to healthcare, they do not have the ability to get that treatment at a stage where it can save their lives. So we will save lives of women. We will keep families intact in the minority community.

For thousands of thousands of women of all races classified as working poor, we will now have healthcare providing one of the most critical lifesaving measures possible by that early screening.

I remember not that many years ago I heard from a good friend of mine, Dr. Patricia Newman, who's the director of the Breast Cancer Clinic in Syracuse and a renowned surgeon, good friend. And she said, "We must do something about early screening," and she told me some statistics that were alarming about women aged 40 and even under who were developing breast cancer. She said, "Without screening for them, we can't wait until they're 50. There are far too many of you."

At that point, it was still somewhat a vague concept to me. And then my own younger sister developed breast cancer at age 36. I think it was a remarkably early screening in her case, but it still didn't save her life, and she was dead one year later.

I'm sure there's nobody in this chamber that has not been touched one way or another by breast cancer in their immediate or extended family. We are clearly sending a message in this action today, through the Senate and through the Assembly, and with the great support of the very kind Governor of this state, that we value the lives of the women in this state and we do not want to see any more women's lives lost prematurely. This early screening, this early detection and commitment to treatment is something that everyone in this chamber can be proud of.

And as to the contraception coverage measure, I want everybody to realize that when contraceptives are prescribed by a physician, in many, many cases it is not for a birth control measure at all. Large numbers,

thousands of young women in this state are prescribed birth controls as a means of regulating or minimizing the difficulty experienced through their menstrual cycle. It is a fairly routine prescription for a very unpleasant, at times, characteristic of women's health that men could very little understand.

But we have a responsibility to all of the women of this state to make contraceptive coverage affordable and accessible through insurance plans, just as we make a wide range of men's health aids and other activities available to them. It is really long overdue that this contraceptive coverage clause be within this bill.

I have no doubt that we will withstand any legal challenge. I, along with many others in this chamber, have talked with the leaders of the Catholic Church in my own area. And I'm disappointed that the Catholic Church, which so really recently has taken a bold step dealing with another national issue, seems reluctant to recognize the need to have a conscience clause in place to allow

contraceptive coverage for all of the women who are employed in those facilities that, although operating under the aegis of the Catholic Church, are in fact functioning in a public way. With the use of public funds and access to the general public for all their services, they clearly meet the means test for a public requirement for insurance coverage.

In sum, I would say how proud I am to be a member of the Senate today, and thank once again the leader of this chamber and all of those who have made this day possible.

ACTING PRESIDENT McGEE: Senator Oppenheimer.

SENATOR OPPENHEIMER: I'd just like to mention -- thank you, Madam President -- two things that have me disappointed. But then I would like to go on to mention the things that I consider very valuable in this bill.

As I had spoken earlier, I had hoped that there would not be required annual deductibles and copays, because I felt that that was an unfortunate situation for some of our less-affluent women in our state. But we

do have a section that says they can apply to the Healthy Women's Partnership. So if they earn up to 250 percent of -- okay, I'm blanking. Thank you, I just missed the words -- of the federal poverty line. If they earn to 250 percent of the federal poverty level, then they'll be able to seek this assistance under the Healthy Women's Partnership.

The other piece that was less than what I had hoped is that the prescription contraceptive coverage is only available if a rider is placed into the policy. There is no mention in this bill whether that rider will be paid for by the employer or by the employee. It is just totally silent. And that is somewhat concerning.

However, it will of course still be less money than if the woman were to pay out every month for her contraception. Because as we all know, the cost of women's health is about 67 percent higher than the cost of men's, and that is principally because of the contraceptives that are required by many women.

Let me applaud the fact that we now have baseline mammograms in this bill for people ages 35 to 39. And, more importantly, a requirement of annual coverage for breast cancer mammograms for women age 40 to 49.

It actually has a very, very significant thing for women, which is the Pap test. The Pap smear test has saved many lives. And that will be covered in the insurance, as will the bone density test for osteoporosis. This is a bill which some of you I have spoken with on the subject. My mother had a very severe case and lost 6 inches, had eight cracks in her spine, and the pain was unbelievable.

But more important, the cost -- while this is costly, the fact is it is much less costly than the cost of taking care of the people that have osteoporosis. Fifty percent of all women over the age of 60 have osteoporosis, and that cost is astronomical, in the billions of dollars. And that's because broken hips and any number of fractures on all parts of the body are very, very costly and the rehab is very costly. So

it's really pay now or pay later, and it's much less costly to pay now.

So I'm very happy to be supporting this bill, even if it isn't a hundred percent of what I wanted. But that's the art of compromise, isn't it.

Thank you.

ACTING PRESIDENT McGEE: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President. Just on the bill.

Senator Oppenheimer beat me to the floor, so that most of the issues I wanted to cover she covered very ably, I will admit. But I just needed to make a comment.

When this bill first came, last year when I first came to the Senate, I listened to Senator Bonacic, and we discussed this bill on the floor. And the one thing that nobody wants to give themselves credit for is that even in this environment that you described, with all these differences of opinion, what this difference of opinion has done, I believe, is make this a better bill. And sometimes we need adversarial activities

in order to bring out the best of us.

I told you then and I will tell you again that this is an exceptional bill. It speaks to a sensitivity, Senator Bonacic and Senator Bruno, that is rare among men when it come to the health of women. And I will be willing to accept any criticism afterwards about that statement. But it is -- it does show a very great level of sensitivity, and for that I am appreciative.

A better bill comes, like a better sword, from hammering, hammering, and hammering. Thank you.

ACTING PRESIDENT McGEE: Senator Liz Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President, to speak on the bill.

I would be lying if I said that I didn't wish this bill had passed three years ago. But I'm very happy to be a member of this house today and be able to vote for this bill. I do want to compliment the members in both houses for working towards resolution.

It is not a perfect bill. There are things in this bill that I would have

changed. And I believe that we can focus on some of those expanded improvements in future years. But I'm very happy to be able to be a member of the Senate tonight and to be able to vote on this bill. I look forward to the Governor signing it.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Stavisky.

SENATOR STAVISKY: Madam President, on the bill.

I'm very proud also to support this measure. And I think it demonstrates what can happen when people have the will to resolve an issue. This demonstrates that people working together can resolve differences. And I hope that this is a harbinger that future issues will be taken up collaboratively and collectively so that we can continue to pass similar bills in the public interest.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

I am pleased that we're finally passing this piece of legislation. Although I must say that listening to Senator Bonacic's words -- and I know he's worked very hard on this -- frankly, I think most of our constituents think this is what we're supposed to do all the time, is resolve difficult issues and put policy and principle above politics. So I'm sorry that we are in a Legislature where that is perceived to be a rare event.

Many people have worked very hard on this. The coalition that assembled around this bill, that was really put together to a great extent by Assemblymember Glick, did a tremendous job, hung together. And it is very difficult to get groups of people who are really focused on different issues to work in a coalition the way they have. They deserve tremendous credit for this.

But as we are in a Legislature that really doesn't rise above politics to deal with policy, let's also recognize the political circumstances of the passing of this bill. And if we were really honest in this

town, we would call it Liz's Law.

Thank you, Madam President.

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

Read the last section.

THE SECRETARY: Section 18. This act shall take effect on the first day of January.

ACTING PRESIDENT McGEE: Senator Bonacic, to explain his vote.

SENATOR BONACIC: There's two other people that I just wanted to thank.

Ken Riddett, who did so many drafts on this bill for the last three years, I think it would have been easier for him to prepare a constitutional amendment and get it through. And last but not least, someone you never hear about but that worked 24/7 whenever we called on this legislation from Senate staff, Caron Crummey. I'd like to thank those two individuals also.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: Yes. A lot that's been said here today I agree with a hundred percent. There's a lot of great portions of this bill that indicate that we are doing things for prevention of disease. Whether it's a woman or a man, prevention of disease is important for both sexes. The fact of the matter is, everything that's been said concerning the positive aspects of this bill.

But there's a negative aspect that I discussed last time concerning the religious beliefs of individuals that I think should be honored. And quite frankly, I think that portion of the bill is going to be struck down as unconstitutional.

So although -- if this was strictly a woman's health bill without that clause in, I would support it in a minute. And that's why I'm voting no.

ACTING PRESIDENT McGEE: Senator DeFrancisco, in the negative.

Announce the results.

THE SECRETARY: Those recorded in

the negative on Calendar Number 1390 are Senators DeFrancisco, Farley, Maltese, Maziarz, Meier, Nozzolio, Stachowski, Trunzo, and Volker. Also Senator Padavan. Ayes, 49. Nays, 10.

ACTING PRESIDENT McGEE: The bill is passed.

(Applause.)

ACTING PRESIDENT McGEE: Senator Bruno.

SENATOR BRUNO: Madam President, can we ask for an immediate meeting of the Rules Committee in the Majority Conference Room.

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

Senator Bruno.

SENATOR BRUNO: And can we at this time have the noncontroversial reading of Supplemental Calendar Number 1.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1366, by Senator Marcellino, Senate Print 98B,

an act to amend the Tax Law, in relation to exempting.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR HEVESI: Explanation.

ACTING PRESIDENT McGEE: This is a noncontroversial reading right now, Senator Hevesi. Do you want the bill laid aside?

SENATOR HEVESI: Lay it aside.

ACTING PRESIDENT McGEE: Lay the bill aside.

THE SECRETARY: Calendar Number 1367, by Senator Kuhl, Senate Print 1797, an act to amend the Workers' Compensation Law, in relation to excluding.

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, 59.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1368, by Senator LaValle, Senate Print 2078, an act to amend the Environmental Conservation Law, in relation to adding.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 6. This act shall take effect April 1.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President. I rise to request unanimous consent to be recorded in the negative on Calendar 1367. They did not see my hand.

ACTING PRESIDENT McGEE: Without objection. We're so sorry. Without objection.

SENATOR HASSELL-THOMPSON: Thank you, Madam President.

THE SECRETARY: Calendar Number 1369, by Senator Spano, Senate Print 2136A --

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

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

THE SECRETARY: Calendar Number 1370, by Senator Stachowski, Senate Print 2578A, an act to amend the General Municipal 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, 59.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1371, by Senator Stafford, Senate Print 2613A, an act in relation to the initial date.

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, 59.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1372, by Senator Volker, Senate Print 2893C --

SENATOR ONORATO: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: In relation to Calendar Number 1373, Senator Padavan moves to discharge, from the Committee on Rules, Assembly Bill Number 7559 and substitute it for the identical Senate Bill Number 3392, Third Reading Calendar 1373.

ACTING PRESIDENT McGEE: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1373, by Member of the Assembly Klein,

Assembly Print Number 7559, an act to amend the Vehicle and Traffic Law, in relation to abandoned vehicles.

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, 59.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1374, by Senator Morahan, Senate Print 3719B, an act to amend the General Business Law --

SENATOR ONORATO: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1375, by Senator Marchi, Senate Print 3798B, an act to amend the Business Corporation Law and others, in relation to mergers.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 65. This act shall take effect on the 120th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1377, by Senator Nozzolio, Senate Print 6176B, an act to amend the Judiciary Law, in relation to the judicial hearing officer.

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, 59.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1379, Senator McGee moves to discharge, from the Committee on Rules,

Assembly Bill Number 9986 and substitute it for the identical Senate Bill Number 6348, Third Reading Calendar 1379.

ACTING PRESIDENT McGEE: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1379, by Member of the Assembly Gunther, Assembly Print Number 9986, an act to amend the Town Law and the Village Law, in relation to local laws and ordinances.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1380, by Senator Larkin, Senate Print 6621A,

an act to authorize the County of Orange to discontinue.

SENATOR ONORATO: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: In relation to Calendar Number 1381, Senator Maziarz moves to discharge, from the Committee on Transportation, Assembly Bill Number 4202 and substitute it for the identical Senate Bill Number 6795, Third Reading Calendar 1381.

ACTING PRESIDENT McGEE: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1381, by Member of the Assembly Towns, Assembly Print Number 4202, an act authorizing a public outreach program.

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, 59.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1382, by Senator Leibell, Senate Print 7192, an act to amend the Eminent Domain Procedure Law, in relation to requiring.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1386, by Senator Skelos, Senate Print 7489A, an act to establish four separate and independent library funding districts.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 10. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1391, by Senator Rath, Senate Print 6725B, an act to amend the Executive Law, in relation to creating.

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, 59.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Duane.

SENATOR DUANE: Thank you, Madam President. I'd like unanimous consent to be recorded in the negative on Calendar Number 1367.

ACTING PRESIDENT McGEE: So ordered.

Senator Fuschillo.

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

ACTING PRESIDENT McGEE: Yes, there is, Senator.

SENATOR FUSCHILLO: Please recognize Senator Wright.

ACTING PRESIDENT McGEE: Senator Wright.

SENATOR WRIGHT: Thank you, Madam President. I request unanimous consent to be recorded in the negative on Calendar Number 37, Senate 4889A.

ACTING PRESIDENT McGEE: So ordered.

Senator Wright.

SENATOR WRIGHT: Madam President, amendments are offered to the following Third Reading Calendar bills, and I read as follows:

Sponsored by Senator Maltese, page number 14, Calendar Number 351, Senate Print Number 195.

Sponsored by Senator Seward, page 48, Calendar Number 1079, Senate Print 6827;

Sponsored by Senator Nozzolio, page number 50, Calendar Number 1114, Senate Print 7196A;

Sponsored by Senator Maltese, page 52, Calendar Number 1144, Senate Print 6101A;

Sponsored by Senator Hannon, Calendar Number 1376, Senate Print 4360A;

Sponsored by Senator Skelos, page 26, Calendar Number 671, Senate Print 6741;

Sponsored by Senator Morahan, page 34, Calendar Number 840, Senate Print Number 6182D.

Madam President, I now move that theses bills retain their place on the order of third reading.

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

Senator Meier.

SENATOR MEIER: Thank you, Madam President.

I wish to call up Senator Skelos's

bill, Print Number 2683A, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 66, by Senator Skelos, Senate Print 2683A, an act to amend the Family Court Act.

ACTING PRESIDENT McGEE: Senator Meier.

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

ACTING PRESIDENT McGEE: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT McGEE: Senator Meier.

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

ACTING PRESIDENT McGEE: The amendments are received and adopted.

Senator Meier.

SENATOR MEIER: Thank you, Madam President.

I now wish to call up Senator Balboni's bill, Print Number 7202, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1234, by Senator Balboni, Senate Print 7202, an act to amend the General Municipal Law.

ACTING PRESIDENT McGEE: Senator Meier.

SENATOR MEIER: 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, 59.

ACTING PRESIDENT McGEE: Senator Meier.

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

ACTING PRESIDENT McGEE: The amendments are received and adopted.

Senator Espada.

SENATOR ESPADA: Thank you, Madam

President.

I wish to call up Senator Saland's bill, Print Number 4899A, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 69, by Senator Saland, Senate Print 4899A, an act to amend the Social Services 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, 59.

ACTING PRESIDENT McGEE: Senator Espada.

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

ACTING PRESIDENT McGEE: The amendments are received and adopted.

Senator Espada.

SENATOR ESPADA: Madam President, I wish to call up Senator Nozzolio's bill, Print Number 6444, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 457, by Senator Nozzolio, Senate Print 6444, an act to amend the Tax 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, 59.

ACTING PRESIDENT McGEE: Senator Espada.

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

ACTING PRESIDENT McGEE: The amendments are received and adopted.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, can we please stand at ease pending the report of the Rules Committee.

ACTING PRESIDENT McGEE: The Senate will stand at ease.

SENATOR FUSCHILLO: And for the information of the members, Madam President, those bills will be taken up tomorrow.

ACTING PRESIDENT McGEE: Thank you, Senator Fuschillo.

(Whereupon, the Senate stood at ease at 7:12 p.m.)

(Whereupon, the Senate reconvened at 7:15 p.m.)

ACTING PRESIDENT McGEE: Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President. May we please return to the reports of standing committees. I believe there's a report of the Rules Committee at the desk.

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 5150B, by Senator Brown, an act to amend the Highway Law;

5463, by Senator Volker, an act to authorize;

6071A, by Senator Marcellino, an act to amend the Civil Service Law;

6268A, by Senator Padavan, an act to amend the Highway Law;

6479, by Senator Kuhl, an act to authorize;

6609, by Senator Stafford, an act to amend the Criminal Procedure Law;

6677A, by Senator Stafford, an act authorizing;

6873A, by Senator Larkin, an act authorizing;

7145, by Senator LaValle, an act to amend the Social Services Law;

7193A, by Senator Maziarz, an act to amend the General Municipal Law;

7364, by Senator Morahan, an act to amend the Banking Law;

7370, by Senator Breslin, an act to

authorize;

7390B, by Senator Maziarz, an act to amend the Tax Law;

7463, by Senator Kuhl, an act authorizing the assessor of the Town of Milo;

7472A, by Senator Trunzo, an act to amend the Criminal Procedure Law;

7485, by Senator Stafford, an act to amend Chapter 485 of the Laws of 2000;

7490, by Senator Maltese, an act to amend the Criminal Procedure Law;

7495, by Senator Leibell, an act to amend the Retirement and Social Security Law;

7511, by Senator McGee, an act to authorize;

7540, by Senator Marchi, an act authorizing;

7557, by Senator Lack, an act authorizing;

7560, by Senator Libous, an act to amend the Mental Hygiene Law;

7565, by Senator Leibell, an act to amend the General Municipal Law;

7576, by Senator LaValle, an act to amend the Town Law;

7577, by Senator Morahan, an act to amend the General Municipal Law;

7581, by Senator Maltese, an act to amend the Correction Law;

And Senate Print 7589, by Senator Nozzolio, an act to amend the Highway Law.

All bills ordered direct to third reading.

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

ACTING PRESIDENT McGEE: All 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 Fuschillo.

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

ACTING PRESIDENT McGEE: We have a substitution.

The Secretary will read.

THE SECRETARY: On page 55, Senator LaValle moves to discharge, from the Committee on Rules, Assembly Bill Number 11084A and substitute it for the identical Senate Bill Number 7147A, Third Reading Calendar 1193.

ACTING PRESIDENT McGEE: Substitution ordered.

Senator Oppenheimer.

SENATOR OPPENHEIMER: Oh, thank you. I would like unanimous consent to be recorded in the negative on Calendar Number 1112, Senate Bill 6806, by Senator Spano.

ACTING PRESIDENT McGEE: Without objection.

SENATOR OPPENHEIMER: Thank you.

ACTING PRESIDENT McGEE: Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, there being no further business, I move we adjourn until Tuesday, June 18th, at 12:00 p.m.

ACTING PRESIDENT McGEE: On motion, the Senate stands adjourned until

Tuesday, June 18th, at 12:00 p.m.

(Whereupon, at 7:20 p.m., the Senate adjourned.)