NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 10, 2003

3:10 p.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, Jr., Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: I ask the Senate to come to order, members to take their places, staff to take their places.

And I'd ask everybody in the chamber to rise and join me in saying the Pledge of Allegiance to the Flag.

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

ACTING PRESIDENT KUHL: 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 KUHL: Reading of the Journal.

THE SECRETARY: In Senate, Saturday, March 8, the Senate met pursuant to adjournment. The Journal of Friday, March 7, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT KUHL: Hearing no objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Senator Schneiderman, why do you rise?

SENATOR SCHNEIDERMAN: Mr. President, has the Senate received a resolution from the Assembly advising the members of the Senate that the Senate and Assembly will meet at noon tomorrow in the Assembly chamber to elect Regents of the University of the State of New York, pursuant to Section 202 of the Education Law?

ACTING PRESIDENT KUHL: Senator Schneiderman, I'm informed by the Secretary of the Senate that in fact we have received that communication and it was filed in the Journal Clerk's office last Wednesday, on March 5th.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Bruno.

SENATOR BRUNO: Mr. President, I believe I have a privileged resolution at the desk. I would ask that it be read in its entirety and move for its immediate adoption.

ACTING PRESIDENT KUHL: There is a privileged resolution by Senator Bruno at the desk. Direct the Clerk to read it in its entirety.

THE SECRETARY: By Senators Bruno, Skelos, and all members of the Senate, Legislative Resolution honoring Irish Tenor Ronan Tynan for uplifting the spirits of all New Yorkers and Americans in the aftermath of September 11th.

"WHEREAS, The inspiration of the extraordinary acts performed by individuals who gave of themselves following September 11th carried our State and our Nation through difficulty by showing all of us the compassion, strength, and power of humanity; and

"WHEREAS, On this truly special occasion, this Legislative Body is justly moved to honor Irish Tenor Ronan Tynan for

uplifting the spirits of all New Yorkers and Americans in the aftermath of September 11th, and for enriching our lives through the expression of his extraordinary talent; and

"WHEREAS, Ronan Tynan is best known as one of the world-famous Irish Tenors and as a celebrated solo recording artist, but he has achieved so much more; and

"WHEREAS, He triumphed over personal adversity and has used his time and talents to inspire and benefit the people of the State of New York; and

"WHEREAS, He was born in Dublin, Ireland, in 1960, with a lower limb deformity that made walking impossible without weighty prosthetic aids, yet he trained as a competitive horse rider and jumper as a boy and went on to compete successfully in riding competitions and shows; and

"WHEREAS, Ronan Tynan's legs were amputated below the knees in 1980, at the age of 20, and he went on to win 18 gold medals and set 14 world records in the Paralympic Games between 1981 and 1990; and

"WHEREAS, He became the first

disabled person ever to be admitted to Ireland's National College of Physical Education, and graduated as a medical doctor from Trinity College in 1993; and

"WHEREAS, He began singing at the encouragement of his father and won Ireland's John McCormack Cup in 1992, the RTE/BBC talent show 'Go For It' in 1994, and was named Best Male Voice at France's prestigious Sing Fest in 1996, all of which launched his singing career; and

"WHEREAS, Ronan Tynan joined the Irish Tenors in 1998 and with them performed three PBS specials in New York and across the United States, which have been a resounding success for public television and the network; and

"WHEREAS, Ronan Tynan recently appeared in his first solo special for PBS, which was highly successful. He has been named PBS's 'Celebrity of the Year' by WLIW-TV; and

"WHEREAS, More recently, Ronan Tynan performed for President and Mrs. George H.W. Bush in Washington, D.C. He has also

sung at a gala concert at Kennedy Center as a soloist; and

"WHEREAS, On March 6, 2001, Ronan Tynan and his fellow Irish tenors filled the Registry Room at Ellis Island with song and emotion in a tribute to the immigrants who built and strengthened America; and

"WHEREAS, He won the hearts of the people of New York and the nation for the caring and dignified role he played during countless memorial ceremonies for the victims of the September 11th attacks; and

"WHEREAS, He used his pure tenor voice to salute the unflinching heroism of the FDNY members at services across the City and State and was named an Honorary New York Fire Chief; and

"WHEREAS, his heartfelt, soaring renditions of 'God Bless America,' heard at the September 11th Memorial Service at Yankee Stadium and throughout the season, lifted the spirits of baseball fans and all Americans out of the park; and

"WHEREAS, His soaring rendition of 'You Raise Me Up' lifted the spirits of the

25,000 firefighters and their families who attended the October 12, 2002, FDNY Memorial Service at Madison Square Garden; and

"WHEREAS, Ronan Tynan's story of courage has made him an inspiration to New Yorkers and to millions worldwide, and his compassion and achievements reflect the best of our State; and

"WHEREAS, With our deepest gratitude and admiration, this Legislative Body salutes Ronan Tynan, a man of colossal talent and charisma, for the indelible legacy of inspiration which he has given to our State and Nation, and the soaring effect which his pure voice has had on the hearts of all New Yorkers; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to honor Irish Tenor Ronan Tynan for uplifting the spirits of all New Yorkers and Americans in the aftermath of September 11th and for enriching our lives through the expression of his extraordinary talent; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted

to Ronan Tynan."

ACTING PRESIDENT KUHL: The Chair recognizes Senator Bruno to speak on the resolution.

SENATOR BRUNO: Thank you, Mr. President and colleagues.

We're asking for unanimous consent in extending the privileges of the floor to Ronan Tynan. And Leader David Paterson joins in acknowledging that request, with our colleagues here.

And for those that aren't aware, we in this chamber are making history with Ronan Tynan's presence in performing and singing in the Senate chamber. Never before has anything like this happened, and that is attested to by our great historian, Senator Marchi, who is the longest-serving legislator in the entire United States.

But you've heard the chronicle of Ronan Tynan's life. And when you talk about an inspiration to all of us, Ronan Tynan is that inspiration. So I can't think of anyone more suitable who has accomplished more in his young life than Ronan Tynan has. And he

shares his blessing and his gift throughout the United States and throughout the world, in always delivering a message -- uplifting, spiritual, inspirational, making life better for everyone.

So, Ronan, thank you very much for sharing your great talents with us here.

An a capella rendition of "God Bless America" by Ronan Tynan.

(Irish Tenor Ronan Tynan sings:

"While the storm clouds gather

Far across the sea

Let us swear allegiance

To a land that's free.

Let us all be grateful

For a land so fair

As we raise our voices

In a solemn prayer.

God bless America, land that I love

Stand beside her, and guide her

Through the night, with the light from above;

From the mountains, to the prairies,

To the oceans, white with foam,

God bless America, my home, sweet home,

God bless America, my home sweet home.")

(Standing ovation.)

ACTING PRESIDENT KUHL: Any other member wishing to speak on the resolution?

The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed?

(No response.)

ACTING PRESIDENT KUHL: The resolution is adopted unanimously.

(Applause.)

ACTING PRESIDENT KUHL: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, on behalf of Senator Hoffmann, on page number 7 I offer the following amendments to Calendar Number 97, Senate Print Number 616, and ask that said bill retain its place on Third Reading Calendar.

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

bill will retain its place on the Third Reading Calendar.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, on behalf of Senator Balboni, I wish to call up Senate Print Number 512, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 39, by Senator Balboni, Senate Print 512, an act to amend the Penal Law.

ACTING PRESIDENT KUHL: Senator Fuschillo.

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

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT KUHL: Senator Fuschillo.

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

ACTING PRESIDENT KUHL: The amendments are received and adopted.

Senator Bruno.

SENATOR BRUNO: Mr. President, I believe there's a privileged resolution at the desk by Senator Wright. I would ask that it be read in its entirety and move for its immediate adoption.

ACTING PRESIDENT KUHL: The Secretary will read the privileged resolution by Senator Wright in its entirety.

THE SECRETARY: By Senator Wright, Legislative Resolution Number 634, congratulating the Immaculate Heart Central High School Girls Soccer and Basketball Teams upon the occasion of capturing the New York State Championships.

"WHEREAS, Excellence and success in competitive sports can be achieved only through strenuous practice, team play and team spirit, nurtured by dedicated coaching and strategic planning; and

"WHEREAS, Athletic competition enhances the moral and physical development of the young people of this State, preparing them for the future by instilling in them the value of teamwork, encouraging a standard of healthy living, imparting a desire for success, and developing a sense of fair play and competition; and

"WHEREAS, The Immaculate Heart Central High School Girls Soccer Team are the New York State Class C Champions, and the Immaculate Heart Central High School Girls Basketball Team are the New York State Class D Champions; and

"WHEREAS, The athletic effort displayed by these teams is due in great part to the efforts of Coaches Kurt Robbins and Jeff St. Croix and their assistants, skilled and inspirational tutors, respected for their ability to develop potential into excellence; and

"WHEREAS, The team's overall records are outstanding, and the team members of both sports were loyally and enthusiastically supported by family, fans,

friends, and the community at large; and

"WHEREAS, The hallmarks of the Immaculate Heart Central High School Girls Soccer and Basketball Teams, from the opening games of the season to participation in the championships, were a sisterhood of athletic ability, of good sportsmanship, of honor and of scholarship, demonstrating that these team players are second to none; and

"WHEREAS, Athletically and academically, the team members of both sports have proven themselves to be an unbeatable combination of talents, reflecting favorably on their school; and

"WHEREAS, Coaches Kurt Robbins and Jeff St. Croix, and their staffs, have done a superb job in guiding, molding, and inspiring the team members towards their goals; and

"WHEREAS, Sports competition instills the values of teamwork, pride and accomplishment, and Coaches Kurt Robbins and Jeff St. Croix and their outstanding athletes have clearly made a contribution to the spirit of excellence which is a tradition of their school; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate the Immaculate Heart Central High School Girls Soccer Team, its members -- Cristina Leon, Marisa Vespa, Angela Puccia, Katelyn Moran, Diane Amelio, Megan Fortunato, Santina Doldo, Addie Stevens, Madison Ringer, Mattea Alteri, Ashley Cesta, Megan Dumka, Kaitlin Robbins, Brittany Bowhall, Ashley Zaremba, Mary Knapp, Nadine Powell, Andrea Beach, Rachelle Misercola, Deena Lazore, Kara Nicol, Alicia Spooner, Theresa Staub, Nakia Doldo, Elysa Doldo, Kady Boynton, Meghan Weldon, and Mary Tess Maroney -- and Assistant Coaches Brandon Cooney, Liana Spaziani, Lennie Spaziani and David Bowhall, and Coach Kurt Robbins; and the Immaculate Heart Central High School Girls Basketball Team, its members -- Mattea Alteri, Andrea Beach, Kathleen Evans, Megan Fortunato, Jennifer Fraczek, Laura Ille, Morgan Jeschawitz, Tracy Leonard, Kimberly Marshall, Katelyn Moran, Jennifer Prevost, Angela Puccia, Jillian Redder, Marisa Vespa, Kyra Waterson, and Alyssa Wills -- Assistant Coaches John Johnson and Mike Fortunato, and

Coach Jeff St. Croix, on their outstanding seasons and overall team records; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the Immaculate Heart Central High School Girls Soccer and Basketball Teams and to Soccer Coach Kurt Robbins and Basketball Coach Jeff St. Croix."

ACTING PRESIDENT KUHL: The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, there's another privileged resolution at the desk by Senator Wright. Could we have it read in its entirety and move for its immediate adoption.

ACTING PRESIDENT KUHL: The

Secretary will read.

THE SECRETARY: By Senator Wright, Legislative Resolution Number 633, congratulating Student Athlete Derek McGuire of Immaculate Heart Central High School upon the occasion of capturing the New York State Class C/D Championship in the Discus.

"WHEREAS, Excellence and success in competitive sports can be achieved only through strenuous practice, team play, and team spirit, nurtured by dedicated coaching and strategic planning; and

"WHEREAS, Athletic competition enhances the moral and physical development of the young people of this state, preparing them for the future by instilling in them the value of teamwork, encouraging a standard of healthy living, and imparting a desire for success, and developing a sense of fair play and competition; and

"WHEREAS, This Legislative Body is justly proud to congratulate Student Athlete Derek McGuire of Immaculate Heart Central High School upon the occasion of capturing the New York State Class C/D Championship in the

Discus; and

"WHEREAS, Derek McGuire won the New York State Class C/D Championship at Rush-Henrietta in the Discus with a throw of 156 feet, 11 inches; and

"WHEREAS, Derek McGuire was the Discus winner in every meet that he participated in; and

"WHEREAS, Derek McGuire set the meet record with a throw of 156 feet, 1 inch, at the South Jefferson Invitational and was named Outstanding Performer; and

"WHEREAS, Derek McGuire set the meet record in the Frontier League Track and Field Championships with a throw of 159 feet, 1 inch; and

"WHEREAS, In addition, Derek McGuire finished second in the Shot Put, with a toss of 51 feet, 2 inches; and

"WHEREAS, The athletic talent displayed by Derek McGuire is due in great part to the efforts of his private coach, Ralph Moore, a skilled and inspirational tutor, respected for his ability to develop potential into excellence; and

"WHEREAS, Derek McGuire's overall record is outstanding; he was loyally and enthusiastically supported by family, fans, friends, and the community at large; and

"WHEREAS, Coach Ralph Moore has done a superb job in guiding, molding and inspiring Derek McGuire toward his goals; and

"WHEREAS, Sports competition instills the values of teamwork, pride, and accomplishment, and Derek McGuire has clearly made a contribution to the spirit of excellence which is a tradition of his school; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate Student Athlete Derek McGuire of Immaculate Heart Central High School upon the occasion of capturing the New York State Class C/D Championship in the Discus; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to Derek McGuire."

ACTING PRESIDENT KUHL: The Chair recognizes Senator Wright on the resolutions.

SENATOR WRIGHT: Thank you, Mr. President.

It's truly a privilege this afternoon to welcome the student athletes from Immaculate Heart in Watertown, representing Jefferson County in the North Country.

And I truly appreciate the acknowledgement of the Senate for their accomplishments, for it is rare indeed that student athletes have the occasion to win a statewide championship. It's even more rare, indeed, that that same high school will achieve two statewide championships in a single year.

The young ladies who serve as members of the basketball and soccer teams in fact did accomplish that, through the leadership and direction of their coaches, Coach Robbins, who has joined with us today, and Coach Cooney. We want to recognize their participation, the discipline, the instruction, the leadership that they have provided these young ladies.

These young ladies, in turn, have risen to the challenge, taken those

opportunities and responded in a fashion that few in the state can speak to, having done it not only once but twice.

Five of those individuals actually serve as members of both squads, and I'd like to recognize them: Katelyn Moran, Mattea Alteri, Megan Fortunato, Angela Puccia, and Marisa Vespa. Together, if those five young ladies would please stand -- we're embarrassing them, and I apologize for that. Those individuals served on both teams and in turn were selected as the Watertown Athletes of the Year for that accomplishment. Thank you.

So I'm very glad that we were able to pause in our deliberations today to recognize these young ladies, recognize their accomplishments. And as the resolution so accurately points out, they truly are student athletes of which we can be proud.

Now, we don't want to forget the male members of that student body either. And so with them, these young ladies have extended the courtesy of inviting Derek McGuire to join them.

Derek, if you would please rise.

Derek is also a state champion and, as the resolution acknowledges, was the 2002 Track and Field State Champion for the Discus in Class C and D. But he didn't stop there; he has built upon that, and this year, just a week ago, was the 2003 State Champion for Indoor Track and Field for the Shot Put.

So like his colleagues, female colleagues at Immaculate Heart, he too has achieved the distinction of being a two-time state champion.

And with them today are their principal, Principal Fontana, and the athletic director, Mr. Delaney. If they would also rise to be recognized.

So on behalf of all of my colleagues, welcome to the Capitol. I hope you've truly enjoyed your day. You are here as part of history, because in addition to being here for the Irish Tenor's presentation, you too will be recorded in the history of the State of New York, having been recognized by these resolutions.

So thank you very much. Thank you

for serving as excellent models of what the youth of New York are and what our student athletes are from the North Country.

Thank you, and safe home. God bless you.

(Applause.)

ACTING PRESIDENT KUHL: Senator Farley, on the resolution.

SENATOR FARLEY: Thank you very much.

Senator Wright, I rise to join you in saluting these athletes from Immaculate Heart Central. The city of my birth is Watertown. I graduated from Immaculate Heart also, as did my mother, who was in one of the first graduating classes at Immaculate Heart.

We're very, very proud of you. I've never seen so many fine athletes, ever, on a particularly incredible day for the Irish and for everybody else. And we're very, very proud of you. Congratulations.

There's been a tradition not only of academic excellence at Immaculate Heart, but of also athletic excellence. And you're following in that tradition.

As you read off those names, the Puccias, the Alteris, and the Vespas, I went to school at Immaculate Heart with many of those names, who must be your fathers or even grandfathers for that matter.

Thank you very much, Senator Wright, for this resolution. And I would hope that I might be a sponsor of it.

Thank you very much.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the resolution?

Hearing none, the question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The resolution is adopted.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

There will be an immediate meeting of the Investigations and Government

Operations Committee in Room 332.

ACTING PRESIDENT KUHL: Immediate meeting of the Investigations Committee in the Majority Conference Room, 332. Immediate meeting of the Investigations Committee, Majority Conference Room, Room 332.

Senator Marcellino.

SENATOR MARCELLINO: Would you recognize Senator Alesi, please.

ACTING PRESIDENT KUHL: Senator Alesi, why do you rise?

SENATOR ALESI: Thank you, Mr. President.

This seems to be a day when we all have the joyful opportunity to recognize so many notable people. And I know that there will be more coming.

And I have the pleasant surprise of being joined today by my good friend Assemblyman Errigo, who has just introduced me, by surprise -- and a delightful surprise, at that -- to Miss New York State Teenager, Lea Daley. And Lea is joining us today with her mother, Debra, and her father, Michael.

And at a time when so many people

look at our nation's youth and wonder the direction that our country is going in, we can only look at someone like Lea and all that she has accomplished and say that she is the benchmark for what we can hope for for today's young people as they grow into adulthood.

She is truly an accomplished young lady, goes to Rush-Henrietta High School, and in her young age has achieved so much and has shown so many people the hope that we all look for in our young people, that I'm very honored to be joined by her and her family and Assemblyman Errigo today.

Mr. President, Lea Daley, Miss Teenager of 2002 New York State.

(Applause.)

ACTING PRESIDENT KUHL: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, if we could go to Resolution Number 636, by Senator Rath, and have the title read of that privileged resolution.

ACTING PRESIDENT KUHL: The Secretary will read the title of Resolution Number 636.

THE SECRETARY: By Senators Rath and Bruno, Legislative Resolution Number 636, memorializing the Honorable George E. Pataki to designate March 2003 as "Women's History Month" in the State of New York.

ACTING PRESIDENT KUHL: The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The resolution is adopted.

Senator Marcellino.

SENATOR MARCELLINO: Following our normal procedure, Mr. President, if we could open that resolution up for sponsorship to all members of the house. And if anyone doesn't wish to be on the resolution, to so indicate to the Chair.

ACTING PRESIDENT KUHL: I'll direct the Secretary to put all the members on the resolution as cosponsors, unless there is some individual who identifies themself to the

Journal Clerk that they don't wish to be on the resolution; they will be excluded from sponsorship.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I believe there are two privileged resolutions by Senator Nozzolio. And if we could have them read, Numbers 651 and 652.

ACTING PRESIDENT KUHL: The Secretary will read Resolution Numbers 652 and 651 in their entirety.

THE SECRETARY: By Senator Nozzolio, Legislative Resolution Number 651, congratulating the Webster Schroeder High School Football Team and Coach Anthony Bianchi upon the occasion of capturing the New York State Public High School Athletic Association Class AA Championship.

"WHEREAS, Excellence and success in competitive sports can be achieved only through strenuous practice, team play, and team spirit, nurtured by dedicated coaching and strategic planning; and

"WHEREAS, Athletic competition enhances the moral and physical development of

the young people of this state, preparing them for the future by instilling in them the value of teamwork, encouraging a standard of healthy living, imparting a desire for success, and developing a sense of fair play and competition; and

"WHEREAS, It is the sense of this Legislative Body to recognize and pay tribute to those young people within the State of New York who, achieving outstanding success in athletic competition, have inspired and brought pride to their school; and

"WHEREAS, This Legislative Body is justly proud to congratulate the Webster Schroeder High School Football Team and Coach Anthony Bianchi upon the occasion of capturing the New York State Public High School Athletic Association Class AA Championship; and

"WHEREAS, The Webster Schroeder Warriors won their second straight AA championship, and third in the past four years, after defeating Shenendehowa High School 28-7 at the Carrier Dome in Syracuse, New York; and

"WHEREAS, The athletic talent

displayed by this team is due in great part to the efforts of Coach Anthony Bianchi and his team of outstanding assistant coaches, skilled and inspirational tutors, respected for their ability to develop potential into excellence; and

"WHEREAS, The team's overall record is outstanding, and the team members were loyally and enthusiastically supported by family, fans, friends, and the community at large; and

"WHEREAS, The hallmarks of the Webster Schroeder High School Football Team, from the opening game of the season to participation in the New York State Public High School Athletic Association Class AA championship game at the Carrier Dome, were a brotherhood of athletic ability, of good sportsmanship, of honor and of scholarship, demonstrating that these team players are second to none; and

"WHEREAS, Athletically and academically, the team members have proven themselves to be an unbeatable combination of talents, reflecting favorably on their school;

and

"WHEREAS, Coach Anthony Bianchi and his staff have done a superb job in guiding, molding, and inspiring the team members toward their goals; and

"WHEREAS, Sports competition instills the values of teamwork, pride, and accomplishment, and Coach Anthony Bianchi and his outstanding athletes have clearly made a contribution to the spirit of excellence which is a tradition of Webster Schroeder High School; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate the Webster Schroeder High School Football Team, its members -- Andrew Fichera, Mike Smith, Justin Costanza, Mike Kaplun, Ray Jones, Joe Aquilina, Dave Serinis, RJ Kelly, Eddie Paffendorf, John Piccone, Mike Mahoney, Dave Dodge, Lee Williams, Mike Stenclik, Carl Garritano, Phil Galletto, Geremy Powers, Mitch Pawlak, Mike Ruggieri, Steve Caezza, Mike Hughes, Joe Nacca, Jim Mikolajko, Chris Joyce, Khyle Petrie, Andrew Hughes, Bryan Lehrer, Aaron Frank, Craig Avalon, Jimmy Johnson,

Brandon Mack, Rob Herman, Melood Abugasea, Mike Yokopovich, Chris Massaro, Mark Dyroff, Dave Burgess, Chris McClurg, Brian Caston, Justin Schifano, Russ Corona, Jeff Bucciarelli, Evan McConnell, Chad Costanza, Brian Mack, Billy Bulmahn, and Mark Chavoustie -- and Coach Anthony Bianchi on their outstanding season and overall team record; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the Webster Schroeder High School Football Team and to Coach Anthony Bianchi."

ACTING PRESIDENT KUHL: The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The resolution is adopted.

The Secretary will continue to read.

THE SECRETARY: By Senator

Nozzolio, Legislative Resolution Number 652, honoring Carl Garritano upon the occasion of his designation as the 2002 Class AA High School Football Player of the Year.

"WHEREAS, Excellence and success in competitive sports can be achieved only through strenuous practice, team play and team spirit, nurtured by dedicated coaching and strategic planning; and

"WHEREAS, This Legislative Body is justly proud to honor Carl Garritano upon the occasion of his designation as the 2002 Class AA High School Football Player of the Year; and

"WHEREAS, Carl Garritano proved once again to be the top high school football player in the state, as he was selected the Class AA Player of the Year for the 2002 season. The Webster Schroeder senior also earned the same honor in 2001; and

"WHEREAS, Carl Garritano's statistics for the season are 2,394 rushing yards, 34 touchdowns, and three receptions for 53 yards; on defense, he made 37 tackles and had one interception; and

"WHEREAS, Carl Garritano's career rushing yard total was 5,212, as he became the Section 5 all-time leading rusher; his career touchdown total was 74 in leading his team to back-to-back state titles, and winning three titles in four years; and

"WHEREAS, Webster Schroeder High School is planning to retire Carl Garritano's jersey number upon his reaching the pinnacle of being chosen Class AA Player of the Year; and

"WHEREAS, Athletic competition enhances the moral and physical development of the young people of this state, preparing them for the future by instilling in them the values of teamwork, encouraging a standard of healthy living, imparting a desire for success, and developing a sense of fair play and competition; and

"WHEREAS, The athletic talent displayed by Carl Garritano is due in great part to the efforts of Coach Anthony Bianchi, a skilled and inspirational tutor, respected for his ability to develop potential into excellence; and

"WHEREAS, Athletically and academically, Carl Garritano has proven himself to be an unbeatable combination of talents, reflecting favorably upon his school; and

"WHEREAS, It is the sense of this Legislative Body that when individuals of such noble aims and accomplishments are brought to our attention, they should be celebrated and recognized by all the citizens of the great State of New York; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to honor Carl Garritano upon the occasion of his designation as the 2002 Class AA High School Football Player of the Year; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to Carl Garritano."

ACTING PRESIDENT KUHL: The Chair recognizes Senator Nozzolio on the resolution.

SENATOR NOZZOLIO: Thank you, Mr. President, on the resolution.

And it's on both resolutions I wish to thank our Journal clerk, Thomas Testo, for

his excellent reading of those resolutions. They're very important documents. They're part of the history of this state.

And along with Senator Wright and Senator Alesi, as young people were recognized today, I think it's so important, as we talk about the crisis and the challenges facing our state, that certainly the leaders of tomorrow are those young people who are being recognized today.

I first wish to thank Coach Anthony Bianchi and his assistant coaching team, who is here today: Jim Bellucco, Dave Howlett, Todd Zoltoski, and Kit Pritchard, who, along with Coach Anthony Bianchi, have molded together a unit of young people I daresay second to none in the history of this great state.

Some may think that statement hyperbole. However, I do not know of any organization like this football team from Webster Schroeder that has, over the last four years, won three state AA titles. A remarkable achievement in an extremely competitive environment.

But, my colleagues, that is not the most significant achievement, although significant, of this team. The most significant achievement of the coaches and of the young men who make up this team are the fact that these individuals are the finest gentlemen you will ever want to know. They are leaders in their community. They are role models for young people coming behind them. They are truly outstanding young people, young men who I predict are genuine leaders of tomorrow.

Of the team, many of the upperclassmen will be going on to play athletics, participate in athletics in college, some to large Division 1 schools, others to Division 3 schools. But the fact of the matter is they will be participating. And they will be ambassadors for the community of Webster throughout this state, throughout our region, and throughout the nation.

Before I yield and sit down, Mr. President, I would like to mention the resolution that honors Carl Garritano. Carl is the last member of this great team that

wants to be singled out. But the fact of the matter is his accomplishments are second to none across this state in terms of his football prowess.

But as with the team, his greatest accomplishments in school are not the yardage -- although very considerable -- not the number of touchdowns, which are record-setting, but the fact that he is a gentleman and a leader in every sense of the word. I'm honored to know him and his teammates. And their pursuit, win or lose on the football field, is not as important as what they bring to the dimension of honor and scholarship.

It is indeed a pleasure to know, though, that Carl will be playing football and going to school in New York State, at Fordham, as are many of the members of this Webster football team staying in New York.

Mr. President, it is an honor to represent this great community, an honor still to acknowledge this wonderful group of young people and the leaders, led by Tony Bianchi, that have taken them to such great heights.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Robach on the resolution.

SENATOR ROBACH: Yes, Mr. President.

Let me also add briefly, while I do not have the pleasure of representing Webster in my district, I do have a personal affiliation with Coach Bianchi and Jim Bellucco, a childhood friend of mine. And I did go with Senator Nozzolio to the championship game.

And I just wanted to add also, knowing the coaches more than I certainly know the players, I think a good point to underscore is how much, besides their success on the field, the amount of time, care, and concern these coaches give the kids. I was talking to Coach Bianchi's wife, and she said during the football season there's no doubt he eats, sleeps, everything that has to do with his players, both on and off the field.

And those are the kind of efforts that certainly we know we need, we can use, and we should applaud in society today, to not

only achieve success on the field but also focus on integrity, teamwork, academics, and the things that I know will make these young men fine adults and successful in their life.

So I just wanted to join with my colleague Senator Nozzolio and congratulate them on their outstanding achievement, but also their life achievement and fine example they've set for coaches and players all across the state, and wish them well in their future endeavors.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Stachowski, on the resolution.

SENATOR STACHOWSKI: Mr. President, I rise to second Senator Nozzolio's resolution.

And unlike Senator Robach and Senator Alesi, who is going to speak next, I have no connection at all to Rochester. I just had the good fortune to see Webster's play in the championship game in the Far West Regionals in Ralph Wilson Stadium.

And I wish these two would have come out in that inclement weather to see you

guys play; we probably would have got them in the press box, where I watched your game. I stayed outside for the other ones, but it got a little cold after a while.

But this is a truly remarkable team. They had great success. I'd like to congratulate the coach on a great job of always keeping his team focused.

And I'd also like to congratulate Carl Garritano. He's excellent running back, I could see from that one game, and then I also saw film clips on him on Empire on various occasions. And I'm glad to see that he's going on to college. Unfortunately, he's going to Fordham, as I went to Holy Cross, who plays Fordham. But I think it's a great school, and he'll do great there too.

And congratulations to the rest of the team on their achievements, and good luck to all the seniors that are moving on to play in college.

And the one message to the underclassmen, that although you may be successful in football, if you don't do your grades, you can't get into school no matter

how good you are. And I'm sure your coaches tell you that all the time, but it never hurts when it's reinforced by people that have gone through that experience and that do other things.

So good luck to you in the future, to all of you. Congratulations to all of you on the coaching staff in particular, because of all the time and dedication it takes to work in that area. And good luck in all of your futures.

ACTING PRESIDENT KUHL: Senator Alesi, on the resolution.

SENATOR ALESI: Thank you, Mr. President.

As Yogi Berra said, "It seems like deja vu all over again." This is the second time that I've had the pleasure of joining my colleague Senator Nozzolio, who so eloquently welcomed you and recognized all of your accomplishments and the accomplishments of your coaches, with the support of your parents and friends and all of the people in the school district.

The reason that I rise to join --

not only to join in acknowledging you and wishing you the very best, and in congratulating you, and Carl as well; also, those of you who are in the school district might have colleagues and friends that live in the town of Penfield, which I represent.

But more importantly, you, as I said earlier with our Miss New York State Teenager, you are the future of this state and this great nation. And we look to you -- many times, young people are thought that they should be looking to adults for role models. But there are times when we look to those of you, in our younger years, that you should be our role models when it comes to sportsmanship and acting as a team and showing us how to live the good life and to pursue a bright future.

And in doing that, I wish all of you the very best. Those of you who are leaving this year, I wish you good success. And those of you who will be coming back next year, more continued success.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Any other

Senator wishing to speak on the resolution?

Hearing none, the question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The resolution is adopted.

Senator Marcellino, that brings us to the calendar.

SENATOR MARCELLINO: Yes, Mr. President. Can we have the noncontroversial reading of the calendar, please.

ACTING PRESIDENT KUHL: The Secretary will read the noncontroversial reading of the calendar.

THE SECRETARY: Calendar Number 106, by Senator Volker, Senate Print 1157, an act to amend the Criminal Procedure Law, the Public Health Law, and the Family Court Act.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 5. This

act shall take effect on the first day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 107, by Senator Robach --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 110, by Senator Meier, Senate Print 1264, an act to amend the Penal Law, in relation to permitting a court to impose a sentence.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 127, by Senator Wright, Senate Print 1068, an act to amend the Environmental Conservation Law, in relation to identification of traps.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 128, by Senator Little, Senate Print 1414, an act to amend the Environmental Conservation --

SENATOR LIZ KRUEGER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, can we proceed now to the controversial reading.

ACTING PRESIDENT KUHL: The Secretary will proceed with the reading of the controversial calendar.

THE SECRETARY: Calendar Number 107, by Senator Robach, Senate Print 1202, an act to amend the Penal Law, in relation to assault upon a police or peace officer.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT KUHL: Senator Robach, an explanation of Calendar Number 107 has been requested by the acting minority leader, Senator Schneiderman.

SENATOR ROBACH: Mr. President, this bill would make a person guilty of assault in the third degree when he or she assaults a person that he or she knowingly or reasonably should know is a police officer or a peace officer, while the officer is engaged in the course of performance of his or her official duties.

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

Hearing none, the Secretary will read the last section.

Senator Hassell-Thompson, why do you rise? To explain your vote or to speak on the bill?

SENATOR HASSELL-THOMPSON: To ask a question.

ACTING PRESIDENT KUHL: Senator Robach, do you yield to a question from Senator Hassell-Thompson?

SENATOR ROBACH: Absolutely, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR HASSELL-THOMPSON: Thank you.

Senator, if you would give a little more attention to the language of the bill that talks about "should know."

SENATOR ROBACH: I'm not sure I understand that.

SENATOR HASSELL-THOMPSON: In the bill it talks about -- it provides that a

person is guilty of assault third when he or she strikes a person he or she knows or should know. Would you explain the language of "should know"?

SENATOR ROBACH: Oh, sure. Absolutely. I think "should know" is a uniformed officer, he or she, or a nonuniformed officer identifying themselves as an officer.

And I would imagine that this would be applicable only when someone is in the commission of performing their duties, which means they would be on the scene in relationship to calls or response to something in the normal course of police work, usually defending or protecting the public.

If that does not answer your question, I'd be happy to give you a scenario.

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

ACTING PRESIDENT KUHL: Senator Robach, do you yield to another question by Senator Hassell-Thompson?

SENATOR ROBACH: Certainly.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR HASSELL-THOMPSON: More than a question, let me give you a scenario, for instance. You have said -- and I think I'm very comfortable with he or she knows, meaning that a uniformed officer, easily identifiable, the presumption that undercover would identify themself as such.

But the scenario of concern is many times off-duty police officers may be in a store and an incident will break out and they may not necessarily identify themselves prior to as being an officer. But according to this, "should know" makes the presumption that the person would know that they were a police officer.

SENATOR ROBACH: I think in order for this charge, they would have to identify themselves and be in the course of duty. So if that did not occur, I think then you'd be looking at a different set of circumstances.

I'll give you a scenario and tell you what this is to cover. We had a situation where the only law enforcement person in a

situation in Rochester was an off-duty female officer, where there were people involved in an altercation certainly physically much larger than her.

Had she not been able to use the power of her badge, really, identifying herself and trying to calm the situation, I think that that may have led to much more injury to other citizens, law-abiding people, in and about this venue that had nothing to do with the altercation.

Saying to people, in us passing this bill, as we did two years ago, when it passed 56 to 1, saying we want to strengthen the penalties for those people doing their duty, trying to make us safe, I think is fairly clear. But it's a clear message to people as long as they are identified, as you point out, that striking an officer is a serious thing in the line of duty.

I'd like to even go further and increase penalties for assault in a lot of other areas. But certainly for those who are the thin line between us, injury, perhaps death, I think makes a lot of sense.

So as long as they do identify themselves, they would be covered under the statute. Otherwise, again, a different set of circumstances would arise if they did not and were not in uniform.

SENATOR HASSELL-THOMPSON: Thank you.

Mr. President, on the bill.

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

SENATOR HASSELL-THOMPSON: I certainly, like you, want to be sure that our persons, whether in or out of uniform -- I also recognize that police officers technically are never off-duty. And so therefore, the responsibility of their duty carries over into plainclothes.

I just need to be sure, though, that as we develop legislation in these chambers that we try to look at the broad spectrum of scenarios that may occur when we're not present. When people are not in uniform, it is very difficult for me to assume that everyone should know and that every officer will in fact do as the female officer

that you described, identify herself immediately, so that under those circumstances it's not a matter of "should know" but it becomes a matter of "knows."

By showing the badge, they have identified. That takes it out of the category of "should know."

"Should know," to me, becomes a subjective situation where, if in fact there is an altercation, the person who is the perpetrator in this instance does not in fact know, and the officer has not in fact identified themselves but later says yes, they did identify themselves. It becomes a matter of where does the jury stand.

And so for us to create language that would set up that kind of situation makes me uncomfortable.

Again, I will in fact support the bill, but I need to do that with you having the understanding that "should know" is very clinical for us to say that in these chambers. But in those situations in alleys and wherever police officers are performing their duty, they may be doing it with the best of

intentions, but they may not always do it in a correct procedural manner. And for that, I don't want to open the door to allow for that.

Thank you, Mr. President.

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

SENATOR VOLKER: I just want to point out something. And having been --

ACTING PRESIDENT KUHL: Senator Volker, on the bill.

SENATOR VOLKER: Having been involved in a couple of the cases involving -- and they always involved felonies, because the reason for this bill really is how difficult it is for any jury or any court, really, to accept the fact that it is as serious to assault a police officer as it is an individual.

He technically can be charged with a Class A misdemeanor anyways. Let remember what this is, assault in the third degree.

It becomes a -- the element of the crime clearly becomes the issue of whether the person knew that the person was a police officer. Therefore, if you have a simple

chase, for instance, where somebody is running down the street and a guy starts chasing them and happens to be a cop, but he just knocks them down or whatever, there have been cases already where police officers, even who have been injured, they were asked on the stand: "Did you identify yourself?" And they say, "Well, he should have known I was a police officer."

And the answer is that's not going to work, because the guy has to be in a position, or the woman, where they can categorically say they identified themselves or that there was proper knowledge.

And the reason for the "should have known," obviously, if the person is in a uniform or has got badges all over them or whatever.

The actual "known," really, is the other side of the coin. And that means that the person has to be able to testify that he somehow informed that person. Under penalty, by the way, of perjury.

So the reason for this bill is really to provide greater protection and

provide a Class A misdemeanor where the alternative is either obstructing governmental administration or whatever, which I think is a B misdemeanor -- I'm not even sure -- but which is the lowest form of crime that there is.

So that's what this is about. And you can be sure that anybody who is going to be charged under this is going to be faced with that -- that -- that's got to be right up front as an element of the charge.

ACTING PRESIDENT KUHL: Senator Montgomery, on the bill.

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

I note that I did not vote no on this last year, according to my records, but I don't know why.

(Laughter.)

SENATOR MONTGOMERY: I just want to point out that we already have, in law, protections for police officers when someone assaults a police officer. But I believe what the difference is is that it requires some level of proof of actual injury. And so that,

I think, is a good thing. We certainly have every interest in protecting our police officers.

But what this bill will do is to lower the level of the requirement that there be actual injury, that there be proof of injury.

And since this kind of charge is the usual -- part of the usual several charges that police officers make whenever they arrest anyone, even when there's not necessarily a criminal charge -- the reason that I know this, Mr. President, is because I've had so many young African-American men in particular, mostly teenagers, who have been arrested for whatever reason, and the charges are always resisting arrest, disorderly conduct, and assault of an officer.

Now, in the case of an assault, the officer must prove that he or she was actually assaulted. There must be some level of proof. What we seem to be doing here is reducing that to the point where we have -- any time an officer makes an arrest for any reason, that can become a charge that is made which sticks

onto that young person's record and begins to build up a rap sheet, so to speak, which eventually ends up being viewed as a predatory person.

So I'm voting against this because I don't see the need. I think that while we want to protect police officers, we certainly should require that there be some evidence of actual injury before we start to charge people. Because a lot of what's going to -- this -- these kinds of charges will rest with young African-American men, who are -- a lot of whom reside in my district.

So I'm going to vote no on this this year.

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

Hearing none, the Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negative and announce the results.

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

ACTING PRESIDENT KUHL: The bill is passed.

Continue to read the controversial reading of the calendar.

THE SECRETARY: Calendar Number 128, by Senator Little, Senate Print 1414, an act to amend the Environmental Conservation Law, in relation to county responsibility.

SENATOR LIZ KRUEGER: Explanation.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT KUHL: Senator Little, an explanation of Calendar Number 128 has been asked for by a number of senators.

SENATOR LITTLE: Thank you. I'm pleased to have the opportunity to be able to explain this bill.

This is a bill that addresses a requirement that is now in law. The

Adirondack Park is comprised of 6 million acres. Three million of those acres are owned by the State of New York, and most of that is considered Forest Preserve.

The DEC, Department of Environmental Conservation, is required to suppress fires within those -- on those forest lands. When they do so, they bring in equipment, they may need helicopters for water drops, because these are on mountainsides and all. They need bulldozers, they bring in sand, fire-suppressing foam.

They also have the authority, in addition to using all the DEC employees that they can pull in, they have the authority to hire citizens to come and help fight the fire. And I believe they pay them $1.75 an hour or $3.50, depending upon their skills.

In addition to all of that, the county and town fire departments, who are all volunteers, bring all of their equipment and all of their personnel that's available to help fight this fire. And hopefully the fire gets put out in a reasonable amount of time.

There have been fires, particularly

after dry summers, that have lasted for a week, especially in the mountains, where the fire gets into the roots of the trees and travels under the ground and then pops up in different parts of the forest.

The part about -- everything is all right to this point. In the end, however, the State of New York adds up all of the costs that DEC has encountered in equipment, helicopters, bulldozers, et cetera, all of the people that they had to hire, their expenses for fighting this fire -- not the expenses of their employees, but all the other expenses -- and they then send the county a bill for half the cost.

This is state land, this is a fire on state land. The local governments, the county governments do everything they can in order to help with the resources that they have. They feel that this is an issue of fairness, like why should they have to pay for half the cost that DEC encountered in fighting a fire on state land that they helped them fight.

Does it amount to a lot? Not

necessarily. There have been fires that have cost $30,000, $15,000, $60,000. We're not talking about a huge amount of money. Unless we had a severe drought, and then there could be more.

However, in some counties an additional $30,000, $17,000, $27,000 bill in some towns is more than they can afford. And they see no reason in heaven why they should have to pay this bill.

Therefore, we have this in our legislative program that would say that the counties are not responsible for the half of that bill.

This could amount to a lot more, because on Forest Preserve land, when you have a blowdown or, you know, large winds and a lot of the trees fall, the state does not allow you to move the fallen timber. Therefore, you know, we are creating the opportunity for additional fires as this wood dries up and rots on forest land.

So this expense could be much higher than what we have encountered so far. But we really believe it's a question of

fairness and that the state should pay the entire cost of fighting the fire on their land.

ACTING PRESIDENT KUHL: Senator Krueger, why do you rise?

SENATOR LIZ KRUEGER: Thank you, Mr. President. I rise to ask the sponsor a question, through you.

ACTING PRESIDENT KUHL: Senator Little, do you yield to a question from Senator Krueger?

SENATOR LITTLE: Yes, I do.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR LIZ KRUEGER: Thank you, Senator.

You closed your remarks by talking about fairness. And I really have one question here. If I could support this bill, it seems to me I would support this on the grounds that we would treat all forest fire reimbursement for all parks the same.

Why specifically does your bill talk about Adirondack Park and not all of the parks in the state of New York that would be

at risk of parallel fire situations with the same cost formula to the localities?

SENATOR LITTLE: Well, I believe because there is so much Forest Preserve land in the Adirondacks. And we're talking about 3 million acres, half the acreage of the towns. And because this had occurred so often within Adirondack towns and counties, that we need to have this addressed.

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

ACTING PRESIDENT KUHL: Senator Little, do you yield to another question from Senator Krueger?

SENATOR LITTLE: Yes, I do.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

Senator Little, you talk about 3 million acres within Adirondack Park. Do you know what the total miles -- excuse me, do you know the total number of acres in parks that are not Adirondack in the state?

SENATOR LITTLE: Three million.

It's about half of --

SENATOR LIZ KRUEGER: No, outside of the Adirondack Park.

SENATOR LITTLE: Oh, no, I don't. No, I don't.

SENATOR LIZ KRUEGER: So you don't know how many it is outside, just how many are in.

SENATOR LITTLE: No.

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

ACTING PRESIDENT KUHL: Senator Little, do you yield to another question from Senator Krueger?

SENATOR LITTLE: Yes, I will.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR LIZ KRUEGER: So I'll accept that actually neither of us -- because I don't know the answer either. It wasn't a trick question -- neither of us know how many acres there are in parks that are not Adirondack Park.

But wouldn't you agree that if that

phenomenon is happening as you described in the Adirondack Park Forest Preserve -- and I'm from New York City, we don't have any forests, so I have to get the language right.

SENATOR LITTLE: We'll send you some.

SENATOR LIZ KRUEGER: You'll send me forests. Thank you.

That if we have this situation in the Adirondack Preserve, we have it other places. Again, from an equity perspective or a fairness perspective, why not propose a bill here in the Legislature that would apply the same rules and the same reimbursement formula for a forest fire in any forest in the state of New York?

SENATOR LITTLE: I would agree that we probably could. But this issue has occurred more in the Adirondacks. And I don't know that this compensation has been required of towns outside of the Adirondacks as it has within the counties that I represent.

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

ACTING PRESIDENT KUHL: Senator Little, do you yield to another question?

SENATOR LITTLE: Yes, I do.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR LIZ KRUEGER: Thank you, Senator.

In answering one of my last questions you said this has happened many times in the Adirondack Park area. Do you have any idea how many fires there are in a given year, on average?

SENATOR LITTLE: We have fires every year. And it depends upon the dryness, of course, and the drought conditions.

Two summers ago, the Noonmark Mountain had a fire that lasted a couple of weeks because it kept cropping up in different places. Mount Discovery, in Essex County, in the town of Lewis, had a one-week fire that the cost that was billed to the county afterwards was $30,000.

There are unfortunately fires every year. We've had them in Warren County, a lot of -- well, I can't think of the exact fires

as we're going along. But it occurs not on a yearly -- some summers definitely are worse than others because of the drought.

SENATOR LIZ KRUEGER: Thank you. Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Brown, why do you rise?

SENATOR BROWN: Through you, Mr. President, if the sponsor would yield for a question.

ACTING PRESIDENT KUHL: Senator Little, do you yield to a question from Senator Brown?

SENATOR LITTLE: Yes, I do.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR BROWN: Thank you, Senator.

The existing law requires counties throughout the state to reimburse the state for one-half of the cost of fighting forest fires. I was wondering, Senator, if you know how long this existing state law has been on the books.

SENATOR LITTLE: I believe I saw

it someplace. I'm not positive, but I think in the 1970 -- 1973. Chapter 83 of the Laws of 1973.

ACTING PRESIDENT KUHL: Senator Brown.

SENATOR BROWN: Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT KUHL: Senator Little, do you yield to another question from Senator Brown?

The Senator yields.

SENATOR BROWN: Through you, Mr. President, what would be the genesis of this 1973 law that required counties to pay half of the cost of fighting forest fires?

SENATOR LITTLE: I'm not positive, but I think it had something to do with setting up fire district towns and -- where they could appoint fire wardens and the superintendent of fires would be the supervisor of the town.

I believe -- I'm not positive, but I think it's for having to undertake leadership in the fighting of a fire in a forest area.

SENATOR BROWN: Thank you.

On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Brown, on the bill.

SENATOR BROWN: I want to thank Senator Little for responding to my questions.

I'm just a little concerned about this legislation. I certainly understand, given Senator Little's explanation, why she's sponsoring it.

As I initially looked at it and thought about the very difficult fiscal times that the state is facing this year, I was concerned about the state incurring additional costs. The Senator has explained why the counties within her district feel that it is reasonable for the state to pick up the cost of fighting fires in that community.

But as Senator Krueger has indicated, if we're just doing this for one county, I question why we're not doing it for other counties. And I also worry about what the fiscal impact might be to the state if we pass this bill this year, next year, and in the future.

So with that being said, I am just concerned about the fiscal impact of this piece of legislation. Thank you.

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

SENATOR VOLKER: Mr. President -- and the only reason I rise is because Betty is way too young to have been there back in 1973. I was there in the Assembly when this bill passed. This has nothing to do with the rest of the state. It was really passed because of the Adirondack Park Agency.

And the truth is nobody tries to collect any money for park fires or anything. I was there for -- the reason is because of the Adirondack Park Agency. The reason this bill hasn't passed the Assembly is because the Adirondack Park Agency doesn't want it to pass. At least that's my understanding.

The only place, as far as I know -- and I think everybody will tell you that -- they ever have enforced this is in the Adirondacks. And by the way, it's not one county, it's a whole bunch of counties. The Adirondack Park is huge.

I'm a little bit -- what's the word I'm trying to use? -- a little bit cynical about this, because I was there when the Adirondack Park Agency passed. I remember Laurence Rockefeller calling me and saying: "I would like you to vote for my park." And he said, "I know you'll do the right thing."

Well, I did the right thing. I voted against it.

(Laughter.)

SENATOR VOLKER: But -- and the reason was -- not that I didn't think the Adirondack -- and I still think the Adirondack Park is fine. The only problem was, there was a touch of arrogance in this whole Adirondack -- and those that represent that.

And I don't represent the Adirondack Park. But I know people don't realize that essentially the Adirondack Park Agency has kept most of the Adirondacks in a semi-recession for years. These towns have a great deal of difficulty. And Betty has addressed it extremely well about the problems there. There's a basic unfairness to the Adirondack Park Agency that controls just

about everything.

It would be very akin, by the way, to having a fire here in the plaza here and the state gets rid of the fire, but there's some fire trucks come from in the city and then we decide to charge the City of Albany for part of the cost of protecting our place here.

A few years ago that used to happen, because a few years ago the City of Albany was supposed to plow this area. The state didn't have the ability and so forth. And the city finally got fed up with it, frankly, and said to the state: Okay, look, you plow the whole area of the complex here and do State Street and, I think, part of Washington Avenue. And that was part of the agreement with the City of Albany. Because basically we were getting a tremendous amount of services from the City of Albany.

What's happening here is akin to that, whereby the firefighters and these towns go in to help, put out a fire that is basically an area that is owned by the Adirondack Park Agency, essentially, which

they can't even use for town purposes because they're mandated, but they still have to, when they help put the fire out, be charged for part of the fire fighting.

I think there's a basic unfairness there that if the same thing, I'm sure, happened to the City of New York -- and I mean this very sincerely -- I know you people would be absolutely infuriated. It would be the right thing to do.

But that's what this bill is really all about, and I think Betty is, frankly, absolutely right.

ACTING PRESIDENT KUHL: Senator Hassell-Thompson, why do you rise?

SENATOR HASSELL-THOMPSON: Thank you, Mr. President.

In committee I voted without recommendation, as Senator Little knows, and in part because I really wasn't as cognizant of all the implications as we've had an opportunity to explore today.

I recognize that the Adirondacks is more than one county. But certainly I think that Senator Brown raises an issue that all of

our -- that the parks of Western New York that contain forestry ought to be, in fact, put in the same position. And so my concern becomes why do we do this for a particular portion of the state when it has a greater impact.

And certainly, like Senator Brown, all of us are cognizant of the fiscal implications. But I think, again, fires happen. And regardless as to what fiscal situations we're in, fires have to be fought. And I think that it is an appropriate thing for our environmental committee to perhaps review this bill but also look at what other parts of the state are impacted, appropriately.

And I think that we tend sometimes to be concerned about our specific areas when there really is a statewide issue that really needs to be better explored. So I would hope that as we go forward in the environmental committee that we will explore impacts of this type not only on the Adirondacks but our other forestry areas in the state of New York.

Thank you.

ACTING PRESIDENT KUHL: Senator

Little.

SENATOR LITTLE: If I may, in closing, I would like to say that I understand the concern for additional costs to the state in this budgetary year. I don't know what the costs would be, because I can't anticipate the number of fires that might occur this year. But as you stated, many fires are caused by things we have no control over. Lightning causes a great number of fires within the forest park.

However, there is a cost to the local governments and to the county governments as they come forward and fight the fire as well. It's the part of having to pick up half the costs of the state's cost in fighting the fire on their land, and when they own so much land within the Adirondack Park. And these fire towns are responsible, you know, to participate and all, but paying their costs.

I would not be averse to amending the bill so that it covered all of the towns in the state of New York, but I'm not aware of the -- it hasn't been a big matter of concern

in those towns. As Senator Volker mentioned, they have not been put upon to pay this cost. And it does go back to the whole Adirondack Park Agency and the whole state feeling as though they own and control the Adirondack Park.

And what we're saying is, fine, pay half -- pay your entire cost of fighting the fire. It's not a huge amount. It's actually a measure of fairness and principle at this point.

Thank you.

ACTING PRESIDENT KUHL: Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Mr. President, I just had one question for Senator Little.

ACTING PRESIDENT KUHL: Senator Little, do you yield to a question from Senator Montgomery?

SENATOR LITTLE: Yes, I do.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MONTGOMERY: Senator Little, when you were explaining your

legislation, you mentioned that some of the citizens volunteered for a dollar and a half --

SENATOR LITTLE: Some of them get paid by DEC. They have the authority to hire people to fight the fire. I mean, these fires go on -- if they are a whole week, that's day and night for a whole week.

But in addition to the DEC employees -- and we are not charged for half of the cost of them. We are charged for half of the cost of any citizens that they would hire.

Now, the volunteer fire department, they are not hired. They are volunteers, and all of their costs are with the town and volunteer fire department.

SENATOR MONTGOMERY: I see. Because I was just wondering, I know that a number of the prison facilities in the Adirondacks have programs where the inmates participate in these --

SENATOR LITTLE: And they have participated and come out and helped in fighting the fire.

Do they get paid? I'm not sure. They probably get some compensation, as they do for many of their work release programs.

SENATOR MONTGOMERY: Yes. Yes. Thank you, Senator. I just wanted to --

SENATOR LITTLE: Thank you.

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

ACTING PRESIDENT KUHL: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: I'm supporting Senator Little's bill.

And certainly I do know that there are a number of inmates, for instance, who participate along with local citizens in helping whenever there's any disaster, including forest fires.

And certainly I don't think that the -- whatever cost to DOCS there might be associated with inmates participating in this program, if we are going to charge the counties, DOCS is not going to see that funding anyway.

And certainly I agree with Senator Little it's a state responsibility. The

Adirondacks belongs to all of us. And I believe that the state has an obligation to support it, including if there's any forest fires. So I'm supporting this legislation as well.

Thank you.

ACTING PRESIDENT KUHL: Senator Krueger, why do you rise?

SENATOR LIZ KRUEGER: Thank you. I rise to explain my bill -- excuse me, I rise to explain my vote on Senator Little's bill.

ACTING PRESIDENT KUHL: Senator Krueger, would you like to do that on the roll call?

SENATOR LIZ KRUEGER: I could do that if you prefer.

ACTING PRESIDENT KUHL: All right. Any other Senator wishing to speak on the bill?

Hearing none, the Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: The Chair recognizes Senator Krueger for the purpose of explaining her vote.

SENATOR LIZ KRUEGER: Thank you, Mr. President. I'll try to be more articulate this moment.

I rise to explain my vote no. While I appreciate Senator Little's bill and her efforts on behalf of the counties included in the Adirondack Park, I still think that New York State needs to evaluate its policy in relationship to all forest land throughout the state and not to try to resolve what is perhaps an injustice to these counties within the Adirondack Park district by having one set of rules for forests that are within one defined park but not to have the same policy in reimbursements for all forests or all forest fire situations.

I also appreciate Senator Volker's comments, and it raises to me a question of how we should be evaluating the fairness or inequity right now between state costs and local costs in both public land -- that is

parks, that is forests that are public authorities -- and other costs that translate perhaps unfairly to some region of our state.

But I think that Senator Little's bill highlights for me that we should be looking at this in a much larger picture. But in fact I cannot vote yes on this bill, although I empathize with the situation for the counties of the Adirondacks.

Thank you.

ACTING PRESIDENT KUHL: Senator Krueger will be recorded in the negative.

Senator Oppenheimer, why do you rise?

SENATOR OPPENHEIMER: To explain my vote, please.

ACTING PRESIDENT KUHL: Senator Oppenheimer, for the purpose of explaining her vote.

SENATOR OPPENHEIMER: I'm voting in favor of this bill, because I think we really are not talking about the true value of the Adirondack Park and the dimensions of it. It is the largest park in the contiguous 48 states. The only park that is larger is

Denali, up in Alaska.

It is a huge percentage of this state, maybe -- I'm going to guess -- 25 percent. There are many, many counties in this park. The vastness of it alone puts it really in an entirely different category. I have a lot of parks in my Senate district, but it doesn't begin to compare. It's not a fraction, it's not a one-thousandth of what this park.

I mean it's true, I'm a hiker and a skier and I do love this park. But this park is really of another dimension. And I think we have to do all we can to preserve it and to understand the public/private nature of it, which makes it different from almost every other park in the United States.

I'm voting in favor.

ACTING PRESIDENT KUHL: Senator Oppenheimer will be recorded in the affirmative.

Announce the results.

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

ACTING PRESIDENT KUHL: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, can we return to the reports of standing committees. I believe you have a report from the Investigations Committee at the desk.

ACTING PRESIDENT KUHL: We will return to the order of reports of standing committees.

There's a report from the Committee on Investigations at the desk. We'll ask the Secretary to read.

THE SECRETARY: Senator Spano, from the Committee on Investigations and Government Operations, reports the following bill direct to third reading: Senate Print 2850, by Senator Spano, an act to amend the Tax Law.

ACTING PRESIDENT KUHL: Without objection, the bill is reported directly to third reading.

Senator Marcellino.

SENATOR MARCELLINO: Mr.

President, is there any housekeeping at the desk?

ACTING PRESIDENT KUHL: The desk is clean, Senator Marcellino.

SENATOR MARCELLINO: In that case, Mr. President, I move we adjourn until Tuesday, March 11th, at 3:00 p.m.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until tomorrow, Tuesday, March 11th, at 3:00 p.m.

(Whereupon, at 4:36 p.m., the Senate adjourned.)