NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:05 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT GOLDEN: 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 GOLDEN: I ask us all to bow our heads in a moment of silence.

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

ACTING PRESIDENT GOLDEN: Reading of the Journal.

THE SECRETARY: In Senate, Saturday, January 24, the Senate met pursuant to adjournment. The Journal of Friday, January 23, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Seward, from the Committee on Insurance, reports:

Senate Print 525, by Senator Balboni, an act to amend the Insurance Law;

1172, by Senator Seward, an act to amend the Insurance Law;

And Senate Print 1173, by Senator Seward, an act to amend the Insurance Law.

Senator Volker, from the Committee on Codes, reports:

Senate Print 67, by Senator Maltese, an act to amend the Civil Practice Law and Rules;

99, by Senator Velella, an act to amend the Penal Law;

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

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

240, by Senator Volker, an act to amend the Penal Law;

277, by Senator Skelos, an act to

amend the Penal Law;

432, by Senator Nozzolio, an act to amend the Penal Law;

518, by Senator Balboni, an act to amend the Civil Rights Law;

552, by Senator Skelos, an act to amend the Criminal Procedure Law;

554, by Senator Skelos, an act to amend the Penal Law;

624, by Senator Padavan, an act to amend the Penal Law;

1021, by Senator Skelos, an act to amend the Criminal Procedure Law;

1206, by Senator Robach, an act to amend the Penal Law;

5554, by Senator Skelos, an act to amend the Criminal Procedure Law;

And Senate Print 5912, by Senator Volker, an act to amend the Civil Practice Law and Rules.

Senator Spano, from the Committee on Investigations and Government Operations, reports:

Senate Print 2027A, by Senator LaValle, an act to amend the Public Buildings

Law;

3343C, by Senator Skelos, an act to amend the Public Officers Law;

4475, by Senator Leibell, an act to amend the Public Officers Law;

5727, by Senator Libous, an act to amend the Alcoholic Beverage Control Law;

And Senate Print 5958, by Senator Skelos, an act to amend the Public Officers Law.

All bills ordered direct to third reading.

ACTING PRESIDENT GOLDEN: All bills reported directly to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of Senator Marcellino, on page 11 I offer the following amendments to Calendar 100, Senate Print 783A, and I ask that that bill retain its place on the Third

Reading Calendar.

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

SENATOR FARLEY: Mr. President, on behalf of Senator Rath, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause. That's Senate Print 2055.

ACTING PRESIDENT GOLDEN: So ordered.

SENATOR FARLEY: On behalf of Senator Marcellino, Mr. President, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause. That's Senate Print 2935.

ACTING PRESIDENT GOLDEN: So ordered.

SENATOR FARLEY: Thank you.

ACTING PRESIDENT GOLDEN: Senator Fuschillo.

SENATOR FUSCHILLO: Thank you,

Mr. President.

On behalf of Senator Golden, on page number 7 I offer the following amendments to Calendar Number 52, Senate Print Number 4446, and ask that said bill retain its place on Third Reading Calendar.

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

SENATOR FUSCHILLO: Mr. President, on behalf of Senator Volker, on page number 10 I offer the following amendments to Calendar Number 86, Senate Print Number 3127, and ask that said bill retain its place on Third Reading Calendar.

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

SENATOR FUSCHILLO: Mr. President, on behalf of Senator Saland, on page number 11 I offer the following amendments to Calendar Number 93, Senate Print Number 216, and ask that said bill retain its

place on Third Reading Calendar.

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

Senator Skelos.

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

ACTING PRESIDENT GOLDEN: The Secretary will read.

THE SECRETARY: Calendar Number 5, by Senator Volker, Senate Print 5883A, an act to amend the Tax Law, in relation to the imposition of sales and compensating use taxes.

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT GOLDEN: The bill is laid aside.

THE SECRETARY: Calendar Number 17, by Senator LaValle, Senate Print 345A, an act to amend the Education Law, in relation to reporting.

SENATOR SCHNEIDERMAN: Lay it

aside.

ACTING PRESIDENT GOLDEN: The bill is laid aside.

THE SECRETARY: Calendar Number 58, by Senator Leibell, Senate Print 4887, an act to amend the Waterfront Commission Act, in relation to empowering.

ACTING PRESIDENT GOLDEN: Read the last section.

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

ACTING PRESIDENT GOLDEN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT GOLDEN: The bill is passed.

THE SECRETARY: Calendar Number 60, by Senator Marcellino, Senate Print 879, an act to amend the Environmental Conservation Law, in relation to management of wildlife resources.

ACTING PRESIDENT GOLDEN: Read the last section.

THE SECRETARY: Section 6. This

act shall take effect on the first of January.

ACTING PRESIDENT GOLDEN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT GOLDEN: The bill is passed.

THE SECRETARY: Calendar Number 72, by Senator Maltese, Senate Print 136, an act to amend the Municipal Home Rule Law, in relation to punishment for the violation of a local law.

ACTING PRESIDENT GOLDEN: Read the last section.

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

ACTING PRESIDENT GOLDEN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT GOLDEN: The bill is passed.

THE SECRETARY: Calendar Number 74, by Senator Bruno, Senate Print 3556, an act authorizing the South Glens Falls Central

School District.

ACTING PRESIDENT GOLDEN: Read the last section.

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

ACTING PRESIDENT GOLDEN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT GOLDEN: The bill is passed.

THE SECRETARY: Calendar Number 76, by Senator Trunzo, Senate Print 5884, an act to amend the General Municipal Law, in relation to allowing active volunteer firefighters.

ACTING PRESIDENT GOLDEN: Read the last section.

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

ACTING PRESIDENT GOLDEN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT GOLDEN: The

bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could go to the controversial reading of the calendar.

ACTING PRESIDENT GOLDEN: The Secretary will read.

THE SECRETARY: Calendar Number 5, by Senator Volker, Senate Print 5883A, an act to amend the Tax Law, in relation to the imposition of sales and compensating use taxes.

ACTING PRESIDENT GOLDEN: Read the last section.

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

ACTING PRESIDENT GOLDEN: Senator Brown.

SENATOR BROWN: Thank you, Mr. President. I just wanted to speak to this bill.

I want to commend Senator Volker and Assembly Majority Leader Tokasz for putting this piece of legislation forward, which I see as a step in the right direction

on the Erie County sales tax.

We've discussed this item before, and in Erie County we have an additional 1 percent of sales tax which was implemented in 1985 as a temporary tax. This tax has now been temporary for the 19th year in a row.

But I do see this as a step in the right direction, with the assistance of Senator Volker and Assembly Member Tokasz. And why it's a step in the right direction, because it allow allows for some potential sharing of that additional 1 percent of sales tax in 2005 and 2006, in the amount of $10.4 million, and in 2006 and 2007 in the amount of, potentially, $21.1 million.

I want to say that this recommended sharing comes from the Emergency Control Board that was imposed on the City of Buffalo by this Legislature and Governor because of Buffalo's fiscal crisis. And every member of that control board -- including the county executive, the Erie County executive and the mayor of the City of Buffalo -- voted unanimously that this potential sharing be included in this piece of legislation.

In addition, in the home rule message that we received from the Erie County legislature, this was passed unanimously by a vote of 15 to 0 by the Erie County legislature.

And I just want to say while I do think this is a step in the right direction, I would like to see some kind of permanent sharing of that additional 1 percent of sales tax.

I think for the county to have collected this money for 19 years, which generally amounts to $115 million per 1 percent every year, is just an injustice to the City of Buffalo and the financial difficulties that the city is experiencing.

Now, I think we all know that the City of Buffalo is in need of help. And I think that this Legislature and certainly this house of the Legislature has shown a willingness to help the City of Buffalo. And the resources to help Buffalo are going to have to come from somewhere, either from the State of New York or from the County of Erie. And I believe that the county does have the

ability, through this sales tax, to assist the City of Buffalo.

Now, just a fact that I want to share with my colleagues is that Syracuse receives 37.74 percent of the County of Onondaga sales tax. That's 19 percent more than the City of Buffalo receives. Rochester receives 34.12 percent of the Monroe County sales tax, which is 15 percent more than the County of Erie receives.

Colleagues, now is the time for us to consider making a sharing permanent. I know that that sharing permanency can't be done this year, but certainly I'm hoping that it can be done next year.

Now, I feel so passionately about this issue that last year I was the only member of this house and the only member of this Legislature to vote against this extension of the additional 1 percent of sales tax for the County of Erie.

But this is a critical, critical issue for the county and for the City of Buffalo. I'm asking you to consider this. I want to commend Senator Volker and Assembly

Member Tokasz for moving this in the right direction.

I am only hopeful that next year and the year after, that the county executive in Erie County and that the Erie County legislature honor the votes that they have taken to do this sharing and we actually see some sharing in those two years.

With that being said, I am going to vote in the affirmative this year on this, because I do think it's a step in the right direction. And I think it is a step in the right direction because of Senator Volker's advocacy on behalf of the entire county, but certainly on behalf of the City of Buffalo.

Senator, I want to thank you for that.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Madam President, I think everybody realizes that this bill, with its legislative findings -- and the way legislative findings work, and I know that most of my colleagues understand it, that this bill, the operative part of this bill relates to the ability to continue the sales tax.

Which again, the money will continue during this fiscal year which we're already in.

The problem with the attitude -- the city was talking to us about sharing this year. Now, the county's fiscal year is January 1st to December 31st. The city's fiscal year is July 1st to June 30th of the following year. The problem with trying to do a share this year is that you would, in effect, be taking a piece out of the county budget that's already in the county budget, and you would cause a deficit to the County of Erie, which would in effect probably result in a downgrading of the county's bond rating and a lot of other things.

What this bill does is, and with the agreement of the Emergency Control Board, who essentially passed a resolution, as Senator Brown suggested, suggesting that we do this starting December -- or, I'm sorry, January 1st of 2005, and the county legislature approved by home rule message this bill.

Now, you say, Well, if nothing changes, isn't the County of Erie then going

to be short the money? That's true, and that's why this has no specific authority in law.

However, let me point out to everyone that we are extremely hopeful -- more than hopeful. This Legislature, and I'm sure this house is going to, is going to do legislation changing and improving Medicaid.

And by that I mean we're going to provide some money. And we're going to have to. And I assume we're going to do some reforms also before this year is out. The Governor has a proposal, we have a proposal, and I think the Assembly is going to have a proposal.

The beneficiaries in upstate New York are counties. In the City of New York, obviously the City of New York would be one of the beneficiaries of those changes. In our upstate, it's the county, and that's the County of Erie.

The Governor's proposal alone, if we passed it, as I understand, pretty well the way it is -- and I'm not saying we should, I'm just saying that monetarywise, it would give

the county more than the 15 million that would be provided by the terms of these legislative findings.

So what we're assuming here is that the county is going to get assistance. And then if the county gets in fact enough assistance, they would, I would think, be all prepared to allow this money anyway.

Because the city either needs money from the county or from the state, because although they are working on a plan right now to downsize government and to stabilize the government in Buffalo, they clearly need some outside help in order to do that.

So what's what this is about. It took a great deal of back and forth, shall we say. And I think that we have come to an agreement here that not everyone is happy with, and that's why it's probably a pretty good agreement. And it's good that we do not have a situation where we have a stalemate, as several times we've had in the past.

So what will happen here is then the 1 percent will continue and the County of Erie, their budget will be in balance. And

the City of Buffalo hopefully will be on their way to doing the same thing.

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

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 17, by Senator LaValle, Senate Print 345A, an act to amend the Education Law, in relation to reporting requirements.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR LaVALLE: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR LaVALLE: This is a piece

of legislation that we have discussed before on this floor.

And before I talk about some of the specific provisions, let me just indicate that just recently in a discussion I had with Abe Lachman, who is president of the Commission of Independent Colleges and Universities, he indicated that New York is the number-one state in the country in terms of importing of students, educating students from out of state.

When we look at the number of students who are foreign students, that number, my counsel tells me, is 50,000 students that we are educating in our colleges and universities from other countries. And this is something that we have always done. It provides, as everyone knows, a good environment, an enriching educational system for not only the students who come from other countries but our own students.

One of the conditions of a student coming here is they are accepted because our country issues a limited student visa. And so this bill goes to the point of what happens

when a student does something that is inconsistent with their promise to, one, come to this country and be educated and, number two, if they do come and don't attend class, well, then, we need to know.

So the bill does two things. It says, well, we have a student who said they were coming but never came, and, number two, we have a student who came, started to attend class, but has disappeared.

We ask the university or college to do two things, one under federal law, where they must provide Homeland Security with some information. But now we ask them to do one other thing. We ask them contemporaneously to contact the State Police. We want that kind of articulation. We want our State Police to know that there's a student who should be -- should have been attending, never showed up, or a student who has showed up but has now disappeared.

And the whole purpose, as everyone knows today, is to get all of the levels of government to interact with one another, exchanging information so that we know, like a

glove in a hand, that everything is nicely fitted and we have the proper information.

We also ask the university to provide us with some data on the number of students and from what countries are attending that particular university. We don't ask for names, we are just asking for raw data.

If the university doesn't comply, we do have some penalties. We say, number one, that university could -- could -- lose its status of receiving students from other countries or, secondly, they could be penalized per omission, of $1,000 per omission.

So we think this is a good bill. We think, given where we were with 9/11 and the world that we live in, that we are not placing unreasonable burdens on our universities, but we are ensuring that the students at the university are safe and our citizenry in general are safe from students who are coming into this country for a purpose other than receiving a quality and good education from one of our great colleges or universities.

THE PRESIDENT: Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

I rise in support of Senator LaValle's bill. And I know there's historically a lot of objection, particularly from the other side. As somebody that has taught at a university for a long time, many years, I don't think this is a great intrusion. It's no intrusion on any of our students.

But with the state of the world today, and it's been mentioned so many times in the area of homeland security that this is a conduit or an area where students do participate in terrorism against our nation, I think this is reasonable. This is more or less asking them to comply with a grave concern that we have today.

Conditions are not the same the same as they were a few years ago. Today we've got a very scary situation. I think that Senator LaValle has got a reasonable bill. I think it dovetails very, very well with the Homeland Security, it makes our State

Police a player. And I think it's significant and it's time has come.

And it's not that unreasonable. It's not going to be a burden on the university. And I don't think it will be a burden on our foreign students, many of which I've had in class.

But the point of it is, it is something that we need. It's reasonable. We need this protection. These are very troubled times. And I think this is a reasonable bill. And, Senator LaValle, I commend you for bringing it forward, and I ask those of you that have had concerns about this to relook at this, because times are a-changin', and this is something that we need.

Thank you, Madam President.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: Madam President, if the sponsor would yield for a couple of questions.

SENATOR LaVALLE: Yes.

THE PRESIDENT: Senator LaValle yields.

You may proceed, Senator Stavisky.

SENATOR STAVISKY: Since this information is available to the Office of Homeland Security, wouldn't it be a lot easier for the Office of Homeland Security to get the email address of the State Police, or their fax number, and get it to them that way? Rather than --

SENATOR LaVALLE: Senator, as you may know -- and it's been discussed and reported that the federal government really relies on the first line of defense, what happens with the police in our local communities and the state police within the states.

And so it is our people, really, many times having this information, finding someone and reporting to the federal government that we have someone floating around that should not be.

So I think it's just the reverse. It's the local people that are really doing the job of seeking out people in places that they shouldn't be.

SENATOR STAVISKY: If the Senator would continue to yield.

THE PRESIDENT: Senator, do you --

SENATOR LaVALLE: Yes.

THE PRESIDENT: He does yield.

You may proceed, Senator Stavisky.

SENATOR STAVISKY: Under the terms of your bill, the State Education Department is going to collect the information.

SENATOR LaVALLE: Yes, that is correct.

SENATOR STAVISKY: As I read the bill, one of the places where they're required to send it is to the chair of the Senate Higher Education Committee.

SENATOR LaVALLE: Uh-huh.

SENATOR STAVISKY: I'm curious what --

SENATOR LaVALLE: He would, as soon as he gets that information, immediately give it to the ranking member.

SENATOR STAVISKY: Yes, give it to the ranking minority member. I knew you were going to say that.

SENATOR LaVALLE: Absolutely.

SENATOR STAVISKY: My question, though, had a more serious tone. When I said it, I realized what you were going to say.

I would like to know what the chair of the Higher Education Committee needs to know about the students with the visas who haven't shown up for class.

SENATOR LaVALLE: I think what we're asking for is, it says here, "The department shall provide to the Legislature a report compiling such information." And we talk about the information on categories of how many students at a particular university and from what countries.

That information, Senator, was either not forthcoming or wasn't collected in work that we in the Legislature want to do.

And as you know, it says both the Senate and Assembly chairs would receive that information.

SENATOR STAVISKY: Yes.

Really one or two more questions.

THE PRESIDENT: Senator, will you yield for two questions?

SENATOR LaVALLE: I'd be happy

to, yes.

THE PRESIDENT: You may proceed with one or two questions, Senator.

SENATOR STAVISKY: Senator LaValle, you're asking the State Education Department to collect this data from the colleges and universities. And in fact if the colleges and universities don't collect the data, they are subject to a fine of $1,000 for a first -- per violation.

SENATOR FLANAGAN: Per violation.

SENATOR STAVISKY: And then a $2,000 fine for second violations.

My question is in the area of putting an unnecessary burden upon the State Education Department. You're causing them additional expense to go out to collect this data. And does not this represent an unfunded mandate?

SENATOR LaVALLE: You know, Senator --

SENATOR STAVISKY: You knew I was going to ask that question.

SENATOR LaVALLE: Well, it dawned on me after -- this is the second year we're

debating this bill, and I realized where some of the opposition might come from.

And my eyes happened to come to this, yes, mandate, on the department. And we ask the department to do lots of things. This, I think, is important. I'm not sure it's burdensome on them. I'm not sure that we've even -- certainly, as sponsor, the department has not come and indicated that this was a burden on them. Maybe they're timid to come to the chairman, you know.

But I think it's important that one of the roles that the department does and should be playing is collecting information. We ask them to collect information on our elementary and secondary schools, on state aid information, the nature of how many teachers and the gender and the race and so forth. Why? Because it goes into better policymaking, the more information that we have. I believe that very sincerely.

I'm sure that this is a mandate that they would rather not have. But I think it's an important one in for us in the Legislature.

SENATOR STAVISKY: My last question.

THE PRESIDENT: Senator --

SENATOR LaVALLE: Yes.

THE PRESIDENT: He yields.

Go ahead, Senator.

SENATOR STAVISKY: How does this legislation impact or how is it affected by SEVIS, the Student Exchange Visitor Information System?

SENATOR LaVALLE: I'm told that the same information can be used to go to the State Police, that it's not duplicative.

In my remarks I had indicated that the colleges would be forwarding the information contemporaneously, in my opening remarks.

SENATOR STAVISKY: But the bill doesn't do that. It doesn't give the information to SEVIS.

On the bill, Madam President. Very briefly on the bill.

THE PRESIDENT: You may proceed, Senator.

SENATOR STAVISKY: Thank you.

I think this legislation is a duplication of existing law. We're placing an unfair burden on the State Education Department and, in fact, on the commissioner. Because as I read the last page of the bill, he serves not only as the enforcement officer but also the judge and jury on violations.

So we do have an unfunded mandate. And as I know, my colleagues do not like to vote for mandates without providing the necessary funding stream.

Secondly, I'm concerned with what the State Police is going to do with this information once they receive it.

And lastly, it seems to me that this information is already available. And much as we all want to thwart potential terrorists, I just don't think this is the way to do it.

Thank you. And I thank Senator LaValle for his detailed responses.

THE PRESIDENT: Senator Lachman.

SENATOR LACHMAN: Yes. What I have to say is said with all due respect to Senator LaValle. I cannot support this bill.

But before I go into the substance of the bill, I would like to correct a statement that was made that was not -- that is not germane to the bill. And the initial statement that was made was that New York State has more out-of-state students than any other state in the nation.

I think that's a very good thing for New York State. First of all, we have, besides our private colleges and universities -- which now have an excellent spokesman -- we have, out of the three public universities in the nation, the first, SUNY, with the largest population of any state university, and CUNY, which has the third largest population of any publicly funded university.

And in terms of the area of students from out of state coming to New York, there are many, many students coming to New York for our teaching hospitals. Fifteen percent of all of the teaching hospitals in the United States are in New York State -- primarily in New York City, but other parts of the state as well.

And this is a great means of developing the economy of the state and the city, as well as educating physicians and others who will aid society. So I just want to separate the issue of students who come from out of state from students who come from out of the United States.

Now, on the second issue, I would also echo some of the words that my predecessor has mentioned. It is duplicative. I do not believe that the Board of Regents or the State Commissioner of Education want this to occur.

And I think that having 50,000 students in our universities who come from out of the country is a positive rather than a negative. Because these students interact with the students who were born in the city and the state, and they create even a better academic environment.

Whether they come from Asia or Russia or Africa, it in a sense brings to the universities of the state of New York and the colleges of the state of New York a different perspective and, at the same time, a great

deal of academic training and scholarship which will benefit our society in the future.

Finally, I'm very concerned that one of my colleagues -- and even if I hadn't heard the word "some," I would still be concerned -- said that foreign students participate in terrorism. Not you, Senator LaValle. If someone else had said some foreign students participate in terrorism, I would respond by saying some American-born students participate in terrorism.

We cannot have here two different categories of students. We cannot say that foreign students are more prone to participate in terrorism than American students are. And by and large, this, I'm told again and again, comes out of speeches of the president of the United States, George W. Bush, who has defended foreigners in the United States going to universities and has said continually that the vast majority, as the vast majority of Americans, do not participate in terrorism.

And I think we have to be very, very careful when we discuss something like this and use words of "terrorism" to reflect

upon foreign nationals, especially students who come to this country and reinvigorate the country and learn and give so much to this nation.

Especially since this bill is duplicative, especially since it is not asked for or required by the Commissioner of Education or by the State Board of Regents, I cannot support it.

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

Senator Krueger.

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

I appreciate my predecessor's comments about this bill.

And I won't phrase it as a question, because I think Senator LaValle intended to answer correctly. But when Senator Stavisky asked wouldn't it be simpler, simply, for the INS or Homeland Security to provide the information to the State Police, Senator LaValle answered: "But we want the State Police to be first line of response," and that the federal government is asking us

to do that.

And I don't disagree with your analysis, but what I do disagree with is that this bill would actually require every college in this state to have two systems. Right now they have to respond to the federal SEVIS system, which is not a system they control or create, but rather the federal government sends them the information on each individual student and they must put information in in response.

Under this bill, the state is asking each institution to create their own, second computer system. Because they don't own SEVIS; it's the federal that they're responding to. It would require each institution to create a separate, independent second system for tracking the same information, put that information and then somehow get it to the State Police.

So I would argue that this bill is duplicative of what the federal government has already mandated and put in place, and that if the State Police need this information, and even if one accepts that there's a very good

reason why you want State Police to have the same information as Homeland Security, that it is a far more cost-effective and simpler and more elegant way to get to your point by simply having Homeland Security share the information they already have through an existing system with whoever in the New York State Police or New York State Criminal Justice should be appropriately looking at this information.

I'm not sure I would support the argument that individual legislators, whether they be chairs of committees or not, ought to be having this particular -- this information.

So I will say that this is not just an unfunded mandate, it is an enormous new set of burdens on each individual college and university in the state. I don't think it does, in this day and age, with the federal program in place, anything to improve security or protection.

And to just follow up on the statement of Senator Lachman that Education hasn't asked for this, the Regents haven't asked for this -- I don't believe the State

Police have asked for this either.

So again, I would argue that at this point in time our proposing a new unfunded mandate on our universities that would require an enormous new database and administrative system, the possibility for mistakes in two systems collecting the same information would not, in fact, improve our security at all.

But rather, a way to get to the same point is to simply arrange for, if it is in the best interests of the State Police and Homeland Security, for those two agencies to agree to share existing information.

So I'll vote against this bill, because I don't think the State of New York needs this to accomplish the goals at this point in time.

Thank you, Madam President.

THE PRESIDENT: Senator Schneiderman.

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

THE PRESIDENT: Senator, will you

yield for a question?

SENATOR LaVALLE: Yes.

THE PRESIDENT: Thank you, Senator LaValle.

You may proceed with a question, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you.

Have the State Police issued a memo in support of this proposal or otherwise publicly indicated support for this?

SENATOR LaVALLE: No. Nor do I have any memos in opposition on the bill.

SENATOR SCHNEIDERMAN: And through you, Madam President, there was some earlier discussion of the State Department of Education. Have any administrators or representatives of the colleges or universities of this state indicated that they would like to see this bill passed and the system installed?

SENATOR LaVALLE: I think you probably know the answer to that. But no.

SENATOR SCHNEIDERMAN: And through you, Madam President.

THE PRESIDENT: Senator, will you

yield for another question?

SENATOR LaVALLE: Yes.

THE PRESIDENT: Go ahead, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Do the State Police have an electronic system in place, as the federal agencies do through SEVIS, to receive this information if it were to be reported?

SENATOR LaVALLE: I don't believe they have an exact system.

SENATOR SCHNEIDERMAN: Okay. Thank you. I'd like to thank the sponsor for his answers.

On the bill, Madam President.

THE PRESIDENT: You may proceed on the bill, Senator.

SENATOR SCHNEIDERMAN: I think what we have here is an effort to fit a square peg into a round hole. We have a federal system that has been developed at great expense in an effort to prevent there from being a duplication of efforts and to make sure that we have one seamless system in which all information can be shared.

And this is an effort to insert the New York State Police -- for whom I have the highest regard -- into this process when they don't want to be there, they are not equipped to handle the situation, they do not have the electronic system to receive the data, as the federal agencies do. It imposes a burden on our colleges and universities that they clearly don't want.

And I would suggest -- if I may, reading from a document that was produced by the U.S. Immigrations and Customs Enforcement Service -- that this bill runs completely contrary to everything we're trying to accomplish in the federal Department of Homeland Security.

And this is on the website of the U.S. Immigrations and Customs Enforcement Agency. "For 50 years, U.S. educational institutions been required to maintain such information about foreign students studying at their facilities. In the past, this was a decentralized, inefficient and paper-driven system. SEVIS, for the first time, automates and centralizes this data."

That is the goal of the federal government. We're spending billions of dollars on homeland security, we're trying to make sure that people don't slip through the cracks as they did, tragically, before September 11th. And I'm afraid that what we're trying to do here, maybe by showing that the state government, we're getting in on the effort to defend the public also, is really creating problems that the federal government is spending a lot of time and energy trying to correct.

We do not need to tell the federal government how to go about the business of collectivizing the information and ensuring that there's accurate information disseminated as fast as possible to all appropriate agencies. We certainly don't need to impose on colleges and universities the requirement to create a duplicative, paper-driven system that would overlap with the federal system.

I think the answer to this problem clearly is to have the federal government collect the information and then to provide it to any local law enforcement agency they think

needs the information.

And I would suggest that the best route for this might be to have communication with the Department of Homeland Security. Certainly Senator Balboni seems to have all sorts of connections in this area. Maybe we could make an inquiry about sharing this information with local agencies in New York State.

And I would urge that that should include more than the State Police. Obviously in New York City the New York City Police Department is our lead agency.

But this bill imposes burdens on colleges who don't want it, imposes burdens on the State Police, who don't want it, imposes a paper-driven system on everyone while the federal government is spending billions of dollars to get away from this sort of duplicate, paper-driven system. I just think it's an effort to make something happen that the agencies involved will never make happen effectively and efficiently.

And people's lives certainly are affected seriously by such systems. There are

examples that have been cited, since the federal system has been implemented, of students being held in interrogation systems for processing as though they were illegal aliens, when returning to the country, just because of problems with the records.

A student at Washington University in St. Louis was actually held in prison because the school couldn't access the file properly.

This is serious stuff. And we shouldn't be trying to impose systems that really aren't tested and would create problems without a great deal of thought and care.

So I urge everyone to vote no on the bill. Our colleges and universities are suffering enough. We will be hearing in the budget process that they need more money. And according to the estimates of the compliance with the federal system, some colleges and universities have reported already it's costing them hundreds of thousands of dollars each year to comply with the requirement to collect the data and process it for the feds.

We don't need to impose more

burdens. Let's try and make the federal system work and communicate with the federal government to get the information we need. I urge everyone to vote no.

Thank you.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 17 are Senators Breslin, Brown, Diaz, Dilán, Gonzalez, Hassell-Thompson, L. Krueger, Lachman, Mendez, Montgomery, Onorato, Oppenheimer, Parker, Paterson, Sabini, Sampson, Schneiderman, A. Smith, and Stavisky. Also Senator Andrews. Also Senator M. Smith.

Ayes, 39. Nays, 21.

THE PRESIDENT: The bill is passed.

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

SENATOR SKELOS: Madam President,

is there any housekeeping at the desk?

THE PRESIDENT: No, there isn't, Senator.

SENATOR SKELOS: Thank you.

If there's no further business to come before the Senate, I move we adjourn until January 27th at 11:00 a.m.

THE PRESIDENT: On motion, the Senate stands adjourned until Tuesday, January 27th, 11:00 a.m.

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