NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 11, 2004

3:12 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, May 10, the Senate met pursuant to adjournment. The Journal of Saturday, May 8, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could adopt the Resolution Calendar, with the exception of Resolutions 4841 and 4857.

THE PRESIDENT: All those in favor of so adopting the Resolution Calendar please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is so adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, at this time if we could have Resolution 4841, by Senator Maziarz, read in its entirety and then adopt the resolution.

THE PRESIDENT: The Secretary

will read.

THE SECRETARY: By Senator Maziarz, Legislative Resolution Number 4841, honoring Sergeant Kevin D. Mack, of Niagara County, upon the occasion of his designation as the 2004 Deputy of the Year by the New York State Sheriffs' Association.

"WHEREAS, It is the sense of this Legislative Body that the quality and sanctity of community life are cherished values, worthy of safeguarding, and is moved to honor those individuals who serve to preserve and protect them, lauding particularly their unwavering courage and dedication in the daily performance of their duties; and

"WHEREAS, This Legislative body is justly proud to honor Sergeant Kevin D. Mack, of Niagara County, upon the occasion of his designation as the 2004 Deputy of the Year by the New York State Sheriffs' Association, to be commemorated on Tuesday, May 11, 2004, in Albany, New York; and

"WHEREAS, Established in 1977, this award is given annually to a deputy sheriff who has displayed outstanding courage and

heroism in the line of duty; and

"WHEREAS, The incident that Sergeant Kevin D. Mack is being honored for began on the morning of February 9, 2003. It involved a challenging eight-hour search for a gunman and, ultimately, a gun battle which injured two Lockport officers; and

"WHEREAS, Sergeant Kevin D. Mack exhibited extraordinary courage in the face of extreme danger and prevented the suspect from inflicting further damage or escape; and

"WHEREAS, Sergeant Kevin D. Mack, a 22-year member of the Niagara County Sheriff's Office, is honored for preventing the suspect from leaving the scene and continuing his violent behavior; and

"WHEREAS, It is the sense of this Legislative Body that those dedicated public servants who unselfishly devote their lives to the preservation of order and the protection of others are worthy and due full praise for their commitment and noble endeavors; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to honor

Sergeant Kevin D. Mack, of Niagara County, upon the occasion of his designation as the 2004 Deputy of the Year by the New York State Sheriffs' Association; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to Sergeant Kevin D. Mack."

THE PRESIDENT: Senator Maziarz.

SENATOR MAZIARZ: Thank you very much, Madam President.

It's with a great deal of pride and honor that I rise to recognize a constituent of mine, Sergeant Kevin Mack of the Niagara County Sheriff's Department.

February 9, 2003, was a dark day in the history of Niagara County, when an individual went on a rampage, firing wildly, wounding two police officers in the city of Lockport. But Kevin Mack, Sergeant Mack, put his life on the line, blocked the exit of this individual from a densely populated area and prevented him from going out and doing any more damage.

It's, as I said, a great deal of pleasure and honor for me to introduce to all

of you, my colleagues, Sergeant Kevin D. Mack, the New York State Sheriffs' Association Deputy Sheriff of the Year.

Sergeant Mack.

(Applause.)

SENATOR MAZIARZ: Madam President, I'd also like to recognize Kristen Mack, Sergeant Mack's wife; his sons, Corey and Tyler; his father, a retired member of the Niagara County Sheriff's Department, William Mack; his mother, Virginia Mack; and Sheriff Thomas Beilein, sheriff of Niagara County, and Chief Deputy Christopher Carlin.

Thank you very much, Kevin, for the work that you do for the citizens of Niagara County.

Thank you, Madam President.

THE PRESIDENT: All in favor of the resolution please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: At this time if we could have the title read on Resolution 4857, by Senator McGee, and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator McGee, Legislative Resolution Number 4857, urging the New York State Congressional Delegation to ensure that the cleanup of the site at West Valley, New York, is the responsibility of the federal governor and that the Department of Energy should be required to conduct and assume financial responsibility for the entire cost of conducting a complete cleanup at the facilities and premises at West Valley.

ACTING PRESIDENT MORAHAN: Senator McGee.

SENATOR McGEE: Mr. President, I'd like to give a little background, if I may, that indicates the drive behind this particular resolution.

The West Valley nuclear fuel reprocessing facility is a failed attempt to reprocess spent nuclear fuel. This facility

closed in 1972, leaving behind spent fuel rods and thousands of gallons of high-level radioactive waste and severely contaminated facilities and premises.

In 1980, Congress accepted proper responsibility for cleaning up this dangerous waste site by enacting the West Valley Demonstration Project Act and directing the U.S. Department of Energy to solidify the liquid high-level waste, dispose of the waste, and decontaminate and decommission the facility.

The solidification of most of the high-level waste has been completed, but it remains on-site. Over time, the Department of Energy's commitment to a complete cleanup of the site, as required in the West Valley Demonstration Project Act, has declined.

The Department of Energy has recently cut its proposed budget for the project and proposed a substantial reduction in the scope of the cleanup. This reduction poses a serious problem for New York State, not only because of its environmental implications, but also because of the

staggering costs it will impose upon us to clean up all of the contamination that remains.

We must ensure, by virtue of this resolution, that Congress reaffirms its commitment to have the Department of Energy perform a total and complete cleanup of the West Valley facility, as originally provided in the 1980 legislation.

And I would ask that everybody be concerned about this facility, as it impacts New York State and the health and well-being of every member living in New York State.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: All in favor of the resolution say aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed, nay.

(No response.)

ACTING PRESIDENT MORAHAN: The resolution passes.

Senator Skelos.

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

ACTING PRESIDENT MORAHAN: Yes, there are.

SENATOR SKELOS: If we could make them at this time.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: On page 4, Senator Hoffmann moves to discharge, from the Committee on Agriculture, Assembly Bill Number 9470A and substitute it for the identical Senate Bill Number 6197A, First Report Calendar 1067.

On page 28, Senator Morahan moves to discharge, from the Committee on Veterans, Homeland Security and Military Affairs, Assembly Bill Number 10076B and substitute it for the identical Senate Bill Number 3045B, Third Reading Calendar 615.

On page 35, Senator Volker moves to discharge, from the Committee on Education, Assembly Bill Number 9724 and substitute it for the identical Senate Bill Number 6134, Third Reading Calendar 761.

And on page 54, Senator Padavan moves to discharge, from the Committee on

Cities, Assembly Bill Number 9610B and substitute it for the identical Senate Bill Number 6430A, Third Reading Calendar 981.

ACTING PRESIDENT MORAHAN: Substitutions ordered.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President.

On behalf of Senator LaValle, I wish to call up Senate Print Number 924D, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 23, by Senator LaValle, Senate Print 924D, an act to amend the Highway Law.

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

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

SENATOR FUSCHILLO: I now offer the following amendments.

ACTING PRESIDENT MORAHAN: The amendments are received.

SENATOR FUSCHILLO: Mr. President, on behalf of Senator Golden, on page number 50 I offer the following amendments to Calendar Number 946, Senate Print Number 3961A, and ask that said bill retain its place on Third Reading Calendar.

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

SENATOR FUSCHILLO: Mr. President, on behalf of Senator LaValle, on page number 58 I offer the following amendments to Calendar Number 1022, Senate Print Number 282, and ask that said bill retain its place on Third Reading Calendar.

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

SENATOR FUSCHILLO: Mr.

President, on behalf of Senator Golden, on page number 48 I offer the following amendments to Calendar Number 926, Senate Print Number 6655, and ask that said bill retain its place on Third Reading Calendar.

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

SENATOR FUSCHILLO: Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Skelos.

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

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 294, by Senator Leibell, Senate Print 4340, an act to amend the Not-For-Profit Corporation Law, in relation to dissolution.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 7. This

act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 330, by Senator Skelos, Senate Print 2124B, an act to amend the Retirement and Social Security Law, in relation to allowing.

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

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 615, substituted earlier today by the Assembly Committee on Rules, Assembly Print Number 10076B, an act to amend the Executive Law and the Public Health Law, in relation to identification.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 90th day.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 663, by the Assembly Committee on Rules, Assembly Print Number 10967, an act to amend the Estates, Powers and Trusts Law.

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT MORAHAN: The

bill is laid aside for the day.

THE SECRETARY: Calendar Number 681, by Senator Wright, Senate Print 6141A, an act to amend the Agriculture and Markets Law, in relation to food containing milk protein concentrates.

SENATOR SABINI: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 738, by Senator Saland, Senate Print 6178, an act to amend the Criminal Procedure Law, in relation to consideration.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT MORAHAN: The

bill is passed.

THE SECRETARY: Calendar Number 749, by Senator Kuhl, Senate Print 4915, an act to amend the Vehicle and Traffic Law, in relation to knowingly operating.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the first of November.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

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

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 773, by the Senate Committee on Rules, Senate Print Number 3984, an act to amend the General Municipal Law, in relation to bureaus.

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

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 785, by Senator Nozzolio, Senate Print 3216 --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 851, by Senator Morahan, Senate Print 3048, an act to amend the Penal Law, in relation to providing.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 854, by Senator Padavan, Senate Print 5507 --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 921, by Senator Rath, Senate Print 6711, an act to amend the Social Services Law, the Executive Law, and the State Finance Law.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 14. This act shall take effect on the first of December.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 938, by Senator Farley, Senate Print 1070A, an act to amend the Executive Law, in relation to designation of August 7th as Family Day, a day of commemoration.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 52. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number

939, by Senator Trunzo, Senate Print 1777, an act to amend the Executive Law, in relation to requiring state agencies.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 956, by Member of the Assembly Schimminger, Assembly Print Number 10436, an act to amend the Public Officers Law, in relation to indemnification.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call

the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 52. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1053, by Senator Skelos, Senate Print 7198, an act to amend the Real Property Tax Law, in relation to adjusted base proportions.

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

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

SENATOR SKELOS: Can we go to the controversial reading.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 681, by Senator Wright, Senate Print 6141A, an act to amend the Agriculture and Markets Law,

in relation to food containing milk protein concentrates.

SENATOR SABINI: Explanation.

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

SENATOR WRIGHT: Thank you, Mr. President.

The bill amends the ag and market laws relative to labeling for MPCs, or milk protein concentrates. It's very similar in concept to legislation this house and the Assembly adopted unanimously last year, only to be vetoed by the Governor.

The veto was because of some technical definitions that we had in the bill. We have worked with Ag and Markets to resolve those, and therefore are advancing this legislation.

ACTING PRESIDENT MORAHAN: Senator Sabini.

SENATOR SABINI: Mr. President, if the sponsor would yield for a question.

ACTING PRESIDENT MORAHAN: Senator Wright, will you yield?

SENATOR WRIGHT: I will, Mr. President.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR SABINI: My question goes to the concern -- and I raised this concern last year, ultimately voting for similar legislation. But I understand that some of the product that we're seeking to sort of harm is imported from other countries and therefore would, you know, not help New York's dairy industry.

But at the same time, it seems to me that the products that are created with this caseins and protein concentrates and nonfat milk solids, that those products being on the market have helped increase consumption of dairy products.

And are we not in some way, by adding an extra labeling requirement -- and for my colleagues that don't know, dairy products are probably the most labeled products there are, with the exception of wine and spirits -- aren't we hurting the sale of those products by sort of dissuading people

from marketing them?

SENATOR WRIGHT: No, I don't believe we're harming anything. Nor is it our intention, Senator, to harm anything. Our intention is to simply ensure that the product accurately reflects the contents of that product.

SENATOR SABINI: Will the sponsor further yield, Mr. President, through you.

ACTING PRESIDENT MORAHAN: Senator Wright, will you continue to yield?

SENATOR WRIGHT: I will continue to yield.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR SABINI: Could you just tell us what -- outline some of the products that this would affect?

SENATOR WRIGHT: Well, it provides that the food shall be misbranded if it contains milk protein concentrates, caseinates, or added casein and is not labeled as containing such substance.

You will find it in various types of cheeses, processed sauces, spreads, dips,

whipped cream, soups, yogurts, whiteners, imitation milks. The list can go on and on.

SENATOR SABINI: Mr. President, on the bill.

ACTING PRESIDENT MORAHAN: Senator Sabini.

SENATOR SABINI: I had a colloquy last year, I believe, in committee with Senator Hoffmann on this bill as well. And I guess I'm convinced that the merits outweigh the negatives on this.

But I am concerned that in doing this protectionist measure, for lack of a better word, that we are in effect sort of harming the marketing of different dairy products that have helped the dairy industry gain a stronger foothold in America's diet.

So I will support this with reservation. Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Sabini.

Does any other Senator wish to be heard?

The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 785, by Senator Nozzolio, Senate Print 3216, an act to amend the Executive Law and others, in relation to access to records.

SENATOR MONTGOMERY: Explanation.

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

SENATOR NOZZOLIO: Mr. President, who requested the explanation?

ACTING PRESIDENT MORAHAN: I believe it was Senator Montgomery.

SENATOR NOZZOLIO: Thank you, Mr. President. I'd be glad to explain this measure.

The purpose of this bill authorizes the Crime Victims Board to access certain records that are normally sealed -- those are Family Court records and records obtained by the Statewide Central Registry of Child Abuse -- when in fact there is a claim for crime victims compensation.

A catch-22 exists under current law because those who are seeking compensation, those who are victimized by crime seeking compensation from the Crime Victims Board, the Crime Victims Board cannot adequately verify the claim made by the crime victim because the records of the particular tribunal are sealed.

This for the purposes only of obtaining records for compensation by victims. The Crime Victims Board would be able to access those certain records to determine the validity of a crime victim's claim.

ACTING PRESIDENT MORAHAN: Thank you, Senator Nozzolio.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, thank you, Mr. President. I want to comment on the legislation, on the bill.

ACTING PRESIDENT MORAHAN: On the bill.

SENATOR MONTGOMERY: All right.

I thank Senator Nozzolio for that explanation which I requested. And I wanted to just find out if there were any changes in the legislation, and there don't appear to be.

So I have responded to this bill in the past, and I will just reiterate some of the points that I have made prior.

I don't see the relationship between having a sealed record and the Victims Board compensating a person for a crime that has been committed. I wasn't aware that the Crime Victims Board compensates people for something that has been sealed and dispensed with by the courts already.

I do, however, want to point out to my colleagues that this bill goes very, very far in looking to unseal records, particularly of juveniles, where, based on the law that we now have as it relates to sealed records, those records are sealed in order to give young people a second chance, hopefully.

But this bill would provide the

board access to Family Court records in cases where a criminal action or proceeding was resolved in favor of the accused. It would open up records to the board for actions for noncriminal offenses, for youthful offender adjudication cases, a proceeding that where the decision was made in favor of the respondent, as well as any disposition involving a juvenile delinquency proceeding.

Now, these are part of the legislation as delineated in the sponsor's memo and as we find in the legislation. So Senator Nozzolio agrees that he is in fact unsealing -- proposing to unseal records for juveniles in cases where they were even judged not to be guilty or the decision was in favor of that young person.

So it is not really -- I can't figure out what the purpose of this is except to make it much easier for this particular body to open up records that have been sealed by the courts. And since this is a precedent that will be set, it also is a slippery slope, so that we're now going to have various and sundry official public bodies looking to

unseal records.

So I continue to be opposed to this. And I invite my colleagues to join me in voting no on this legislation, because this clearly goes against all that we in our state, and hopefully in our nation, all that we believe to be a promise, that if the court seals a record those records should remain sealed except for a very, very narrow group of officials who may need to have those records unsealed, but certainly not the Crime Victims Board.

Mr. President, I'll vote no on this.

ACTING PRESIDENT MORAHAN: Senator Krueger.

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

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MORAHAN:

Senator Nozzolio yields, Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

So I listened to your explanation and Senator Montgomery's concerns, and I do think I understand why the Crime Victims Board would need to document facts for the victim. But these are sealed records.

So I'm wondering whether -- or what would prevent us from passing an amended version of your bill where the information was redacted as far as the identity of the person. Because in these cases it's not a question of the guilt of the person in the records, because these are sealed records and in many cases they may not have been found guilty.

But rather, from reading your explanation in your memo, the concern is that the board needs information as it was collected by various agencies as to the confirmation of a crime against the victim, not necessarily relevant to who was or was not ever found guilty of the crime. You could have the right to compensation as a victim even if we never found the perpetrator.

So would it not meet the same needs of the Crime Victims Board if these types of documents were redacted as far as the identification of the young person?

SENATOR NOZZOLIO: Thank you for asking that question, Senator.

Through the chair, let me say, Mr. President, that this measure does in fact determine victim eligibility and that the information is to be shared with the Crime Victims Board for the sole purpose of determining whether a victim is eligible for compensation.

It doesn't concern itself with the perpetrator of the crime. That page 2 and 3 of this measure, lines 34 and 35 on page 2, lines 27 and 28 on page 3, deal with the express provision that the Crime Victims Board is seeking this information for the sole purpose of determining victim eligibility.

It's not for publication. It's not for promotion of the perpetrator's experience. It's for the sole purpose of determining whether an individual who is applying to the Crime Victims Board for compensation is in

fact eligible. And this information may very well be the only information that substantiates the case that a claimant -- here, in fact, the crime victim -- is in fact eligible for compensation.

Senator Montgomery's dissertation boggles my mind. That how you could infer that the obtaining of this information, where a crime victim goes before the Crime Victims Board, applies for compensation, the Crime Victims Board currently cannot verify, in circumstances where those court records are sealed, whether or not a victim is in fact a victim. That the information is used under this statute for the express role of the Crime Victims Board to ascertain whether or not a victim is so victimized.

There is no other way that the Crime Victims Board would be seeking that information. And the legislation expressly allows the eligibility of this record to be opened only, in fact, when the applicant to the Crime Victims Board needs that information.

ACTING PRESIDENT MORAHAN: Thank

you, Senator.

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

On the bill, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

I certainly understand the sponsor, Senator Nozzolio's passion about the need to assure that the Crime Victims Board can properly assess victim compensation claims.

But I also don't agree with his analysis of Senator Montgomery's concern for respecting the importance of having laws to seal records, particularly for people who may never have been found guilty of anything.

And while it is true this is not for publication, as Senator Nozzolio said, the broader you open up sealed records to outside sources, even another government entity, the more likely that information is to get out in ways that perhaps no one intended it to.

And again, your answer to my question leads me to believe that an amended version of this bill that redacted the

information about the individual and their identifying numbers, probably Social Security or case numbers, would in fact meet everybody's needs.

The Crime Victims Board would get the kind of records they need to ensure the facts of the actual crime against the victim. The person or people who had sealed records under existing laws that are there for good reasons would not have to fear that information that is sealed and should be sealed got out in various ways, that there's no need to get those materials out there to the public or to others who ought not have it.

And that we could come to an agreement on this bill, a bill that doesn't yet have an Assembly sponsor and apparently has been discussed here off and on since 1993, that we might actually be able to get an agreement between the two houses if we considered redacting the personal information on the sealed records, and it might meet everyone's needs.

So I will vote for your bill, Senator Nozzolio, as I voted for it last year,

but would like again to go on the record and urge you to consider an amendment to redact the information about the individual identities in sealed records, in hopes that your goal of getting a law passed in two houses might be accomplished if we explored this option.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Krueger.

Does any other Senator wish to be heard on the bill?

Read the last section.

THE SECRETARY: Section 9. This act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President.

I would just like to reiterate that

based on the memo from the sponsor of the bill, we're talking here cases that were terminated in noncriminal proceedings. We're also talking about convictions for noncriminal offenses. We're talking about unsealing records following a youthful offender adjudication -- proceedings in favor of the respondent.

So by virtue of this, the explanation in the memo from our sponsor, there's clearly an intent to unseal records even in cases where there was no crime committed.

So in those instances in particular, there would not be eligibility, obviously. So I think that this goes far -- we need to think about this very carefully.

And no matter whatever people say about how neutral these bills are, these bills are always to help someone. But by the same token, they hurt a lot of other people. And many of those people who are going to be hurt by this process, this door opening, are going to be people who live in my district and other districts like mine, especially in urban areas

around this state.

So I absolutely reject the notion that this is simply to help the crime victim. Because clearly the legislation seeks to open records which have been sealed and there was no crime involved.

So, Mr. President, I vote no.

ACTING PRESIDENT MORAHAN: Senator Montgomery will be recorded in the negative.

Senator Volker, to explain his vote.

SENATOR VOLKER: To explain my vote.

Senator, I think you're absolutely right. It will hurt some people in your district if this didn't happen, because most of the people that commit crimes in your district of this nature commit it on your constituents.

The problem here with what you're saying is that you won't let the Crime Victims Board see that there has been a wrong done to a person. Whether the person is exonerated or not, the records will show that a victim of a

crime, even -- because one of the things you have to recognize is in our society a lot of people who commit crimes don't get convicted. They still committed crimes. It's no secret.

The problem is if we don't do this sort of thing and it has happened, a lot of victims cannot collect. And that's wrong. The only reason for unsealing has nothing to do with the criminal or the victims or whatever it is, it's to help the people who got hurt.

Why should we, in a situation such as where -- and most people -- and this is New York City. And in New York City it's no secret that everything is pled out. Seriously. I mean, it's -- so that a lot of people who are victimized can't collect anything. And that's wrong. That's why we have a crime victims fund. This has nothing to do with the criminals themselves or noncriminals or the -- this has to do with the victims.

And I'm afraid, Senator, that you're going to find out that it's your constituents, just as mine and yours, who get

victimized by the fact that we can't get to this information. Not because we want to know who did it, but because we want to know what was done and be able to have people who were victimized compensated.

And that's what this is all about. It's not about opening up records. It's about allowing victimized people, whether the person is convicted or not or whether they get youthful offender or whatever it is, to be able to be compensated.

I vote aye.

SENATOR MONTGOMERY: Mr. President, I would just like to respond.

ACTING PRESIDENT MORAHAN: Senator, you've already explained your vote.

SENATOR SKELOS: I believe Senator Montgomery has explained her vote.

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 785 are Senators Andrews, Brown, Dilán, Hassell-Thompson, and Montgomery. Ayes, 54. Nays, 5.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 854, by Senator Padavan, Senate Print 5507, an act to amend --

SENATOR SCHNEIDERMAN: Explanation.

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 1053, by Senator Skelos, Senate Print 7198, an act to amend the Real Property Tax Law --

SENATOR LIZ KRUEGER: Explanation, please.

ACTING PRESIDENT MORAHAN: Senator Skelos, an explanation has been asked for by Senator Krueger.

SENATOR SKELOS: Thank you, Mr. President.

This bill was introduced at the request of the City of Long Beach to allow the city to reduce the shift of their two classes, which is currently occurring, limit it from

5 percent to 1 percent. Very similar to what is done for New York City and Nassau County. This would apply to the City of Long Beach.

ACTING PRESIDENT MORAHAN: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President. If the sponsor would please yield.

ACTING PRESIDENT MORAHAN: Senator Skelos, will you yield?

SENATOR SKELOS: I do.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

Senator, about a month ago, maybe less, we passed another bill that was for Nassau County, and it limited to a 2 percent increase.

And so what confused me was this appeared to be a parallel type of bill for just a smaller area of Nassau County, but in that town, I believe you just said, Long Beach. It's just one town, as I understand from your explanation.

SENATOR SKELOS: City. Long

Beach is a city.

SENATOR LIZ KRUEGER: One city, excuse me. Their adjustment would go up no more than 1 percent. Why 1 percent for them and 2 percent for the rest of --

SENATOR SKELOS: Because the school districts requested 2 percent and the City of Long Beach requested 1 percent.

SENATOR LIZ KRUEGER: Thank you.

Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT MORAHAN: Senator Skelos, will you continue to yield?

SENATOR SKELOS: Yes, I do.

ACTING PRESIDENT MORAHAN: Senator Krueger, he yields.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

I also understand, either from the memo -- I believe from the memo that there would be no fiscal implications from this change. I would think every time we change a tax rate or an assessment rate, somebody has a fiscal -- that there's an implication for somebody at the fiscal level, local, I would

assume. Could you clarify why there's no fiscal effect from this bill, fiscal impact?

SENATOR SKELOS: Could you restate that?

SENATOR LIZ KRUEGER: Sure. I apologize. Mr. President, through you, I'm just pulling open the memo. Excuse me.

SENATOR SKELOS: Senator Krueger, this has been requested by the city manager of the City of Long Beach. And I have the letter right here, if you'd like to look at it.

SENATOR LIZ KRUEGER: I appreciate it.

To clarify my question, Mr. President, the memo on the bill said that there's no fiscal implication for the locality. And I would assume, when you change an assessment and a tax rate, that there would be a fiscal assessment.

I'm not debating that the locality may have asked for it. I just make the assumption that we should double-check that there would be some fiscal impact from changing an assessment rate for a locality.

SENATOR SKELOS: It's the same

amount of money that the locality will be receiving, if that's your question. It just will be distributed differently between the two classes.

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

ACTING PRESIDENT MORAHAN: Thank you, Senator Krueger.

Thank you, Senator Skelos.

Any other Senator wish to be heard?

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MORAHAN: The bill is passed.

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

ACTING PRESIDENT MORAHAN: Senator Skelos, there is no housekeeping at

the desk.

SENATOR SKELOS: There being no further business to come before the Senate, I move we stand adjourned until Wednesday, May 12th, at 11:00 a.m.

ACTING PRESIDENT MORAHAN: On motion by Senator Skelos, the Senate will stand adjourned until Wednesday, May 12th, at 11:00 a.m.

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