NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

June 2, 2004

3:07 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: Reverend Edward Rizzo has joined us this afternoon. He's pastor of Gospel Community Church in West Sayville, and he will give an invocation.

REVEREND RIZZO: I just ask that you bow your heads, if you will.

Father, we thank You as we come to You this day. And we thank You that your Scriptures remind us that there is no power but of God and that the powers that there be are ordained of God.

And we thank You that You have ordained marriage and the family. We thank You that You have ordained church, and we thank You that You have ordained government.

And, Father, the Book of Esther reminds us that You chose her to come into the

Kingdom on a day just as this, O God, for a time just as this.

And, Lord, we thank You now for these Senators that You've called into government for a time as this. We ask You to give them courage to do that which is right and righteous in God's sight.

Lord, we ask You to give them strength, strength that they might even be able to go against the policies and the thoughts of even public opinion.

And, Father, we ask You to give them wisdom, the wisdom of Solomon, that they might rescue the fallen family even now, O God. Father, we ask You to give them the wisdom to rescue even those that are innocent, especially the unborn as we stand here.

And, Father, we thank You for all You're doing in the midst of all we see in the world. We ask You to bless the Senators now, men and women here, O God. We ask You to bless them richly with all this that we've asked.

And, Father, we thank You now in the precious name of the one that we believe

gave his life for us. His name is Jesus.

Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, June 1st, the Senate met pursuant to adjournment. The Journal of Monday, May 31st, 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.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

Amendments are offered to the following Third Reading Calendar bills:

Sponsored by Senator Rath, page number 23, Calendar Number 556, Senate Print

Number 6129;

By Senator Rath, page number 23, Calendar Number 557, Senate Print Number 6131;

Sponsored by Senator McGee, page number 48, Calendar Number 1020, Senate Print Number 7010;

Sponsored by Senator Bonacic, page number 81, Calendar Number 1338, Senate Print Number 5449.

I now move that these bills retain their place on the order of Third Reading Calendar.

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

Senator Bruno.

SENATOR BRUNO: Madam President, I believe that there is a privileged resolution at the desk by Senator Skelos. I would ask that it now be read in its entirety and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senators Skelos, Bruno, Hannon and Meier, Legislative

Resolution Number 5313, urging New York State's United States Senators and members of the United States House of Representatives to pursue a more equitable federal Medicaid reimbursement for New York State.

"WHEREAS, It is the sense of this Legislative Body to effectuate public policies that best serve the people of New York State; and

"WHEREAS, Medicaid is a federal program requiring the states to provide comprehensive health care to their disadvantaged and disabled residents; and

"WHEREAS, Notwithstanding a temporary 3 percent increase, the federal government reimburses 50 percent of New York State's Medicaid-eligible expenditures, and New York State requires an aggregate 15 percent contribution from its county governments; and

"WHEREAS, New York State's reimbursement from the federal government is lower than 39 other states and the District of Columbia; and

"WHEREAS, The existing

reimbursement mechanism is solely based on a state's relative wealth, while failing to incorporate other salient factors, including cost of living, cost of care, and concentrated need; and

"WHEREAS, Similar states like Florida, Michigan and Pennsylvania are reimbursed at a higher percentage for their Medicaid-eligible expenditures than New York State, and others, like Arkansas, enjoy a reimbursement level in excess of 70 percent; and

"WHEREAS, Escalating health care costs, generally, have generated precipitous increases in Medicaid's programmatic expenses; and

"WHEREAS, Medicaid's rising programmatic expenses have imposed a tremendous burden on both the New York State budget and budgets adopted by its various counties; and

"WHEREAS, The adoption of a more equitable federal Medicaid reimbursement methodology would increase New York State's reimbursement level and enable New York State

to alleviate county budgetary pressures; and

"WHEREAS, Such action would augment this Legislative Body's ongoing effort to reduce the Medicaid program's cost and achieve new efficiencies; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to urge New York State's representatives in the United States Congress to pursue a federal Medicaid reimbursement mechanism that more appropriately reflects New York State's true circumstances; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to New York State's two United States Senators and 29 members of the United States House of Representatives."

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President, thank you.

I want to really commend Senator Skelos for his leadership on this critical issue of really calling to the federal government's attention how they have disadvantaged the people of New York State.

It is inequitable. It is unfair.

In June, this house created a Medicaid reform task force. We have 40 recommendations, and many of them hopefully will be implemented. And the bottom line is to provide a quality of health care that the citizens of this state deserve in a way that is affordable.

It isn't as if the counties in New York and the people of New York haven't been paying their fair share. We heard in the resolution that New York State gets reimbursed less than 39 other states. Now, that is just wrong. Something like 28 counties in this state had to raise taxes over 10 percent to pay escalating Medicaid costs.

Costs of long-term care here in this state in the average are like $70,000 a year; 39 percent increase in prescription drugs that people have to have just to stay well and get well.

So we're appealing, through Senator Skelos's resolution, to our delegation -- the Senators, Congressional people -- to the White House, to all of the people that serve in

Washington, for equity and fairness for the people of New York, with a recognition that we are presently paying twice the national average. I believe it approaches $1,400 per citizen here in this state, versus a national average of half that amount, a little under $700.

Senators Meier and Hannon cochaired, with other members serving, to do something about these escalating costs. So this is an appeal for equity, for fairness for all the people of New York.

And again, I applaud Senator Skelos for his leadership, recognizing that there in Nassau County, on the Island, escalating costs are truly prohibitive and we are mandated that we provide a quality of health care that each and every citizen of this state deserves.

Thank you for your support. And thank you, Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Thank you very much, Madam President.

And thank you, Senator Bruno, number one, for establishing the task force

this past June and the great service of Senators Hannon and Meier, the members of the task force, I know Minority Leader David Paterson -- truly a bipartisan task force.

You know, a distinguished U.S. Senator, Patrick Moynihan, always pointed out through his years in office that New York State was really gypped by the federal government, that we did not get anywhere near the amount of money back that we had sent to Washington.

One of the principal causes of this disparity is really the Medicaid reimbursement formula that fails to take into consideration New York State's higher regional costs and New York City's concentrated needs.

Today's resolution really just calls upon our representatives in Washington to point out how we are being shortchanged in New York State and help us resolve an issue that has generated the concern of local elected officials and editorial boards.

Unfortunately, what is not mentioned by many of the elected officials and the editorial boards -- and the truth is that

Medicaid is not an unfunded mandate on local governments, it's an underfunded federal mandate on New York State.

Despite our higher costs and greater need, New York State receives the minimum 50 percent federal reimbursement. I believe this year it's 53 percent. That places us at the bottom 20 percent of states, far below those like Arkansas, that receives well in excess of 70 percent.

Our predecessors in the Legislature in the early '60s -- Senator Marchi was there -- created a Medicaid program that provided comprehensive care to those in need. And they also enabled county governments to assess local sales taxes to pay their aggregate 15 percent share. And because of the rising cost of health care, we've provided, as a Legislature, additional relief through targeted state aid, overburden aid.

We also proposed a bipartisan set of reforms, that Senator Bruno mentioned, to rein in the cost and achieve new efficiencies. But that is really only half the equation. We need help from Washington.

Some have proposed a state takeover of all or part of Medicaid's local costs. Now, this may be attractive, but it fails to recognize the disproportionate burden it would impose on taxpayers in different regions of the state and regional strife that would follow.

It also fails to recognize that county governments are the administrators of this program, serving as the first line of defense against fraud and abuse. Such a state takeover or cap would remove any incentive to control costs and produce an even larger burden in the future.

Now, we are one state, and we need a comprehensive solution. Through the hard work of Senator Hannon and Senator Meier, and the involvement of Minority Leader David Paterson, the Senate, the whole Senate has put forth a bipartisan, a bipartisan plan to lower costs. This was an important first step.

Now we must obtain New York State's fair share from the federal government. Simple math indicates that even a modest increase to a 56.5 percent reimbursement this

year, this raise would bring us to the same level as Florida and Michigan, would allow us to pass almost $3 billion in budget relief to local governments, or reduce their share by roughly 43 percent -- up from 50 percent to 56.5 percent.

Combined with the savings outlined by the Medicaid reform task force, we could alleviate the budgetary pressures facing so many of our counties and also the state.

I cannot overstate -- and I thank you, Senator Bruno, for allowing this resolution to come to a vote -- how important it is that our federal representatives, that the federal government steps to the plate and they understand the need that New York State has for a higher reimbursement rate to alleviate the tax burden on our local governments, to alleviate a burden on the state government, but also to maintain quality of care for those who need it.

THE PRESIDENT: Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

I rise to support this resolution and to thank my colleague Senator Skelos for taking a leadership position on this very important procedure, and to thank Senator Bruno for throwing his support behind this important measure.

The people of this state are in need of assistance, and especially in the districts where I live, where Medicaid funding and Medicaid payout is increasing along with the cost of health care overall. Medicaid was designed to take care of people in need, not put people into need.

And the way the program is funded today, with a lack of funding coming from the federal government, we need more help. Our counties statewide are in trouble, as Senator Skelos pointed out. I don't want to repeat all the numbers, but he has them and he's perfectly correct in his research and his statement, and I support it.

And I think we should all rise up and reach out to our federally elected officials and say, help us in Washington and get the proper amount of aid to this state

that is richly deserved.

Most of the money for Medicaid goes to senior citizens for long-term care. So when people tell us you should cut programs, you should cut Medicaid, where are we going to cut? We're going to be cutting those people who are in most need. And then the very young who are in most need.

So it's very difficult to say cut, cut, cut on something like this. This is a most important program for people who truly require it.

What we need is assistance from the federal government. And we're not looking for a total takeover, we're just looking for a little help. And if they can come out and, as the Senator pointed out, just give us a slight bump in the federal numbers, that will go a long way to providing tax relief to our counties and municipalities, something they are in dire need of.

So, once again, I urge our federal officials to support this measure, and I thank Senator Skelos again for his leadership position on this project.

THE PRESIDENT: Senator Breslin.

SENATOR BRESLIN: Thank you, Madam President.

I too salute Senator Skelos for his initiative with this resolution, and to Senator Bruno, who allowed a joint task force to be formed and operate that included our Minority Leader, David Paterson.

Because this is not a partisan issue. This is an issue of being shortchanged by the federal government. They look at the incomes of states, where they really should be looking at the poverty of states.

And the poverty of New York, with a poverty rate in excess of 11 percent -- in a report issued by the Democratic minority, if they switched it to the poverty, which is the real cause, we could save over a billion dollars a year. A billion dollars a year, as Senator Skelos so aptly pointed out, would do much to eliminate this financial crisis.

And we look to our 62 counties and what they have to do in raising taxes. And as Senator Bruno aptly pointed out, 39 of which had double-digit tax increases.

And in Albany County, the county that I represent, the entire property tax falls short, falls short of covering just Medicaid. It's still $14 million short. And where is that burden placed? As Senator Marcellino pointed out, it's on the backs of the middle class and the poor, who are homeowners on fixed incomes, and creating a need for them.

So we should continue to make this a bipartisan issue and continue to call out to the federal government to be fair in the way it treats Medicaid universally. So for that reason, I hope all of us in this house join in this resolution in a very nonpartisan way.

Thank you, Madam President.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, I rise to support the resolution.

I think every county is going through the same thing at this point in time. Our county happens to be calling for a 1 percent increase in the sales tax, which affects everyone, poor and not-so-poor alike,

but the main burden goes on those individuals on a fixed income.

The reason they're raising the tax is because of -- that they want to raise the tax, to get our approval, is because of the escalating costs of Medicaid.

We definitely should have our fair share. It's just not right that we are not getting our fair share. How could we be the 37th state as far as the percentages of Medicaid to be given out?

Secondly, Senator Bruno rightfully mentioned the 40 reform proposals that are out there from the Senate task force. We also have an obligation to enact some of those reforms, both houses. Because we cannot keep passing these costs down to local government. We just cannot do it.

So hopefully everyone will be able to sponsor this bill, and hopefully the message will get to Washington loud and clear that we need assistance. And hopefully we'll show our good faith by trying to curb some of the excesses of costs in the system that we have in our state.

THE PRESIDENT: Senator Meier.

SENATOR MEIER: Thank you, Madam President.

And I also want to thank Senator Skelos for pointing out that there is a third partner who is sometimes overlooked in this whole Medicaid program. Medicaid in New York is a federal, state, and local partnership.

Now, the Legislature, of course, is composed of two houses, and right now this Senate is a house of this Legislature in search of a partner. We put together, under Senator Bruno's leadership, a joint, a bipartisan task force on Medicaid reform. There are over 40 specific recommendations. The Minority also proposed some additional recommendations in addition to those contained in the major task force report.

And one of the interesting things about the task force report is we really did depart from the same old tired debate about Medicaid.

There's an old saying -- I wish I had said it; I didn't -- that the definition of insanity is doing the same thing over and

over again and expecting a different result.

This report departs from asking the same question over and over again and doing the same thing over and over again. We identify some very specific savings that can be obtained in this system without depriving a single New Yorker of health care.

For example, the nursing home industry itself comes to us and tell us that at least 10 percent and perhaps 20 of percent of the people who now languish in nursing home beds could be moved into a less restrictive, more satisfying to them individually, and less expensive method of care.

What we need to do is to pass legislation that frees up the funding stream and frees up the regulatory environment. When you have a funding stream and a regulatory environment that promotes nursing home beds, guess what? You get nursing home beds.

We have a system right now where sick people who can afford no other way to obtain health care than to go to Medicaid obtain their health care in a very fragmented and ad hoc kind of way. The emergency room

many times is the primary care provider of choice for these folks.

The private sector has successfully employed a concept called disease management, which is not a way that bean-counters use to take health care away from people, but it's a way to give good health care and to manage conditions before they become full-blown and more expensive.

The Senate Majority and Minority together have a proposal. The Minority has some additional proposals. Other Majority members on this side have introduced bills as well. The Governor had a task force and a working group that issued a report. And we hear from the other side, from the Majority in the other house, so far silence.

This is an opportunity this year that we cannot miss. It is time for the federal government to step up to the plate and to recognize the uniqueness of New York. Yes, we do have concentrations of wealth, but we also have a unique kind of state. We have the vast urban area of the city of New York and vast rural areas in upstate New York where

delivering health care is very problematic because of lack of resources and distances. We have a concentration of elderly. We have a concentration of people who suffer with HIV and with disabilities, you name it. The federal government needs to step up to the plate.

We need to find a partner in the Assembly as we negotiate this budget and close out this session to make health care under Medicaid more affordable and to meet our responsibility to our partners in local government, to the poor who rely on Medicaid for health care and deserve decent and humane health care, and to the taxpayers at both the state and local level who foot the bill.

This is the year to do it. It is an opportunity that we dare not miss.

Thank you, Madam President.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

I think all here are in agreement that the federal government should treat

New York more fairly. I hope my Republican colleagues will lobby their president. And we pledge over here that starting in January, we will lobby our president to address this issue.

And I'm also sure that as we send new representatives to Washington, Senator Kuhl and others will hopefully resolve this issue.

I would like to note, because the minority is happy to participate in efforts like this, it was very, very gracious of Senator Bruno to appoint Senator Paterson.

I would like to note, however, that it was in fact in Senator Paterson's minority report on this issue that the issue that most of us are talking about today, increasing the federal reimbursement rate based on poverty, not income, was raised. And that would result in a reimbursement rate of 57 percent.

So I think that the issue has been raised by both parties now, and I do hope that we can move forward. And I would urge that as we move forward on issues such as this, further bipartisan cooperation in this house

is always welcome. I hope that we will get results from Washington, and I hope we will get some results by both houses of the Legislature before this session is out.

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: Madam President, I'd like to open up the resolution for sponsorship. If anybody does not wish to sponsor the resolution, they should notify the desk.

THE PRESIDENT: Any member who does not want to sponsor the last resolution, please notify the desk.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could adopt the Resolution Calendar, with the exception of Resolutions 5292 and

5310.

THE PRESIDENT: All 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: At this time if we could have Resolution 5292, by Senator Stachowski, read in its entirety and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Stachowski, Legislative Resolution Number 5292, congratulating the St. Francis Varsity Football Team and Coach Jerry Smith upon the occasion of capturing its fourth consecutive MMAA League 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, The St. Francis Varsity Football Team are the MMAA League Champions for the fourth consecutive year. In addition, it finished with a 9 and 2 record and was voted the Number 1 team in Western New York by the coaches of the section; and

"WHEREAS, The athletic talent displayed by this team is due in great part to the efforts of Coach Jerry Smith 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 St. St. Varsity Football Team, from the opening game of the season to participation in the championship, 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 Jerry Smith and his dedicated 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 Jerry Smith and his 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 St. Francis Varsity Football Team, its members -- Zak Kedron, Ralph Pignataro, Chad Beers, Doug Worthington, Chas Moore, Erick Coins, Pasquale Raimondo, Kevin Rautenstrauch, Chris Murphy, Kyle Scritchfield, Matt Friedman, Dan Marmion, Illio DiPaolo, Andy Schichtel, George Sisson, Ryan Parker, Brent Titus, Pat Haidon, Vince DeMarco, Rick Janiszeski, Sean Trapper, Mickey Barr, Jim King, Geoff Michalek, Kevin Thie, Joshua Bauman, Joe Glomb, Jordan Lambert, Ed Bashan, Adam Urbanczyk, Bill Haas, Joshua Schneider, Darryl Purucker, Alex Handzlik, Mike Hymes, Mark Dulak, Jeremy Seneca, Evan Krug, Mike Strycharz, Andrew Garrigan, Chris Smith, Bill Travis, Colin Casey, Kevin Jewett, and James O'Connor -- Assistant Coaches John Scibetta, Joe Volpe, Steve Otremba, Dennis DiPaolo, Jim DeMarco, and William Stachowski, and Coach Jerry Smith on their outstanding season and overall team record; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the St. Francis Varsity Football Team and to Coach Jerry Smith."

THE PRESIDENT: Senator Stachowski.

SENATOR STACHOWSKI: Just briefly, we heard football team after football team all year. And actually I was reluctant to put this one in, but their banquet is tomorrow, and I figured I'd better take them a resolution back.

But they were number one in Western New York. And you'd say: Well, jeez, they didn't do well in the state playoffs. Well, that's only because we're not allowed to play in them. In Section 6, the Catholic schools aren't allowed to participate with the public schools in the sectionals.

So, you know, we'd like to have a situation like Rochester, where even if they wouldn't play us during the year, they would put us in the playoffs. And we would have been happy with that.

And you say: Well, you were 9 and

2. Yeah, but the two losses were in Pennsylvania, to two of their teams that made the state playoffs, and both did pretty well in the state playoffs.

So it was a pretty interesting group of young men, as good as any I've seen this year. We did play teams from other areas. Obviously Aquinas had a bad year and they were not a challenge this year. They were good other years. And we played Union-Endicott, and they made the playoffs. And they won't play us again next year, even though they were supposed to, because the experience wasn't good for them.

But I just wanted to congratulate Coach Smith and all the young men that played there and at least give their season the recognition that I thought this body should give it.

Thank you.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed,

nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, Resolution 5310, by Senator Alesi, is at the desk. If we could have the title read and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Alesi, Legislative Resolution Number 5310, memorializing Governor George E. Pataki to proclaim September 12 through 18, 2004, as Local Chamber of Commerce Week in the State of New York.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The

resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, Senator Alesi would like to open the resolution for sponsorship. If anybody wishes not to sponsor the resolution, they should notify the desk.

ACTING PRESIDENT McGEE: The resolution is open for cosponsorship. If you do not wish to be a cosponsor, please notify the desk.

Senator Skelos.

SENATOR SKELOS: I believe Senator Smith has a motion.

ACTING PRESIDENT McGEE: Senator Ada Smith.

SENATOR ADA SMITH: Thank you, Madam President.

On behalf of Senator Breslin, on page number 74 I offer the following amendments to Calendar Number 1336, Senate Print Number 4972, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT McGEE: The

amendments are received and adopted, and the bill will retain its place on Third Reading Calendar.

Thank you, Senator Ada Smith.

SENATOR ADA SMITH: Thank you.

ACTING PRESIDENT McGEE: Senator Bonacic.

SENATOR BONACIC: Thank you, Madam President.

I wish to call up my bill, Print Number 4443, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 342, by Senator Bonacic, Senate Print 4443, an act to amend the Tax Law.

ACTING PRESIDENT McGEE: Senator Bonacic.

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

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: Senator Bonacic.

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

ACTING PRESIDENT McGEE: The amendments are received.

SENATOR BONACIC: Thank you.

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Madam President, if we could return to reports of standing committees.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Senator DeFrancisco, from the Committee on Judiciary, reports the following nomination:

As a judge of the Rockland County Family Court, Rachelle C. Kaufman, of New City.

ACTING PRESIDENT McGEE: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, I proudly rise to move the nomination of Rachelle C. Kaufman, of New City, as a judge of the Rockland County Family Court.

And I'm moving on behalf of Senator Morahan, who did call my office today and indicated his regrets for not being here. And the judge is aware of the serious situation that kept him back home.

Governor Pataki again submitted a name to us that we all should be proud to confirm today. Despite her relatively short career -- I'm computing she may be the age of my son. But the fact of the matter is that her twelve-year career in the law has been an incredible twelve years of public service.

Assistant district attorney for the district attorney's office and then many years in -- most of the years in Family Court. Senior court attorney to the Honorable Margaret Garvey, who she will be replacing -- that's a Family Court judge -- for five years, principal law clerk to a Supreme Court judge, acting village judge, and now a support magistrate.

A special person is this individual to want to take on the rigors of one of the toughest courts, the Family Court, where sometimes the issues are sometimes not resolvable or not resolvable with a lot of problems over many years. So I'm proud to be able to move the nomination of soon-to-be Judge Kaufman.

And I would like to just mention that she is accompanied today by her husband, Glenn; her daughter, Lauren, who is asleep, I think. She was sleeping there; mother, Camille Congemi; father-in-law, Henry Kaufman; sister and brother-in-law, Lenore and Brian Robins.

Thank you, Madam President.

ACTING PRESIDENT McGEE: The question is on the confirmation of Judge Rachelle Kaufman, of New City, as a judge of the Rockland County Family Court. All in favor will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The nominee is confirmed.

(Applause.)

ACTING PRESIDENT McGEE: Your Honor, on behalf of the Senate and on behalf of all of us here, let us extend our congratulations and best wishes to you and your family on your appointment. Thank you.

Senator Skelos.

SENATOR SKELOS: Madam President, I believe there's a substitution at the desk, if we could make it at this time.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: On page 21, Senator Maltese moves to discharge, from the Committee on Rules, Assembly Bill Number 9573 and substitute it for the identical Senate Bill Number 6375, Third Reading Calendar 482.

ACTING PRESIDENT McGEE: Substitution ordered.

Senator Seward.

SENATOR SEWARD: Yes, Madam President. On page 35 I offer the following amendments to Calendar Number 833, Senate

Print Number 6962, and ask that the said bill retain its place on the Third Reading Calendar.

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

Senator Skelos.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Rules Committee in the Majority Conference Room.

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

Senator Skelos.

SENATOR SKELOS: And if we could go to the noncontroversial reading of the calendar.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 106, by Senator Bonacic, Senate Print 4327, an act to amend the Public Authorities Law, in relation to the power of the State of New York

Mortgage Agency.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 165, by Senator Skelos, Senate Print 3925A, an act to amend the Correction Law, in relation to the registration of sex offenders.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the 120th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55. Nays, 2. Senators Duane and Montgomery recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 230, by Senator Maltese, Senate Print 1180A, an act to amend the General Municipal Law, in relation to certain lung disabilities.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 265, by Senator Flanagan, Senate Print 3581A, an act to amend the Public Health Law and the Correction Law, in relation to requiring.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the 30th day.

ACTING PRESIDENT McGEE: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 301, by Senator Skelos, Senate Print 5902B, an act to amend the Limited Liability Company Law, the Partnership Law, the General Construction Law and others, in relation to publication.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 23. This act shall take effect on the first day of the first month which commences not less than 90 days.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 389, by Senator Padavan, Senate Print 6120A,

an act to amend the Executive Law, in relation to extending.

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 729, by Senator Libous, Senate Print 2355A, an act to amend the Penal Law, in relation to increasing the penalties.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the first of November.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 774, by Senator Breslin, Senate Print 6238, an act to amend the Town Law, in relation to including the Schuyler Heights Fire District.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 859, by Senator Little, Senate Print 5722A, an act to amend the Tax Law, in relation to authorizing the County of Essex.

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

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 860, by Senator Little, Senate Print 6267B, an act to authorize the Commissioner of General Services to convey certain unappropriated state lands.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 912, by Senator Robach, Senate Print 6503, an act to amend the Retirement and Social Security Law, in relation to adjusting.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 926, by Senator Golden, Senate Print 6655B, an act to amend the Education Law, in relation to crediting of student progress.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 931, by Senator Kuhl, Senate Print --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number

951, by Senator Larkin, Senate Print 6015A, an act to amend the Vehicle and Traffic Law, in relation to fees and charges.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 985, by Senator Trunzo, Senate Print 6548A, an act to amend the Public Authorities Law, in relation to the Islip Resource Recovery Agency Act.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1051, by Senator LaValle, Senate Print 6901A, an act authorizing the assessor of the Town of Southold, County of Suffolk.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Bonacic recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1148, by Senator Balboni, Senate Print 4746A, an act to amend the Military Law, in relation to the waiving of filing fees.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1178, by Senator Seward, Senate Print 6474A, an act to amend the Insurance Law, in relation to excess line insurance policies.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1185, by Senator Kuhl, Senate Print 2581, an act to amend Parks, Recreation and Historic Preservation Law and the General Municipal

Law, in relation to authorizing.

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1192, by Senator Alesi, Senate Print 44, an act to amend the Public Health Law, in relation to mandatory reporting of abuse.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1217, by Senator Nozzolio, Senate Print 5312A, an act authorizing the conveyance of certain state lands to Donald E. Green, in exchange.

ACTING PRESIDENT McGEE: Read the

last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1220, by Senator DeFrancisco, Senate Print 6087, an act to amend the Tax Law, in relation to allowing a taxpayer carrying on business.

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1224, by Senator Volker, Senate Print 6522, an act to authorize the City of Buffalo to transfer certain parkland.

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

Read the last section.

THE SECRETARY: Section 4. This

act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1310, by Senator Rath, Senate Print 6763, an act to amend Chapter 479 of the Laws of 2001, amending the State Administrative Procedure Act.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1335, by Senator Johnson, Senate Print 4768, an act authorizing the assessor of the Town of

Islip to accept an application.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Bonacic recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1359, by Senator Fuschillo, Senate Print 7108, an act to authorize the Neighborhood Assembly of God of Nassau County.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Bonacic recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President.

I rise to request unanimous consent to be recorded in the negative on 1185.

ACTING PRESIDENT McGEE: Senator, that bill was laid aside. So that will give you the opportunity to vote against it as you wish.

SENATOR HASSELL-THOMPSON: Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Kuhl.

SENATOR KUHL: Yes, Madam President. Can we move to reconsider the vote by which Calendar Number 912 passed the house.

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

(The Secretary called the roll.)

THE SECRETARY: Calendar Number 912, by Senator Robach, Senate Print 6503, an act to amend the Retirement and Social

Security Law.

ACTING PRESIDENT McGEE: Senator Kuhl.

SENATOR KUHL: Can we lay that bill aside for the day.

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

SENATOR KUHL: Now could we have the controversial reading of the calendar, Madam President. But can we start with Calendar Number 931.

The person who laid aside Senator Padavan's bill, 389, is out of the house at the moment at Rules Committee. So can we start with Calendar Number 931 and then proceed.

ACTING PRESIDENT McGEE: Thank you, Senator Kuhl.

May we call the roll on reconsideration first, please, Calendar Number 912.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

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

THE SECRETARY: Calendar Number 931, by Senator Kuhl, Senate Print 743, an act to amend the Agriculture and Markets Law and the Vehicle and Traffic Law.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR KUHL: Thank you, Madam President.

This bill, very simply stated, would exempt farm-plated vehicles from the Motor Vehicle Identification Act, which included them in coverage, which was adopted by this Legislature back in 1994.

ACTING PRESIDENT McGEE: Senator Schneiderman.

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

ACTING PRESIDENT McGEE: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: This bill has come before us before, and we've discussed it. The reason that I voted against it last year, as did many of my colleagues, has not

been corrected in this year's version of the bill.

And the reason is really very, very simple. There is no requirement in this legislation that any sort of umbrella liability policy for farmers who are the owners of the vehicles at issue provide insurance for those vehicles.

This legislation would exempt an entire category of vehicles that travel frequently on New York's roads from the requirement that they have insurance coverage, as every other vehicle in the state is required to have.

There clearly is a situation here that could be addressed, I believe, by a modified bill. The supporters of the bill argue that farm vehicles are frequently covered for liability purposes under umbrella policies carried by farms to insure tractors and other farm equipment. But once again, this year's bill does not have any requirement that those sorts of umbrella policies cover these vehicles.

I think a modification to this bill

which was suggested last year, that would essentially prohibit the exemption of a farm vehicle from a general liability policy, would enable us to move the bill forward, and I think that we might even get some action on the other side of the Capitol.

So with this exemption, this loophole, essentially, in the insurance coverage requirements for all vehicles in the state still in this legislation, I will be voting no and encouraging everyone else to vote no as well.

Thank you, Madam President.

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

Read the last section.

Oh, Senator Liz Krueger.

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

I too will be voting against the bill, as I have in the past. But I had an experience over Memorial Day weekend -- it was in New Jersey, not New York, in fact. But I was driving along a country road, and it was right after sunset, but it was a

45-mile-an-hour road, and it was a bit curvy. And I came around a curve and almost hit a farm vehicle that was driving along filled with hay, with no lights in the back, no license plate. And it dawned on me if I had crashed into that vehicle if it hadn't had liability insurance, what would be the situation that I was in.

So it was interesting to me to see right on the calendar today this same bill that we have discussed in previous years, with a new appreciation for what it would mean to be in fact be in an accident with an uninsured farm vehicle that was on the road, having almost had that incident myself.

So I hope that my colleagues will continue to reconsider their votes and vote against this bill.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 931 are Senators Breslin, Brown, DeFrancisco, Dilán, Duane, Hassell-Thompson, L. Krueger, Lachman, Onorato, Parker, Sabini, Sampson, Schneiderman, and Stavisky. Also Senator Montgomery. Ayes, 42. Nays, 15.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. Can you now call up Calendar Number 389 on the controversial reading, please.

ACTING PRESIDENT McGEE: The Secretary will read Calendar Number 389.

THE SECRETARY: Calendar Number 389, by Senator Padavan, Senate Print 6120A, an act to amend the Executive Law, in relation to extending.

SENATOR DUANE: Explanation, please.

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

Senator Duane.

SENATOR PADAVAN: Thank you, Madam President.

This is a chapter amendment of a bill we passed late in the session last year and that went to the Governor, was signed by him at the end of August, extending the date which was previously mandated to be December 2003, which was an impossible time frame in order to enable the Office of Public Security to meet the mandates of that legislation, which was to come up with an analysis, a report, recommendations relevant to security measures for infrastructures throughout the state, particularly those dealing with utilities, transmission lines and the like.

And so one of the provisions of this chapter amendment will extend that date to December 2004.

Another provision within the chapter relates to the confidentiality provision of the underlying legislation. We want to make this report, studies, available as broadly as possible, but at the same time

we don't want them to get in the hands of the bad people, those who would use that information to enhance whatever plans or plots they have to do harm. And so the confidentiality provision is binding.

Those are the two aspects of the chapter amendment that is before us now.

ACTING PRESIDENT McGEE: Senator Duane.

SENATOR DUANE: Thank you, Madam President.

According to the sponsor's memo, the justification says as follows, that "Chapter 403 of the Laws of 2003 requires the Office of Public Security -- that is, OPS -- to conduct a review and analysis of all measures taken by the PSC and any other agency or authority of the state, or political subdivisions thereof, to protect the security of critical infrastructure related to energy generation and transmission located within the state.

"OPS's first report was to be completed by December 31, 2003, and once every three years thereafter.

"The Director of Public Security shall report to the Governor, the Temporary President of the Senate, the Speaker of the Assembly, the Public Service Commission, and any chief operating officer of an affected facility. Confidentiality protocols would be established for the report and be binding on the recipient of such report.

"Chapter 403 of the Laws of 2003 was enacted into law on October 26, 2003. This provided the Office for Public Security with a period of only four months to conduct a thorough review of measures being taken to protect the security of critical infrastructure related to the state's generation and transmission facilities.

"This bill would provide the Office of Public Security with additional time necessary to conduct its review, compile the required reports, and to establish confidentiality protocols. This bill would extend the initial report date from December 31, 2003, to December 31, 2004, and would require the Director of Public Security to make a preliminary report to be filed with

the Governor, the Temporary President of the Senate, and the Speaker of the Assembly, the chairman of the PSC and the chief executives or his or her designee of any affected generating or transmission company by October 30, 2004."

Is that correct, Senator?

SENATOR PADAVAN: You did an excellent job of reading the memo.

SENATOR DUANE: Thank you.

Thank you, Madam President.

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

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1185, by Senator Kuhl, Senate Print 2581, an

act to amend the Parks, Recreation and Historic Preservation Law and the General Municipal Law.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 180th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Duane recorded in the negative.

Excuse me. Ayes, 55. Nays, 2. Senators DeFrancisco and Duane recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1185, ayes, 54. Nays, 3. Senators DeFrancisco, Duane and Hassell-Thompson recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Duane, why do you rise?

SENATOR DUANE: Thank you, Madam

President. When I was out at Rules, I believe I missed Calendar Numbers 1148, 1192, and 1310, all of which I'd like to vote no on.

And if I may also be recorded in the affirmative on Calendar Number 165, which is a change.

Thank you.

ACTING PRESIDENT McGEE: Without objection. Thank you, Senator Duane.

SENATOR KUHL: Madam President.

ACTING PRESIDENT McGEE: Senator Kuhl.

SENATOR KUHL: It seems as though we've been moving just a little too quickly here. So could we reconsider the vote by which Calendar Number 1185 passed the house.

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

THE SECRETARY: In relation to Calendar Number 1185.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

SENATOR KUHL: Would you recognize Senator Schneiderman, on the bill.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: And I appreciate the courtesy of allowing us to bring this back.

This is a piece of legislation that some of us voted no on in the past for a very simple reason. This relates to the Adopt-A-Park program, a fine program run by the Commissioner of Parks, Recreation and Historic Preservation.

The reason some of us have voted no against this bill in the past is it exempts state, local governments from any liability for negligence by volunteers working in the parks. So this would in a sense create a two-tier standard in parks. In parks that were run by Parks Department employees, there would still be liability if you were injured because there was negligence and you fell into a hole or something. But this would exempt

parks in programs where they use volunteers instead from such liability.

The public really shouldn't have to distinguish between parks where volunteers are working and parks that are being run by professional Parks employees. There is no reason to remove the protection of liability in case of negligence. Everyone should have a right to access to the courts.

And therefore I have voted no on this bill and would urge others to do likewise.

Thank you, Madam President.

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

Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 180th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

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

SENATOR KUHL: Thank you, Madam President.

Just so the members of the house are aware, there are two programs presently in existence in the State of New York. One is Adopt-A-Highway, and you see the signs along the highways which allow volunteers to go out and help not only the State of New York but other municipalities who have the responsibility and the obligation of taking care of those highways and keeping them up and keeping them clean.

We have a very strong tourism industry here in this state, and we like to have the State of New York looking as pristine as it possibly can.

There's a second program that we adopted in this state several years ago, and it's called the Adopt-A-Cemetery program, where municipalities many times are charged with the upkeep of those facilities and they find it difficult, because of the scenario that they find themselves in, in keeping them up in pristine condition.

This is a follow-up, third type of program that would become available to municipalities to help them maintain their

parks. We've heard earlier a resolution adopted in this house talking about the burden of the Medicaid costs because of the failure of the federal government to subsidize this state like it does other states.

We know and we hear time and time again about the mandates that are imposed by this organization, this house, the other house, the state government upon municipalities. Whether they're well-founded or not, they have burdens and responsibilities to take up.

And so this is a way of helping your local communities maintain the facilities as they see fit.

Now, the same standards of negligence apply in all of these cases. There's no specificity that's different in this particular case of this bill as the ones that have previously been adopted. Just so that the members are fully understanding of the bill that they're voting on.

I vote aye.

ACTING PRESIDENT McGEE: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you. To explain my vote.

Senator Kuhl, I, like you, am very supportive of Adopt-A-Park, Adopt-A-Highway, adopt anything that calls for volunteerism and participation.

As a person who served on the city council in the community, Adopt-A-Park went a long way toward developing some of our parks and playgrounds that the municipality could not afford to pay for.

However, also having worked with municipalities and not-for-profits, when you have volunteers and those volunteers are not covered, the lawsuits that ensue also make it almost -- almost untenable for us to be able to have volunteers participate.

So my continued voting no has nothing to do with the merits of the bill but has everything to do with the liability that's assumed that is not -- that I feel is not covered and does not put municipalities in a good position.

Thank you.

ACTING PRESIDENT McGEE: You will

be recorded in the negative, Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you.

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1185 are Senators DeFrancisco, Duane, Hassell-Thompson, L. Krueger, Montgomery, Parker, Schneiderman, A. Smith and Stavisky. Ayes, 48. Nays, 9.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1220, by Senator DeFrancisco, Senate Print 6087, an act to amend the Tax Law.

SENATOR LIZ KRUEGER: Explanation.

ACTING PRESIDENT McGEE: Senator DeFrancisco, an explanation has been requested by Senator Liz Krueger.

SENATOR DeFRANCISCO: Under current law, mortgagors are responsible for paying a special additional mortgage recording tax. The tax is 25 cents per $100.

It can be recouped by the mortgagor as a tax credit that is refundable when the credit is in excess of ordinary tax on business income. This refundability is only available under C corporations and S corporations and is not allowed under LLCs.

Many organizations have gone into LLCs as the preferred entity. And all this does is put the LLCs on equal footing as far as this tax rebate, so that whether you get the rebate doesn't depend upon the form of corporation that you determine is best for your company.

ACTING PRESIDENT McGEE: Senator Krueger.

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

ACTING PRESIDENT McGEE: Senator DeFranscis -- frisco --

SENATOR DeFRANCISCO: DeFrancisco.

SENATOR LIZ KRUEGER: Oh, whoever you are.

SENATOR DeFRANCISCO: That's easy

for you to say.

ACTING PRESIDENT McGEE: Would you yield?

SENATOR DeFRANCISCO: Absolutely.

ACTING PRESIDENT McGEE: The Senator yields.

(Laughter.)

SENATOR LIZ KRUEGER: I'm sorry. Whoever that Senator is, he yields and I appreciate it. Thank you. Excuse me.

Senator DeFrancisco, clearly when we increase tax credits there's a cost to the State of New York. But your bill doesn't show any fiscal implications, and I'm wondering where those numbers are.

SENATOR DeFRANCISCO: I just happen to have that. I anticipated your question.

The Tax and Finance estimates the reduction in revenues in years 2004-2005 is $300,000 and in succeeding years it would be approximately $600,000.

SENATOR LIZ KRUEGER: Thank you.

Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator

Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

I appreciate the Senator's response. And it's the reason that I raised the question, because I think we should be looking at our tax credit policies, our business taxes in a whole -- in a broader perspective than an individual tax credit for an individual subset of corporations.

In fact, there's been a massive growth in LLCs and in even subchapter K types of limited liability companies over the last decade. And, frankly, that's grown out of the recognition that there are tax advantages for subchapter K LLC-type businesses over the S and C models.

And so businesses have changed their practices and even the way they incorporate in order to minimize their business taxes. If we were businesses, we too would probably go: Let's see what we can do to minimize our tax bill to New York State.

The other side of the coin, however, is that means that we've seen dramatic decreases in business tax revenue to

the State of New York during a time where we know we're desperate for more revenue.

And so it's not so much my concern about the -- I respect the concern you have about the inequity, at least on paper, between the S and the C and the K. My concern is actually that businesses keep shifting the way they define themselves, how they incorporate themselves, to reduce their tax bills to the State of New York.

And while the estimate you received was only for a few hundred thousand dollars if this bill was to pass, when I looked at the Tax Department's information about the mortgage recording credits on the other types of businesses, the Cs and the Ss, I found that it's been almost doubling every year, the amount of tax credits that they have been claiming.

So in '98 the tax credit for those who already could draw the additional mortgage recording credit was $2.4 million. By '99 it was $5.7 million. By the year 2000, it was about $7 million. There's been exponential growth in the use of these mortgage recording

tax credits.

And for me, I believe the question that should be before this house is evaluating our policies on business tax credits. I share your view that they should be equitable between different kinds of businesses and corporations. We shouldn't have one set of tax policy for a company that calls itself a C corporation and another type of tax policy for a company that calls itself a subchapter K LLC.

Nonetheless, what is really the issue here is that we've got the business community adjusting their corporate structure to decrease the amount of money they're paying into the New York State tax pool. It is leaving us with less and less revenue every year.

And in fact, I might argue, if we were to have open hearings and discussions about this, you and I might agree that perhaps, rather than providing the tax credit for the subchapter K LLCs, we might agree we should get rid of this tax credit for the other companies as well, and that equity might

be more logically served by doing away with a number of these individual tax credits that in fact are draining money from the state budget and, one could argue, are not decreasing the likelihood that businesses are going to set up or incorporate or do business in the State of New York.

So I will vote for the bill because I believe in equity. But I actually think that the bill before us ought to be a much broader analysis of our business tax policies and the enormous amount of money that in fact we don't collect because of the types of tax credits we have.

Using the same charts, for example, we could see that we have an investment tax credit for financial services where we lose $86 million a year to our treasury. We have the Empire Zone investment tax credits where we're not collecting 162 -- actually, $163 million a year. We have the alternative minimum tax credits where we're not collecting over $70 million a year from businesses in New York.

We should be looking at tax policy

from the perspective of where are we in the year 2005, how have businesses changed their practices since the last time we had a major overhaul of business tax policy in the State of New York, how much money are we not collecting in business taxes because of all these different credits and exemptions out there, and would we be better serving the people of New York State if we in fact had a reform of our business tax structure that both addressed the concerns of equity -- which is clearly where Senator DeFrancisco is going in this bill today -- but also assured that the businesses of the State of New York paid their fair share for the services we all need to invest in for the future of our state.

And that the State of New York might in fact be able to draw down significantly larger amounts of revenue from our business tax structure if we were to completely revamp our business tax credit system.

Thank you, Madam President.

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

Read the last section.

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

ACTING PRESIDENT McGEE: Senator DeFrancisco.

SENATOR DeFRANCISCO: I just want to explain my vote --

ACTING PRESIDENT McGEE: One moment, Senator DeFrancisco.

Call the roll, please.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator DeFrancisco.

SENATOR DeFRANCISCO: Thank you. I just want to explain my vote.

First of all, I don't think there's any corporation that consciously changes from one form to an LLC to save this particular tax. So that's number one.

Number two, I think you're seeing that increase in revenues that were lost by tax credits in this particular -- for this particular tax because, over the years that you're citing, the mortgage rates have been so low that there has been substantial

refinancings, there's been a boom in housing over the many, many years.

So I know that there's more and more losses due to this credit. But that's, I think, more due to the fact that there's so many refinancings and so many house sales in the low interest rate period than it is from companies intentionally trying to take advantage of the law to save this particular tax.

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: The bill is passed.

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

SENATOR KUHL: Thank you, Madam President.

May we return to the order of motions and resolutions. I believe that there's a privileged resolution by Senator Maltese at the desk. I ask that the title be read and move for its immediate adoption.

ACTING PRESIDENT McGEE: The

Secretary will read.

THE SECRETARY: By Senator Maltese, Legislative Resolution Number 5305, expressing support for the Pledge of Allegiance and memorializing Governor George E. Pataki to proclaim June 14, 2004, as Pledge of Allegiance to the Flag Day in the State of New York.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Kuhl.

SENATOR KUHL: Madam President, may we now go to the order of reports of standing committees. I believe there's a report of the Rules Committee at the desk. I ask the Secretary to read.

ACTING PRESIDENT McGEE: Reports of standing committees.

The Secretary will read.

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

Senate Print 1470, by Senator LaValle, an act to amend the General Municipal Law;

2526A, by Senator Trunzo, an act in relation to requiring;

2739A, by Senator Volker, an act to amend the Retirement and Social Security Law;

3587, by Senator Flanagan, an act to amend the Correction Law;

3893A, by Senator Volker, an act in relation to granting;

5264A, by Senator Alesi, an act to amend the Executive Law;

5677A, by Senator Alesi, an act to amend the County Law;

5826, by Senator Morahan, an act to amend the Executive Law;

5880, by Senator Maziarz, an act authorizing;

6153, by Senator Morahan, an act to authorize the Village of Spring Valley;

6247, by Senator Flanagan, an act to allow;

6376, by Senator Larkin, an act to amend the Real Property Tax Law;

6449A, by Senator Larkin, an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law;

6588, by Senator Volker, an act to amend the Civil Service Law;

6851, by Senator Spano, an act to amend the Retirement and Social Security Law;

7091, by Senator Golden, an act to amend the Executive Law;

7329, by Senator Stavisky, an act to amend the Highway Law;

7344, by Senator Robach, an act to amend the Civil Service Law and others;

And Senate Print 7364, by Senator Larkin, an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law.

All bills ordered direct to third reading.

ACTING PRESIDENT McGEE: Senator Kuhl.

SENATOR KUHL: Yes, Madam

President. I move to accept the report of the Rules Committee.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The report is accepted.

Senator Kuhl.

SENATOR KUHL: Is there any housekeeping at the desk?

ACTING PRESIDENT McGEE: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, thank you, Madam President, for recognizing me by my proper name.

On behalf of Senator Volker, please remove the sponsor's star from Calendar Number 1111.

ACTING PRESIDENT McGEE: So ordered.

SENATOR DeFRANCISCO: And I wish

to call up my bill, Print Number 6043A, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 382, by Senator Skelos, Senate Print 6043A, an act to amend the Penal Law and others.

ACTING PRESIDENT McGEE: Senator DeFrancisco.

SENATOR DeFRANCISCO: May I now move to reconsider the vote by which this bill was passed.

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT McGEE: Senator DeFrancisco.

SENATOR DeFRANCISCO: Well, I was now going to offer the following amendments.

ACTING PRESIDENT McGEE: Thank you so much. Amendments are received.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. There being no further business to come before the Senate today, I move we stand adjourned until tomorrow, Thursday, June 3rd, at 11:00 a.m.

ACTING PRESIDENT McGEE: On motion, the Senate stands adjourned until Thursday, June 3rd, at 11:00 a.m.

(Whereupon, at 4:26 p.m., the Senate adjourned.)