NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

February 8, 2005

3:00 p.m.

REGULAR SESSION

SENATOR JOHN J. FLANAGAN, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT FLANAGAN: The Senate will come to order.

I ask everyone present to please rise and join me in the Pledge of Allegiance.

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

ACTING PRESIDENT FLANAGAN: In the absence of clergy, I would ask everyone to bow their heads in a moment of silence.

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

ACTING PRESIDENT FLANAGAN: Reading of the Journal.

THE SECRETARY: In Senate, Monday, February 7, the Senate met pursuant to adjournment. The Journal of Friday, February 4, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT FLANAGAN: 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: Mr. President, there is a privileged resolution, 399, at the desk by Senator Bruno. I ask that it be read in its entirety and move for its immediate adoption.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 399, recognizing February 11, 2005, as "Blue Friday."

"WHEREAS, The State of New York takes great pride in participating in significant days of recognition; and

"WHEREAS, Albany radio station WGNA has teamed up with the Capital District Chapter of Concerns of Police Survivors, Incorporated (COPS), in recognizing February 11, 2005, as 'Blue Friday' in honor of Albany Police Lieutenant John Finn and

Schenectady Police Officer Eric Verteramo, both of whom tragically and heroically lost their lives in the line of duty; and

"WHEREAS, COPS, organized in 1984 with 110 members, is a nationwide nonprofit organization which helps rebuild the lives of survivors of law officers killed in the line of duty, as determined by federal government criteria; and

"WHEREAS, COPS also provides training to law enforcement agencies on survivor victimization issues and educates the public of the need to support the law enforcement profession and its survivors; and

"WHEREAS, Each year between 140 and 160 officers are killed in the line of duty, and their families and coworkers are left to cope with the tragic loss; and

"WHEREAS, Today COPS' membership includes spouses, children, parents, siblings, significant others and coworkers of officers killed in the line of duty, and consists of more than 12,000 families; and

"WHEREAS, February 11 marks the one-year anniversary of the death of

Lieutenant John Finn from the Albany Police Department. This anniversary is a reminder to pay tribute to those in the law enforcement community who have made the ultimate sacrifice; and

"WHEREAS, On February 11, 2005, from 6:00 a.m. until 10:00 a.m., WGNA and COPS will be taking a donation for a carnation, selling blue carnations for $5. T-shirts will also be available for $10; and

"WHEREAS, All proceeds will go directly to COPS in memory of Lieutenant Finn and Officer Verteramo; and

"WHEREAS, In addition, supporters are asked to wear blue on that day; and

"WHEREAS, The State of New York is eternally grateful for the service of its brave men and women in law enforcement and applauds the efforts of COPS to assist the families of those who have made the ultimate sacrifice; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to recognize February 11, 2005, as 'Blue Friday'; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to WGNA and COPS."

ACTING PRESIDENT FLANAGAN: Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

This resolution, by Senator Bruno, myself and Senator Breslin, is one that proclaims February 11th as "Blue Friday." And with us in the gallery are a number of police officers representing both cities, who lost two valiant police officers.

WGNA, a local radio station, has made a major project out of promoting this. Incidentally, it's the number-one radio station listener-wise in this area. And they will be holding, this Friday, a sale of carnations, blue carnations, which Senator Breslin and I both have on, at the Colonie Center, and also T-shirts to support COPS, which is an organization that supports the families of surviving police officers.

This is a significant day for us, because I just want to say a few words about

these two incredible officers that gave their lives on behalf of their communities. Lieutenant John Finn, only 38 years of age, survived by his wife, Maura, and their two daughters, Clara and Molly.

I was told by people that were there at the funeral mass that the daughter singing just absolutely devastated the entire audience.

You know, this man was somebody that always wanted to be a police officer. He created the Children and Family Service Unit for the City of Albany. He was a 13-year veteran of the Albany P.D. and rose to the rank of lieutenant.

He was responding to an armed robbery within almost sight of the Capitol, on South Pearl Street, and a fleeing suspect opened fire, hitting him three times with the intention to kill him. Fortunately, he was able to get off a shot. But he suffered for 51 days before he passed away.

A man that is truly loved and honored by his fellow police officers, Lieutenant Finn will be sorely missed.

In my hometown of Schenectady, Eric Verteramo, 30 years of age, rushing to a motorcycle accident, lost control of his cruiser, slammed into a utility pole and was killed, I believe, at the site.

Of course Eric was the ninth officer who lost his life in the line of duty in Schenectady. He was a very bright young officer known for his good humor and his physical fitness. He was an incredible athlete. And he's another one that always wanted to be a police officer.

I think it's rather significant that we call this "Blue Friday." And the results of this drive will go to try to help the surviving families. As we honor these police officers, you have to realize that they leave a family behind. The mourning never stops. Those children will never again see or know their father. And of course in the case of Eric, he's a young man -- they're both in their thirties -- the tragedy is just beyond belief.

It is with this that I yield the floor. And I'm sure that Senator Breslin, who

represents the City of Albany, would like to speak to it.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Breslin.

SENATOR BRESLIN: Thank you very much, Mr. President.

And thank you, Senator Farley, for such an eloquent presentation about Officer Verteramo and Lieutenant John Finn from my city of Albany. And John Finn's life and my own and my brother's interacted frequently. He exemplified what the definition of a police officer really is about, and that's caring for others.

But when we think of that caring for others, we sometimes lose sight of the fact that each and every day police officers go out in the line of duty and put their life at risk. And John Finn suffered the ultimate sacrifice with the loss of his life and, as Senator Farley said, leaving behind a wife and two children.

But he is part of the best, those people who protect us. And we're joined here

today by Chief Jim Turley of the Albany Police Department and other members of law enforcement agencies.

And it will give us -- on "Blue Friday" on an annual basis, we'll remember Lieutenant John Finn, but we'll also remember police forces as an entity. And it will place them in our prayers and our thoughts to make sure that not only for the deceased members, who we'll raise money for, but each and every member of those police agencies, what they do on a daily basis to protect us.

And I commend Senator Farley, I commend Senator Bruno for making this happen today. And I'm delighted that the entire Senate will participate in this process, to make sure that "Blue Friday" is a success this year as it will be every year.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Farley.

SENATOR FARLEY: With this addendum, I'd like to say that Senator Bruno truly regrets that he's not here to address and honor these police officers.

And if it's all right with the Acting Majority Leader, then we'll open up this resolution to every member of the Senate. And anyone wishing not to be on it please notify the desk.

ACTING PRESIDENT FLANAGAN: On the resolution, all in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT FLANAGAN: Opposed, nay.

(No response.)

ACTING PRESIDENT FLANAGAN: The resolution is adopted.

Senator Skelos.

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

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: Calendar Number 11, by Senator McGee, Senate Print 86, an act to amend the Criminal Procedure Law, in relation to eligibility.

SENATOR SCHNEIDERMAN: Lay it

aside.

SENATOR SKELOS: Lay it aside for the day, please.

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

THE SECRETARY: Calendar Number 14, by Senator Trunzo, Senate Print 150, an act to amend the Penal Law, in relation to unlawful sale of tobacco.

SENATOR TRUNZO: Hold it up for amendment.

ACTING PRESIDENT FLANAGAN: Lay it aside for the day.

THE SECRETARY: Calendar Number 18, by Senator Morahan, Senate Print 237, an act to amend the Penal Law --

SENATOR HASSELL-THOMPSON: Lay it aside.

ACTING PRESIDENT FLANAGAN: The bill is laid aside.

THE SECRETARY: Calendar Number 20, by Senator Maltese, Senate Print 274, an act to amend the Penal Law, in relation to clarifying the definition of physical injury.

ACTING PRESIDENT FLANAGAN: Read

the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 21, by Senator Saland, Senate Print 312, an act to amend the Penal Law, in relation to including school buses.

SENATOR SABINI: Lay it aside.

ACTING PRESIDENT FLANAGAN: The bill is laid aside.

THE SECRETARY: Calendar Number 22, by Senator Skelos, Senate Print 498, an act to amend the Criminal Procedure Law, in relation to limiting plea bargaining.

ACTING PRESIDENT FLANAGAN: Read the last section.

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

November.

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 25, by Senator Volker, Senate Print 777, an act to amend the Penal Law, in relation to the imposition of certain fees.

ACTING PRESIDENT FLANAGAN: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the same date as Part F of Chapter 56 of the Laws of 2004.

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 28, by Senator Balboni, Senate Print 183, an act to amend the Penal Law, in relation to

establishing.

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT FLANAGAN: The bill is laid aside.

THE SECRETARY: Calendar Number 46, by the Senate Committee on Rules, Senate Print 1815, an act to amend the Insurance Law, in relation to insurance conversions.

ACTING PRESIDENT FLANAGAN: Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT FLANAGAN: The bill is laid aside.

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

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Skelos.

SENATOR SKELOS: Mr. President,

would you please ring the bells to inform the members of the Senate that we are now on the controversial calendar.

ACTING PRESIDENT FLANAGAN: The Secretary will ring the bell.

Senator Skelos.

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

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: Calendar Number 18, by Senator Morahan, Senate Print 237, an act to amend the Penal Law and the Criminal Procedure Law.

SENATOR HASSELL-THOMPSON: Explanation.

ACTING PRESIDENT FLANAGAN: Senator Morahan, an explanation has been requested.

SENATOR MORAHAN: Thank you, Mr. President.

This bill amends the Penal Law and the Criminal Procedure Law to provide that if a person, while on parole or other conditional

release, commits a felony, that they would have to then complete the original felony sentence to the maximum and then serve the minimum of the new crime penalty before they can again be paroled or released.

ACTING PRESIDENT FLANAGAN: Senator Hassell-Thompson.

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

Just a very quick question, if Senator Morahan would yield.

ACTING PRESIDENT FLANAGAN: Senator Morahan, will you yield?

SENATOR MORAHAN: Certainly, yes.

ACTING PRESIDENT FLANAGAN: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you.

Senator Morahan, are there any changes in this bill from last year?

SENATOR MORAHAN: No, ma'am.

SENATOR HASSELL-THOMPSON: Okay. I'll waive any other questions.

Thank you, Mr. President. Thank you.

ACTING PRESIDENT FLANAGAN: Any other Senators wishing to be heard?

Then the debate is closed.

The Secretary will ring the bell, and the Sergeant-at-Arms will bring in the members to the chamber.

Read the last section.

THE SECRETARY: Section 8. This act shall take effect on the first of November.

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FLANAGAN: The Secretary will announce the results.

THE SECRETARY: Those voting in the negative on Calendar Number 18 are Senators Andrews, Duane, Hassell-Thompson, Montgomery, and Parker.

Those Senators absent from voting on Calendar Number 18 are Senators Johnson and Stavisky.

Ayes, 52. Nays, 5.

ACTING PRESIDENT FLANAGAN: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 21, by Senator Saland, Senate Print 312, an act to amend the Penal Law.

ACTING PRESIDENT FLANAGAN: Senator Sabini.

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

ACTING PRESIDENT FLANAGAN: Senator Saland, will you yield to a question?

SENATOR SALAND: Yes, Mr. President. As soon as I can get my colleague to my right to sit down and not whisper in my ear.

ACTING PRESIDENT FLANAGAN: Senator Sabini.

SENATOR SABINI: Thank you, Mr. President. I'd like to ask the sponsor to clarify for me the intent or the actual implication of the bill.

This bill came to Codes and not Education, so I didn't have a chance to reference the Vehicle and Traffic Law that it refers to. But it is my understanding that right now --

SENATOR SALAND: Senator Sabini, can I just ask for your indulgence.

I welcome Senator Goodman back to the chamber, but there's a little bit of a din over here, making it hard for me to hear Senator Sabini. Thank you.

ACTING PRESIDENT FLANAGAN: Senator Sabini.

SENATOR SABINI: I'm interested in the application of the Vehicle and Traffic Law here. And since it is my understanding that currently if a school bus is parked on school grounds, it is part of school grounds.

Does this bill address a school bus moving? Since in some cases a school bus off school grounds would be more of a fertile place with less supervision than a school bus on school grounds.

SENATOR SALAND: This is intended to address the school bus that is somewhere beyond the "drug-free school zone" boundaries that surround our schools.

The long and short of it, Senator Sabini, is that this is a bill that was recommended to me several years ago by a local

official in my Senate district who has since passed away. And it just seemed to make a heck of a lot of sense. We try to protect our children within the drug-free school zones, and it just seems a logical extension to say if in fact they're in transit in a school bus, they're entitled to the same protection.

SENATOR SABINI: Mr. President, if I could ask just a follow-up to the sponsor.

ACTING PRESIDENT FLANAGAN: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Sabini.

SENATOR SABINI: I agree with the sponsor's assertion. My question is, does this bill do it, in effect, anywhere where a school bus is, is this applicable?

SENATOR SALAND: I'm sorry, Senator?

SENATOR SABINI: Does this law apply no matter where a school bus is?

SENATOR SALAND: If it's being

used for school purposes, if it's sitting in front of somebody's driveway waiting for a student to get on the bus, whether it's in transit, if it's part of its regular and ordinary duties, the intention is is that it applies.

SENATOR SABINI: Mr. President, if the sponsor would yield once again for another question.

ACTING PRESIDENT FLANAGAN: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Sabini.

SENATOR SABINI: Just in reading the bill, halfway down it talks about a thousand feet off of a school line. And that was really where our confusion was, in that if the bus is beyond a thousand feet, which is less than a quarter of a mile, does this law apply?

Because some of us agree with you, we want tough penalties and tough laws on people that deal drugs to our children.

SENATOR SALAND: Well, there are two subsections to the bill. And the language that you're interested in is placed in Subsection A. And if you read what's included in A, there -- that -- what is included in A, if you then look at the conclusion, it says "or," and "or" leads into your 1,000 foot context for --

SENATOR SABINI: So it's either/or?

SENATOR SALAND: Yes.

SENATOR SABINI: Okay. Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Any other Senator wishing to be heard on the bill?

Senator Onorato.

SENATOR ONORATO: Would the sponsor yield for another question?

ACTING PRESIDENT FLANAGAN: Senator Saland, will you yield?

SENATOR SALAND: Yes.

ACTING PRESIDENT FLANAGAN: Senator Onorato.

SENATOR ONORATO: Senator Saland, does the school bus have to have students on

it for this to apply?

SENATOR SALAND: The school bus has to be engaged in whatever would be part of its ordinary and normal activities. If in fact -- I guess I could conjure up a scenario. If -- I'm trying to conjure up a scenario.

If in fact it was parked, again waiting for a student to get on, and there were some personnel that were on, whether they were bus assistants or attendants, and they were engaged in drug trafficking, I would think it could be applicable.

But again, it would have to be something that occurs during the ordinary course of the operation of the school bus in school business.

SENATOR ONORATO: Thank you.

ACTING PRESIDENT FLANAGAN: Any other Senator wish to be heard?

Senator Diaz.

SENATOR DIAZ: Thank you, Mr. President. If my colleague Senator Onorato will yield for a question, please.

ACTING PRESIDENT FLANAGAN: Senator Onorato, will you yield?

SENATOR ONORATO: I yield.

SENATOR DIAZ: It was not clear to me when you asked the question, and also Senator Sabini, in questioning the distance of the school bus of being on the property of a school and being considered as a school grounds.

It is -- it is -- are you saying -- just for my benefit, are you saying that we would allow a school bus to be used as a drug -- to use drugs in school buses if that bus is not close to school?

SENATOR ONORATO: No, Senator, you misinterpreted my question.

SENATOR DIAZ: Please explain to me.

SENATOR ONORATO: My question was, will this law apply if the school bus is empty of students. In other words, the bus driver may have already completed his route and may be on his way back to the garage with no students or any other school personnel on it.

SENATOR DIAZ: Mr. President, would the Senator yield.

ACTING PRESIDENT FLANAGAN:

Senator Onorato, will you continue to yield?

SENATOR ONORATO: I'll be happy to yield on my bill.

(Laughter.)

SENATOR DIAZ: So if the school bus is empty and the driver already left all the students and the driver is coming back home, would it be okay, would it be good enough so then they could use drugs in it?

SENATOR ONORATO: No, it's not okay. But I want to know if the law will apply if it's empty.

SENATOR DIAZ: Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Any other Senator wish to be heard?

Debate is closed.

The Secretary will ring the bill. The Sergeant-at-Arms will bring the members into the chamber.

Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FLANAGAN: Announce the results.

THE SECRETARY: Ayes, 57.

Those Senators absent from voting on Calendar Number 21 are Senators Johnson and Stavisky.

ACTING PRESIDENT FLANAGAN: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 28, by Senator Balboni, Senate Print 183, an act to amend the Penal Law, in relation to establishing definitions.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT FLANAGAN: Senator Balboni, an explanation has been requested.

SENATOR BALBONI: Thank you, Mr. President.

This is a bill that we have visited beforehand but, I would argue, could not be

more timely. As you will recall, in the Governor's State of the State address he outlined several criminal justice initiatives, and one of the initiatives he talked about was the creation of a cyberterrorism crime in this state. That is what this bill does.

But it also does some things that I think are crucial and obvious. The computer laws in the State of New York were last significantly changed in 1986. It's almost 20 years since we have updated our computer crimes.

And to give you just how different our world is today, back then, most of the computers that were in our homes and our schools were not connected to the Internet. Now all our computers are connected to the Internet.

I have some information to share with my colleagues. USA Today did a study back in November of last year, and all they did was they took six computers and they merely hooked them up to the Internet, and they let them run. And they saw whether or not there would be any type of attacks or an

attempted intrusions.

Here are the numbers that came out as a result of this little experiment. From September 10th to September 25th, online intruders made 305,000 attempts to break in to six unguarded computers. The total attacks averaged about 300 per day.

Now, these attacks can range from anything from the attempted introduction of a worm or a virus in your computer or to the attempt to take over your computer to use it in a subsequent attack, what we refer to as a "denial of service" attack.

What this bill does is it sets up a revamping of the criminal justice laws as it relates to computer intrusion crimes, and it creates a cyberterrorism crime for the State of New York.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. Briefly on the bill.

The -- my concern with this legislation I expressed before. And I would

urge the sponsor that I think everyone in this house agrees that the laws in this area need to be updated. Everyone agrees that cyberterrorism, particularly where it relates to things like power plants and the water supply that rely on software, is an important issue.

The difficulty I have is, as with the last version, what we have here is an incredibly overbroad definition of cyberterrorism. And I would urge that a one-house bill doesn't help make anyone any safer from cyberterrorism.

If we want to really move forward and make this a law, we're going to have to do something about the definition, which creates a Class B felony for anyone who is guilty of any of the misdemeanors enumerated in this statute "with the intent to affect the conduct of a unit of government."

That means that if you are engaged in computer intrusion in the third degree, which means -- could mean you wilfully use a computer without authorization to influence the conduct of a unit of government, you're

guilty of a B felony. So if you make unauthorized use of someone's computer to send an email to President Bush opposing his proposal to raise copayments by veterans for health care by $250 a year, you're guilty of a B felony.

It is an incredibly broad definition. And my suggestion to the sponsor, as I did suggest last year as well, is that a little bit of editing and a little bit of work could make this a statute that would be something that we could move forward, I believe, even in the other house.

As it is drafted now, I think it really contains what amounts to a poison pill. You can't make every misdemeanor a B felony just because it was done to affect the conduct of a unit of government. That could mean trying to affect the decision of a school district whether to have a prom.

I mean, you know, there are lots of things that are done by email now, lots of things that are done through computer networks. And this is just a -- the escalation of a penalty into a major felony

that is completely inappropriate given the breadth of the definition.

So I supported this is in the past with the view that we were going to move forward and edit it and try and get a statute actually passed. I would urge the sponsor, though, that, you know, we've got time. Let's do some editing now. Let's make this a definition that could get somewhere in the other house and come up with a cyberterrorism law as opposed to letting another year go by passing a one-house bill.

I will support the bill again, Mr. President, with this ongoing request that we're never going to get anywhere with this until we narrow the definition.

Thank you.

ACTING PRESIDENT FLANAGAN: Senator Klein.

SENATOR KLEIN: On the bill, Mr. President.

ACTING PRESIDENT FLANAGAN: On the bill.

SENATOR KLEIN: While I applaud Senator Balboni's effort to punish people who

commit various acts of cyberterrorism, I think what we're doing is, first, we're not addressing the problem and we're not doing anything to prevent the problem.

I did an investigation last year which showed our own state computers in various state agencies that are holding very, very important information -- like tax information, our records from the Department of Motor Vehicles -- were hacked into three times in a three-month period.

And so we're really doing very, very little within our own state within this present administration to protect very pertinent information from cyberthieves.

Also, one of the pieces of legislation that I passed last year in the Assembly would do something that's very, very simple and, again, go a long way towards preventing the ramifications of being a victim of a cyberthief and identity fraud, and that's to notify individuals if their pertinent information is taken off a state computer or a private computer.

Believe it or not, we have no

policy and there is not one corporation in the United States that has an affirmative program, a program within their own company to notify people if they're the victim of a cyberthief.

And I don't have to tell you, if your information is taken -- your Social Security number, your address -- what type of havoc that can cause with your own finances.

So I look forward to doing a lot more on this issue, and I applaud Senator Balboni in actually punishing the people who commit these crimes. But at the same time, I think we need to do a lot more towards preventing this crime and actually recognizing that it exists in the State of New York.

Thank you.

ACTING PRESIDENT FLANAGAN: Senator Krueger.

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

ACTING PRESIDENT FLANAGAN: Senator Balboni, will you yield?

SENATOR BALBONI: Yes.

ACTING PRESIDENT FLANAGAN:

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

Senator Balboni, I also find much in this bill that I can be comfortable with. Some concerns, technical. But two issues stuck in my head this year that I didn't ask you about last year.

Would this apply to ATM machines? When I read the definition of the bill about what a computer is, I believe it would. I was wondering --

SENATOR BALBONI: I believe it would also.

SENATOR LIZ KRUEGER: Okay. So I suppose a follow-up question, Mr. President.

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

SENATOR BALBONI: Yes, sir. Mr. President, I yield.

SENATOR LIZ KRUEGER: Thank you.

Is there any reason for us to think we ought to be reviewing this with the Banking Department, on the theory that it would also apply to ATM machines, which are under their auspices?

SENATOR BALBONI: Mr. President, through you, I have discussed this bill with our Department of Homeland Security, Mark Cohen, who's the chief counsel. We have sent this over for comment and review, and they, I believe, have talked to not only DCJS but also folks in the other agencies, including Insurance and Banking.

Just on that point, you know, this is a very coordinated approach that a lot of people don't know about. There's actually a group -- and I don't know what the acronym stands for, but it's called FIPIC [ph], and it talks about a federal, state and private partnership that actually takes the insurance industry, the banking industry, all of the financial industries and tries to reach out and give them governmental templates for them to utilize in their own businesses to prevent, again, these types of attacks.

So there is the involvement of the financial community. Perhaps not as focused on the bill as -- on the language that we have here, but certainly in the general concepts of how do we protect against cyberterrorism

attacks.

SENATOR LIZ KRUEGER: Thank you.

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

ACTING PRESIDENT FLANAGAN: Senator Balboni, do you continue to yield?

SENATOR BALBONI: Yes, I do, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Krueger.

SENATOR LIZ KRUEGER: Can I assume that also -- because you are right, the definition of what is on computer is expanding every day. Would this bill also apply to video lottery terminals and lottery machines, since they're also --

SENATOR BALBONI: Mr. President, through you. To the extent that any program -- I'm sorry, any -- let's see how to describe it -- any platform is computer-based and you would attempt to get into that platform, that operating platform or computing platform, yes, in fact that would fall under the definitions. Which are in the first part of the bill.

SENATOR LIZ KRUEGER: Right. Thank you.

Mr. President, if the sponsor would please yield for another question.

ACTING PRESIDENT FLANAGAN: Senator Balboni?

SENATOR BALBONI: I do, Mr. President.

SENATOR LIZ KRUEGER: Thank you. This clarification is very helpful, because I think it both broadens my understanding of the issues we're talking about and also where we might need to go in the future in the state.

So would this also, I assume, then, apply to voting machines if the State of New York continues down the road of ending up choosing machines that are attached to the Internet in some way, or computer-driven?

SENATOR BALBONI: Mr. President, through you, I don't believe that there's any prohibition or restriction that it must be connected to the Internet. We focus on that as a relatively new phenomenon relative to the initial amendments of the statute itself. But we don't restrict it to the Internet use.

Should you have a computer issue, you try to access it without authorization, that would fall under the definitions of the bill.

SENATOR LIZ KRUEGER: Thank you. Thank you very much.

Mr. President, briefly on the bill.

ACTING PRESIDENT FLANAGAN: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you. Well, I share my colleague Senator Schneiderman's concerns that perhaps the definitions are changing every day and we need to think through what some of the impacts are.

To be honest, I am very glad to hear that this would apply to ATM crimes, which is a very real issue, as Senator Farley knows from the Banking Committee. It would apply to video lottery terminals and lottery machines, which is also, whether anyone likes it or not, a growing business in the state of New York, and we need to assure that we are protecting citizens from any kind of hacking into that system.

And, frankly, perhaps most

importantly, voting machines. Because as the President Pro Tem certainly knows, we're dealing with questions of where we go with voting machines in this state, and there are great concerns about our failure to be exploring machines that are safe enough and secure enough to be -- to have our votes be counted on them.

And the fact is that research shows that we do more to protect ATM machines and more to protect video gambling machines than we currently are doing in this country to protect voting machines. So I'm glad to see that if this bill became law, we'd be expanding the definitions of oversight and evaluation of all these new computer systems that are affecting our lives.

So while I still don't know that I understand all of this bill completely, I respect the Senator's efforts on these issues and think that in fact the impact is far broader than even just homeland security. So I will be voting for the bill.

Thank you very much for the explanation.

ACTING PRESIDENT FLANAGAN: Senator Balboni.

SENATOR BALBONI: Yes, Mr. President, on the bill. I wanted to address Senator Schneiderman's concerns.

I've had a chance to work with many people, Michael Fallon one of them, and we did consider the change in the definition. The difficulty, frankly, is that Assemblyman Lentol introduced this bill last year. I believe that he's going to be doing it again this year. We're going to be negotiating that definition.

The difficulty here is that we have to start from a starting point. And the starting point is the definition of terrorism that we use in the Penal Law that we passed in 2001. The difficulty, of course, is in that definition you have the utilization of assassination, kidnapping, or murder as the active components of an act of terrorism. Well, you don't have that with computer crimes or cyberterrorism.

And so that's, frankly, the difficulty, the definitional difficulty. In

other words, would you say it's only cyberterrorism if someone died as a result of the act? You know, and so we're actually negotiating that.

But at the same point in time, I think we're going to see initiatives from the Governor that's going to talk about this specific act.

And to Senator Klein's point, this is the first of a series of bills that we will be putting out that will talk about the new assault on the American public through the computer. Whether it is spyware, whether it is other computer crimes or activities, we're going to be hopefully be rolling out a lot of pretty progressive stuff. I'm working with Assemblyman Morelle on that. And I think that you'll like what we have to say about that.

So some of the things that Senator Klein pointed out are some of the things we'll be looking at also.

So I want to thank you for all your attention to this one. This is a good concept we need in the state.

Thank you very much.

ACTING PRESIDENT FLANAGAN: Any other Senator wish to be heard?

The Secretary will ring the bell, and the Sergeant-at-Arms will bring the members into the chamber.

Read the last section.

THE SECRETARY: Section 12. This act shall take effect on the first of November.

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 28 are -- is Senator Duane.

Those Senators absent from voting on Calendar Number 28 are Senators Johnson and Stavisky.

Ayes, 56. Nays, 1.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 46, by the Senate Committee on Rules, Senate Print 1815, an act to amend the Insurance Law.

SENATOR LIZ KRUEGER:

Explanation, please.

ACTING PRESIDENT FLANAGAN: An explanation has been requested, Senator Seward.

SENATOR SEWARD: Yes, Mr. President.

The bill before us deals with some clarifying provisions of Chapter 1 of the Laws of 2002. And if you would recall, the legislation that we enacted back in 2002 allowed the Empire Blue Cross Blue Shield to convert to a for-profit entity. And also, as part of that, it was created the Public Asset Fund as well as the charitable foundation.

And this legislation does two things. Number one, it extends to the members of the board of these two entities indemnification under the Public Officers Law; and, number two, it clarifies that the Public Asset Fund and its board shall not be considered a state agency.

ACTING PRESIDENT FLANAGAN: Senator Krueger.

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

yield.

ACTING PRESIDENT FLANAGAN: Senator Seward, will you yield to a question?

SENATOR SEWARD: Certainly, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. Thank you very much.

The sponsor discusses that there are two parts to the bill, and one is to indemnify the officers of the board under the Public Officers Law. Am I correct that that in-general indemnification under the Public Officers Law is for entities that are in some way the government or a part of the government or affiliated with the government, as opposed to private entities?

SENATOR SEWARD: Well, Mr. President, it's not uncommon to extend this type of indemnification under the Public Officers Law to such entities as this board of the Public Asset Fund. Because we do it for the State Insurance Fund. We -- also a number of nonprofit entities in the state, their

boards are indemnified under these provisions of law even though they are not considered state agencies. So they obviously do public good on behalf of the state, as does this entity.

And I would also point out that the laws of Chapter 1 of 2002 offered such indemnification.

However, as you may know, there's some litigation involving that law we passed in 2002. And the passage of this bill today, should it be enacted, would mean that regardless of what happens in the court case involving the original law, that the board would be able to proceed with indemnification. And that, frankly, is necessary in order to allow for any further stock sales and also to maintain the stock price.

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

ACTING PRESIDENT FLANAGAN: Senator Seward, will you continue to yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT FLANAGAN:

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you very much. I appreciate the response on that part of the bill.

The other part of the bill would provide that this Public Asset Fund should no longer be considered part of the state or its agencies, even though, as you've already raised, there is litigation still in process that may change the outcome of what would happen with the proceeds of a sale of this asset fund, which would then no longer be considered part of the state or its agencies if this bill passed.

Is that correct on my part? Is that a correct analysis?

SENATOR SEWARD: Mr. President, I had difficulty hearing the question. If we could have a little more quiet, and if you could just repeat the question.

ACTING PRESIDENT FLANAGAN: If we could get the house quiet.

And it would be helpful, Senator Krueger, if you would be kind enough to repeat the question.

SENATOR LIZ KRUEGER: I will repeat and try to be clearer, actually.

So the second part of this law, which we didn't discuss yet, would clarify that this Public Asset Fund would no longer be a part of the state or its agencies, it would become a private entity. Although you are correct, there is still litigation moving through the courts as to what might ultimately might or might not happen to the distribution of funds from this sale.

Is it a concern or -- one, am I correct in my reading? And, two, should it be a concern to us at all that this would then be a private entity but we still don't know the outcome of a legal decision and we, in fact, then might have liability because we underwrote them, so to speak, under our liability law?

There's a complication, it seems to me, between public role/private role and litigation. Is there any concern you have about the confusion that might occur after litigation was resolved because of these changing patterns of ownership?

ACTING PRESIDENT FLANAGAN: Senator Seward.

SENATOR SEWARD: Mr. President, I'm very comfortable with the provisions in the bill.

But let me explain further. The -- I would make one correction to what Senator Krueger said. She said that they would be considered no longer to be a state agency. It was never intended to be considered a state agency. And that was -- we're really not changing anything. We are clarifying that it could not -- cannot be considered a state agency or a direct state entity.

So that is just a -- really a clarifying provision versus a major change in law.

And, frankly, it's important to move forward with that distinction for I think two very important reasons. We as a state have a great deal at stake in the sale of the Empire Blue Cross stock as it proceeds. They're scheduled stock sales. And, frankly, we have -- we're looking to fund a good portion of the HCRA through the proceeds of

those sales.

So I think the state and, more importantly, those that are -- very much need the services and the medical and health care that is derived through HCRA, it's important that we get as much money from the sale of this stock as possible. So it's important to keep that stock price up and not have any impediments to sale of the stock.

And secondly, along the same line, it's important that we do not jeopardize the Empire Blue Cross license under the national Blue Cross Blue Shield Association. Because I question very much that they would allow Empire to continue to be -- use that Blue Cross name if in fact there was any thought that they were a state entity directly.

So for those two reasons, I'm very comfortable with the bill that it really does merely clarify provisions of the 2002 law and will in fact help us in our efforts to fully fund HCRA.

SENATOR LIZ KRUEGER: Mr. President, if the sponsor would yield to one additional question.

ACTING PRESIDENT FLANAGAN:

Senator Seward, do you continue to yield?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT FLANAGAN:

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. I appreciate your clarification and educating me about this.

So again, if I read this and listen to your explanations, under this change we, the State of New York, wouldn't have the right to review their books because they wouldn't be, quote, unquote, a public entity or a public asset fund as we have understood it up until now, where the Comptroller's office or the Legislature or the executives had the ability to review the finances of the entity.

So we would not, after passage of this bill, have the right to review the books, but we would still be liable as the government for defense and indemnification of their officers and their employees? Is that correct?

SENATOR SEWARD: Well, Mr. President, under the existing law, the board

of this Public Asset Fund is subject to consultation with the Division of the Budget. Plus the Comptroller is the -- they do -- the Comptroller does actually take care of the accounts, the money.

So there is some degree of, shall we say, state oversight on that very limited basis. So it's not as if there's not some degree of at least looking at the books.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

Briefly on the bill.

ACTING PRESIDENT FLANAGAN: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

I do have some concern that we would be continually responsible for defending and indemnifying the officers and employees of this company prior to the sale without having necessarily the same oversights we do over other entities of the State of New York.

I think one of the things we talk about so often in this Legislature is the importance of, again, bringing the dollars back on the books. We finally got HCRA --

well, we think we may have HCRA back on the budget, if it moves forward this year. And as Senator Seward talked about, now this would be potentially a funding stream for HCRA, although I think that's still open for interpretation by some people.

And yet we'd be removing in some way our oversight powers and our review and accountability powers for this what may be -- $2 billion is a number I heard earlier today.

So I will vote for the bill, although I am not sure whether the other house is moving forward on such bill, but with great caution and concern over the precedent we might be making here today that we would again be removing legislatively our oversight authority over large sums of the public's money and, in this situation, even leaving ourselves liable for the responsibilities if something goes wrong, without having had a direct role in overseeing the operation of this set of funds or the sale therein. And that ultimately, of course, there's the question of how those funds are used.

So out of respect for Senator

Seward, and the concerns that if we don't act quickly we may face a serious problem, I will vote for it. But I think we should all be thinking carefully about what this is a precedent and what some of the dangers and risks from this action might be.

So thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Hannon.

SENATOR HANNON: Yes, Mr. President.

I think Senator Seward has comprehensively and thoroughly just addressed the questions, but I just want to add, in terms of oversight, that this entity is a publicly traded corporation, it's subject to all of the filing requirements established under the SEC and the heightened filing requirements required by the Sarbanes-Oxley.

In addition, as a publicly traded insurance corporation, it's regulated by the Superintendent of Insurance, in the same fashion that we regulate the other publicly traded health insurance corporations.

So that there is a great deal of

information just in the same way we have with the other corporations. So we're on an equal footing with them. There's no less, there's not been complaints we don't have the oversight with the other corporations. They're on an equal footing. We know what's happening with their books.

ACTING PRESIDENT FLANAGAN: Any other Senator wish to be heard?

The Secretary will ring the bell. The Sergeant-at-Arms will bring the members into the chamber.

Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 46 is Senator Duane. Ayes, 56. Nays, 1.

Those Senators absent from voting on Calendar Number 46 are Senators Dilan, Johnson, and Stavisky.

ACTING PRESIDENT FLANAGAN: The

bill is passed.

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

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

ACTING PRESIDENT FLANAGAN: No housekeeping, Senator.

SENATOR SKELOS: There being no further business to come before the Senate, I move we stand adjourned until Wednesday, February 9th, at 11:00 a.m.

ACTING PRESIDENT FLANAGAN: On motion, the Senate stands adjourned until Wednesday, February 9th, at 11:00 a.m.

(Whereupon, at 4:04 p.m., the Senate adjourned.)