NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 2, 2005

3:08 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, May 1, the Senate met pursuant to adjournment. The Journal of Saturday, April 30, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

On behalf of Senator Balboni, I wish to call up his bill, Print Number 3095, which was recalled from the Assembly, and it's now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 387, by Senator Balboni, Senate Print 3095, an act authorizing the assessor of the County of Nassau.

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

THE PRESIDENT: The Secretary will call the roll upon reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

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

THE PRESIDENT: The amendments are received.

SENATOR FARLEY: Madam President, these amendments are offered to the following Third Reading Calendar bills:

On behalf of Senator Morahan, page 21, Calendar 266, Senate Print 2751;

For Senator Skelos, on page 28, Calendar 412, Senate Print 496;

Senator Wright, on page 30, Calendar 430, Senate Print 2978;

On behalf of Senator Volker, on page 31, Calendar 451, Senate Print 1524;

On behalf of myself, Senator Farley, on page 38, Calendar 545, Senate Print 3289;

And on behalf of Senator LaValle, on page 40, Calendar 573, Senate Print 842.

Madam President, I now move that these bills retain their place on the order of third reading.

THE PRESIDENT: The amendments

are received, and the bills will retain their place on the Third Reading Calendar.

SENATOR FARLEY: Thank you.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, if we could return to reports of standing committees, I believe there's a report at the desk. I ask that it be read at this time.

THE PRESIDENT: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Seward, from the Committee on Insurance, reports the following bill direct to third reading:

Senate Print 5248, by the Senate Committee on Rules, an act to amend the Insurance Law.

THE PRESIDENT: The bill is ordered direct to third reading.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could now return to motions and resolutions, there's a Resolution 1613, by Senator DeFrancisco. Could we have it read in its entirety and move for its immediate

adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution Number 1613, honoring Detective Diane M. Leshinski of the Onondaga County Sheriff's Department upon the occasion of her designation by the New York State Deputies Association as the 2004 Deputy of the Year in the law enforcement category.

"WHEREAS, It is the sense of this Legislative Body to honor and pay tribute to those singular individuals who devote their purposeful lives to serving others, thereby expressing its highest regard for their unwavering dedication, courage and personal sacrifice in putting the safety and welfare of others before their own; and

"WHEREAS, Attendant to such concern, and fully in accord with its long-standing traditions, the New York State Senate is justly proud to recognize and commend Detective Diane Leshinski of the Onondaga County Sheriff's Department upon the

occasion of her designation by the New York State Deputies Association as the 2004 Deputy of the Year in Law Enforcement; and

"WHEREAS, This award is presented annually to a deputy sheriff who has displayed outstanding service in the line of duty; and

"WHEREAS, Diane Leshinski was one of six children who grew up on a farm in Middleville, New York. She entered the law enforcement field in 1979 as the first female ever to serve in the Village of Mohawk Police Department. After her service to the village, she transferred to the Onondaga County Sheriff's Department in 1985 and joined as a road patrol deputy; and

"WHEREAS, For the past 13 years, Diane Leshinski has served as a detective in the Felony Crimes Unit of the Onondaga County Sheriff's Department, Criminal Investigation Division; and

"WHEREAS, Detective Leshinski brings to her job an outstanding educational background. She was awarded an Advanced Fellowship Degree by the New York State Sheriff's Association and the Bureau of

Municipal Police, completing a Master's Degree in Criminal Justice at the State University of Albany in 1991. In addition, she completed a second master's degree, in counseling and psychological services, at the State University of New York at Oswego in 1997; and

"WHEREAS, While a member of the Onondaga County Sheriff's Department, Diane has served as a field training officer, a background investigator and as a member of the hiring board for the Sheriff's Office; and

"WHEREAS, Detective Leshinski has frequently received special recognition for her work with the department. She was honored with five Sheriff's Office commendations and three letters of recognition. In 2004, Detective Leshinski was named Onondaga County Deputy of the Month for heroic service with the Crisis Negotiations Team for her successful intervention with a suicidal individual in 2004; and

"WHEREAS, When not on duty, Detective Leshinski volunteers with the InterReligious Council of Central New York, participating in diversity education and

dialogue circles. She has also been a volunteer counselor with C.O.N.T.A.C.T., and for three years she was a volunteer with the Make-A-Wish Foundation; and

"WHEREAS, The specific case for which Detective Leshinski has been recognized as the 2004 Deputy of the Year in Law Enforcement is for her investigative efforts that followed the murder of Melissa Flora; and

"WHEREAS, On July 1, 2004, the body of Melissa Flora was discovered at her residence in the village of Solvay. Diane Leshinski was assigned to the case as lead detective. The victim's body had been discovered in her apartment several days after she had last been heard from; and

"WHEREAS, Many of those who were interviewed in an effort to solve the case were hostile and uncooperative. Those who were asked to help shed light on the case were, in many cases, drug abusers, as was the victim, and many had a history of violence. The investigation was complicated further since the memories of the drug abusers were frequently inaccurate; and

"WHEREAS, Over the next several months, and despite the difficulties she encountered, Diane Leshinski, as lead detective, never lost her focus and dedication as she reviewed evidence, tracked down leads, interviewed witnesses and suspects, and maintained contact with members of the victim's family; and

"WHEREAS, As time went by and other detectives were assigned to other cases, the arduous investigation continued under Detective Leshinski's lead. Due to her easy ability to maintain a good rapport with potential witnesses, she was able to maintain contact with those who could help the investigation. Eventually, Detective Leshinski was able to gain the trust of two individuals who later provided critical information which tied a predicate felon to the victim's vehicle just minutes after she was murdered; and

"WHEREAS, After months of painstaking investigation, Detective Leshinski was able to provide sufficient witness accounts to the prosecutor which led to an

indictment of a suspect for murder in the second degree. Ten months of hard work had passed prior to the indictment; and

"WHEREAS, Detective Leshinski's superiors cited her exceptional ability to communicate with a wide variety of people under difficult circumstances as the reason for her success in this case, as well as throughout her career. It was her persistence and willingness to interview and reinterview people, as she developed leads, that led to solving this case; and

"WHEREAS, Diane Leshinski is well-known as an advocate for victims and the families of victims. She maintained close contact with the victim's family throughout the investigation as she worked and reworked various leads; and

"WHEREAS, Her outstanding success has led to her recognition as 2004 Deputy of the Year in the law enforcement category. She has justly earned the admiration and respect of her peers, the community and its citizens. This Legislative Body is proud to now add its commendation, paying tribute to Detective

Leshinski for professionalism and commitment to her community; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to honor Detective Diane Leshinski upon the occasion of her designation by the New York State Deputies Association as its 2004 Deputy of the Year for Law Enforcement, and to express its pride and gratitude to her on behalf of the people of the State of New York; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to Detective Leshinski at the Annual Legislative Reception to be held by the New York State Deputies Association on May 2, 2005, at LoPorto's Sign of the Tree in Albany, New York."

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: Thank you, Madam President.

We're very honored to have deputy Diane Leshinski in the chamber today.

You know, for the time that I've been in the Senate -- this is my 13th year --

I know all of us take great pride in the legislation we enact to try to do better as far as the crime activities are in this state, to try to provide the tools to the various law enforcement agencies so those who should be behind bars are behind bars.

However, those are just the tools. The people that do the work are those in the field. And Detective Leshinski is the best in the field this year for deputy sheriffs or sheriffs, according to the State Deputies Association. She's the 2004 Deputy Sheriff of the Year for Law Enforcement -- to me, the top category of all the awards that they give.

So I'm very honored that she's from our district, and I'm honored that she's here today.

And on behalf of everyone in the Senate, I want to thank you and all the other law enforcement officials that do such great work for our community.

Thank you.

THE PRESIDENT: Senator Valesky.

SENATOR VALESKY: Thank you, Madam President. I stand today to rise in

support of this resolution with my colleague from Onondaga County, Senator DeFrancisco.

As we heard the words of this resolution, some stand out clearly in my mind, and that talks about the commitment and dedication of Detective Leshinski. Those are why we -- those words are why we are honoring her today, her unwavering dedication, courage and personal sacrifice in putting the safety and welfare of others before her own.

As we salute her for being named by the New York State Deputies Association as 2004 Deputy of the Year in Law Enforcement, let me also, on behalf of the people of Onondaga County, thank you, Deputy Leshinski, for all that you do in making Onondaga County a better place.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Congratulations and best wishes for continued success.

(Standing ovation.)

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, there's a Resolution 1189 at the desk, by Senator Maltese, which was previously adopted. If we could have the title read at this time, and then if you'd recognize Senator Maltese.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Maltese, Legislative Resolution Number 1189, congratulating the Christ the King Regional High School Girls Basketball Team upon the occasion of capturing the New York State Federation Class AA Championship.

THE PRESIDENT: Senator Maltese.

SENATOR MALTESE: Madam President, I appreciate your indulgence in this matter.

As has been mentioned, the Christ the King Regional High School, where I have the honor to be chairman of the board, has emerged as the New York State Federation AA

champions. This in no small part due to their coaches, Bob Mackey and Jill Cook, as well as their athletic director, Carol Timpone.

Bob Mackey has a winning record -- and he's with us today -- of 153 games won to 13. He of course was instrumental in winning the New York State Federation AA Class Championship. He is at the top of USA Today's Super 25 rankings, and he is the WBCA Coach of the Year.

The team itself has an overall record this year of 27 to 0. The girls are, quite frankly, a fantastic team, because they combine not only athletic prowess and excellence but good sportsmanship as well as superior academic ability.

They are indeed a team that we can be proud of, not only we in Queens County or those of us in the Christ the King Regional High School family, but all of us in New York State, for their exemplary record not only this year but in past years. They are truly a superior team.

Joining them today is the Christ the King AP History class, taking courses in

United States government and politics, taking advantage of observing not only this session but being here at the State Capitol. All are in the top 10 percent of the class, and all are college-bound.

Madam President, colleagues, I am very proud to welcome today the Christ the King Regional High School Girls Basketball Team and the Christ the King AP History class.

Thank you very much.

THE PRESIDENT: This resolution was previously adopted on April 5th.

Congratulations and continued best wishes.

(Applause.)

THE PRESIDENT: Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 78, by Senator DeFrancisco, Senate Print 47, an act to amend the Real Property Law, in relation to prohibiting certain lease

provisions.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 143, by Senator LaValle, Senate Print 93, an act to amend the Navigation Law, in relation to requiring the use of personal flotation devices.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 30th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 191, by Senator Larkin, Senate Print 415, an act to amend the Education Law, in relation to requiring institutions.

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 227, by Senator Rath, Senate Print 2637A, an act to adjust certain state aid payments to the Elba Central School District.

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

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 290, by Member of the Assembly Morelle, Assembly Print Number 1551, an act to amend

the General Business Law, in relation to regulating.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 392, by Senator Maziarz, Senate Print 3102B, an act to amend the Parks, Recreation and Historic Preservation Law, in relation to creating.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 433, by Senator Meier, Senate Print 3318, an act in relation to adjusting certain state aid payments.

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

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 441, by Senator Skelos, Senate Print 3685B, an act to amend the Executive Law, in relation to establishing an independent office.

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 449, by Senator Volker, Senate Print 877A, an act to amend the Criminal Procedure Law, in

relation to granting certain powers.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 452, by Senator Volker, Senate Print 1539 --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 461, by Senator Saland, Senate Print 3168, an act to amend the Penal Law, in relation to harassment of teachers.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 2. Senators Duane and Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 499, by Senator Wright, Senate Print 2533, an act to amend the Tax Law, in relation to imposition of sales and compensating use taxes.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 528, by Senator LaValle, Senate Print 3020, an act to amend the Real Property Tax Law, in relation to extending the date.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 534, by Senator Spano, Senate Print 3284, an act to amend the Labor Law and the Public Officers Law, in relation to public access.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 7. This act shall take effect on the 60th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 551, by Senator Robach, Senate Print 3894, an act to amend the Retirement and Social

Security Law, in relation to investments.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 8. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 552, by Senator Robach --

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

THE PRESIDENT: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 558, by Senator Maltese, Senate Print 4001, an act to amend Civil Service Law, in relation to the resolution of disputes in the course of collective negotiations.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

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

SENATOR SKELOS: Thank you, Madam President.

As we embark upon our journey to the controversial calendar, I'd just like to mention that having taken a long journey to come to this country are members of the Knights of Malta from Italy.

So we do welcome them to our chamber today.

(Applause.)

THE PRESIDENT: The Secretary will ring the bell, and members should return to their seats.

ACTING PRESIDENT LITTLE: Senator Skelos.

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

ACTING PRESIDENT LITTLE: The Secretary will read.

THE SECRETARY: Calendar Number 191, by Senator Larkin, Senate Print 415, an act to amend the Education Law, in relation to requiring institutions.

SENATOR SCHNEIDERMAN: Explanation.

SENATOR LIZ KRUEGER: Explanation.

ACTING PRESIDENT LITTLE: Senator Larkin, for an explanation.

SENATOR LARKIN: Madam President, Senator Krueger, this is a bill you and I discussed last year. This is a bill that was passed.

Don't make me talk too long, Schneiderman.

(Laughter.)

SENATOR LARKIN: You know, there was a question last time about did we ever talk to any of the colleges. I've talked to about 10 or 12 colleges since last year, and the question comes up about dependency.

And that's where the colleges in my

district felt that it was a very fine justification. Because, if you know, the law authorizes, it doesn't mandate that you will do this to the parent. And I think that was a concern that you had.

But when you start to look at this, under the current law, there's no obligation to do anything. But by giving them the authority, for those who have parents providing the tuition, room and board and everything else, there's many people who believe that they have an obligation, if they so desire, to go to the college and say: I'd like to find out what my $40,000 a year is getting for me.

And basically, that's all this says.

SENATOR LIZ KRUEGER: Thank you.

SENATOR LARKIN: And my kids are all paid for.

SENATOR LIZ KRUEGER: Thank you.

ACTING PRESIDENT LITTLE: Senator Krueger.

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

ACTING PRESIDENT LITTLE: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you. And I certainly didn't want to make you speak too long, Senator Larkin. Thank you.

And you're right, we've debated this in the past and I've had concerns about the authority of parents to get this information on college students, since I do believe that, under my belief in what the role of state government should be, that we should not be imposing ourselves on adult child-parent relationships.

I would like to ask you to consider pulling your bill for today, Senator Larkin, because since our last conversation, and before I had a chance to talk to you today, I found that under federal law, the Family Educational Rights and Privacy Act of 1974 -- shorthand, FERPA -- 20 USC, 34 CFR, Part 99, that federal law says that in order to receive funds under an applicable program of the U.S. Department of Education, that certain rights are given to parents with respect to their children's educational records, but these

rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level.

And then it very specifically spells out that in fact the school doesn't have the right to give these documents or records to anyone without the student's permission.

So while I recognize that your law, proposed law would say that parents would have to specifically ask the schools for the right to get their children's grades, that in fact we would be putting, if this law went into effect, our educational institutions at risk of losing their right to federal funding under the FERPA law.

So I don't change my position about the bill from past years, that I don't think New York State should be inserting itself into the relationship between college-age students and their parents. And that if college students' parents want to say, Give me your grades or I don't pay the $40,000, I think that's a perfectly reasonable analysis by the parent and the student.

But my concern, as before, is the state shouldn't insert itself into this process. But in fact, based on federal law, I don't think we legally want to insert ourselves into the process, because we'd be putting our institutions of higher education in direct conflict between federal privacy rights for students over the age of 18 and then state law.

So I will share this report with you. I believe this is still a one-house bill, so even if it were to pass today, I hope we'll take a more careful look at this before we move forward and again would suggest, based on the fact that I think we're violating federal law if we move forward with this law, that we ought to rethink it before we go forward.

Thank you, Madam President.

ACTING PRESIDENT LITTLE: Senator Robach.

SENATOR ROBACH: Yes, Madam President, on the bill.

I would like to commend Senator Larkin and just say very briefly that I think

for the amount of students who are really emancipated, 18, are going on their own way, making their own money, this is not an issue.

I think this is a bolstering for the vast majority of parents, which I am one of, who are involved financially, emotionally, in every way in our kids' college life, and we want to make sure they're staying on the right track.

I think giving them that information, allowing them access, makes all the sense in the world, both as a legislator and as a parent, and want to commend Senator Larkin and encourage a yes vote on a bill that I think helps students and bolsters parents who are very functional and interested in what goes on in their children's lives.

Thank you.

ACTING PRESIDENT LITTLE: Thank you, Senator.

Is there any other Senator wishing to be heard?

The debate is closed.

The Secretary will ring the bell.

Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT LITTLE: Senator Montgomery, to explain your vote.

SENATOR MONTGOMERY: Yes, Madam President, to explain my vote.

I'm going to support this legislation. I do understand the issues that have been raised by Senator Krueger, but I also understand, as a parent, that you get to a point in the relationship between a parent and the young person, I will say the child, when they just stop communicating. I just think it's the nature of what happens to young people. And you ask them what's happening, and they say nothing or they give you one-word answers. It's not very helpful, and there's very little that you can do about it as a parent.

But I do think that it is still important, even though they're 18, to be more a part of helping to guarantee that they're

moving in the right direction, that they're being successful, and that if there's anything that you need to be doing in addition to what you are already doing, that you know when to move and how to move. And that very often and probably won't come from them.

So I'm going to support this, because I certainly do want to know, I would like to know how my son is doing in school. I know that he is not going to tell me the whole truth. And I want to be able to move appropriately, if necessary.

So I commend Senator Larkin on this. And certainly this is for New York State; there are some states that have not -- that don't have this law in place, and that creates a problem for those of us who have children in those states.

But nonetheless, I think it's a good law for New York State, and I'm supporting it.

Thank you.

ACTING PRESIDENT LITTLE: Thank you. Senator Montgomery will be recorded in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 191 are Senators Breslin, Duane, L. Krueger, Parker, Serrano, and A. Smith. Ayes, 52. Nays, 6.

ACTING PRESIDENT LITTLE: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 441, by Senator Skelos, Senate Print 3685B, an act to amend the Executive Law, in relation to establishing.

SENATOR SAVINO: Explanation.

ACTING PRESIDENT LITTLE: Senator Skelos, for an explanation.

SENATOR SKELOS: Thank you, Madam President.

You know, as you know, in the past two years the issue of Medicaid has become a significant if not the most significant issue facing this Legislature and the state.

This year we enacted a historic cap, and by the year 2008 the Medicaid program will be administered by the state. While the

cap will alleviate the local property taxpayers and counties of an enormous burden, true reform is needed to control the program's skyrocketing costs and ensure that our health care resources are going to those who truly need help, the poor.

The system needs to be made more accountable to the taxpayer. This bill is an important step in this direction. According to public and private sector studies, we lose billions of dollars a year to Medicaid fraud. Unlike the complex, overlapping structure in place now, this bill creates a single independent entity to investigate -- and I use the word "investigate" -- Medicaid fraud and coordinate the state's recovery efforts.

Through the creation of a Medicaid inspector general, we will create a streamlined, efficient system that clearly separates the three distinct responsibilities involved: Data collection, which will remain with the Department of Health; investigation, which will be with the inspector general; and prosecution, which will be maintained in the Office of the Attorney General.

This new office of Medicaid inspector general will work with and provide assistance to the Attorney General and local prosecutors, to enable more prosecutions of criminals that rip off New York State taxpayers. The office of the inspector general cannot commence criminal actions themselves.

Now, the statistics don't lie. We have the largest Medicaid program in the country, but we're not recovering as much as we can or should in Medicaid fraud. This is a bold plan. We've worked with the Department of Health and Human Services in the federal government to develop this legislation and ensure that it complies with federal laws and regulations.

We've incorporated the concerns raised by the Attorney General in the initial bill that was introduced, and we've received support from the New York Association of Counties.

New York State taxpayers deserve nothing less than a Medicaid system that is accountable to them. And this is the type of

reform that will go a long way in making sure that not only will the poor be able to obtain the services that they deserve, but also the system will not be ripped off by those who would abuse the system.

ACTING PRESIDENT LITTLE: Thank you.

Senator Savino.

SENATOR SAVINO: Madam President, would the sponsor yield for a question.

ACTING PRESIDENT LITTLE: Thank you.

Senator Skelos, would you yield?

SENATOR SKELOS: Yes, I shall.

ACTING PRESIDENT LITTLE: Yes.

SENATOR SAVINO: Thank you, Madam President. Through you, has there been an evaluation of the current procedures and of the technology in place that shows deficiency in the existing fraud detection system?

SENATOR SKELOS: I believe that this will be a new, streamlined, more efficient system where everybody will talk to each other and that the inspector general will do what he or she should do best, and that's

investigate.

We want to build on the strengths of the Department of Health, in terms of data collection; the inspector general, whose sole purpose will be to investigate; and the Attorney General, whose sole purpose will be to prosecute and to obtain restitution.

SENATOR SAVINO: Madam President.

ACTING PRESIDENT LITTLE: Thank you. Senator Savino.

SENATOR SAVINO: Through you, if the sponsor would continue to yield.

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

SENATOR SAVINO: Again, unless we determine what is wrong with the current system of fraud detection, how do we attempt to create a system that will work in a new agency? What I haven't yet heard --

SENATOR SKELOS: Well, you know, I was sort of hoping this would go on the noncontroversial calendar, because whenever you bring up statistics, it will then be indicated that there's something political about what is happening with this legislation.

Let me just say this. From 2001 to 2003, for every dollar that we spent in New York State on Medicaid fraud detection, we recovered 72 cents. So there's something wrong with the system right now.

We're not looking to accuse or point fingers. What we're looking to do is reform the system. And that seems to be a big word right now, is "reform," which I believe this legislation will do. It will reform a very dysfunctional system of collection and prosecuting Medicaid fraud that exists right now in the State of New York.

SENATOR SAVINO: Madam President, on the bill.

ACTING PRESIDENT LITTLE: Thank you. Senator Savino, on the bill.

SENATOR SAVINO: Certainly recognizing that Medicaid fraud is a critical problem that the state faces, and having spent many years working in the social service delivery system in New York City representing people who do Medicaid fraud and do welfare fraud, I will tell you, the creation of a new bureaucracy is not the answer to improving

Medicaid fraud.

The answer to improving Medicaid fraud detection is taking a look at the current system in place, recognizing where there are deficiencies, and improving them.

That I have not heard an answer from either you or anyone else as to what this new agency will do differently, except become a separate agency, a new bureaucracy, in essence, to do the same thing that the current system does, that current system which has proven that it has -- it has recovered record dollars, a 29-year record -- more money this year than we have in the past 29 years. So we've recovered more than $65 million this year alone under the current Medicaid fraud collection unit.

Obviously, something is working. Are there deficiencies? Perhaps there are. We need to examine them, not create a new bureaucracy, a new layer of government. Improve the current layer of government and continue to work towards not just fraud collection, but fraud detection. I haven't heard anybody talk yet about preventing fraud

in the Medicaid system, just the collection of money upon the prosecution.

So on that, I will be voting against this bill, because I think the creation of a new bureaucracy is not the answer. We should go back and see what's wrong with the current system and improve that first.

Thank you.

ACTING PRESIDENT LITTLE: Senator Skelos.

SENATOR SKELOS: If I could comment on that, Madam President.

You're absolutely wrong. We're not creating a new bureaucracy. And I know that that is a good sound bite, but that is not what's happening here.

Right now there are approximately 300 people in the State of New York working in our current Medicaid fraud control unit. We are recovering less than just about every other state in the nation.

I mentioned the 72 cents for every dollar. At the same time, California, with 189 employees, recovered 200 percent more;

Florida, with 127 employees, 300 percent more -- no? Then I'm going to correct myself. But they all recovered more. And I'll use the statistics.

Texas, for every dollar spent, $4.96 recovered. Florida, for every dollar spent, $3.14 recovered. California, for every dollar spent, $1.98. New York, 72 cents.

Now, in Texas they receive -- well, in New York State we receive Medicaid fraud control unit money from the federal government $30.6 million, 295 members of staff, and we recovered $24 million. That's out of a roughly $44 billion budget.

California, $16.2 million in dollars from the federal government, 189 in staff, recovered $39.4 million out of a $30 billion budget.

Washington, D.C., $1.2 million in funding, 16 employees, 16 employees, and they have an inspector general in Washington, D.C., recovered $13 million. And certainly their Medicaid program comes nowhere near the $44 billion Medicaid program that we have in this state.

Now, Senator, you mentioned the $62 million that was recovered. While we collected around $62 million, $30.8 million of that was from a national pharmaceutical settlement negotiated by the National Association of Medicaid Fraud Control Units, with no New York State involvement.

That leaves about $32 million that was recovered by our state Medicaid fraud control unit, or about the same amount as in the past. Of the $62 million our state Medicaid fraud control unit recovered, $45 million had to be repaid to the federal government. And when you go through local shares, how much we got back, the state may have received $15 million more from the federal government for monies that were not collected, with the $12.8 million from the state recovery fund used by the state to collect the money. That's 75 employees. And the work of 283 employees, we recovered a net for the state of $9.2 million.

This is bureaucracy at its worst. And that's why it's important that we streamline the system. Many of the employees

that will be used in the inspector general's department will be assigned from the Department of Health, will be assigned from the Attorney General's office, through memorandums of understanding, so we're not all of a sudden creating a bloated bureaucracy.

Rather, we're streamlining the bureaucracy, because the present one that exists in terms of Medicaid fraud right now is not functioning properly. And that's why we're doing this.

So you're wrong when you say we're creating a new bureaucracy. We're having employees that exist assigned to this office with a new, up-to-date Medicaid fraud control unit that will collect more dollars. Because it's just not happening right now.

ACTING PRESIDENT LITTLE: Senator Meier.

SENATOR MEIER: Thank you, Madam President.

I've spent a considerable part of my public career dealing with Medicaid, first as a county executive and then here in the State Senate. And it seems to me that there's

a very simple and very intuitive answer as to why we need to pass Senator Skelos's bill. My experience in public life has been that nothing much happens about anything until somebody identifiable is accountable.

Now, here's the present structure of running the Medicaid program in this state. Ostensibly the Department of Health is responsible for running Medicaid, but the Office of Mental Hygiene, the Office of Mental Retardation and Developmental Disabilities, the Office of Alcoholism and Substance Abuse Services, the Office of Temporary and Disability Assistance also all have roles in administering the Medicaid program. And by the way, while I'm thinking of it, the Department of Education and the Department of Correctional Services also has somewhat of a role.

There are 57 counties in this state that have a role, in addition in the City of New York. The Comptroller of the State of New York and the Department of Audit and Control have responsibility to audit and to look into the expenditure of public funds.

And the Attorney General has rather broad jurisdiction in terms of what he can do with regard to the expenditure of public funds and, in particular, has a Medicaid fraud recovery unit.

Now, you tell me, after you navigate through that alphabet soup of agencies and that collection of individuals and jurisdictions, who's responsible, who's accountable. And the problem is, although the Department of Health controls a significant part of the data, they use it mostly for the purpose of paying the providers.

What Senator Skelos has done is really not at all the creation of a new bureaucracy. It's not an attempt to layer something more on. It is an attempt, and a very good one, to get to the point -- to get to the only point where anything ever gets done in government, and that's where somebody identifiable is accountable.

And that's what the inspector general's office will be. That will be the person with cross-jurisdictional power to collect the data, review it. And it doesn't

supplant the Attorney General. This includes referrals to the Attorney General, it includes referrals perhaps to local prosecutors.

This is -- Senator Skelos, this is a very important bill. The General Accounting Services has said perhaps 10 percent of the money expended on the Medicaid program goes to fraud and abuse. That would be $4.5 billion in this state. Let's say they've exaggerated that by a factor of ten. We're still talking about $450 million.

This is a significant expenditure of public funds that is identified year after year after year in this town and in this chamber as one of the most severe problems we face within our budget process. It affects a program that millions upon millions of vulnerable New Yorkers rely upon, that our health care industry relies upon.

We have an obligation here to bring some people to the center of this debate who have been long overlooked. That's the patients who rely on Medicaid, and that's the taxpayers who pay for it. And all this bill does is say it's time for somebody that we can

identify to be accountable and to be held accountable.

And I'm going to vote for this bill. And, Senator Skelos, congratulations.

ACTING PRESIDENT LITTLE: Thank you, Senator.

Senator Volker.

SENATOR VOLKER: Madam President, this, in my humble opinion, is the -- one of the key issues of this decade.

And you know, it's interesting, because when you're dealing with these kinds of issues, you get the distinct opinion that there's a reason why certain people are so reluctant to get into this sort of thing.

It is difficult. It reminds me of how difficult we were in getting the inspector general for welfare many years ago, to set up the inspector general for welfare. And what we found out, of course, there was an enormous amount of welfare fraud.

And when this house and the other house did one of the most extensive welfare reforms in the country -- and Medicaid reforms, too, by the way, which has gotten

very little press -- and 700,000 people ended up off of welfare back in the '90s. And a lot of people said, Well, that was the feds. No, it wasn't the feds. We were there before the federal government. This house and the other house moved.

And one of the fascinating things about it and one of the most controversial was they called finger imaging. Really, fingerprinting. Very controversial. Well, there's a story that has really never gotten much publicity about when finger imaging or fingerprinting tripped in. Amazingly, within about two months, a hundred thousand people disappeared off the welfare rolls. Just dematerialized.

And people said, Well, jeez, what happened? And of course when they disappeared from welfare, they disappeared from Medicaid also.

Well, we know what happened. What happened was that an awful lot of people were fraudulent. A ton of people. And by the way, as a result of that, they found thousands of people who were triple-dippers,

quadruple-dippers. And one famous guy, I believe, in the city was a six-time dipper. I don't know how you do that. I have no idea what kind of programs those were.

And I'm only saying this because I think the story here is that you've got to realize that people internally that have spoken to me in the criminal justice area say, This is the issue, this is what you in the Legislature have to deal with.

If you're going to deal with Medicaid and if you're going to deal with the real funding of Medicaid, you must deal with fraud. Because there isn't even a question that there's enormous fraud out there. We all know it. Deep down, we all know it. Some people claim it's 10 percent. Some say it's 15 percent. But it's big stuff.

Some of it is not even in this state. That is, there are out-of-state people and out-of-state companies that are doing it. And there's all sorts of things that are happening here.

And Senator Skelos has got on an issue, very honestly -- in my budget

subcommittee or conference committee, we looked at this issue, and the Assembly initially rejected it only because they didn't know what to do with it. But this is an issue that not only has this house got to deal with, but the Assembly has got to deal with it.

And this is not a knock on the Attorney General, at least from my perspective. We have got to develop a coordinated approach to deal with something as complicated as Medicaid fraud. It's way too complicated for just the Attorney General or the Health Department. What has to happen is you've got to find it, put it together, set up a computerized system.

And I think, Senator, you mentioned that you've got to set up a -- well, that's what this is all about. Because when you think about it, how else could we really do an overall job? Because you need Social Services, you need Health, you need the Attorney General, you need local district attorneys, you need a link. And the best way to link that is with a separate office. We've always found that. It's not that we want

another bureaucracy. We don't need another bureaucracy.

On the other hand, if you're going to deal with this -- and there's a lot of things, and Senator Skelos and Senator Meier and myself have talked about this, about incentives for local district attorneys, for instance, or for local counties, to find welfare fraud, that they can keep some of the money and all that sort of thing. But that can be coordinated by an inspector general's office.

And so from my perspective, it just seems to me that Senator Skelos has an issue here that, personally, this may be as important an issue as we have to deal with in this entire session.

Because last year, by the way, Senator Balboni had an issue -- and the funny thing is, with all the Brennan Commission and all that, he passed one of the most important bills in this decade and the last decade, which was the terrorism bill. And the rest of the country said, Oh, my gosh, look at that bill.

And then we did DNA, and then we did drug reform -- which was very historic, in many ways, because it calmed down the people that wanted to get everybody out of jail and at the same time did some substantial reform.

My point, I think, is that people are running around saying, Oh, you guys passed a budget -- or all of us, guys and girls -- and now you're not going to go anything. We're doing something. This is important.

The Assembly is going to do this bill or a similar bill, mark my words on it, because they're going to have to. And that's why today is a much more historic day, in my opinion, than we realize.

ACTING PRESIDENT LITTLE: Thank you, Senator Volker.

Senator Balboni.

SENATOR BALBONI: Thank you very much, Madam President.

I just want to point out that there's something ironic about this debate. For all the time that I've been here, we have always had to struggle over how we spend money. And at the core of every decision,

whether it was the amount of money we spent on education or health care, we always had to talk about what services to cut, what services to create.

Here we have a situation in front of us where we're talking about crime. That's what we're talking about. And I would really like to meet somebody who thinks that we should perpetuate, in any way, shape or form, crime or fraud. That's something we should all be able to agree on.

And so this is one of the issues that we should be jumping all over and saying, absolutely, whatever program we can try to get at the fraud that's in our system, that is rampant in our system, we should embrace. If for nothing else, as an experiment.

There's something ironic about saying that we're worried about setting up another bureaucracy when we see the costs that have been recovered by other states. Because that would truly lessen the burden of the decisions we have to make.

And what I always like to do is just take a step back and look at this from

the context of how we're viewed by the rest of the nation. We are viewed as a system that spends too much money. And we can all argue it's because of the age of our infrastructure, it's the size of our programs, and perhaps it's a little bit of administrative costs in those. But there's also fraud.

If you need any better evidence, check out the newspaper last week that talked about private insurance companies that did rate reductions in automobile insurance. All the major companies had between 5 and 6 percent reductions, and there were several factors attributed to that reduction. But one of those factors were the aggressive fraud prosecutions by the private companies.

Ladies and gentlemen, just talk to any of the district attorneys in the city, around the state, ask them what's happening in their communities. And they'll tell you, there are mills set up that do nothing but work through fraud.

It's a problem. We should have all of the tools in our arsenal that are necessary and possible to try to recover as much money

as possible. Because it truly is a cruel thing to do to the people we represent and say: You know what, we want to give you the health care you deserve and you need, but we're also not going to take this step and really root out all the fraud.

And the benefit of this is every time you go and prosecute, every time you use the force of government to go after fraud, the money will be returned to the taxpayers and to the people who use the system. That is our first mandate in any type of system of this size, complexity and importance.

Thank you, Madam President.

ACTING PRESIDENT LITTLE: Thank you, Senator Balboni.

Senator Johnson.

SENATOR JOHNSON: Madam President, many years ago -- I've been here a while -- I was chairman of the Social Services Committee. And at that time there was a Channel 2 or Channel 4 in New York City that did an expose on Medicaid fraud showing the doctor's office, the lawyer's office, the pharmacist, the whole racket and how it

worked. The guy who gives the sonograms, every little provider, criminal-intented provider who was in the business of giving away our money, stealing our money.

I talked to the Health Department at the time. Oh, they were oblivious to it: Oh, really? Well, we didn't know anything about that. Oh, really, you didn't? Well, I got them a copy of the videotape and I said, Come watch a videotape. Now, do something about it.

Now, that was maybe 15 years ago. I've been out of the Social Services Committee for a long while. And I guess in the meanwhile they've gone back to the same old practice and the people who got caught then are gone or out of the business. But the entrepreneurial spirit of the American people -- and some non-American people in this country -- apparently is still working and still creating more opportunity for fraud.

So I say I mentioned that, and now that -- about that time the Medicaid expenditures were perhaps what I'm saying 25 -- let me read my own notes -- probably,

yes, 25 percent of the present amount of Medicaid expenditures which are now taking place. At that time, Medicaid expenditures were the second largest item of our budget behind school aid.

As you all know, now school aid has gone up to some considerable extent, and Medicaid is approximately three times the amount of school aid.

Now, during this recent budget, you're all aware of being lobbied by your counties. Most everybody got lobbied. County executives, county boards, they need more money for Medicaid, it's too expensive, they can't carry the load. Why did it triple, why is it triple what it was eight or 10 years ago? Not only because we have more people on it and the practices are more expensive, but because of fraud.

And there was recently a report, and Dean probably knows who wrote the report, that approximately 10 to 30 percent of our expenditures are fraudulent. When you ask why does Texas or California, with more people on Medicaid, spend a lot less money, it's because

fraud is a big part of the picture. And everybody knows it.

And if you weren't lobbied by your county executives about Medicaid and something needs to be done about it, then you must have been sleeping, because they lobbied everybody. And all they said was, Give us more money.

And at that time, during the budget, I said, We can't just give them more money, we've got to find out where that money is going. And if these fraud artists are at it again, then we have to nab them.

And that's why this bill was developed, to deal with the problem. Not of just giving more money to the counties from some other necessary quarter in the state or raising taxes in the state to keep giving those people money, but to find out who are these people taking it and what are we doing about those people, and then put them away.

And this bill is going to help you do that. And I think we should all be very aware of the problem we had in this last budget with Medicaid and know this is part of the solution to the problem.

Thank you.

ACTING PRESIDENT LITTLE: Thank you, Senator Johnson.

Senator Savino.

SENATOR SAVINO: Thank you, Madam President.

I just want to -- I want to clear up a misinterpretation. When I rose before, I asked a simple question: What will we do differently in this new agency that we're not doing now? And if other states are doing a better job at fraud collection, what are they doing differently and how can we improve?

I did not get an answer to that question, and for that reason I felt that I should not support this bill. But I've heard an awful lot of discussion here, and I've heard people talk about the importance of Medicaid fraud detection and --

ACTING PRESIDENT LITTLE: Senator Skelos.

SENATOR SKELOS: If Senator Savino would yield, I --

ACTING PRESIDENT LITTLE: Thank you.

Senator Savino, will you yield?

SENATOR SAVINO: Sure.

ACTING PRESIDENT LITTLE: Thank you.

Senator Skelos.

SENATOR SKELOS: I believe I answered that question when I indicated to you that the District of Columbia has a Medicaid inspector general. And I think I gave you the statistics in terms of how successful their collection efforts are as compared to New York State.

ACTING PRESIDENT LITTLE: Thank you.

Senator Savino.

SENATOR SAVINO: The question was had there been an evaluation -- Madam President, through you -- has there been an evaluation of the current procedures and practices in place in the Medicaid fraud collection unit, and are there deficiencies that have been detected and is there any attempt to fix them. That was the question.

But you answered it in the way that you felt was sufficient. I did not feel that

I got a sufficient explanation. But I want to just state that with --

ACTING PRESIDENT LITTLE: Senator Skelos, why do you rise?

Sorry. Senator Savino.

SENATOR SAVINO: Thank you.

I want to state for the record, because a lot has been bandied about about the importance of Medicaid fraud collection and even welfare fraud collection, I actually have a record on that.

In 1996, as a representative of the social service employees union representing the entire social service system in New York City in the public sector, I was involved in the creation -- after the passage of the Welfare Reform Act of 1995, I was involved in the creation of the eligibility verification review unit in the Department of Welfare in New York City's Human Resource Administration, recognizing that one of the principles of welfare reform was detected fraud, rooting it out, and decreasing fraud in the New York City public welfare system.

What we did, through our

cooperative effort with Mayor Giuliani, who was the mayor at the time --

ACTING PRESIDENT LITTLE: Senator Padavan.

SENATOR SAVINO: May I continue, Madam President?

ACTING PRESIDENT LITTLE: I'm sorry.

SENATOR SAVINO: Mayor Giuliani was the mayor of the City of New York at the time; Jason Turner was his new welfare commissioner. We took a very long look at the current procedures in place with respect to welfare fraud investigation, Medicaid fraud investigation, child welfare fraud investigation, the Office of Child Support Enforcement, and every other agency that worked within HRA.

We recognized where the deficiencies were, we created a new system and a new division within the current agency. They improved their fraud investigation techniques. They separated the services of fraud investigators from caseworkers, recognizing that oftentimes caseworkers can

become sympathetic to their clients and overlook issues that would be considered fraud. We created a new title of fraud investigators, a new chain of command. They reported directly to the commissioner's office. And as a result of that, in five years we cut welfare fraud in New York City in half.

We recognized the deficiencies, we improved it, and we did not do that by creating another agency.

So my suggestion was that we look at the current system, figure out what's wrong, and determine whether or not we can fix it in its current setting before we create another agency and/or simply a new title or someone else that they report to.

ACTING PRESIDENT LITTLE: Thank you, Senator Savino.

Senator Krueger.

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

I've also been listening to the debate. No one, I'm sure, in this house disagrees with the idea that we should do

whatever we can to improve the system of our programs, that we should root out fraud, that we should not in any way excuse any kind of fraud.

But I share my colleague Senator Savino's both past experience in New York City and her concern that this bill isn't going get us there. I think her questions were legitimate questions. How do we look at best practice from other states and see if we can replicate them here? And I don't believe that Senator Skelos would disagree with me. We want to replicate best practice.

My concern around this bill is that we're actually creating a public benefit corporation. We're taking responsibilities or a portion of responsibilities that ought to be state government's -- to evaluate the operation of programs and to, in fact, root out fraud, stop it and prosecute it -- and we're moving it into a model that, if anything, we're learning in this state is not necessarily part of the solution but in many cases part of the problem: off-budget corporations and authorities.

And so while I don't disagree with the goal of my colleagues on either side of this chamber that we want to decrease the cost of fraud in the Medicaid program, I am not convinced that a bill that creates a new off-budget public corporation that then does RFPs without coordination with the agencies right now that have direct responsibility -- the Department of Health and the Attorney General's office -- for following through on investigations and prosecutions, I'm not at all convinced that this is the right direction to go, even though I have no disagreement with Senator Skelos or my other colleagues who have spoken here today that we want to save the money in the Medicaid system to be used for actual health care and not fraud.

But I also must rise, when Senator Volker raised his examples on welfare fraud, something I have raised before. There can be fraud in every program in the history of government. And no doubt there has been fraud in every program in the history of government. But in fact, his data on welfare fraud was wrong. When we created a finger-imaging

system in this state, there were only a couple of hundred cases of duplicative fingerprints in the system. And while there was an initial hundred thousand New Yorkers who failed to show up to be fingerprinted over the course of months after fingerprinting was implemented, the vast majority came into the system.

Because while there is fraud in welfare, as there is fraud in every other system, there really wasn't a fraud problem with people attempting to receive benefits under multiple IDs, not in any significant statistical way.

I specifically remember a group of homeless men, I believe who there were 80 of them, who were eligible for or receiving public benefits, both in Newark, New Jersey, coming across the PATH train to New York and in fact were, quote, unquote, double-dipping to, I think, the tune of an additional $80 per month per person.

The fact is, welfare fraud you can't make a lot of money on. Medicaid fraud, I think it's important for today's debate to note, you can, but only with providers. That

Medicaid fraud should not be callously discussed as catching individuals who are ripping off the Medicaid system for cash value.

Medicaid fraud is double-dipping by medical institutions by billing for services that were not needed, by billing for services that were never provided -- perhaps worse, billing for services that weren't needed but were provided. We're talking about skyrocketing costs in prescription drugs and patterns of abuse there that almost always involve large ring operations involving prescription-writing operations, pharmaceutical companies themselves.

When you're talking about Medicaid fraud, you are talking about large institutional fraud. Which is an argument to go forward, go forward with the right model.

So again, it is not my opposition to taking a look at what we do with Medicaid fraud. I don't think this is the right way to go. I hope we'll sit down and reevaluate this. I'd be happy to work with my colleagues on the Republican side to come up with looking

at best practices from around the country.

And again, it's not just saying we're not doing the right thing and changing it; it's actually looking at what works more effectively and going down that road.

I know that Attorney General Spitzer has actually called on this house to pass a bill, I believe sponsored by Senator Farley, if I am correct -- just trying to find the number of Senator Farley's bill -- which would give the Attorney General much greater power to in fact follow through on investigations of fraud. I believe it is -- excuse me, it is the New York State False Claims Act, sponsored by Senator Farley.

And I hope that we might go forward and look at that bill and other proposals that have been made to in fact improve our ability to stop Medicaid fraud, to collect money that is wrongly being distributed, and to reinvest that in the kinds of programs that we know we need and never have the funding for.

So I'll be voting no.

Thank you, Madam President.

ACTING PRESIDENT LITTLE: Thank

you, Senator Krueger.

Senator Padavan.

SENATOR PADAVAN: Thank you, Madam President.

I think, Senator Krueger, when you emphasize the fact that providers are a big part of this problem, you in effect tell Senator Skelos he's on the right track.

Those providers who run the full gamut, as you described, and accurately so, whether they be Medicaid providers of transportation or drug operations or hospitals or clinics -- Medicaid bills, common term -- they are operated in a very sophisticated manner. It takes a very sophisticated, focused apparatus to ferret them out.

And from time to time we pick up the newspaper and we read stories where some have been found and where millions of dollars have been recovered. But we know, when we read those stories, that we're talking about the top of the iceberg. And to really get down to where the big numbers are, an awful lot of effort and energy has to be expended, as well as technical expertise.

Now, this is not a new issue. Back in 1993 we had a series of hearings, five in number, dealing with issues of illegal immigration. One of those hearings was dedicated to public assistance and Medicaid and other social services. One of the most important presenters at that hearing was the welfare inspector general, whose name was Elmer Toro. Very capable individual. And he explained to us not only the issue of welfare fraud among illegal immigrants and undocumented aliens, but rampant Medicaid fraud.

And I'm just going to read one sentence from his testimony. "I strongly believe that many of those illegal aliens arriving from Spanish-speaking countries are in possession of fraudulent identification. A full assortment of social services and public assistance benefits are at their disposal."

Now, that hasn't changed. At that point in time, INS told us that there were roughly a half a million illegal immigrants in the metropolitan New York City area. Today, that figure, by the same source, is in excess

of 700,000 -- I'm sorry, 500,000, 700,000 -- people in the metropolitan area who are identified as illegal immigrants. Therefore, the magnitude of the problem that existed in 1992 that Elmer Toro was talking about is even greater today.

Now, recently Senator Skelos and I met with the welfare inspector general who serves in that capacity today. And during the course of our meeting with him, and he providing us with some insights, he made it clear that the current configuration that exists today between the Health Department, Social Services and other agencies is inadequate to deal with the magnitude of Medicaid fraud. Both again, as you said before, on the part of the providers and on the part of recipients.

Document fraud is rampant. Commissioner Martinez of the Office of Motor Vehicles recently determined that fact when he had people -- when he had Social Security numbers checked and found that there were thousands of them, thousands of them in this state that had more than one Social Security

number and more than one driver's license.

And they're able to do that because you can go on streets in the city of New York and get a phony birth certificate, a phony Social Security card. You can even get a phony green card at very minimal cost. And they're doing it. And because of technology, they're very, very sophisticated documents. Hard to tell the real ones from the bad ones.

So the fact that we would have someone who would be dedicated, with all the resources necessary, bringing together what is available today both in terms of personnel -- we do have technology that we didn't have back in '93 -- and using those resources to not hurt the people who are generally in need of and deserving of health care, but those who are ripping off the State of New York and, in so doing, ripping off every citizen in the State of New York.

Imagine what we could do with that $4 billion or $5 billion, whatever the figure might be, dealing just with education, one of our most difficult issues today. And it's out there to be obtained without hurting anybody

who is really entitled to the kind of assistance that Medicaid provides.

I think we're on the right track here. I know we're on the right track. We had a welfare inspector general 13 years ago, and a welfare inspector general today who works in this field all the time, tell us that we have a serious problem. And the difference between the two is it's gotten worse, not better, despite all our best efforts.

Now, you can be on Medicaid without being on welfare, and a significant percentage of Medicaid recipients are not on welfare. So therefore, when you weed out welfare fraud, you're not taking care of them, you're not dealing with that population.

We had a task force, as you all know, that worked diligently for over six months, chaired by two of our colleagues. Part of that responsibility was dealing with hospital administrators. And when we met with them in conferences and in conclaves, one of the issues frequently raised is: Tell me, how much Medicaid fraud do you think is going on in your hospital? And the answer is

uniformly: A lot.

"What can you about it?" "Nothing. If they arrive at our doors with a Medicaid card, we can't do anything about that. You have to get at the problem before they get the Medicaid card. And if they got it, somebody in the state government has got to deal with it if they got it fraudulently and are using it in that manner."

So no matter where you turn in the health care industry, or anywhere you turn in government, and you talk with people who have expertise and knowledge and are working on a day-to-day basis, you hear the same story. It's an enormous problem. And frankly, the bulk of it is in New York City. It's a fact. We can't ignore that.

Now, in the City of New York we have 11 hospitals owned by the city, operated by the Health and Hospital Corporation. We talked to them too. "Do you go after Medicaid fraud?" "Well, no, not really." "Well, why not?" "Well, we don't have the ability, the resources, or the authority."

"Also, if we find someone who's

receiving Medicaid benefits fraudulently, if that happened to be the case, and they're removed from Medicaid and they're an illegal immigrant, you've got to provide health care anyhow. However, not to the same extent. But then we pay for that out of our own pockets a hundred percent, and the state and the federal government contribute nothing."

There's no incentive, absolutely none whatsoever, by hospitals to go after people who they can bill under Medicaid. And we have to therefore assume that responsibility. If it's not going to be done at that level, we have to do it at the state level.

And so Senator Skelos' bill and all the things that other members have spoken to are right on the mark. This is long overdue. We should have done it a decade ago. But now is the time to do it, and to do it quickly.

ACTING PRESIDENT LITTLE: Thank you, Senator Padavan.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. I would like to just be on record

and very clear that no one on this side, I don't believe, is saying that we don't agree absolutely a hundred percent with what Senator Skelos, his ultimate aim with the legislation. And that is to reduce Medicaid fraud, hopefully, and certainly to recover as much as we can from those who are using it fraudulently.

Certainly for my district and for me, as a representative of the people in the part of the city where I am, Medicaid fraud is a huge problem. It is a disgrace, because it hurts the people that I represent, a lot of them. And so I resent it very much and I'm very much in favor of fighting it.

I do, however -- I would like to propose that what we're creating is just what Senator Savino has spoken of, and that is another layer of bureaucracy. I only wish that we would look to enhance and empower the Office of the Attorney General, who will ultimately be responsible, we think, to prosecute anyone who is guilty of Medicaid fraud. And so therefore, in the end, that person is the one who we will look to to deal

with this issue in the last and final resolution.

So why do we want to create another bureaucracy, another bureaucrat, another level of government which will conduct and supervise investigations, which will initiate civil suits to recover monies, to make information and evidence related to fraud available to law enforcement, to grant immunity? All of these are good things, but we already have that power vested in the Office of the Attorney General.

But in addition to all of these things that we have listed here as part of this legislation, we have the authority to prosecute. And that, I think, is the ultimate authority and the ultimate resolution.

And so, yes, let it be very known and clear that I am adamantly opposed to any kind of Medicaid fraud, because it hurts my constituents. It hurts the elderly in my district, it hurts the students in my district. We don't have school based health care in my district for teenagers --

ACTING PRESIDENT LITTLE: Senator

Winner, why do you rise?

Excuse me, Senator Montgomery.

SENATOR WINNER: Will the Senator yield.

ACTING PRESIDENT LITTLE: Senator Montgomery, will you yield for a question?

SENATOR MONTGOMERY: Yes, I will.

ACTING PRESIDENT LITTLE: Thank you. The Senator yields.

SENATOR WINNER: Senator, I listened with great interest to your explanation that all of these powers currently exist and are vested within the Attorney General.

I just ask the obvious question, that what has he been doing all this time with regard to collecting money? If in fact he has all these powers, and you acknowledge that all this fraud exists, and so does all of the members of the Senate on your side of the aisle, that the fraud is there, yet we don't really need to do anything else because why create another bureaucracy?

It appears that the taxpayers are crying out for the Attorney General to do

something about this and perhaps help out in saving them some money in this program.

SENATOR MONTGOMERY: Madam President, through you.

ACTING PRESIDENT LITTLE: Senator Montgomery.

SENATOR MONTGOMERY: With all due respect to my colleague, the record that I have here is that in one year we recovered $64 million, $65 million in Medicaid. That's just in one year.

And certainly over the years there are a number of instances and cases that I'm aware of where millions of dollars have been recovered because of the activity of the AG's office.

Now, obviously, that is not enough, I grant you. I would like to see more. However, I think that it is a mistake to say that we have not -- the Attorney General's Office has not been involved and engaged in recovering, both the current attorney general as well as the prior attorney general, one of them being a Republican, the other one being a Democrat.

But nonetheless, both attorneys general have been very much involved in trying -- attempting to recover funds that were fraudulently received through Medicaid.

SENATOR WINNER: Would the Senator yield.

ACTING PRESIDENT LITTLE: Thank you.

Senator Montgomery, will you yield for another question?

SENATOR MONTGOMERY: Yes.

SENATOR WINNER: Senator, you know, in all due respect, it appears that you're arguing more in favor of this legislation than arguing in opposition to it.

You make the statement that the Attorney General has made the successful recovery of $60 million, of which $30 million of which was not done by his office.

In fact, if the only amount of recovery that was done in the entire state was $30 million -- of which, Senator Skelos has accurately pointed out, is 72 cents recovered for every dollar expended -- it would appear that the Attorney General has done such a

horrible job here, in fact, that the taxpayers have been so adversely impacted by his performance that you are in fact making the case for why it should be entirely changed such that we have now an accountable inspector general that will in fact produce results rather than the woeful job that the state's Attorney General has done so far to protect the taxpayers.

ACTING PRESIDENT LITTLE: Senator Montgomery.

SENATOR MONTGOMERY: Madam President, in answer to my colleague, an attempt to answer, at least certainly to reiterate my position, I am in favor of an aggressive move to recover funds that were fraudulently received through the Medicaid program. I wanted to make that very clear.

However, the point of departure for me, and I believe some of the other colleagues on this side of the aisle, is with the way in which Senator Skelos has decided and determined that this is the way that we should go in order to recoup those funds.

He proposes to establish a new and

different bureaucracy. What we are saying is we would like to have the Attorney General --

ACTING PRESIDENT LITTLE: Senator Skelos, why do you rise?

SENATOR MONTGOMERY: -- fulfill that role. And if we are going to make any changes, we should --

ACTING PRESIDENT LITTLE: Excuse me, Senator Montgomery. Excuse me just a moment.

Senator Skelos, why do you rise?

SENATOR SKELOS: Would Senator Montgomery yield.

SENATOR MONTGOMERY: Yes, sure.

SENATOR SKELOS: Senator Montgomery, do you understand how a group or an entity can be certified by the federal government in order to qualify for the federal funding for Medicaid fraud collection money?

There are three ways. The system that exists right now, which is not working. That's one. System number two, where the Attorney General is not involved at all. And system number three is the model that we've created in this legislation.

Those are the only three ways that the federal government will certify a state for Medicaid fraud collection dollars. Okay? The only three ways.

So if the one way is not working -- and I should point out that in this legislation we seriously looked and changed our original bill based upon the memo of opposition from the Attorney General. We made the changes to meet his concerns.

As of right now, I do not have a memo in opposition from the Attorney General. I do have a memo in support by the Association of Counties that will say -- that says the old system is not working and this new legislation, the new system that we're establishing, that we've discussed with the Department of Health and Human Services, is a better way to go in order to save the state money -- the federal government too -- the state and the localities, and to make sure that the money is there to provide the services for my constituents and your constituents that need Medicaid assistance.

So these are the three types of

units that can be established that will be certified by the federal government.

Again, I want to point out that I had hoped at the beginning that this would not be a finger-pointing exercise at either the Attorney General or at us, that we want to create a bureaucracy. That's not the case.

The problem right now is that the system as it exists is not working. And if you put in more money the way it is now, the 72 cents that you collect is going to become more and more of a net loss to taxpayers of the State of New York.

Now -- and again, I hoped we wouldn't get into this. The Attorney General's report that came out for 2004 -- and I think some of the information came out, just coincidentally, on the day we were having a press conference concerning our Medicaid fraud legislation.

In 2004, 187 civil and criminal cases were completed, 139 civil recoveries with the responsibility of the Department of Health. Criminal restitutions, which were the responsibility of the Attorney General,

constituted $8.2 million ordered and $5.6 million actually collected in 2004.

It's not working. And that's why I think that we should emphasize the strengths of the Health Department data collection and the inspector general to do the investigation, and then say to the Attorney General: Here, we're going to work with you. This is what we've found. You go out and do what you do best and prosecute.

The inspector general cannot prosecute criminal cases. They can make referrals to the Attorney General, and they work out a process with the local district attorneys, help them with funding and individuals to help them prosecute.

So it really does streamline the system. It does not create a new bureaucracy, because as I mentioned to Senator Savino before, there are also individuals that are brought together from either the Health Department, assigned from the Health Department, or the AG's office to this inspector general's office.

So really what it is is a

coordinated effort to try something new, to reform the system that's dysfunctional right now, and to make sure that the people of the State of New York, their hard-earned tax dollars are not wasted and that your constituents and my constituents, as I said before, that need Medicaid assistance, the money will be there for them and that the only answer to the growing cost will not be cut programs, cut programs, cut programs.

ACTING PRESIDENT LITTLE: Thank you.

Senator Montgomery.

SENATOR MONTGOMERY: Madam President, I think the question intended was what would I do, do I agree with -- let me just say the areas where I certainly agree with Senator Skelos, since he's asking me what would I propose.

I propose that there are two places where we agree and we should go. This should not be a partisan finger-pointing one-upsmanship, you know, debate. It is within all our interests that this process takes place and that it's improved. So we

agree on that.

I agree also, as Senator Skelos has said, it is the Attorney General who has the ultimate authority to do the prosecutorial aspect. So I would hope and propose that we could in fact sit down with the Attorney General and with the Department of Health and with all of the other entities and come up with a plan for in fact making this work, making it possible, making it an operation within the Attorney General's Office -- no matter who that attorney general may be, from whatever party -- that the main interest and focus should be the process of aggressively going after and recouping funds that were fraudulently received through the Medicaid program.

So certainly there are some areas that we agree on. There's, I believe, a possibility of working out a program that we can all feel comfortable with and agree with and go with and hope that it makes a difference in this process.

So, Senator Skelos, I hope that we can come to that point.

Thank you, Madam President.

ACTING PRESIDENT LITTLE: Senator Skelos.

SENATOR SKELOS: Madam President, if I could comment on Senator Montgomery's good words. I mean, good recommendations.

During the budget process, we sought to have more funding go to the Attorney General's office for this. It was refused. We also asked for an appointment for the Attorney General and the Department of Health people to meet with us. The Department of Health people were willing to do it; the Attorney General's office refused to come and meet with us.

So again, this legislation now has grown out of the recommendations that the Attorney General made in opposition to the first bill, the Department of Health and Human Services, discussing it with numerous experts in this area far better than I am in coming up with an alternative model, one out of the three that we're allowed to go back to Washington to get certified. Because the model right now is just not working.

ACTING PRESIDENT LITTLE: Thank you.

Senator Onorato.

SENATOR ONORATO: Madam President, will Senator Skelos yield to a question.

ACTING PRESIDENT LITTLE: Senator Skelos, will you yield for a question?

SENATOR ONORATO: Senator Skelos, you know that I'm going to be supporting this bill. But you just made a remark about the process, when we were going through the budget process, that the Attorney General didn't want to support anything.

Now we're coming up with another process of investigating fraud. Where is the money coming from in this bill to address that particular problem?

SENATOR SKELOS: Let me explain to you. There is presently, right now, in the budget $1 million of Senate money to start the process going.

What we do is -- what we have done is we have, under this legislation, which would become effective immediately, the

Governor would immediately have to -- would have to go for certification to the federal government within 30 days, and the board would be appointed.

Now, let me just go into the board appointment, because Senator Krueger talked about not liking the idea of public benefit corporations.

The reason why we do it this way is because we truly want an independent board. And to show our desire to do so, we want to make the inspector general, number one, that one person truly responsible. Rather than some bureaucracy that is not necessarily responsible to anybody.

The board: two appointed by the Governor, two by the Majority Leader, two by the Speaker, and one each by the respective Minority Leaders. So we want the minority of both conferences to be involved in the selection process.

The qualifications -- I mean, these are tough qualifications. The -- well, number one, there will be post-audit supervision by the Comptroller of the state. So I think

that's critically important to point out.

The Medicaid inspector general, prior to his or her appointment, at least ten years of experience in auditing or law enforcement or investigation or in prosecuting or aiding in the prosecution of fraud.

The board members, ten years of experience. Plus we preclude individuals from either being on the board or serving as inspector general if they have held certain political positions for a period of, I believe, five years or if they have been one of your employees or my employees within the past five years.

So we truly want, within this public benefit corporation, an independent board selected by everybody and an inspector general that will have to produce for the people of the State of New York. Because also included within the legislation is that they have to report to the Governor, to the majorities and the minorities in both houses at least once a year on how they are progressing.

So we've put the million dollars

there. We can start the process. And if we start collecting the money, it will fund itself eventually.

ACTING PRESIDENT LITTLE: Thank you, Senator.

Is there any other Senator wishing to be heard?

The debate is closed.

The Secretary will ring the bell.

Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT LITTLE: The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 441 are Senators Andrews, Duane, Gonzalez, L. Krueger, Montgomery, Parker, Paterson, Sabini, Savino, Schneiderman, Serrano, A. Smith and Stavisky.

Ayes, 45. Nays, 13.

ACTING PRESIDENT LITTLE: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 452, by Senator Volker, Senate Print 1539, an act to amend the Civil Practice Law and Rules.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT LITTLE: Senator Volker.

SENATOR VOLKER: Madam President, this is a bill that has passed this house on a number of occasions.

Ironically, many years ago -- and Harvey Weisenberg and I have sponsored this bill for some time -- the bill initially was a much broader bill and was whittled down after we came to an agreement between both houses and the Governor. Unfortunately, the communication got mixed up in the delivery, and it got vetoed. So ever since then, we've been trying to get this bill passed.

And what it is is, as I was explaining to my good friend in front of me here, this is really not much of a problem upstate, because most police officers will

talk to lawyers. But there's something in downstate New York, apparently a lot of the law enforcement people, for one way or another, feel more comfortable with getting advice from union officials.

And there have been a number of strange situations, from what I understand, where there has been an attempt -- and most of these are not criminal issues, these are bargaining issues. And so what has happened is that the -- there has been a request in this bill to deal with confidential communications with an elected union official only.

And what it basically means is -- it has no criminal impact at all. What it means is that if the police officer asks for advice from a union official and discusses it with him, then that communication cannot be obtained by, in effect, the City or Long Island or whoever it is, and the communication with that elected official is privileged.

Go ahead.

SENATOR SCHNEIDERMAN: Explanation satisfactory.

(Laughter.)

ACTING PRESIDENT LITTLE: Thank you, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Very briefly on the bill, Madam President. I would like to incorporate by reference my remarks last year.

The problem with this bill, quite clearly, is that it's like one of those little kid's toys that hits a speed bump; it just can't get over it. There's no momentum to do it. There's not a perception that this needs to be done.

It essentially elevates a union official to the status of a professional, like a doctor or lawyer, with whom communication is already confidential.

And the problem, I think, really at this point -- and times change. And when you first started introducing this bill and it got vetoed by accident, the sense of the relationship of the police to the public in New York City was somewhat different.

I think the problem we have now is there's a strong impression out there that

this creates some special legal status for the police, unlike anyone else, and gives them special privileges that are denied to others.

The official duties, as are defined here, would mean that a union official in fact cannot have this special privilege apply if they're talking to a police officer about issues related to collective bargaining, wages and those things.

So the problem we have here, I think, is that the bill is actually losing momentum. And if there is a good reason to do this, we're going to have to take a different approach. Maybe there needs to be a hearing to bring the issue out into the fore, if this really is a problem that police officers won't talk to lawyers and aren't getting representation. Because right now I feel like it's losing support as we move forward.

I don't know that there is a reason for it right now. I'm going to vote no just because I don't think we need to create a new privilege. I don't believe that this is something that is impeding law enforcement officers, and I don't know why they should be

put in a special category.

But politically, if there is a problem here, we'd all like to address it and move past this sort of the perpetual one-house status of the piece of legislation.

So I would encourage the sponsor that maybe a hearing -- and we'd welcome you to New York City, if that's where the problem is. We'll have a nice hearing down there and see if we can get out facts that indicate the need for this legislation.

But in the absence of that, I will vote no.

Thank you, Madam President.

ACTING PRESIDENT LITTLE: Thank you, Senator Schneiderman.

Is there any Senator wishing to be heard?

The debate is closed.

The Secretary will ring the bell.

Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT LITTLE: The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 452 are Senators Andrews, Brown, DeFrancisco, Duane, L. Krueger, Montgomery, Parker, Paterson, Schneiderman, Serrano, A. Smith and Stavisky.

Ayes, 46. Nays, 12.

ACTING PRESIDENT LITTLE: The bill is passed.

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

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

ACTING PRESIDENT LITTLE: No, there is not, Senator Skelos.

SENATOR SKELOS: There being no further business to come before the Senate, I move we stand adjourned until Tuesday, May 3rd, at 3:00 p.m.

ACTING PRESIDENT LITTLE: Thank you.

On motion, the Senate stands adjourned until Tuesday, May 3rd, at 3:00 p.m.

(Whereupon, at 5:00 p.m., the Senate adjourned.)