

80TH GENERAL ASSEMBLY
SECOND SPECIAL SESSION
NOVEMBER 9, 1977

1. PRESIDING OFFICER: (SENATOR ROCK)

2. The Second Special Session will come to order. Reading
3. of the Journal. Senator Leonard.

4. SENATOR LEONARD:

5. Mr. President, I move that the reading and approval
6. of the Journals of Wednesday, November the 2nd, Thursday,
7. November 3rd, Friday, November 4th, Monday, November 7th,
8. and Tuesday, November 8th, in the year 1977, be postponed
9. pending arrival of the printed Journals.

10. PRESIDING OFFICER: (SENATOR ROCK)

11. You've heard the motion. All those in favor signify
12. by saying Aye. All those opposed. The Ayes have it.
13. The motion carries. So ordered. Messages from the
14. House.

15. SECRETARY:

16. A Message from the House by Mr. O'Brien, Clerk.

17. Mr. President - I am directed to inform the
18. Senate that the House of Representatives has passed
19. bills with the following titles, the passage of which
20. I am instructed to ask concurrence of the Senate, to-wit:

21. House Bill 2 and House Bill 4.

22. PRESIDING OFFICER: (SENATOR ROCK)

23. Senator Smith, are you ready to proceed? Okay. Senate
24. Bills on 3rd reading. On the Order of Senate Bills 3rd
25. reading. Senate Bill 1. Senator Smith.

26. SENATOR SMITH:

27. Mr. President and Ladies and Gentlemen of the Senate.
28. You may or you may not recall that this particular bill
29. was before the Body just a few days ago. You were presiding,
30. Mr. President. And on motion made by Senator Rhoads, a
31. motion, which by the way, prevailed. All of the amendments
32. to this bill were stricken. I voted against the motion
33. made by the distinguished Senator, but he was entirely
34. within his rights in making such motion as he so saw fit.

1. I have caught...I...I...I conceded at that time that two
2. of the amendments were good, from our point of view and
3. did not need to be stricken and that there were two of
4. the amendments for which we then, or at least in the
5. hands of a given member of this Body, there were two
6. amendments to clarify the other two amendments to that
7. bill and I suggested that he offer those amendments,
8. which he did not. Anyway they were stricken. I have
9. in the hands of the Secretary, Mr. President, an
10. amendment. That amendment that seeks to return this
11. bill to its former wording including the amendments
12. for No. 1 and No. 3, which were necessary. The Secretary
13. has that amendment.

14. PRESIDING OFFICER: (SENATOR ROCK)

15. Senator Smith seeks leave of this Body to return
16. Senate Bill 1 back to the Order of 2nd reading for
17. purpose of an amendment. Is leave granted? On the
18. Order of Senate Bills 2nd reading, Senate Bill 1.
19. Mr...Mr. Secretary.

20. SECRETARY:

21. Amendment No. 1 offered by Senator Smith.

22. PRESIDING OFFICER: (SENATOR ROCK)

23. Senator Smith.

24. SECRETARY:

25. No, I'm sorry, Mr. President. That would be Amend-
26. ment No. 5.

27. PRESIDING OFFICER: (SENATOR ROCK)

28. Correct. It would be Amendment No. 5. Senator Smith.
29. SENATOR SMITH:

30. May I state that the membership on this side of the
31. aisle and so far as I know, is in favor of the incorporation
32. of that or reincorporation of that portion of the bill that
33. was stricken and certainly membership on the other side of

the aisle is in favor of this amendment. Senator Schaffer,
1. I yield to you.

2. PRESIDING OFFICER: (SENATOR ROCK)

3. Senator Schaffer.

4. SENATOR SCHAFFER:

5. I just wanted to agree with Senator Smith this
6. first amendment and at least the amendments I'm aware of
7. are in good shape and I urge support on this side of the
8. aisle for it.

9. PRESIDING OFFICER: (SENATOR ROCK)

10. Senator Berman.

11. SENATOR BERMAN:

12. Thank you, Mr. President. I rise on a point of
13. personal privilege at this point.

14. PRESIDING OFFICER: (SENATOR ROCK)

15. State your point, Sir.

16. SENATOR BERMAN:

17. In the later editions of this morning's Sun Times,
18. an article appeared concerning this bill and my role
19. as a Legislator concerning amendments and debate on
20. this bill. This amendment and the bill pertains to
21. a subject about which I have very strong feelings.
22. The relationship between individual citizens, private
23. corporations, businessmen and the governmental bureaucracy.
24. I have voiced by feelings in committee, but I do want
25. to state on the Floor of the Senate that at one point
26. my law firm representated a Medicaid provider. The
27. provider which successfully challenge the Department
28. of Public Aid in the Supreme Court decision. I want
29. the record to show that my firm had done preparatory
30. work for this client. When it appeared, however, that
31. the position of my client and my personal philosophy
32. as a Legislator differed, my firm withdrew as attorney
33. for this client. And that took place over ten months

1. ago. Long before the court decision and long before this
2. legislation was introduced. This was done even though it
3. would have been totally permissible, totally permissible,
4. for my firm to continue its representation. Because this
5. is such important legislation for the taxpayers, Public
6. Aid recipients and responsible providers, who are turned
7. off by excessive irrelevant and non-germane regulations
8. and abuse of authority. But in order to avoid even the
9. appearance of conflict, I am going to ask the Secretary
10. of the Senate to record me as voting Present on all
11. amendments and I will vote Present at the proper time
12. on 3rd reading. I want to point out, however, in addition,
13. that the statement that I have just read was prepared
14. prior to the publication of the article to which I refer.
15. I know the author of that article and I've spoken with
16. him. And I merely suggest to him that he has done a
17. great disservice not to Art Berman alone, but to every
18. lawyer Legislator in the General Assembly. I would
19. suggest that there is...there is probably not a bill
20. that is before us that doesn't affect, in some way or
21. other, a present or past client of a lawyer Legislator.
22. We are elected by our constituents based upon not only
23. our political sagacity, but within the concept of
24. citizen Legislators, each of us runs for office based upon
25. an expertise and experience outside the halls of the
26. Legislature. And we, who are lawyers, come to this Body
27. with the...full knowledge that we do represent private
28. clients who may or may not be affected by Legislation.
29. I've spoken with the Director of Public Aid this morning
30. who refutes the implication that's made in this article
31. that he questioned my integrity in the discussion of the subject of
32. retroactivity. I don't think there was any member of the
33. committee who would argue that retroactivity isn't a

1. proper subject of debate. A proper subject of debate. I
2. regret that I must take the action that I have asked for
3. to vote Present. Because I think that I am doing all Legislators
4. a disservice by taking that position. And I perhaps might
5. be selfish, but I think I have been put in that position
6. by the tenure of the article that appeared. My integrity
7. has been questioned by that article. In order to avoid
8. any appearance of impropriety, I am taking the action,
9. regrettably, and asking to be voted Present.

10. PRESIDING OFFICER: (SENATOR ROCK)

11. Further discussion? Senator Carroll.

12. SENATOR CARROLL:

13. Thank you, Mr. President. I rise on a matter similiar
14. to Senator Bermans and that is, I would assume, considered
15. a point of personal privilege. I was not mentioned in
16. the article to which Senator Berman spoke. I have consistently
17. voted Present on this type of legislation in the past. Our
18. law firm is representing a client at this time before the
19. courts in Cook County. We have challenged the department's
20. prior Statutory authority in a case somewhat similiar to
21. the biomedical decision, which brought forth the reason for this
22. Special Session and the call of the Governor. I think that
23. our firm is entitled to represent this client. I see, and
24. I checked this morning, the conflict of interest laws in Illinois
25. and the prohibition laws in Illinois and the treatises by
26. the Legislative Council in Illinois on the subject. And it
27. seems to me that it is totally proper for myself and Senator
28. Berman to participate in the debate and in the vote on this
29. topic or any topic that comes before us. We are a citizen
30. Legislator, each of us. We each have special interests
31. of which we know from our daily lives. I don't care what
32. the type of profession or occupation a member is in. It
33. is from that knowledge that he gains his experience on which

1. to cast a vote on any issue. And I think that is what the
2. people of Illinois wanted both in 1870 and in 1970 when
3. they passed the Constitution. I think that this article
4. has done a disservice to the members of the General
5. Assembly. Our office received a call yesterday and I might
6. add I am not trying that case. I do not appear before
7. State agencies and have consistently not done so. Other
8. members of my firm do. We did receive a call from the
9. lobbyists and I call them the lobbyists on the side of the
10. department on this legislation. He is a lobbyist. He is
11. paid for by the State to be a lobbyist. He is lobbying
12. for a position of the Attorney General and of the
13. department. And he asked my partner who is trying this
14. case, whether or not I would participate in the vote.
15. My partner rightly told him he had no idea. He and I had
16. never discussed it. We are not involved in this particular
17. legislation. We have a case pending under the old law and
18. not under this. But I am sure that the information
19. that I have gathered from just speaking with people
20. would be of value to the members of the Senate
21. and members of the General Assembly on this topic. I intend
22. to do what the people elected me to do and to speak out
23. on these issues. If it be the will of this Body that I vote
24. Present because of the information I have garnered, I will
25. so do. I don't see it as a conflict. I see it as some
26. knowledge and expertise that has been gained. But I think
27. that there is a mood afoot that generated, I might add,
28. by the department and by the Attorney General that I might
29. have a conflict. I have spoken to no member of this
30. Session...of this Assembly during this Session or any
31. other time on this legislation or any other legislation that
32. might affect this field. I don't think that is proper for me
33. to do so. The particular client we represented has joined

1. with others and hired lobbyists to speak their position
2. before the General Assembly, so I have been told. I have
3. not spoken to that lobbyist on this issue. I think that's
4. proper for them to do so. But I will and I think it is
5. my right and my duty to let you know some of the pitfalls
6. that I see from the experience that I have gathered in
7. reviewing these amendments. And I thank you. I would also
8. ask that I be recorded as Present on all amendments. I
9. will vote Present on the bill, but I will reserve my right
10. to speak out.

11. PRESIDING OFFICER: (SENATOR ROCK)

12. Senator Maragos.

13. SENATOR MARAGOS:

14. Mr. President and members of the Senate. For the reasons
15. expressed by my law partner, Mr. Berman, I also wish to be
16. recorded accordingly.

17. PRESIDING OFFICER: (SENATOR ROCK)

18. Senator Kenneth Hall.

19. SENATOR KENNETH HALL:

20. Mr. President, Ladies and Gentlemen of the Senate.
21. I assume right now, we're discussing the retroactive...

22. PRESIDING OFFICER: (SENATOR ROCK)

23. No...

24. SENATOR KENNETH HALL:

25. Are we discussing that, Sir?

26. PRESIDING OFFICER: (SENATOR ROCK)

27. I don't believe we're there, yet.

28. SENATOR KENNETH HALL:

29. Oh, okay. I'll withhold mine until that time.

30. PRESIDING OFFICER: (SENATOR ROCK)

31. Okay. The question before the Body is the adoption
32. of Amendment No. 5 to Senate Bill 1. Is there any further
33. discussion on the adoption of Amendment No. 5? If not,

1. Senator Smith moves the adoption of Amendment No. 5 to
2. Senate Bill 1. All those in favor signify by saying
3. Aye. All those opposed. The Ayes have it. The amendment
4. is adopted. Further amendments. Yes, Senator Grotberg,
5. for what purpose do you arise?

6. SENATOR GROTBORG:

7. It would be helpful, Mr. President, if...our
8. amendments aren't numbered on our desks, if you could...

9. PRESIDING OFFICER: (SENATOR ROCK)

10. Okay.

11. SENATOR GROTBORG:

12. ...tell us the first key words of an amendment so
13. we could number them accordingly, we would...

14. PRESIDING OFFICER: (SENATOR ROCK)

15. Will do. That request is in order. A number of the
16. members have asked that copies be provided. The amendment
17. which was just adopted, No. 5, as I'm told being duplicated
18. at this very moment and will shortly be passed out. The
19. packet of amendments...all right. The Chair is informed
20. that the packet, the four amendments offered...will be
21. offered by Senator Moore. I will ask him to identify each
22. as he proceeds. Yes, Senator Smith. There are more
23. amendments pending. I was just...I'm trying to find out
24. where they're coming from. Yes, Senator Smith.

25. SENATOR SMITH:

26. It has been suggested that this side of the aisle would
27. offer opposition. We have studied the amendments...that
28. will be offered by the two Senators you just referred to
29. on the other side of the aisle. We have no opposition to
30. those amendments as handed us. I may or may not want to
31. ask certain specific questions with regards to one or
32. two of the amendments, but I do hope that Senators will
33. now present their amendments representing their point of

1. view concerning this bill from the other side of the aisle.

2. PRESIDING OFFICER: (SENATOR ROCK)

3. All right. Mr. Secretary, are there further amendments?

4. SECRETARY:

5. Amendment No. 6 offered by Senator Moore.

6. PRESIDING OFFICER: (SENATOR ROCK)

7. Senator Don Moore.

8. SENATOR MOORE:

9. Thank you, Mr. President. And before I proceed,
10. there are four amendments on your desk, is that correct?
11. All right. Amendment No. 6 will be handled by myself.
12. Amendment No. 7 by Senator Rhoads, Amendment No. 8 by
13. Senator Schaffer and Amendment No. 9 by myself. Thank
14. you, Mr. President, members of the Senate. Amendment
15. No. 6 to Senate Bill 1 eliminates the word substantially
16. in Section A of the bill. The bill presently reads as
17. follows: "Such vendor is not complying substantially
18. with the department's policies or rules and regulations
19. or with the terms of conditions of a participation agreement."
20. What this amendment does, it simply strikes the word
21. substantially. Senate Bill 1 would give the department
22. the power to terminate or suspend. With both of these
23. powers, the department will have great flexibility in
24. dealing with abusive vendors. The bill will allow the
25. department to impose a less severe sanction in cases where
26. abuses may not be serious enough to warrant terminations.
27. However, if the word substantially remains in the bill,
28. this flexibility will be greatly limited. Substantial
29. violations should be grounds for termination. However,
30. the department should also have the power to suspend in those
31. cases, where there have been violations which are not
32. substantial. The other problem with the word substantial
33. is what is substantial by definition? I can conceive of every

1. matter going into the courts to have a question of fact
2. determined as to whether or not five violations are
3. substantial or a hundred violations are substantial.
4. I think this is a good amendment. It gives the greater...
5. the department greater flexibility in dealing with vendors
6. and I'd be happy...to any questions and if there are none,
7. I would like to move the adoption of the...of Amendment
8. No. 6.

9. PRESIDING OFFICER: (SENATOR ROCK)

10. Senator Moore has moved the adoption of Amendment
11. No. 6 to Senate Bill 1. Is there any discussion?

12. Senator Smith.

13. SENATOR SMITH:

14. The objections that we had to the bills now being
15. submitted and discussed by members from the other side of the
16. aisle. I could not get in my head how we could recognize
17. and appreciate the offering and incorporation into this bill
18. of the word, a substantially compliance with the bill.
19. It has been changed by...a very able assistant here informs
20. me that the whole purpose or at least a part of the purpose here
21. is to eliminate that, is that correct? Have no objection,
22. Mr. President. Now, there's one other...

23. PRESIDING OFFICER: (SENATOR ROCK)

24. Further discussion? Senator Kenneth Hall.

25. SENATOR KENNETH HALL:

26. Mr. President, would the sponsor yield to a question?

27. PRESIDING OFFICER: (SENATOR ROCK)

28. Sponsor indicates he will yield. Senator Kenneth Hall.

29. SENATOR KENNETH HALL:

30. I don't have your amendments before me. So,
31. what I'm simply asking now, are you referring to suspension
32. in this particular amendment and if so, what are the
33. ...the grounds for the suspension?

1. PRESIDING OFFICER: (SENATOR ROCK)

2. Senator Moore.

3. SENATOR MOORE:

4. Thank you, Mr. President. The section which has the
5. word substantially in it, is the section of the bill
6. that gives the department the authority to suspend or
7. terminate the eligibility of any person, firm, corporation,
8. association, et cetera who...or legal entity to participate
9. as a vendor of goods or services to recipients under the
10. Medical Assistance Program authorized by this article
11. if after reasonable notice and an opportunity to be heard,
12. the Illinois department finds and then we set forth
13. several guidelines, A, B, C, D, E, F, G, H, subsections and
14. so forth. In other words, the...the Trainor versus the
15. biolaboratory case, the Supreme Court said that the director
16. was not given specific authority by the General Assembly
17. to suspend or terminate. And what Senate Bill 1 attempts
18. to do is to give the director that authority and set forth
19. the guidelines by which he can suspend or terminate.

20. PRESIDING OFFICER: (SENATOR ROCK)

21. Senator Hall.

22. SENATOR KENNETH HALL:

23. Well, in other words, the...the...he has been given
24. a hearing prior to the suspension?

25. PRESIDING OFFICER: (SENATOR ROCK)

26. Senator Moore.

27. SENATOR MOORE:

28. Yes, he has to be given reasonable notice and an
29. opportunity for hearing and thereafter, he is also given
30. the opportunity for an administrative review under the
31. Administrative Procedures Act which presently does not
32. exist.

33. PRESIDING OFFICER: (SENATOR ROCK)

1. Senator Hall.

2. SENATOR KENNETH HALL:

3. One more question. Now, while this suspension is

4. going on, if he's found not guilty of these, what

5. happens to all his cases or is he denied participating

6. in any programs while this suspension is going on...

7. PRESIDING OFFICER: (SENATOR ROCK)

8. Senator Moore.

9. SENATOR KENNETH HALL:

10. ...until he's found guilty.

11. PRESIDING OFFICER: (SENATOR ROCK)

12. Senator Moore.

13. SENATOR KENNETH HALL:

14. ...or not guilty?

15. SENATOR MOORE:

16. The payments could be suspended. This amendment

17. that we're talking about now does not pertain to that.

18. The payments could be suspended during the...the

19. hearing process by the department of up to one hundred

20. and twenty days. If there has not been an adjudication

21. within one hundred and twenty days by the department

22. then all payments are reimbursed and he continues on.

23. But there is a provision in the bill to allow the suspension

24. of payments for up to a hundred and twenty days.

25. PRESIDING OFFICER: (SENATOR ROCK)

26. Senator Hall.

27. SENATOR KENNETH HALL:

28. Well, do we do that with anyone else? In¹ other

29. words, under our...under our Constitution, a...or whoever,

30. he or she, is not guilty until proven. Now, are you telling

31. me that you're going to go on the assumption that the

32. person is guilty up until that time?

33. PRESIDING OFFICER: (SENATOR ROCK)

1. Senator Moore.

2. SENATOR MOORE:

3. It has been the practice of the department in the
4. past to suspend payments from vendors pending an investigation,
5. et cetera. What we're doing in this bill and incidently,
6. it happens to be Senator Schaffer's amendment which is
7. coming up later and perhaps your direct questions could
8. be directed to Senator Schaffer rather than debate it at this
9. time. But what we're doing in this bill is to...setting
10. forth a specific period of time that payments can be
11. suspended after an investigation and where abuses and fraud
12. in the opinion of the department can be proven. They then
13. have a total of a hundred and twenty days in which to go ahead
14. and prove their case during which period of time the payments
15. could be withheld.

16. PRESIDING OFFICER: (SENATOR ROCK)

17. Any further discussion? The question is the adoption
18. of...Senator Moore has moved the adoption of
19. Amendment No. 6 to Senate Bill 1. All those in favor
20. signify by saying Aye. All those opposed. The Ayes
21. have it. The amendment is adopted. Further amendments?

22. SECRETARY:

23. Amendment No. 7 offered by Senator Rhoads.

24. PRESIDING OFFICER: (SENATOR ROCK)

25. Senator Rhoads.

26. SENATOR RHOADS:

27. Mr. Secretary, what's the LRB number on the
28. amendment you have?

29. SECRETARY:

30. 80-7180..

31. SENATOR RHOADS:

32. Thank you...

33. PRESIDING OFFICER: (SENATOR ROCK)

1. Senator Rhoads. Senator Maragos, for what
2. purpose do you arise? Yes. Senator Rhoads.

3. SENATOR RHOADS:

4. Thank you, Mr. President, members of the Senate.
5. Senate Amendment No. 7 is one which has been worked on
6. by Republican and Democratic staff and I believe agreed to
7. by the department. The identical language was put on
8. yesterday on the similar bill in the House. It deals with the
9. language patterned after legislation in other states to
10. deal with vendor fraud and abuse civil recoveries.
11. Provides recoveries would be in addition to actions taken
12. by the Department of Public Aid and would be enforceable
13. by the Attorney General. In cases where a vendor
14. obtains or seeks to obtain excessive payments
15. through willful misrepresentations or concealment of
16. material fact, he would be liable for payment of interest
17. at the maximum legal rate then in effect, plus three times
18. the amount of any excessive payments plus two thousand
19. dollars for each false claim submitted. In other words,
20. if you have one voucher and several different false claims,
21. each claim would carry with it a two thousand dollar
22. fine. In cases where over payments resulted from
23. unintentional violations, the vendor would only be liable
24. for the repayment of the amount of the excessive payment
25. where obtained in the result of errors by the department.
26. It...we're attempting to deal here with the problem
27. where would it be cheaper for somebody to pay the
28. fine and go on defrauding the State or...we want to put
29. some very stiff penalties in here and I think that Senator
30. Smith is in agreement with this amendment.

31. PRESIDING OFFICER: (SENATOR ROCK)

32. Senator Carroll.

33. SENATOR CARROLL:

1. Question of the sponsor, if he will yield.

2. PRESIDING OFFICER: (SENATOR ROCK)

3. Indicates he will yield. Senator Carroll.

4. SENATOR CARROLL:

5. Senator Rhoads, while I personally agree with the
6. intent of the amendment, I do have a question having
7. seen some of the problems in hospital audits, year end
8. audits, when I served on a commission when I was in the
9. House, and it seems to me that all of our hospitals in the
10. State of Illinois at the end of the year are deemed
11. to either owe or be owed money by the Department of
12. Public Aid for services provided and it's usually in terms
13. of millions of dollars as opposed to tens of dollars.
14. And I know Lutheran General, Micheal Reese, or any
15. hospital in the State, Cook County, especially,
16. has been found to owe oney at the end of the year or be
17. owed millions of dollars. Is that willful? How are you
18. defining willful? They did submit vouchers for this
19. money. They did receive payment and at the end of the
20. year, the State comes in and says you owe us a million
21. dollars or we owe you two million dollars.

22. PRESIDING OFFICER: (SENATOR ROCK)

23. Senator Rhoads.

24. SENATOR RHOADS:

25. I'm not under...I guess I don't follow what you're
26. saying about the word willful...

27. SENATOR CARROLL:

28. Well, my qusion is...

29. SENATOR RHOADS:

30. ...we're talking about an audit at the end of the year
31. correct?

32. SENATOR CARROLL:

33. No, my question is that when you...as I recall the
34. procedure and it's apparently most often happens with the

1. hospitals where they just bill during the middle of the
2. month and there's some formula within the department whereby
3. it is presumed they will be there so many days. They
4. do submit a bill. To me, that would be a willful
5. act. They have submitted a voucher for money. The State
6. later comes and says to them, you...those people did not
7. stay the seven days you thought they would stay, therefore,
8. you owe us seven million dollars at the end of the year
9. or we owe you two million because they stayed longer than they
10. should have. That is not a negligent act. They knowingly
11. submitted this bill. It is willful. And I think...

12. SENATOR RHOADS:

13. Okay.

14. SENATOR CARROLL:

15. ...you might have now closed County Hospital and many
16. others.

17. SENATOR RHOADS:

18. I understand the question, although it's an
19. overt act, it's not a willful misrepresentation. Senator
20. Schaffer wanted...I yield to Senator Schaffer on that
21. point.

22. PRESIDENT:

23. Senator Schaffer.

24. SENATOR SCHAFFER:

25. I might, Senator Carroll and Senator Moore, if you
26. would listen and keep me honest, I think you will find,
27. it's been...it's been my understanding of that when we get
28. into the payment, repayment situation with a hospital,
29. that is almost universally brought about by the department
30. in the hospital or hospital association in the course of the
31. year debating rates and payment schedules and in effect,
32. agreeing to continue the existing procedure or some
33. modified procedure with the statement saying that at a time
34. certain...we will sit down, come to a final conclusion and if

1. you owe us money, we'll get it back and if we owe you
2. money, we'll send it to you. In most cases, it's a case of
3. the State giving the hospitals money. I don't think that
4. that procedure which is a way to allow, if you will,
5. the hospital and the bureaucracy to sit down and hammer
6. out their differences. I can't conceive of that falling
7. in the...willful category now...that I think is what
8. you're talking about and I just don't think that that
9. would fall into this type of situation.

10. SENATOR CARROLL:

11. As I recall it, when we had the testimony...

12. PRESIDENT:

13. Senator Carroll.

14. SENATOR CARROLL:

15. Thank you. As I recall it when we had the testimony
16. from the department and this goes back about five years
17. ago, what they told us then, is they had some kind of a
18. formula of average day stay and they had the hospitals
19. bill them and then at the end of the year audit, they
20. determined whether the patients were actually there that
21. many days, et cetera, et cetera. My point is as the
22. points you've raised in other bills today, it is not
23. spelled out in this bill. My opinion would be that is a
24. willful act, they willfully billed for a patient who was not
25. there that day. And I have no problem as a legislator
26. with the repayment section you know, and that is, in fact,
27. what they do now. And I think the statistics we got at that
28. time is a more often than not, the hospitals receive more
29. money than they were entitled to rather than less than
30. have to pay back or at least take it off of future billings.
31. But that's been resolved year in and year out. I think
32. the question really is if that now becomes a willful
33. act under this Act, not only would the department then have

1. the entitlement of the monies back because of the dollars
2. involved, they should suspend those hospitals from being
3. providers under the Medical Assistance.

4. SENATOR SCHAFFER:

5. Well, Senator Carroll, if I might, I think universally
6. in those proceedings, the one thing that is present is
7. an acknowledgement between the hospital and the department
8. that things aren't certain and the department understands
9. that this may...there may be an...some change of money
10. at the end of the year and when the hospital and the department
11. are working together and the hospital...the department knows
12. that the...that things aren't carved in granite. I don't
13. see how in the world the department could describe the
14. hospital's activity as willful and move against them in
15. any way, shape or form under the provisions of this amendment
16. to this very important Act.

17. SENATOR CARROLL:

18. My point is that I think that should be spelled out
19. because they would have the mandate to close down those
20. hospitals under this Act.

21. PRESIDENT:

22. Senator Rhoads.

23. SENATOR RHOADS:

24. Thank you, Mr. President. Senator Carroll, the director
25. and I have been chatting here. He informs me that this
26. does not affect hospitals, that, in fact, the attorneys for
27. the Illinois Hospital Association and the Attorney General's
28. Office have discussed this point, that they agreed that it
29. does not affect them and that they agreed...okay.

30. PRESIDENT:

31. Senator Carroll.

32. SENATOR CARROLL:

33. I would just appreciate something on the record as to why
34. it doesn't because they are a provider of medical services.

1. But if that's the case, that's perfect.

2. PRESIDENT:

3. Senator Rhoads.

4. SENATOR RHOADS:

5. Senator Carroll, I can't get you that right at this
6. moment. Perhaps Senator Moore can answer the question.

7. PRESIDENT:

8. Senator Don Moore.

9. SENATOR MOORE:

10. Thank you, Mr. President. In the bills...Senate
11. Bills 4 and 5 of this Session which are reposing in committee,
12. similar language appeared in those bills and it was called
13. to my attention that the year end reconciliation
14. with the hospitals in the event there was an overpayment
15. and there was money coming back, it could attach interest.
16. We sat down with the Illinois Hospital Association. We re-
17. vised the language. It is not the intention of the department
18. to charge interest in the event there is an overpayment to
19. the hospital. They feel that the language as contained
20. in this amendment does not pertain to the year end
21. reconciliations and for the record, I will state that it
22. is the...it is our intent in adopting this...this amendment
23. that it does not apply to year end reconciliations and
24. that there will be no interest or penalties attached thereto
25. in the event of an overpayment.

26. PRESIDENT:

27. Is there any further discussion? If not, Senator...

28. Senator Rhoads.

29. SENATOR RHOADS:

30. I just wondered if Senator Carroll would accept a
31. representation by the director to me to you that he will so
32. specify in our rules and regulations. Thank you.

33. PRESIDENT:

1. He indicates he will accept that representation.
2. If there's no further discussion, the question is
3. on the adoption of Amendment No. 7. All those in favor
4. of the adoption of the amendment signify by saying Aye.
5. Opposed. The Ayes have it. The amendment is adopted.
6. Any further amendments?

7. SECRETARY:

8. Amendment No. 8 offered by Senator Schaffer.

9. PRESIDENT:

10. Senator Schaffer.

11. SENATOR SCHAFFER:

12. Mr. President and members of the Senate. This
13. amendment accomplishes several things and I'd like to
14. briefly go over them. The first thing is it provides that
15. the department cannot require vendors to make private
16. paying patients records available. It maintains the
17. sanctity of that particular relationship. It also
18. clarifies the relationships of a vendor in relation
19. to the word control. I might add this and the initial
20. amendment that Senator Smith put on, moves the bill in
21. compliance with the Federal regulations which were
22. disseminated quite recently. The third provision
23. is it grants the department the power to approve or
24. not...deny applications and to recover money. The department
25. would be required to determine minimum standards for eligibility
26. and terminated vendors can reapply for participation one
27. year following issuance of a final administrative decision
28. terminating eligibility. The next provision, Senator
29. Hall, is the one that you were interested in and it required...
30. allowed the department to have the power to withhold
31. payments during the time that the termination of
32. ...the termination to suspend or not suspend the vendor
33. proceeded. This would be limited to a hundred and twenty
days and after that point, the department could not withhold

1. and I should say that it is currently the department's
2. practice and I'll read you part of a letter and...when
3. a vendor is found...when they start to proceed to lift
4. a vendor's license, the intention...the current practice which
5. was...I guess negated by the Supreme Court recent decision,
6. and what...I believe would be continued practice would be
7. to notify a vendor and...by letter, that he was
8. ...they were moving to terminate him and then they put in
9. this provision, it says you are at risk with respect to
10. payment of any services rendered subsequent to
11. the receipt of this letter. You will not receive
12. credit for such services, if the final agency decision is
13. to...is to terminate your eligibility for participation
14. in the medical assistance program. In other words, they
15. aren't saying to a vendor, you can't continue to render
16. services. They are saying if you continue to, and
17. we are successful in having your license lifted, we are
18. under no obligation to pay those bills. The fear of the
19. department is that if they go after a bad actor, somebody
20. who is really ripping the taxpayers off, that that
21. person through the normal and right legal protection
22. of his rights, which could take up to a hundred and twenty
23. days, would jam every rotten bill he can get his hands
24. on through the department and in a big provider and a big
25. operation, this could add up to hundreds of thousands of
26. dollars and in that hundred and twenty day period, he could
27. further rip off the taxpayers. What they're saying is
28. if they're guilty, they probably aren't going to pay them
29. if the man...the firm is found innocent, they're going to
30. get their bills paid. And then the other provisions of this
31. amendment, the department could deny payment for services
32. rendered during the pendency of the proceedings if the
33. administrative proceedings result in termination of the
34. vendor. Same thing again. And a final perfunctory thing

1. which says that these provisions are not construed to impair
2. the authority or power of State licensing agencies,
3. something that they felt was necessary to have in. If you
4. have any questions, I'd be happy to answer them. It's a
5. fairly involved amendment, though.

6. PRESIDING OFFICER: (SENATOR BRUCE)

7. Senator Smith.

8. SENATOR SMITH:

9. I'm not going to invade upon your objections
10. except to say just this, that I hope it isn't and
11. if you signal, I'll cease, sit down. I think I have
12. conveyed to the sponsor of this particular amendment
13. the fact that personally, now that's my personal
14. opinion, I could not agree to the hundred and twenty
15. day suspension. And you, yourself, have stated that
16. which is the latter part of my objections. Within a hundred
17. and twenty days, if a man is suspended for that length of time,
18. he will have lost his practice, his business, in considerable
19. amount so much so that it may have put that supply
20. completely out of business. I can't see the wisdom of
21. that. I don't think that that is your intent nor the
22. intent of this wording here on page 3, I think it is,
23. of this bill, a hundred and twenty days. If you could
24. see fit, I note you are conferring with the director
25. and I say in his presence and here in the presence
26. of all, that I think that's entirely too lengthy a period.
27. I think twenty or twenty-five or thirty days at the most
28. should suffice and I bear in mind the fact that
29. within that length of time, this man could be reduced to a
30. tramp, I shouldn't have used the word tramp, to critical
31. financial situations so much so that he, himself, would
32. have to make that...make an application for admittance to the
33. welfare program. I think simply stated that the hundred

1. and twenty day period, Senator Schaffer and Mr. Director,
2. is entirely too long. It's too lengthy and I think it
3. should be reduced to twenty days or twenty-five days
4. at the most. Now, I'll yield to Senator Hall.

5. PRESIDING OFFICER: (SENATOR BRUCE)

6. Senator Kenneth Hall.

7. SENATOR KENNETH HALL:

8. Thank you, Mr. President. Will the sponsor yield
9. to a question?

10. PRESIDING OFFICER: (SENATOR BRUCE)

11. Indicates that he will yield. Senator Kenneth Hall.

12. SENATOR KENNETH HALL:

13. Senator, I'm very happy to hear in part of your
14. amendment that this will prevent these people from coming in
15. looking at other records other than what are Public
16. Aid, which they are doing right now, that when they
17. go into these doctor's offices they don't just look at
18. Public Aids, they look at everything. I'm happy to see
19. that in there. Now, I'm concerned like everybody else
20. here. I want to see a good Public Aid provision in this.
21. I want to get rid of all the cheaters, I want to get rid of
22. all...it's what they referred to. I don't want anybody
23. drawing money illegally that they're not entitled to.
24. But the point about is if you say a hundred and twenty
25. days, today we got people in these areas that are going
26. from six to eight months getting their payments. If we go
27. into this with a hundred and twenty days, what guarantee
28. have we got that this will happen with one hundred and twenty
29. days, it will continue much longer, which I know that's
30. happening right now.

31. PRESIDING OFFICER: (SENATOR BRUCE)

32. Senator Schaffer.

33. SENATOR SCHAFFER:

1. Well, a series of answers to both the questions
2. raised by my colleagues on the other side. One, if it
3. goes over a hundred and twenty days, the department has
4. to pay them. That's the...the hundred and twenty day
5. ceiling is if the department can't get it done within
6. a hundred and twenty days then that vendor is going to get
7. his bills paid. That's a date in there to protect the
8. vendor. I will tell you that as originally proposed,
9. in Senate Bill 4, 5 earlier on, the department asked for
10. a hundred and eighty days. So, they have come down
11. sixty days which I am told, frankly, that the vendors
12. themselves indicate that these type of provisions
13. or hearings are going to take a hundred and twenty days and
14. I would respectfully submit again that an innocent person
15. has nothing to fear because they're going to get paid.
16. A guilty person is going to have problems with this.
17. And I think this amendment has protections in it for the
18. innocent and I'm sorry, I'm not down here to protect
19. the guilty. So, I think the amendment is in pretty good
20. shape and will give the department the power to
21. get the people out of...again, we're not talking about
22. recipients. We're talking about multi-million dollar operations
23. in many cases.

24. PRESIDING OFFICER: (SENATOR BRUCE)

25. Senator Kenneth Hall.

26. SENATOR KENNETH HALL:

27. Well, Senator, I hope you don't think I'm down here
28. to protect the guilty. If you're making that reference.
29. The point is this, what I'm trying to say is this,
30. is that what will happen...I just don't want to throw the
31. baby out with the bathwater. The point is that if you
32. suspend some of these people up to four months, that
33. what happens is a number of these people who are...

1. and you're saying providers, we're talking about the
2. providers which includes everyone, whose doing business
3. with the Public Aid, my point is this, that why does it
4. take a hundred and twenty days? Why is that necessary?

5. PRESIDENT:

6. Senator Schaffer.

7. SENATOR SCHAFFER:

8. Senator Hall, you've just set me up for make one of
9. my...making one of my sarcastic comments about lawyers,
10. but I'm not going to rise to that particular occasion.
11. I'm getting heckled already just at the hint of it.
12. I should point out to you that that hundred and twenty
13. days is the maximum. There's a provision already in the
14. Rules and Regs for fifteen day...you know, if you get
15. your notice in fifteen days for hearing. So, if
16. somebody is sincerely interested in getting this thing
17. cleaned up, they can get it cleaned up a lot faster than that.
18. If, on the other hand, we want to get some high...high
19. priced talent involved and really drag it out, we probably
20. can. I would again submit to you that the hundred and
21. twenty days is a maximum period of time that the department
22. is...the director tells me, fully willing to move much
23. quicker than that and from what I have heard on the
24. Public Aid Committee, it's been my experience in this...
25. this particular type of case where we're talking about
26. vendors doing a lot of business with the State, making
27. a lot of money, at least taking it in, that the
28. way...the people have been dragging their feet have been
29. the vendors, not the department. I think the department would
30. like to get these things resolved quickly. They don't want
31. to abrogate anybody's rights, but they...they, I think,
32. are not the ones who would cause us to hear...see the last
33. day...see it extended to the last day.

1. Senator Kenneth Hall and your time has expired,
2. Senator Hall.

3. SENATOR KENNETH HALL:

4. I don't want to have to be like Senator Smith.
5. I don't take the Floor that often, but the thing I'm
6. trying to get clear in my mind is that I'm not thinking
7. of these high priced vendors as such. I'm thinking about the
8. lowly physician who delivers service who...whose...that's
9. really laboring in the vineyard. That's my concern
10. and I don't know why we have to wait and when you say
11. a hundred and twenty days, you know the department is
12. going to take as long as they can on this.
13. They're doing it on other things and I don't see no reason
14. why they should automatically change from this.

15. PRESIDING OFFICER: (SENATOR BRUCE)

16. For what purpose does Senator Schaffer arise?

17. SENATOR SCHAFFER:

18. Frankly one very cogent point has just been pointed
19. out to me by the director. That when the department
20. moves against somebody, they've got the case built, a hundred
21. and twenty days is for the defendant to build his case
22. to rebut the department. So, what we're doing is giving
23. the...the vendor time to get his act together and get in
24. and defend his rights. The department, when they...when they
25. move, they've got their file folder all filled and their
26. lawyers are ready to go. And that's where the date comes
27. from.

28. PRESIDING OFFICER: (SENATOR BRUCE)

29. Further discussion? Senator Newhouse.

30. SENATOR NEWHOUSE:

31. Thank you, Mr. President and I must confess that I
32. think that this discussion...the point I'm going to raise
33. might better have been raised in committee and I regret having

1. to raise it on the Floor. And it...I have the same concerns
2. as Senator Hall because we're talking about several levels of
3. vendors and I think we ought to understand that. Some
4. vendors are rather substantial and have a business operation
5. going on. There are others who are medical providers who are
6. not business people in the true sense of the word.
7. Now, it appears as if that at a certain point and for a
8. private practitioner, when his aid load gets to a certain
9. point, that becomes his business in fact. So that an
10. action taken against someone on this...in this level,
11. puts him out of business which is quite different from
12. someone whose caseload from the department is rather
13. small or from someone who is conducting a business
14. operation which has built into it the cushions for
15. all of these such occasions. I think that's one point
16. that ought to be made. And the second...the question I guess
17. I want to raise would probably be more proper to raise with the
18. director and perhaps we ought to do this by private
19. conversation. But I had an experience like this, Senator.
20. I got a call from one of the medical people in my district
21. one day who said to me, Senator, there are some people
22. in here from the department who say they're here to
23. conduct an investigation. My entire operation has been
24. disrupted. They're asking for records, I'm not sure whether
25. or not they're entitled to, what are my rights, what can they
26. do. I happen to be here in Springfield or I would have
27. gone right over to watch to see because as a matter of fact,
28. I would like to see one of these operations and see how it is
29. done. Now, as I say, the question may be one that the director
30. may want to come over here and talk to me about it rather than
31. divulge it on the Floor.

32. PRESIDING OFFICER: (SENATOR BRUCE)

33. Senator Carroll.

1. SENATOR CARROLL:

2. Thank you, Mr. President, Ladies and Gentlemen
3. of the Senate. This is sort of in the form...excuse me.
4. Senator Newhouse...

5. PRESIDING OFFICER: (SENATOR BRUCE)

6. Senator Newhouse.

7. SENATOR NEWHOUSE:

8. I'm sorry, Senator Carroll, but I think Senator
9. Schaffer may want to reply to that question one way or
10. another.

11. PRESIDING OFFICER: (SENATOR BRUCE)

12. Senator Schaffer.

13. SENATOR SCHAFFER:

14. Well, I just was informed by the director
15. and our staff over here that what is...is kind of amusing
16. to me is that our roles have been reversed. I understand
17. the bill, as it now stands, they can suspend up for any
18. length of time and not pay bills. What I've done is put
19. a hundred and twenty days in here that after that point,
20. if they haven't got their act together, they have to pay
21. the man's bills so your arguments have been going against
22. my position, if you follow me. So, what we've done, the
23. hundred and twenty days without this amendment, the
24. department can say, we aren't going to pay your bills forever
25. and we can take two years to adjudicate this thing out.
26. With this, they have a hundred and twenty days and then if
27. they haven't got...got it settled, they've got to start
28. paying the bills again, so Senator Hall, I think the fears
29. that you have articulated are resolved by this amendment,
30. not confounded.

31. PRESIDING OFFICER: (SENATOR BRUCE)

32. Senator Newhouse.

33. SENATOR NEWHOUSE:

1. No, Senator, I want to make it clear that the
2. hundred and twenty days is not the thrust of my...what
3. I was trying to do rather was to point out the distinction
4. between the levels of vendors so that...so that this
5. Body would have it clear in our minds that we're not
6. talking about a single individual or a single type of
7. entity. We're talking about a one level hospitals, we're
8. talking about clinics, we're talking about businesses that
9. are financed in other ways that don't totally depend upon
10. Public Aid. We're talking about some substantial
11. businesses that are financed by Public Aid so these...
12. there are all kinds of distinctions that I think we ought
13. to bear in mind when we act on this bill. The question
14. that I raised and I see the director is here now and I would
15. really like to have it in the record some kind of way as to what
16. that procedure is. Several legislators have suggested that it
17. ought to be in the record some kind...I don't know how to do
18. it because it's an unfair question, I think, to you.
19. But perhaps after some discussion with the director, I might
20. ask that I be given the privilege of putting it in the record.
21. Thank you, Mr. President.

22. PRESIDING OFFICER: (SENATOR BRUCE)

23. Senator Carroll.

24. SENATOR CARROLL:

25. Well, I thank you, Mr. President, Ladies and Gentlemen
26. of the Senate. Before I make some remarks on this particular
27. amendment, one of my colleagues on this side of the aisle
28. has recalled to me that our Senate rules do not allow the
29. director to be on the Floor. While his expertise is welcome,
30. and desirable, that particular Senator had had a similarly
31. situated person removed from the Floor by a request
32. from the other side of the aisle because the rules specifically
33. provide that only elected officials and an aid from the

1. Governor who is specifically designated, are allowed
2. the privileges of the Floor. So, with that admonition,
3. Senators, maybe your courtesies can be extended at other
4. times, too. My question relates to the situation
5. and again, I refer to this in my remarks earlier today,
6. an expertise, probably, that was developed as a result
7. of the case we have pending where we represent other
8. owners who at no time had been involved in any
9. type of accusation of abuse who are investors in
10. provider type facilities. And those investors are
11. finding themselves in a situation where one of
12. the owners had been...had actually pled guilty in Federal
13. Court to nothing that was a dollar fraud on the
14. State of Illinois, but was involved in some litigation
15. there that under this bill, would make any home in
16. which he had an ownership interest or any provider
17. in which he had an ownership interest, ineligible under
18. the program, even though he was not in control, even
19. though he was not in management, but the mere fact
20. that he owned an interest deprived all other owners
21. of any access to this program which admittedly is
22. a substantial part of their involvement in providing
23. medical care. So, the point is how do you rectify the
24. situation? Who is going to buy the interest of
25. a person who would make the entire facility ineligible
26. when the facility itself has never been in any way
27. involved in any fraud on the system and I might add
28. that in any of these, there's no question of the quality
29. of care. Is the State going to buy that interest, are
30. you going to demand that he just absolve himself of any
31. interest and take away all of his property rights, are
32. you going to demand that the other owners buy him out
33. and at what price?

1. PRESIDING OFFICER: (SENATOR BRUCE)

2. Senator Schaffer.

3. SENATOR SCHAFFER:

4. The director informs me that they don't close
5. homes, they ask them to divest their interests and I believe
6. this is a Federal requirement that stands or falls without
7. this legislation and this amendment merely puts what is
8. already a Federal requirement into the Illinois law.

9. PRESIDING OFFICER: (SENATOR BRUCE)

10. Senator Carroll.

11. SENATOR CARROLL:

12. I don't believe that to be correct. There is a
13. Federal Statute on confiscation that the Federal
14. Government has the right to invoke itself on and if it
15. so chooses, that ends the issue. That's very nice, however,
16. that the director allows for divestiture. My question is
17. how and when and to whom and where. Does the State want to
18. buy the interest, they want to set the price, how much
19. time...these...you know, and again, I'm talking from the
20. expertise of the litigation we're having where
21. the owners are saying, what about us? Why is the home
22. terminated because of it's owner?

23. PRESIDING OFFICER: (SENATOR BRUCE)

24. Senator Schaffer.

25. SENATOR SCHAFFER:

26. Well, I think that the director...director informs
27. me that they recognize this problem, which, by the way,
28. exists as I understand it, HR3 which has been put upon
29. us within the last month and that these...this type of
30. problem will have to be addressed by the Department of
31. Regulations, frankly, with or without this legislation.
32. And by the way, in comment to your earlier remarks
33. about the director on the Floor, I personally don't have

1. any objections to any of the Governor's directors being
2. on the Floor, save one.

3. PRESIDING OFFICER: (SENATOR BRUCE)

4. Senator Carroll.

5. SENATOR CARROLL:

6. As in the other case, then, I think before we pass
7. a law, that we cannot enforce or anybody has any understanding
8. of, or that impunes the rights of other people who are,
9. in fact, majority owners of providers and who have no
10. involvement with the department and no involvement in
11. any alledged fraud or anything else. I think there should
12. be some more clear understanding than you're providing
13. us with and since the director is on the Floor illegally,
14. maybe we can get a more direct and definitive answer for the
15. record.

16. PRESIDING OFFICER: (SENATOR BRUCE)

17. Senator Schaffer.

18. SENATOR SCHAFFER:

19. The director, through a probably less than effecient
20. conduit, wishes me to inform you that there is a...and I
21. will quote roughly, "there is some line I have to draw "
22. and they've chosen to draw the line along the Federal
23. standards. The rules and regulations of the department
24. will have to direct this...address this problem in
25. a fair and equitable manner that protects not only
26. investors but the clients in the establishments or the
27. patients served by the establishment and he tells me that
28. they are absolutely committed to that type of guideline
29. and rules and will proceed with or without this legislation
30. to comply with the Federal regulation which is...they are
31. obviously mandated to do.

32. PRESIDING OFFICER: (SENATOR BRUCE)

33. Senator Carroll.

1. SENATOR CARROLL:

2. I will merely ask, then, the offeror of the amendment
3. if he understands that and could give me a definitive
4. answer based on what was whispered into his ear. I haven't
5. heard an answer other than some vague representation
6. that at some time in the future, somebody will figure out
7. a...resolve to a problem that this legislation is in
8. part creating and the Federal rules apparently are also
9. in part creating. If you understand it, God bless.

10. PRESIDING OFFICER: (SENATOR BRUCE)

11. Senator Schaffer indicates that he understands it.
12. Is there further discussion on Amendment No. 8 to
13. Senate Bill 1? Senator Washington.

14. SENATOR WASHINGTON:

15. Yes, Senator Schaffer, my concern is similar to
16. that of Senator Hall's, the hundred and twenty day period
17. which seems to me to be an inordinate period of time
18. to place one under suspension particularly when you're
19. dealing here also with small vendors who...whose cash
20. flow may be so small that they can't pay their bills and
21. maintain their offices during that period. Since you
22. indicate that when the department moves in, it already
23. has a completed file and is actually ready to do business
24. based on his prior investigation, since they already
25. prepared, I simply don't see that a hundred and twenty
26. day suspension is at all necessary. They may drag their
27. feet. Wouldn't a forty-five day period be necessarily...
28. be more logical and then extend it based upon the readiness
29. of the vendor to come forth with his information or his
30. file?

31. PRESIDING OFFICER: (SENATOR BRUCE)

32. Senator Schaffer.

33. SENATOR SCHAFFER:

1. I apologize for my inability to clarify that point.
2. As the bill now stands, the department can suspend somebody,
3. stop paying their bills and take ten years and that
4. guy can't get his bills paid. What this amendment says is
5. that if the department attempts...institutes proceedings
6. to suspend that if they haven't got it finished within
7. a hundred and twenty days, then they have to start
8. paying the man's bills again. So, what in essence this is
9. a limitation on the department and a protection for the
10. vendor and without this amendment, the department...the
11. thing can go on for years and they don't have to pay the man's
12. bills. I think that this...this amendment in effect, that
13. portion of this amendment protects the vendor from the
14. very problem that you have mentioned and again, the
15. department goes in from day one with their case prepared
16. and it's the vendor who needs the time to get his
17. council and get his act together and defend his rights.
18. So...and I might add for Senator Newhouse and I would
19. like to acknowledge that I...I totally agree with you
20. on the types of vendors we're talking about, but in the
21. vast majority of the cases that this Act is going to affect,
22. the type of firm you're affecting, you know, is very well
23. financed and can get their act together with a lawyer.
24. The little guy who perhaps lives in my district, more than
25. yours that only a portion of his practice is medicaid
26. who, you know, might say just fooley, I admit, this will be
27. a problem because they will have to have a lawyer, but
28. the vast majority of the cases that we're...that are now
29. in the mill in the department certainly are not that type of
30. vendor.

31. PRESIDING OFFICER: (SENATOR BRUCE)

32. Senator Washington.

33. SENATOR WASHINGTON:

1. Yeah, I...I laud you for your recommendation here
2. and I am aware of the present situation. I'm simply saying
3. that since you started off to reform this procedure,
4. I think you should go all the way and tighten it up
5. a bit more. A hundred and twenty days, it might give
6. the department the feeling that they can just string it out.
7. After all, we do have in some of these departments,
8. something which borders on arrogance sometimes and I think
9. while we're at the job, Senator Schaffer, you should simply
10. extract a more reasonable time frame, taking into
11. consideration that you're dealing in the main with a
12. lot of small vendors, not...not gigantic operations, you're
13. dealing with small vendors whose cash flow, if cut
14. off, will sufficiently put them out of business. All I'm
15. suggesting that a forty-five day period and also added
16. to that, additional time based upon the unreadiness of the
17. vendor would be far more apropos. I encourage what
18. you're doing, but I simply think you haven't gone
19. far enough and since you've started on this road, this
20. hundred and twenty day restriction would prevent me,
21. really, from...from operating favorably in terms of
22. Amendment No. 8 because I think otherwise, it's a good
23. amendment.

24. PRESIDING OFFICER: (SENATOR BRUCE)

25. Senator Schaffer.

26. SENATOR SCHAFFER:

27. I think it's a reasonable compromise and I...I
28. recognize your point, but I think this is a reasonable
29. compromise and if, in the future, we find the fear that
30. you...you voice to be reality, I'd be the first
31. to help you amend the Act.

32. PRESIDING OFFICER: (SENATOR BRUCE)

33. Further discussion? Senator Newhouse.

1. SENATOR NEWHOUSE:

2. Yes, Mr. Chairman, thank you and this is my second
3. bite at the apple and I don't want to prolong...I want
4. a roll call, also. But, I do want to get into the
5. record my conversation with the director. I raised the
6. question of what...under what guidelines do the investigators
7. operate when they begin an investigation into a facility,
8. a doctor's office, a medical facility...otherwise, cause
9. in the past, we've had some complaints about sort of
10. a Gestapo mentality that takes place there. The director
11. informed me that guidelines are presently being written
12. which will outline clearly the department's responsibility
13. and the department's rights and the vendor's responsibility
14. and the vendor's rights. And my understanding is that
15. these are being worked out with the various vendors on
16. the various levels so that there will be an...an
17. accommodation on both sides and there will be input from
18. both sides. I've asked the director if he would give
19. me a communication to that effect and he has said that he
20. would and I'm wondering, Director, if I've represented
21. correctly our conversation? In that case, thank you for
22. the record. Thank you, Mr. President.

23. PRESIDING OFFICER: (SENATOR BRUCE)

24. Further discussion? The question is on the adoption
25. of Amendment No. 8 to Senate Bill 1 in the Second Special
26. Session. All in favor say Aye. Opposed Nay. The Ayes have
27. it and the amendment is adopted. Further amendments,
28. Mr. Secretary?

29. SECRETARY:

30. Amendment No. 9 offered by Senator Moore.

31. PRESIDING OFFICER: (SENATOR BRUCE)

32. Senator...Senator Moore.

33.

End of reel

minutes
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11.9.2
Rec'd

1. SENATOR MOORE:

2. Thank you, Mr. President and members of the Senate.
3. Amendment No. 9 to Senate Bill 1 there are several parts
4. of it which I would like to explain to the members. Section
5. 9...or 5-9.2 will specifically grant the department the
6. authority to exercise the powers enumerated in Senate Bill
7. 1 with respect to the conduct and activities engaged in
8. prior to the bill's effective date. The provision does
9. not mean that the department could make a determination
10. of...The provision does not mean that the department could
11. a determination effective prior to the effective date of
12. the Act. It does mean that if the Act was passed today
13. we could terminate or suspend someone prospectively based
14. upon activities engaged in prior to the Act's effective
15. date. This would be further limited to those instances
16. in which providers had actually or...had actual or
17. constructive knowledge of the requirements which applied
18. to his conduct or activities. The new Section 5-9.3 would
19. authorize the director to review the findings of fact made
20. in earlier hearings and to use those findings as grounds
21. for exercising the powers granted to the department in
22. Senate Bill 1. Again, the termination would be prospective.
23. However, it would be based on factual determinations made
24. at a hearing conducted by the department and initiated prior
25. to the bill's effective date. Without these provisions
26. vendors who have defrauded and abused the Medicaid program
27. in the past, in effect, would be granted total amnesty for
28. such activities. This would include the ninety-one vendors
29. previously terminated by the department for such reasons as
30. kickback, fraudulent billings, gross overutilization, improper
31. record keeping and other gross abuses. These vendors...these vendors
32. in many instances, been the most serious abusers of the
33. program. The department does not believe that such vendors

1. should be granted amnesty for these past activities. However,
2. without these provisions this is...precisely what will happen.
3. Now, I do want to make a comment. There has been some dis-
4. cussion upon the some of the members had as far as this being
5. an ex post facto law. I will admit, and in respect to Senator
6. Berman, I'm sorry he's not on the Floor, the original bills
7. that I introduced, Senate Bill 4 and 5, were, in fact, ex post
8. facto. They did provide for civil penalties retroactively.
9. They did provide for criminal penalties that would have occurred
10. in the past. This amendment does not deal with the ex post facto
11. situation. All we're saying in this amendment is that if a
12. medical provider has been terminated from the program. In some
13. cases been tried, sentenced or tried, convicted, sentenced in
14. jail, in some cases fined up to two hundred and fifty thousand
15. dollars. This type of an individual, based upon the prior
16. facts, after a redetermination by the director of those facts
17. he can terminate or suspend that provider in the future. It is
18. not an ex post facto law and the argument that Senator Berman
19. did make in committee, as far as my bills were concerned,
20. he was absolutely right. The provisions of those bills were
21. ex post facto. The provisions of Amendment No. 1 are not. They
22. are retrospective in nature and they deal only with prospective
23. terminations. I'd be happy to answer any questions or, if not,
24. I'd move for the adoption of this amendment.

25. PRESIDING OFFICER: (SENATOR BRUCE)

26. Senator Carroll has moved the adoption of Amendment No.
27. 1...No. 9 to Senate Bill 1. Is there discussion? Senator
28. Carroll.

29. SENATOR CARROLL:

30. Yes. Questions of the sponsor.

31. PRESIDING OFFICER: (SENATOR BRUCE)

32. Indicates that he will yield.

33. SENATOR CARROLL:

1. Senator Moore, as I understand it, you're saying that
2. where, in fact, a provider has been terminated already, what
3. you want to do is under the new law allow them to continue
4. that termination. Is that correct?

5. PRESIDING OFFICER: (SENATOR BRUCE)

6. Senator Moore. Could we have some...Senator Guidice
7. and Senator Mitchler you're in the line of sight a little
8. bit. If they could...asking questions there. Senator Moore.
9. SENATOR MOORE:

10. No. The providers that were terminated before and, perhaps,
11. in jail today, if we do nothing could apply to the court and be
12. reinstated in the...in the Medical Assistance Program. What
13. this amendment does, is allows the director to review prior
14. findings of fact, prior court decisions, prior hearings and
15. then make a redetermination and terminate that provider based
16. upon the prior information, terminate him from participation
17. in the future.

18. PRESIDING OFFICER: (SENATOR BRUCE)

19. Senator Carroll.

20. SENATOR CARROLL:

21. Thank you, Mr. President. My question was not answered.
22. My question to you, based on a statement I thought you had
23. made and that was where you said, I thought, that the reason
24. behind this, at least in part, was to take those who had
25. already been terminated after hearing by the department and
26. who might, as you pointed out, if we don't do this be eligible
27. for reinstatement and allow that termination to, once again,
28. be granted. And I guess my question, which I understood to be
29. your comment, that those who had already been terminated, could
30. continue to be terminated. My question goes to several other
31. things. A, those who have not already been terminated by the
32. department, but who might be based on new law, based on old
33. facts or those who have had no hearings yet who, where the

1. director may say you did something before this became a law
2. and we will now terminate you based on those findings of fact
3. of something you did before this became a law. Specifically,
4. what bothers me about this, again, and within the confines
5. of the comments I made earlier, is that under existing law
6. at the times some of these people who are involved, and I
7. might add, those who were not actual defrauders of the system,
8. had made a determination based on certain plea bargainings
9. in Federal Court with the U.S. Attorney. And based on those
10. plea bargainings will now find themselves divested of interests
11. that are totally unrelated to anything that they may have done
12. in the past. What this bill now says, as I read this amendment,
13. is that although they, in good faith, accepted the word of the
14. U.S. Attorney at a time when he had the power to confiscate their
15. property entered into a plea bargaining arrangement for whatever
16. reasons they did so as opposed to going for trial. They could
17. now be divested by the director because of some Act we now
18. pass for some past history plea bargaining arrangement. And I
19. would assume that a plea of guilty is probably the most con-
20. vincing evidence the director would find in the future of
21. something that was done in the past when this was not the law.
22. And I think that many of these people would have been advised
23. by counsel not to have entered into those kind of agreements
24. had they known that this was a potential consequence which,
25. talking at one point in history there's no way of knowing
26. in the future that that's going to be a potential consequence.
27. So you are, in effect, doing something, A, the Federal
28. Government did not do and B, penalizing someone unrelated to
29. their activities. And I think that this is the wrong way to
30. go. I think we should stop those who have defrauded the system
31. and I think we should give the director the power to keep those
32. terminated who have, in fact, bilked our system. But I think
33. this is going beyond that. Maybe not intentionally. But again,

1. from the expertise we have garnered, I think this does do that.
2. And I don't think that's the way you want to go and I don't think
3. the court would uphold it in that sense.

4. PRESIDING OFFICER: (SENATOR BRUCE)

5. Further discussion? Senator Rock.

6. SENATOR ROCK:

7. I...thank you, Mr. President. I suppose this is not the
8. most popular stand to take since we are talking about or
9. worrying about, I suppose, the rights of...of some who have,
10. in fact, violated the law. But I think what we're doing here
11. by virtue of Amendment No. 9 simply is untenable. Whether you
12. call it a bill of attainder or ex post facto or whatever you call
13. it, it is, in my opinion, totally unconstitutional and I would,
14. if the sponsor would yield, like to ask a couple of questions.

15. PRESIDING OFFICER: (SENATOR BRUCE)

16. Indicates that he will yield. Senator Rock.

17. SENATOR ROCK:

18. At line 20 of Amendment No. 9, as I have it, you talk
19. about where the vendor had...actual or constructive knowledge
20. of the requirements which applied to his conduct or activities.
21. And my question is twofold. What, in fact, do you mean by
22. constructive knowledge? And #A and 2, what were the requirements,
23. any, which applied to his conduct or activity at that time?

24. PRESIDING OFFICER: (SENATOR BRUCE)

25. Senator Moore.

26. SENATOR MOORE:

27. Could you repeat what lines you were on, Senator?
28. What line in the amendment?

29. SENATOR ROCK:

30. Yes, I have amendment to Senate Bill 1, Second Special
31. Session as amendment, I presume, this is Amendment No. 9.
32. It was the last in that packet, which was passed out and I'm
33. referring, specifically, to line...lines 20 and 21.

1. PRESIDING OFFICER: (SENATOR BRUCE)
2. Senator Moore.
3. SENATOR MOORE:
4. Constructive knowledge would be where the vendor had
5. the rules and regulations or his negotiated contract or agree-
6. ment with the department in his possession. And should have
7. known what the rules and regulations or what the terms of
8. his contract were. Now, if he never read the rules and
9. regulations he should have read them because they would
10. be in his possession as well as the contract that would be
11. entered into between the provider and the department.
12. PRESIDING OFFICER: (SENATOR BRUCE)
13. Senator Rock.
14. SENATOR ROCK:
15. Well, that then goes to my next point. Does the department,
16. in fact, enter into a contractual agreement with all providers?
17. PRESIDING OFFICER: (SENATOR BRUCE)
18. Senator Moore.
19. SENATOR MOORE:
20. Yes, it's a negotiated agreement, contractual agreement
21. entered into between the provider and the department. Now, there
22. were one phase of our medical providers that did not have a contract.
23. That has been cured in other portions of the bill where it is
24. set forth there would be a negotiated contract to include all
25. of the medical providers. The one that, presently, I don't
26. believe have a contract are the physicians.
27. PRESIDING OFFICER: (SENATOR BRUCE)
28. Senator Rock.
29. SENATOR ROCK:
30. Well, do I, as a provider, assuming a hypothetical, do I
31. as a provider, have any vested right in obtaining such a contract?
32. PRESIDING OFFICER: (SENATOR BRUCE)
33. Senator Moore.

1. SENATOR MOORE:

2. The guidelines for granting or denying an application
3. from you, as a provider or a would be provider with the
4. department are set forth in other portions of the bill.
5. There are now guidelines set up which were not heretofore
6. in the Statute.

7. PRESIDING OFFICER: (SENATOR BRUCE)

8. Senator Rock.

9. SENATOR ROCK:

10. Well, my...my question really is, if I, again hypothetically,
11. as a provider come to the department and wish to enter into a
12. contract and the department says to me, no, because you were
13. a bad guy at one point in your life, aren't...isn't the department well
14. within its rights, even absent this amendment?

15. PRESIDING OFFICER: (SENATOR BRUCE)

16. Senator Moore.

17. SENATOR MOORE:

18. Under the Supreme Court decision I don't know. Everything
19. is up in the air. That is why in Senate Bill 1 guidelines
20. were set out to set forth what the general perimeters were for
21. you being eligible to be a provider, 1. And also the fact that
22. the rules and regulations have to be promulgated and published
23. pursuant to the Administrative Review Act which will further
24. set forth in detail the guidelines and the...the specific re-
25. quirements of you being...becoming a vendor or not becoming a
26. vendor. Presently, that does not exist.

27. PRESIDING OFFICER: (SENATOR BRUCE)

28. Senator Rock.

29. SENATOR ROCK:

30. Well, thank you, Mr. President and Ladies and Gentlemen
31. of the Senate. I, frankly, am...am rising in opposition to
32. Amendment No. 9. I just don't see how we can say, statutorily
33. that factual determinations made by a department, whether it's

1. this department or Children and Family Services or Mental
2. Health or somebody in administrative hearings initiated
3. prior to the effective date of this amendatory Act, which
4. involve issues of fact relating to activities which now
5. would constitute grounds for termination shall be reviewed
6. and maybe used as grounds for approval or denial of applications
7. after the...after this Act. It just, we simply can't do it.
8. PRESIDING OFFICER: (SENATOR BRUCE)

9. Further discussion? Senator Moore may close.

10. SENATOR MOORE:

11. Thank you, Mr. President and members of the Senate.
12. I think that some of the memorandums were distributed to
13. some of the members of the Senate and just for the sake of
14. the record I would just like to read into the record some-
15. thing that might help clear this matter up. The General
16. Assembly has the power to enact retroactive legislation.
17. Illinois courts uphold such legislation if it is clear
18. from the language of the Act that the Statute was meant to
19. be applied retroactively. And we cite U.S. Steel Credit
20. Union versus Knight thirty-two Illinois second, one
21. thirty-eight, on page 142, a 1965 case. A case
22. in which the Illinois Supreme Court validated the retro-
23. active operation of an amendment to the Credit Union Act.
24. The court said and I quote, "if the language of the Statute
25. requires retroactive application, it is the duties of the
26. court to so apply it." Close quote. In the matter of the
27. application of the county treasurer, fourteen Illinois
28. Appellate third, 1062 at...at page 1066, a '73 case. An
29. Illinois Appellate Court held that a Statute will be applied
30. retroactively if the and I quote, "legislative intent that
31. they be given retrospective operation clearly...applies...
32. there clearly appears from expressed language or by...
33. necessarily or unavoidable implication." They also refer
34. to Stanley versus Denning 130 Appellate...Appellate Second

1. at 628. Insofar as the ex post facto aspect of this, an
2. ex post facto law is one which makes a crime of an act which
3. when committed was not a crime or a law which increases the
4. criminal punishment for an act already committed. It has
5. always been clear that the constitutional prohibitions against
6. ex post facto laws apply only to criminal laws. The United
7. States Supreme Court has specifically refused to interpret
8. an ex post facto law, those laws which operate to a persons
9. detriment and yet do not impose criminal penalties. In a
10. case, *Heredades versus Shaughnessy*, 342 U.S. 580, a 1952
11. case. The U.S. Supreme Court considered the constitutionality
12. of the Alien Registration Act of 1940 which authorized the
13. deportation of aliens who were members of the Communist Party
14. prior to the Act but were no longer members at the time of the
15. passage of the Act. While the court acknowledged...the
16. deportation of the very...severe consequence, it held that
17. it is not a criminal procedure. Similarly it cannot be said
18. that the termination or suspension of a medical provider is
19. a criminal penalty. Illinois courts have followed the rule
20. that a law is not ex post facto and that in...unless it imposes
21. a criminal penalty. In *Navisite versus Barger*, three Illinois
22. second 511 of page 519, a 1954 case. It was held that a
23. retroactive law, which allowed the court to take a child from
24. the custody of his parents because of a prior finding of
25. mental incompetence was not an ex post facto law. In *Jewell*
26. *versus Carpentier*, 22 Illinois second, 445 at page 451 a
27. '61 case, the court held that the retroactive suspension
28. of a driver's license was not an ex post facto law since it
29. was not a criminal penalty. I could go on with other citations
30. as far as the retroactive aspect or the ex post facto aspect of
31. it. I believe that this amendment, if adopted, will give the
32. department the tools that it needs to keep the bad guys out
33. including those that are presently in prison. The some

1. ninety-one cases of the most flagrant abuses of...of Medicaid
2. fraud that we have ever seen. I think that this is a good
3. amendment and I would move for its adoption, Mr. President.

4. PRESIDING OFFICER: (SENATOR BRUCE)

5. Senator Moore has moved the adoption of Amendment No. 1
6. to Senate Bill...Amendment No. 9 to Senate Bill 1. Those in
7. favor say Aye. Opposed Nay...been a request for a roll call.
8. Those in favor will vote Aye. Those opposed will vote Nay.
9. The voting is open. Have all voted who wish? Have all voted
10. who wish? Take the record. On that question the Ayes are
11. 46, the Nays are 2. 6 Voting Present. Amendment No. 9
12. is adopted. Further amendments?

13. SECRETARY:

14. No further amendments.

15.

16.

17. (The following typed previously)

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1. PRESIDING OFFICER: (SENATOR BRUCE)

2. 3rd reading. Senator Graham on Senate Bill 3.

3. Do you wish to bring that back, Senator Graham, or are you
4. ready to proceed? Read the bill, Mr. Secretary.

5. SECRETARY:

6. Senate Bill 3.

7. (Secretary reads title of bill)

8. 3rd reading of the bill.

9. SENATOR GRAHAM:

10. Mr....Mr. President and members of the Senate.
11. This bill deals with the current Act signed into law relative
12. to consolidation of elections. After some hearings conducted
13. by Election Laws Commission, Senator Maragos, myself and
14. others, were cognizant of the fact that in the case of an
15. emergency, relative to have referenda only on five dates
16. as provided by this law, that perhaps there should be
17. some relief afforded those especially the schools who were
18. in strong opposition to having their referenda considered
19. on the days when we have either a primary or a general
20. election. So, considering that fact as being laudable and
21. perhaps to try to help them solve the problem, this bill
22. was caused to be introduced, and it says...in fact, when
23. emergency exists, that then they will petition the
24. county judge, circuit judge and he will issue an order for
25. the referenda. Basically, that's the only change it does in
26. this law. I think it's an indication as we proceed through
27. next year's efforts in attempt to do something with the
28. consolidation of election bill, that this might be an
29. indication of our first step toward an intention to
30. cooperate both with villages and with school districts I offer
31. consideration.

32. PRESIDING OFFICER: (SENATOR BRUCE)

33. Senator Berman.

1. SENATOR BERMAN:

2. Thank you, Mr. President. I'm back in action.

3. Will the sponsor yield?

4. PRESIDING OFFICER: (SENATOR BRUCE)

5. Indicates that he will yield. Senator Berman.

6. SENATOR BERMAN:

7. Senator Graham, do I understand that it is the
8. legislative intent of this bill that a school district
9. that has a financial crisis could be considered
10. an emergency under the provisions for a special referendum
11. under this bill?

12. PRESIDING OFFICER: (SENATOR BRUCE)

13. Senator Graham.

14. SENATOR GRAHAM:

15. In that case they would petition the county judge
16. and prove that there is an emergency existing and in
17. that case, I don't think that any county judge would
18. prevent them from presenting a referenda. If we don't
19. do this under the current bill, it's signed into law,
20. they're either going to wait until the general election
21. or a primary.

22. SENATOR BERMAN:

23. Thank you...

24. PRESIDING OFFICER: (SENATOR BRUCE)

25. Senator Berman.

26. SENATOR BERMAN:

27. Mr. President. On the bill, the answer that Senator
28. Graham just gave is quite relevant to the legislative
29. intent of this. A number of school boards have contacted
30. me and indicated their concern as to the scope of the meaning
31. of the word emergency and I am pleased to support this
32. bill with that understanding that a financial crisis
33. could be considered by a judge to be an emergency under the

1. terms of this bill and I am pleased to support this
2. legislation.

3. PRESIDING OFFICER: (SENATOR BRUCE)

4. Senator Wooten.

5. SENATOR WOOTEN:

6. A question of the sponsor. Senator Graham, I am
7. at a disadvantage. I do not have my notes with me from the
8. committee hearing. Were there not...was there not some
9. discussion about further amendments to this bill?

10. PRESIDING OFFICER: (SENATOR BRUCE)

11. Senator Graham.

12. SENATOR GRAHAM:

13. Senator Wooten, not this particular bill. I think
14. the discussion is that there will be further amendments
15. offered to the bill that was signed into law by the
16. Governor as we proceed through our hearings next year.

17. PRESIDING OFFICER: (SENATOR BRUCE)

18. Senator Wooten.

19. SENATOR WOOTEN:

20. No, I just...as I say, I'm at a disadvantage.
21. I don't have my notes and it's...I know that there was some
22. bill that we talked about looking at for additional amendments
23. to resolve further problems and I...I thought this was it,
24. but I have...I don't have my notes here so I can't go
25. any further. Thank you.

26. PRESIDING OFFICER: (SENATOR BRUCE)

27. Okay. Senator Vadalabene. For what purpose
28. does Senator Graham arise?

29. SENATOR GRAHAM:

30. I think a conclusion, Ladies and Gentlemen,
31. this law...this Act signed into law by the Governor goes
32. into effect next December. What we're attempting to do
33. after which I thought was unwise action by the committee,
34. but it was action, to extend this date for two years and we're

1. going to be forced to have a...to extend a concerted effort
2. in attempting to still have consolidation of elections as...
3. as intended by this General Assembly by their vote,
4. and to work out some solutions that will arise as time
5. goes by, from the various organizations that are interested
6. in this and the Election Laws Commission has committed themselves
7. to such hearings and such propositions...necessary. I think
8. that's what you were confused. We intend to do that. Next
9. year we'll have more amendments.

10. PRESIDING OFFICER: (SENATOR BRUCE)

11. Senator Vadalabene.

12. SENATOR VADALABENE:

13. Yes, thank you, Mr. President. Senator Graham,
14. House Bill...was it House Bill 236 the consolidation bill
15. that we passed out of here last year?

16. PRESIDING OFFICER: (SENATOR BRUCE)

17. Senator Graham.

18. SENATOR GRAHAM:

19. It was House Bill 1139, I think, sponsored by
20. Mr....by Senator Regner.

21. SENATOR VADALABENE:

22. Oh, yes. House Bill 236, I think...

23. SNEATOR GRAHAM:

24. 1139, Senator.

25. SENATOR VADALABENE:

26. Are the...are the provisions in Senate Bill 3 similar
27. to the provisions in Senator Regner's bill where the
28. mayors will all have to run next year? Their four year
29. terms have been shut off by a two year term?

30. SENATOR GRAHAM:

31. No, we hope we have that cured. There was not
32. the intent of the Legislature, anyway. No. We've
33. erased those fears hopefully and we could have probably

1. had a little more time to work with that, but as I say,
2. the committee seen...fit to defeat a bill introduced by
3. Senator Regner and I which would have extended two more
4. years.

5. PRESIDING OFFICER: (SENATOR BRUCE)
6. Senator Vadalabene.

7. SENATOR VADALABENE:
8. In other words, the mayors who are running...who are
9. elected for four years, will not be affected by this
10. legislation and we will address ourselves to get those
11. people back so they can have their four year term that
12. they were elected to.

13. PRESIDING OFFICER: (SENATOR BRUCE)
14. Senator Graham.

15. SENATOR GRAHAM:
16. I think they're already back there and they
17. shouldn't have been put in that position in the first
18. place.

19. PRESIDING OFFICER: (SENATOR BRUCE)
20. Senator Vadalabene.

21. SENATOR VADALABENE:
22. And this bill in no way jeopardizes their four
23. year term?

24. PRESIDING OFFICER: (SENATOR BRUCE)
25. Senator Graham.

26. SENATOR GRAHAM:
27. Hopefully, that is correct and that's what my
28. lawyers say. We didn't want to do that anyway and I think
29. we have it straightened out, Senator. I hope so.

30. PRESIDING OFFICER: (SENATOR BRUCE)
31. Senator Maragos.

32. SENATOR MARAGOS:
33. Mr. President and members of the Senate. I rise in favor

1. of this bill. As Senator Wooten, there was some discussion
2. in the Elections Committee regarding this bill
3. and there was some school board opposition to a certain
4. extent because they would like to have more substantial
5. input as to whether...as to the definition of an emergency.
6. We are sure that anytime they have a real emergency, they
7. can go through the court system to be able to proceed on
8. this particular matter and get their relief that they
9. want if...if the referendum...referendum vote
10. and elections come between the election dates that are
11. specified by the law which is presently in effect.
12. However, we need this bill right now so we can at least
13. put on the books and take off the bad effects of the present
14. bill and the present law. And it gives some escape clauses,
15. some valve...escape valve for the school districts,
16. primarily to come in and get that relief that they want
17. which they could not do with the present law which was
18. signed in by the Governor last summer. I think we should...this process
19. ...doesn't come into effect until December '78, not this
20. December, December of '78 and I think we'll have more
21. opportunities for the next year and a...little over a year
22. to correct any additional problems that may be created by
23. the passage of the consolidated bill. We have to finally
24. determine as a Legislature that we are in favor of the idea
25. of consolidation and we have to cure any defects in the
26. present law and I ask that this...is one step in that direction.
27. and I ask for the support of this bill.

28. PRESIDING OFFICER: (SENATOR BRUCE)

29. Is there...for what purpose does Senator Graham
30. arise?

31. SENATOR GRAHAM:

32. I have been pursuing this as rapidly as I can.
33. I was informed that this did take care of that mayoral thing.

1. I don't see it. I'll be truthful with you, I don't
2. see it in there. Now, I can do...suggest to you one or
3. two things. We can hold this bill and get that
4. amendment prepared so that we're assured of that or we
5. could take chances on the House to do it and I'll leave
6. it to this Body how we do it. I'd...I would just as soon
7. ...I think we would have time for this to be handled
8. in the House, too. I would like to be assured, perhaps,
9. that we have written into this bill, that provision that
10. does not make those mayors run again in two years, elected
11. for four year terms and I'll have such an amendment
12. prepared and I would like to...after all this debate,
13. ask that this be taken out of the record.

14. PRESIDING OFFICER: (SENATOR BRUCE)

15. Senator Rock is recognized.

16. SENATOR ROCK:

17. Yes, thank you, Mr. President. Senator Graham,
18. Senator Vadalabene just came over and asked me the same
19. question and it seems to me, my understanding was and I
20. was not the draftsman of this bill, but Section 2-A-
21. 27, page six, when you threw that...threw those next
22. three paragraphs, where it says..you add the words
23. or 1981 in whichever of those years the terms of such
24. officers expire, in fact, those who were elected in 1977
25. their terms will expire now in '81 as opposed to '79 which
26. is what we did in the...in the other bill.

27. PRESIDING OFFICER: (SENATOR BRUCE)

28. All right. Are we in agreement that it is included?

29. All right. Senator Schaffer is next then Senator Rhoads
30. then Senator Glass. Senator Mitchler, are you seeking
31. recognition? Mitchler. All right. Senator Schaffer.

32. SENATOR SCHAFFER:

33. Mr. President, I rise in support of this bill. I think

1. that it does cure some of the problems that the original
2. Act inadvertantly created. I would also like to commend
3. the Governor of this State for signing that Act and getting
4. us off dead center on election consolidation. I think that
5. this bill does address problems. I have but one reservation
6. and in spite of that I'm going to vote for the bill,
7. and that's the emergency provisions for school referendums.
8. I interpret that to mean that if a crisis comes up, financial,
9. you name it and they have to have a referendum for a very
10. important type situation, that a judge can give them the
11. right to do that. If, in fact, every school district in
12. the State who wants to hide their referendum from the people
13. can slide up the back door of the court house and get some
14. judge to sign an order to allow them to hold it on
15. some obscure Saturday between the hours of twelve and three
16. in the basement of Jones' grocery store, then I'm going to
17. be back to get this provision repealed. I'm a cynic,
18. I admit on this subject, I've seen the school boards
19. try and slide these referendums through. I don't know why
20. they're afraid of the people. If they've got a case,
21. they can make it. I've seen it time and time again in
22. my district. The people aren't that stupid. The
23. people care. You give them a chance to vote on something
24. and you explain your side of the story and if you're
25. right, you'll win. And I hope that this emergency provision
26. is not misused, but in spite of that reservation, I intend
27. to support this legislation.

28. PRESIDING OFFICER: (SENATOR BRUCE)

29. Senator Rhoads.

30. SENATOR RHOADS:

31. Thank you, Mr. President and members of the Senate.
32. I also rise in support of Senate Bill 3. I think for those
33. of you who have reservations about the emergency provision is

1. that if you would refer to pages five and six beginning on
2. line 30 of page 5, I think there are adequate
3. safeguards in there. The people...the school district
4. which is seeking a special referendum, an emergency
5. referendum, have to set out their reasons before a judge.
6. They have to give a date of a next special...next regularly
7. scheduled election. There are many steps that they do have to
8. go through. There is one other important thing for the
9. membership to remember here. And...address my remarks to
10. Senator Wooten, Berman and others, that...

11. PRESIDING OFFICER: (SENATOR BRUCE)

12. May we have some order, please. Continue.

13. SENATOR RHOADS:

14. This correction bill does give the schools something
15. they do not now have. As a result of the Governor signing
16. the consolidation of election bills, there was no emergency
17. provision in that bill. Now, this...we're at least giving
18. the schools half a loaf. They may still be unhappy with
19. certain provisions about the possibility of...of an appeal in
20. the court process, but at least it gives them something
21. to work with. And perhaps as time goes on here, we can see
22. if it can be improved upon. But it's a good bill and it gives
23. the schools something they don't now have under the
24. consolidation law.

25. PRESIDING OFFICER: (SENATOR BRUCE)

26. Senator Glass.

27. SENATOR GLASS:

28. Thank you, Mr. President. I have a question of the
29. sponsor. Senator Graham...

30. PRESIDING OFFICER: (SENATOR BRUCE)

31. Indicates that he will yield. Senator Glass.

32. SENATOR GLASS:

33. ...there is one...one area that I'm wondering if this

1. bill addresses and that is where we have municipal elections.
2. As I understand it, there...in presently in the law,
3. is a different election date for those elections depending
4. on...whether they are partisan or nonpartisan. Am I correct
5. in that and was there anything done on that point?

6. PRESIDING OFFICER: (SENATOR BRUCE)

7. Senator...Senator Graham.

8. SENATOR GRAHAM:

9. Bill...this bill does not address that in any manner,
10. shape or form whatever.

11. PRESIDING OFFICER: (SENATOR BRUCE)

12. Senator Glass.

13. SENATOR GLASS:

14. So that, is it correct then, that there still is a
15. different election date for municipality depending on whether
16. they have a partisan election or a nonpartisan election?

17. PRESIDING OFFICER: (SENATOR BRUCE)

18. Senator Graham.

19. SENATOR GRAHAM:

20. Basically, the nonpartisan elections can be held
21. on a separate date, if they're nonpartisan, that is provided
22. for in the other law...in the law signed by the Governor.

23. PRESIDING OFFICER: (SENATOR BRUCE)

24. Senator Glass.

25. SENATOR GLASS:

26. Well, if...if there...let's suppose they are partisan.
27. That is you have a Republican and Democratic election in a...
28. in a municipality. Do those have to be held on the dates
29. of the national elections?

30. PRESIDING OFFICER: (SENATOR BRUCE)

31. Senator Graham.

32. SENATOR GRAHAM:

33. They have to be held on the dates as provided in the
34. Act that deals with partisan elections excluding the

1. nonpartisan elections. Yes. If they're going to be partisan
2. part of the time, they're going to be partisan all of the time.

3. PRESIDING OFFICER: (SENATOR BRUCE)

4. All right. Senator Mitchler.

5. SENATOR MITCHLER:

6. Mr. President, I have a question of the sponsor.
7. Going back to the four year terms of let's say a mayor,
8. that it was elected in 1977. Now, in order for that
9. mayor to be on the election process provided in the original
10. bill, their terms would have had to end in a two year
11. term and then they would be elected for a four year term
12. and then they would be in the swing of things. Very similar
13. to our constitutional officers, who are elected for a two
14. year term and now they'll be in the swing of things from...
15. after the next election. Does this amendment to the Consolidated
16. Election Act correct that by having the mayors that were elected
17. for a four year term, complete their four year term
18. and then in order to get in the swing of things, be elected
19. for a two year term and then a four year term thereafter?
20. That's the only way that I can see to correct...to get them
21. like I use the terminology in the swing of things in
22. compliance with the original Act. Or, if there's no provision
23. in here for that, then it would be as the mayors
24. have written to me and as they analyze the bill and as I
25. analyze the bill and it's been explained to me, their
26. four year terms would terminate in '79 and they'd have to run
27. then for a four year term in order to get into the continuity
28. of the bill.

29. PRESIDING OFFICER: (SENATOR BRUCE)

30. Senator Graham.

31. SENATOR GRAHAM:

32. Well, whether it's continuity or in the swing of things,
33. I don't...I don't know how you want to...want to phrase
34. this, but I thought we had discussed this. This bill specifies

1. that those municipal officers elected in 1977 for four
2. years will not be up for reelection until 1981.

3. PRESIDING OFFICER: (SENATOR BRUCE)

4. Senator Mitchler. May we have some order, please.

5. SENATOR MITCHLER:

6. Well, then in...in 1981, do they run then for a two
7. year term?

8. PRESIDING OFFICER: (SENATOR BRUCE)

9. Senator Graham.

10. SENATOR GRAHAM:

11. They run for a four year term.

12. PRESIDING OFFICER: (SENATOR BRUCE)

13. Senator Mitchler.

14. SENATOR MITCHLER:

15. Well, then, this alters the election that they get
16. elected in because the Consolidated Election Law as it
17. stands today has them elected in years different from what
18. they're running now and they can't continue on and on and
19. on with a four year term and comply with the Act. Sooner
20. or later, they're going to have to have a two year
21. term. Whether it be a half a term of their present four
22. year term or a two year term elected after they serve
23. this four year term.

24. PRESIDING OFFICER: (SENATOR BRUCE)

25. Senator Graham.

26. SENATOR GRAHAM:

27. I am told that they may always...might be out of
28. step with the two year terms, but the four year terms...the
29. four year term provision of this bill satisfies those
30. mayors and municipal league at least at this time
31. and I'm willing to take their word any time I get them
32. in agreement with me, I'm going to stop right there. We have
33. two more years or four more years to work on it.

1. We protect those now that were involved and that was the
2. main thing. And we have all next year until 1958 to put
3. in additional amendments.

4. PRESIDING OFFICER: (SENATOR DONNEWALD)

5. Is there further discussion? The question is shall
6. Senate Bill 3 pass. Those in favor vote Aye. Those
7. opposed vote Nay. The voting is open. Have all
8. voted who wish? Take the record. On that question the
9. Ayes are 58, the Nays are None. Senate Bill 3 having
10. received a constitutional majority is declared passed.
11. Senator Smith.

12. SENATOR SMITH:

13. Did you recognize me?

14. PRESIDING OFFICER: (SENATOR DONNEWALD)

15. Yes, Sir.

16. SENATOR SMITH:

17. Mr. President, having been intervening business,
18. since Senate Bill No. 1 was placed on 3rd reading,
19. I now wish to call for passage, Senate Bill No. 1 of
20. the Special Session...No. 2.

21. PRESIDING OFFICER: (SENATOR DONNEWALD)

22. Do we have leave? I think we had arranged for that
23. earlier.

24. SENATOR SMITH:

25. All right, then, Mr. President.

26. PRESIDING OFFICER: (SENATOR DONNEWALD)

27. Senate Bill 1.

28. SENATOR SMITH:

29. Roll call, Mr. President.

30. PRESIDING OFFICER: (SENATOR DONNEWALD)

31. There is a request for a roll call. Is there discussion?
32. Just a moment. The bill has to be read.

33. SECRETARY:

34. Senate Bill No. 1.

1. (Secretary reads title of bill)

2. 3rd reading of the bill.

3. PRESIDING OFFICER: (SENATOR DONNEWALD)

4. Senator Smith requests a roll call. Is there
5. discussion? Question is shall Senate Bill 1 pass.
6. Those in favor vote Aye. Those opposed. The voting
7. is open. Have all those voted who wish? Have all those
8. voted who wish? Take the record. On that question the
9. Ayes are 52, the Nays are 1, 5 Voting Present.
10. Senate Bill 1 having received a constitutional
11. majority is declared passed and the bill having received
12. the affirmative vote of three-fifths of the members
13. elected is effective immediately upon its becoming law.
14. Senate Bill 7, Senator Maragos. Senate Bill 8,
15. Senator Nimrod. Senator Hynes.

16. SENATOR HYNES:

17. Mr. President and members of the Senate.
18. We have one or two rather routine matters to take care
19. of, I believe that is the...the business to come before
20. the Senate today. There is an adjournment resolution.
21. We have a couple of motions to put over and some other
22. items of that nature. I'd like to outline what the
23. schedule will be for the balance of the day and for
24. next week. It is our intention to recess all of these...
25. all three Sessions subject to the call of the Chair
26. for the purpose of receiving Messages from the House,
27. reading in committee reports and reading House Bills
28. a first time so that they may go to the Rules Committee
29. and from the Rules Committee be assigned or not as that
30. committee so determines so that all three Sessions will be
31. recessed subject to the call of the Chair for the purpose
32. of expediting this business so that we will be in...in order and ready
33. to proceed when we return next week. Insofar as next

1. week's schedule is concerned, we had originally announced
2. ...as Tuesday, Wednesday and Thursday and we have now
3. modified that schedule. The Senate will return on Wednesday
4. and we will be in Session also on Thursday. Friday is tentative.
5. So if...if we have the work to do and...and it will be productive
6. and we can possibly even complete action on the Governor's
7. Messages, we will stay in on Friday and complete it. But we
8. will be here on Wednesday and Thursday for sure. Friday is
9. tentative. As far as Wednesday's schedule is concerned, there
10. will be committee...committee meetings in the morning and early
11. afternoon. The Regular Session will come in at three p.m. on
12. Wednesday. The First Special at three fifteen. The Second
13. Special at three thirty. So for next week it's Wednesday
14. and Thursday scheduled. Friday tentative, for the balance of the
15. day then we will simply take these matters that are necessary
16. as...as I indicated to get us in position to be able to act
17. next week. And we're...one further announcement. There will
18. be a meeting of the Rules Committee in the President's Office
19. at three p.m.

20. PRESIDING OFFICER: (SENATOR BRUCE)

21. ...Senator Netsch. Senator Netsch. Senator Netsch, would
22. you move to your right or left? She went to her left. That's
23. correct.

24. SENATOR NETSCH:

25. Thank you. I always move to the left, Senator Donnewald,
26. in case you had any doubt about it. A question to the President
27. of the Senate. As he knows there are several of us who must
28. have committee meetings as early as possible next week. I
29. realize that they are still working on that schedule. May we
30. be put in a posture where as soon as we are given the time
31. when our committee will meet, we may just automatically set
32. whatever has to be set and notify the members by phone. I'm
33. simply worried about the fact that we may not be here to...to

1. get the appropriate notices out or whatever.

2. PRESIDING OFFICER: (SENATOR BRUCE)

3. Senator Hynes.

4. SENATOR HYNES:

5. Well, Senator Netsch, we...we anticipated your concern
6. and one of the reasons of the schedule for the committees
7. is not final is that we must first wait and see what bills
8. the House sends us so that we know what committees must...
9. necessity meet. To...and as you know all of the bills will
10. have to be approved by the Rules Committee before they can
11. be heard in committee and so it was my intention before, as
12. one of those last items of business and as long as you brought
13. it up I will do it now. It was my intention to suspend the
14. Six Day Notice requirement, as to any bills that are passed
15. by the House and approved by the Rules Committee for hearing
16. So that the committee notices can and will go out either this
17. afternoon or tomorrow. So there will be ample notice but it
18. will not be the full Six Days. So I would move, Mr. President,
19. that the Six Day Notice requirement be suspended for committee
20. hearings next week with respect to those House Bills that are
21. approved by the Senate Rules Committee.

22. PRESIDING OFFICER: (SENATOR BRUCE)

23. For what purpose Senator Bower arise?

24. SENATOR BOWERS:

25. I'd like to ask the President a question, if I may.

26. PRESIDING OFFICER: (SENATOR BRUCE)

27. Is it on this motion, Senator...

28. SENATOR BOWERS:

29. Yes, it is.

30. PRESIDING OFFICER: (SENATOR BRUCE)

31. Okay.

32. SENATOR BOWERS:

33. Senator Hynes, well...what about Senate Bills that may

1. or may not still be in committee? Will that include those
2. also?

3. PRESIDING OFFICER: (SENATOR BRUCE)

4. Senator Hynes.

5. SENATOR HYNES:

6. If...if they are approved by the Rules Committee. But
7. it was just pointed out to me...and very correctly that my
8. motion should be made in the...in the Regular Session as...
9. as to bills that go through the Rules Committee. It will be
10. necessary to make...to make the same motion with respect to
11. the Six Day Notice requirement as to bills in each of the
12. Special Sessions as well and I do make that motion, as to
13. bills in this Special Session.

14. PRESIDING OFFICER: (SENATOR BRUCE)

15. You've heard the...Senator Bowers.

16. SENATOR BOWERS:

17. I don't want to belabor the point, but when it comes to
18. the...comes to this motion I just want to say that there are
19. some Senate Bills that are still in Judiciary II and they are
20. hopeful that they'll come out. Now I don't know whether a
21. notice is required to...to have them voted out next week or
22. not, but I'm just asking you to be suspended as to those, too.

23. PRESIDING OFFICER: (SENATOR BRUCE)

24. Senator Hynes.

25. SENATOR HYNES:

26. My motion does include it. It includes all bills in
27. this...in this Special Session, but with respect to the ones
28. you have in mind, in particular, Senator, it is not necessary
29. because they were previously posted and continued. So there
30. is no...no posting requirement. But I would make that motion
31. as to the Six Day Notice requirement in the Second Special
32. Session.

33. PRESIDING OFFICER: (SENATOR BRUCE)

1. You've heard the motion...the Six Day Posting Notice
2. as to bills in the Second Special Session be waived. Any
3. discussion? All in favor say Aye. Opposed Nay. The Ayes
4. have it. The Six Day Rule is suspended. Any further business?
5. A Message from the House. Excuse me, Mr. Secretary. Senator
6. Hickey.

7. SENATOR HICKEY:

8. Thank you, Mr. President. I want to make this announcement
9. for the benefit of the members of the Senate Higher Education
10. Committee. Because of the change in schedule the breakfast
11. scheduled for Wednesday morning will be Thursday morning.

12. PRESIDING OFFICER: (SENATOR BRUCE)

13. Senator Wooten.

14. SENATOR WOOTEN:

15. Yes, Mr. President, we seem to be at the benediction
16. and the congregation is breaking for the door. What is happen-
17. ing to Senate Bill 6 in the House? May we leave here with a
18. sense of ease and security or are funny things going to happen
19. over there?

20. PRESIDING OFFICER: (SENATOR BRUCE)

21. I'm informed that they have not called that bill yet.

22. SENATOR WOOTEN:

23. Are we...are we to remain somewhere near the post until
24. that matter is successfully concluded? We are up against up
25. against a deadline tomorrow at midnight, I believe.

26. PRESIDING OFFICER: (SENATOR BRUCE)

27. Senator Hynes is recognized.

28. SENATOR HYNES:

29. Mr. President, our latest informatin is that the bill is
30. on 3rd reading. The votes appear to be there and that no
31. amendments will be adopted and, therefore, there will be no
32. need for Senate action. I deliberately did not mention that
33. problem because I did not want to encourage members to leave

1. town rapidly. But if something should go wrong we will
2. round you up promptly to be back here. So I...I think
3. you have to use your own judgment on that...that matter,
4. Senator. I do not beleive we will...there will be a necessity
5. for Senate action on that bill.

6. PRESIDING OFFICER: (SENATOR BRUCE)

7. Senator Wooten, would you please leave us your telephone
8. number, your route home and your CB handle? Messages from the
9. House.

10. SECRETARY:

11. A message from the House from Mr. O'Brien, Clerk.

12. Mr. Presiding - I am directed to inform the Senate
13. that the House of Representatives has adopted the following Joint
14. Resolution and the adoption of which I am instructed
15. to ask concurrence of the Senate to-wit: House Joint Resolution
16. 2.

17. (Secretary reads HJR 2)

18. PRESIDING OFFICER: (SENATOR BRUCE)

19. You've heard the motion. Senator Rock moves the adoption of
20. the Adjournment Resolution. All in favor say Aye. Opposed
21. Nay. The Ayes have it. The Adjournment Resolution is adopted.
22. Any further business? House Bills, 1st reading.

23. SECRETARY;

24. House Bill No. 2 sponsored by Senators Bruce and Smith.

25. (Secretary reads title of bill)

26. 1st reading of the bill.

27.

28. (the following typed previously)

29.

30.

31.

32.

33.

1. House Bill No. 4 sponsored by Senators Netsch-Schaffer.
2. (Secretary reads title of bill)
3. 1st reading of the bill.
4. PRESIDING OFFICER: (SENATOR BRUCE)
5. Further business to come before the Second Special Session.
6. Second Special Session shall stand in recess subject to call
7. of the Chair.
8. (Recess)
9. (After Recess)
10. PRESIDING OFFICER: (SENATOR BRUCE)
11. Second Special Session shall come to order. Messages
12. from the House.
13. SECRETARY:
14. A Message from the House...by Mr. O'Brien, Clerk.
15. Mr. President - I am directed to inform the Senate
16. the House of Representatives passed bills with the following
17. titles in the passage of which I am instructed to ask concurrence
18. of the Senate to-wit: House Bills 3, 5 and 6.
19. PRESIDING OFFICER: (SENATOR BRUCE)
20. House Bills, 1st reading.
21. SECRETARY:
22. House Bill 3 sponsored by Senator Maragos.
23. (Secretary reads title of bill)
24. 1st reading of the bill.
25. House Bill No. 5 sponsored by Senator...cosponsored by
26. Senator Davidson and Donnewald.
27. (Secretary reads title of bill)
28. 1st reading of the bill.
29. House Bill No. 6 sponsored by Senator Sommer.
30. (Secretary reads title of bill)
31. 1st reading of the bill.
32. PRESIDING OFFICER: (SENATOR BRUCE)
33. Committee Reports.

1. SECRETARY:

2. Senator Donnewald, Chairman of the Committee on Assignment
3. of Bills, assigns the following bills to committee...the following
4. House Bills to committee:...House Bill...Appropriations I - House
5. Bills 5 and 6; Higher Education - House Bill 2; Elections and
6. Reapportionment - House Bill 3; Public Health, Welfare and
7. Corrections - House Bill 4.

8. PRESIDING OFFICER: (SENATOR BRUCE)

9. Any further business to come before the Second Special
10. Session? Senator Wooten is recognized.

11. SENATOR WOOTEN:

12. Mr. President, I move that the Second Special Session
13. stand adjourned to Wednesday, 16th at the hour of three-thirty
14. p.m.

15. PRESIDING OFFICER: (SENATOR BRUCE)

16. You've heard the motion and discussion. All in favor
17. say Aye. Opposed Nay. The Ayes have it. The Second Special
18. Session stands adjourned.

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