

PA 11-134

HB6490

House	3166-3172	7
Judiciary	3845-3855, 4026, 4029, 4050- 4051, 4495-4506	27
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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2011**

**VOL.54
PART 10
3113 - 3437**

Will the Clerk please call Calendar 338.

THE CLERK:

On Page 54, Calendar 338, House Bill Number 6490
AN ACT ESTABLISHING A PROCEDURE FOR RELIEF FROM
CERTAIN FEDERAL FIREARMS PROHIBITIONS. Favorable
Report of the Committee on Finance, Revenue and
Bonding.

DEPUTY SPEAKER ALTOBELLO:

Representative Fox of the 146th, you have the
floor, sir.

REP. FOX (146th):

Thank you. Thank you, Mr. Speaker. I move for
the acceptance of the Joint Committee's Favorable
Report and passage of the Bill.

DEPUTY SPEAKER ALTOBELLO:

The question before the Chamber is acceptance and
passage of the Bill. Please proceed, sir.

REP. FOX (146th):

Thank you, Mr. Speaker. This Bill is a follow up
to 2005 legislation passed by the General Assembly.
What it does is, it addresses the situation with NICS.
That's the National Institute Criminal Background
Check Database, and what it does it, with respect to
checking the records of those who hold or purchase

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firearms, what this does is, it fulfills the requirement from the federal government that we include a relief from disability section.

And what that would do is allow that someone whose name has already been entered into the NICS because of a mental disability to apply for relief should they qualify.

What this also will do, I should point out that this is a Bill that comes to us from the Department of Public Safety. And what this Bill will also do is enable us to be eligible for additional funds from the federal government that will go to our Judicial Branch, to DMHAS, and others, and it would enable us to maximize that.

Now, Mr. Speaker, the Judicial Branch had discussions with the Department of Justice, and they have requested a minor Amendment, and the Clerk has in his possession, LCO Number 6423. I would ask that that be called and I be permitted to summarize.

DEPUTY SPEAKER ALTOBELLO:

Would the Clerk please call LCO 6423, which shall be designated House "A".

THE CLERK:

LCO Number 6423, House "A", offered by
Representative Fox.

DEPUTY SPEAKER ALTOBELLO:

The good Representative seeks leave of the Chamber to summarize. Seeing no objection, please proceed, sir.

REP. FOX (146th):

Thank you, Mr. Speaker. The Amendment is a very short Amendment. It simply substitutes the term may, or the term shall for may as well as takes out a section that includes the term shall, and I would urge adoption of the Amendment.

DEPUTY SPEAKER ALTOBELLO:

The question before the Chamber is adoption. Further on House "A"? Further on House "A"? Representative Hetherington of the 125th, you have the floor, sir.

REP. HETHERINGTON (125th):

Thank you, Mr. Speaker. I believe that the Amendment proposed is consistent with the intention of the Bill. That is, to comply with the federal opportunity and regulation and I would urge adoption. Thank you.

DEPUTY SPEAKER ALTOBELLO:

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I thank you, Representative Hetherington.

Representative Klarides, you have the floor, madam.

REP. KLARIDES (114th):

Thank you, Mr. Speaker. Just for clarification, was there a mistake in the original draft of the Bill that used the word shall and we changed it to may, or was there just some confusion? Through you.

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

REP. FOX (146th):

Thank you. Through you, Mr. Speaker, this Amendment was actually requested by the Judicial Branch during the course of the public hearing. For some reason we did not do it as part of the Judiciary Committee, but it is something that they had been in discussions with the Department of Justice regarding the best way to meet the qualifications of the federal government so that we could maximize grant funds. Through you.

DEPUTY SPEAKER ALTOBELLO:

Representative Klarides.

REP. KLARIDES (114th):

Thank you, Mr. Speaker. And just one final follow up question to that. So when the Bill was

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originally drafted it just, was it that there was no conversation with the Department of Justice. Is that why it wasn't written that way? Through you.

DEPUTY SPEAKER ALTOBELLO:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker. I do believe there were conversations with the Department of Justice. This, I believe, and I'm speculating, but this was something that the Judicial Branch, I believe, had ongoing discussions and this is just one additional recommendation that they made as a way for us to, as I stated, meet the federal requirement.

DEPUTY SPEAKER ALTOBELLO:

Representative Klarides.

REP. KLARIDES (114th):

Thank you, Mr. Speaker. I thank the gentleman for his answers.

DEPUTY SPEAKER ALTOBELLO:

Thank you, madam. Further on House "A"? Further on House "A"? If not, I'll try your minds.

All those in favor please signify by saying Aye.

REPRESENTATIVES:

Aye.

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DEPUTY SPEAKER ALTOBELLO:

Opposed? The Ayes have it. Another shut out.

Eight nothing.

Further on the Bill as amended? Further on the Bill as amended? If Representative Hetherington would like to speak, you have the floor, sir.

REP. HETHERINGTON (125th):

Thank you, Mr. Speaker. I rise in support of the Bill as amended. This Bill provides us with an opportunity to continue to receive federal funding under the firearms program and at the same time, I believe, provides the appropriate scrutiny and review by a judge in order to grant the relief.

So I would, I think this is a good Bill and I would urge adoption. Thank you, Mr. Speaker.

DEPUTY SPEAKER ALTOBELLO:

Thank you, sir. Further on the Bill as amended?

Further on the Bill as amended?

If not, staff and guests please retire to the Well of the House. Members take your seats. The machine will be opened.

THE CLERK:

The House of Representatives is voting by Roll Call. Members to the Chamber.

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The House is voting by Roll Call. Members to the Chamber.

DEPUTY SPEAKER ALTOBELLO:

Have all Members voted? Have all Members voted?
Please check the board to make sure your vote is properly cast.

If all Members have voted, the machine will be locked. Would the Clerk please take the tally.

Would the Clerk please announce the tally.

THE CLERK:

House Bill 6490 as amended by House "A".

Total Number Voting	144
Necessary for Passage	73
Those voting Yea	144
Those voting Nay	0
Those absent and not voting	7

DEPUTY SPEAKER ALTOBELLO:

The Bill as amended is passed.

Would the Clerk please call Calendar 177.

THE CLERK:

On Page 10, Calendar 177, House Bill Number 6474

AN ACT CONCERNING THE RESOLUTION OF LIENS IN WORKERS' COMPENSATION CASES. Favorable Report of the Committee on Judiciary.

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 12
3606 – 3933**

2011

ask questions if they have any questions following your testimony.

There's a lot of people signed up. There's a lot of people here, but we'll, you know -- we'll get through it, and we'll just -- we'll hear from everybody. So having said that, why don't we get started, and the first name from the public officials list is Steven Spellman from the Department of Public Safety.

STEVEN SPELLMAN: Good morning, Senator Coleman and Representative Fox, members of the Committee. I'm attorney Steven Spellman, Legislative Liaison for the Department of Public Safety, and I'm here this morning representing the agency and speaking on behalf of Raised Bill 6490, AN ACT ESTABLISHING A PROCEDURE FOR RELIEF FROM CERTAIN FEDERAL FIREARMS PROHIBITIONS.

Two things I'd like to mention about the bill before I get into the merits. One is it is in response to a federal mandate, and secondly, that it is the work product of a working group that spent over a year putting together this language.

That group included representatives of my own agency, the Judicial Department, Probate Administration, Office of Policy and Management, as well as the Department of Mental Health and Addiction Services. That group is also, I should mention at the outset, recommending a technical amendment, which is attached as a attachment to my written testimony, and I will, hopefully, address that briefly before finishing.

This bill was actually before you last year and was on the agenda at the JF deadline and did not get a vote. There was also an attempt to

revive the issue by way of amendment on the floor, and those efforts were -- were made because this bill has fiscal impact for the state of Connecticut.

Because it is a federal mandate, there is a carrot and stick approach by the federal government that would involve possible reductions of our Omnibus Crime general grants, but, more importantly, it would make the state of Connecticut eligible for millions of dollars in grants.

There was concern about this bill last year that I can understand from -- because if you just look at the language, it's -- it's somewhat difficult to -- to see where it's coming from. This morning, I'm hoping to allay some of those concerns and give you some context on the bill. It's one of those bills that you can't really understand what it is and why it's before you just from reading the bill. You have to put it in its historical context.

All of you are aware of what the Brady Bill is, the gun control bill that was passed when James Brady was injured during the attempted assassination of Ronald Reagan. Because of the Brady Bill, there is a national computerized database known as the NICS Index, the National Instant Criminal Check System, and whenever any purchase of a gun, whether it is a handgun or a long gun, is made, that system is accessed by people having authority to do so to determine if there are any disqualifications. The most typical disqualification would be conviction of a felony.

Up until 2005, there was a serious flaw in this NICS Index. I can best explain it by telling you what the procedure was at that point in time. If someone who had a mental disability

or had been adjudicated as such by being involuntarily committed or by having a not guilty by reason of insanity went to purchase a gun in the state of Connecticut, the NICS Index would be accessed to determine if they were disqualified.

If they had no felonies, it would come back without any hits. Department of Public Safety personnel, at that time, would contact personnel at the Department of Mental Health and Addiction Services to ask if this person was on their list as having been adjudicated with a mental disability. If they said yes, then the person would not be allowed to purchase.

The hole in the system was that that same person could then go to Massachusetts, Rhode Island, New York, or any of the other 49 states and make a purchase because they would not know to contact Connecticut Department of Mental Health and Addiction Services, and this was true for all 50 states. So there was this huge hole, and, at that point in time, the federal government had a mandate to get these names into the NICS Index.

In response to that, the General Assembly, in 2005, passed Public Act 05-283, which directed the Department of Public Safety, the Judicial Department, Department of Mental Health and Addiction Services to enter into an MOU with the Federal Bureau of -- of Investigations to develop procedures for entering these names into the index.

And it was a bear to do so without violating the privacy rights of these individuals, but, with some ingenuity and a lot of hard work, Connecticut became one of the first states to become complaint in getting these names into

the NICS Index.

In 2008, the federal government adopted the -- the NICS Improvements and Amendment Act, and among its provisions are -- are a provision which has a mandate that all of the states now develop a due process procedure for those persons whose names were entered into the index to challenge that entry to have their name removed, and again, it has the carrot and stick approach.

Pursuant to that, this working group began deliberations, and we, frankly, had many of the same concerns that, I think, were raised last year in regard to not wanting to do anything that would threaten public safety in regard to giving gun licenses to persons who may have had a mental adjudication at some point.

The work product that is before you, I believe, both complies with the federal mandate in developing a due process procedure and also protects public safety as well as we can. First of all, in regard to the venue, it provides for persons seeking to file such a petition to go to the probate court first, which is the appropriate venue because that is where you do conservatorships. They're familiar with these kind of issues. If there is an appeal, it will be a de novo appeal to the Superior Court.

The record that must be compiled before the probate court is extensive, requiring the petitioner to give certified copies of all available records, including psychiatric records; to give notice to the Department of Public Safety Commissioner, who would have the opportunity to be heard; along with a release so that all available records are also present for someone who might want to represent the

public safety interests of the state of Connecticut.

Most importantly, the standard that is developed is not by a preponderance of the evidence, but by clear and convincing evidence. The petitioner would have to prove that reinstatement of the rights and removal of the person's name from the index would in no way threaten public safety and is not contrary to the public interest in any way.

So I think that the procedure that is before you does as much as can possibly be done to -- to protect public safety in regard to any of these petitions. In practical terms, it may be that this process will never be used. Certainly, we anticipate that it would be very seldom used.

But it is a federal mandate, and it -- it could involve as much as \$5 million to the state of Connecticut in terms of federal grants that will be applied for that we will only be eligible for if this process is put into place.

Lastly, I'd like to just address briefly the -- the two amendments which you should have before you as an attachment to my exhibit. They're both technical in nature. One is on Lines 46 to 48, and it is simply a -- or change of a 'shall' to a 'may.'

The existing language says that if all the required information of this statute is not before the probate court, they must deny. We can't really do that because we are requiring in our process much more than federal requirements are. So we don't want to have a mandatory denial based upon failure to provide all of the information that the state of Connecticut provides.

And lastly, on Lines 86 to 86, is a technical change that the Department of Justice, in reviewing this language, indicated, that if the -- by a clear and convincing evidence the petitioner shows that he is not likely to act in a manner dangerous to public safety and that granting the relief will not be contrary to the public interest, then the language should indicate that the court shall grant the relief.

I'm hoping that you will give this bill careful consideration and JFS it out of Committee, and with that, I'd be open to any questions.

REP. FOX: Are there questions? Representative -- oh, Senator Kissel. I'm sorry.

SENATOR KISSEL: Thank you very much, Mr. Chairman. I'm just wondering why the task force came up with the requirement that the individual who's making the petition provide so -- substantially more documentation than the federal law would require?

Because it appears that the -- the -- the federal charge is to afford people an opportunity to sort of redress something that was -- that was a wrong, and if we create such a high hurdle, then aren't we making it more difficult and sort of undermining the intent of what that federal legislation was?

STEVEN SPELLMAN: The -- the thought of the working group was that it was important that all available information be before the decision maker, and that that information should include, for example, all of the records concerning the original disposition of an adjudication of -- of mental incapacity.

The -- it -- the language is not contrary in

any way to burden of proof. The federal government was very accepting of a clear and convincing standard, and again, it was a concern of having all available evidence before the -- before the decision maker.

SENATOR KISSEL: And just as a follow up, was there consideration paid to how difficult it would be for the applicant or petitioner to obtain this information? Quite often, we set up constructs that are just so difficult with -- there's so many hoops that people just give up because it's too difficult to -- to -- to jump through all those hoops.

And so I'm just wondering was there attention paid to how difficult this information would be to obtain, and -- and if so, what was the conclusion of that analysis?

STEVEN SPELLMAN: Well, I think that concern is partially addressed by a technical amendment because, you know, if it was very difficult to obtain, like, some particular part, then by changing the mandatory denial to a 'may,' that would involve -- that would enable the decision maker to take into consideration that there was difficulty in obtaining this information and rule on the application without necessarily having everything that we're requiring here before us.

SENATOR KISSEL: I guess the reason I asked those questions is I'm wondering the mindset that created a mandatory denial when the -- when the intent of the federal legislation was not to go in that direction, and I -- and just the fact that I know that there -- the -- the-- the suggestion is that we need to now change that --

STEVEN SPELLMAN: Yeah.

SENATOR KISSEL: -- but I'm wondering if the mindset was we're just going to make it so difficult that people aren't going to get there, and thus, boom, denied?

STEVEN SPELLMAN: Yeah.

SENATOR KISSEL: And it seems not to go with the spirit of what that federal legislation was.

STEVEN SPELLMAN: Well -- well again, first of all, you know, we would be seeking to change that, but, very frankly, the mindset was -- was largely in terms of what is it going to take to have the General Assembly comfortable in passing this bill that -- because last year, our experience was that in -- in a very cursory look at the bill, it looks like you are making it easier for people with mental disabilities to get guns, and -- and, understandably, there is a concern about that.

So it requires, like, a big education effort in terms of the General Assembly, but the mindset, as -- as you suggest, was, like, how do we craft this in such a way that we can make a convincing argument to the General Assembly that we have done everything we possibly can to protect the public safety in this regard?

SENATOR KISSEL: And -- and my last question is, you said that the federal construct is use carrots and sticks. If we don't pass this year, what's this stick that's going to come down on our -- our heads?

STEVEN SPELLMAN: The -- this year, I don't anticipate the stick to come into play. There -- there are -- the NICS Amendments and Improvements Act includes some language -- there are some states that aren't in full

compliance in terms of getting this information into the index, and I think, in terms of like getting everything in place, the federal government is more focused right now on those states.

I think the major impact at this point in time will be in regard to eligibility for the grant, and it is a huge opportunity at this point in time because there's a limited number of states that -- that have come into compliance in terms of the due process procedure.

So you've got a pot of money -- this year I believe it's \$20 million -- that you would have a limited number of states applying for, and we would have relatively good chances of getting. It would greatly enhance abilities of the agencies that have stakeholders in this process.

SENATOR KISSEL: Okay. So it's -- it's almost like the stick is now a carrot. And what would be -- what would be a best case scenario? Let's say we pass this legislation. It sails through the Legislature. It's signed by Governor Malloy. What would be the -- the high end of a -- the grant application that the state would make, and what would be the timeframe to maybe get those funds?

STEVEN SPELLMAN: I'm advised that our application -- it -- it would include several agencies. It would include my own agency, Department of Public Safety, Judicial Department, possibly Mental Health and Addiction Services. OPM advised me that it was a total of about \$5 million, and I think it would be relatively quickly -- within the fiscal year -- in terms of -- of being able to access grants.

In my own agency, the software that we use in regard to this process is late 1990s, and

something that we'd very much like to get into this century. So that -- we have an application of slightly under \$1 million that we'd be looking for both software and hardware to -- to greatly improve, technologically, the process.

SENATOR KISSEL: I -- I very much appreciate your answer to those questions. It really explains the -- the genesis of this proposal, why we're at the point we are at, and I'm hoping it gets a big push from the Executive Branch as well because I'd hate to leave \$5 million on the table, especially if we're in the lead when it comes to complying with federal requirements and mandates. Thank you.

STEVEN SPELLMAN: Thank you.

REP. FOX: Thank you. Representative Adinolfi?

REP. ADINOLFI: Thank you, Mr. Chairman. Real quick, you mentioned about the \$5 million. Now, if we're going to expand the requirements here past the federal requirements, aren't we inflicting upon ourselves an unfunded mandate?

It's going to cost -- it's cost us more to do this if we're adding to it. It's going to take more time, more paperwork with -- with the people interviewing. That costs money, and I'm concerned. Why go any further than what the federal government is asking us for?

STEVEN SPELLMAN: The -- the only area in which we are going beyond the federal mandate is in regard to information that a petitioner would be required to present to the court if he seeks to get his name out of the index. Connecticut is already in compliance in regard to getting these names into the index, so there's no cost at all involved here.

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10:00 A.M.

REP. ADINOLFI: Thank you for clarifying that.

REP. FOX: Are there any other questions? Thank you very much for your testimony.

STEVEN SPELLMAN: Thank you.

REP. FOX: Before we continue, I should have also pointed out that there is an overflow room, and that is Room 2-E. So if -- if you can't find a seat in here, you're welcome to go to 2-E.

Next is Representative Christopher Coutu. I don't see him. Next is Senator Gary LeBeau. And next is Senator Marty Looney. Well, that's it for the public officials, so we got through that pretty quickly. All right.

They -- they will -- I'm sure -- I'm sure they're in other meetings. They will come in, but we'll -- we'll -- we'll go now to members of the public, and then, when they do come in, we'll alternate, as I said at the beginning. Next is -- are both Chief Salvatore and Chief Strillacci. Good morning, gentlemen.

ANTHONY SALVATORE: Chairman.

JAMES STRILLACCI: Good morning, Representative, Senator, members of the Committee. I'm Jim Strillacci, Police Chief from West Hartford. Tony Salvatore is Chief from Cromwell. We represent the Connecticut Police Chief's Association. We want to comment on five bills on your agenda.

1094 -- Senate Bill 1094 will ban large capacity ammunition magazines. It's -- it's not much. I mean, a misfit with a 31 shot pistol shot U.S. Representative Giffords and 18 other people a few months ago. Legislators

SB 1096
SB 1206
SB 1210
HB 6615

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**JUDICIARY
PART 13
3934 – 4275**

2011

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dd/mb/chr JUDICIARY COMMITTEE

March 23, 2011
10:00 A.M.

still murders so I don't believe so, no. Also it's -- it's important to -- to remember that there's federal laws against machine guns and this has nothing to do with machine guns. This has to do with ordinary magazines that are in about 75 percent of all of the firearms we all own. This isn't doing anything to stop fully automatic weapons or whatnot. Those have been -- those have been heavily regulated since the '80s.

REP. SMITH: So these mags and the guns that you use they're used mostly for target shooting or how do you use them?

TIMOTHY ROCKEFELLER: They're used for everything. Just about every firearm around today that's been made since the '90s will hold over ten rounds. It's just the way they're made. Target shooting, self defense, everything.

REP. SMITH: Thank you very much. And again thank you for your service.

TIMOTHY ROCKEFELLER: Thank you, sir.

SENATOR DOYLE: Thank you.

Any further questions from the Committee?

Seeing none, thank you very much.

Next speaker is Bob Crook, then Joseph Hriczo, Andrew Jennison and Ken Brooks.

Is Bob Crook here? Yes he is.

ROBERT T. CROOK: Mr. Chairman, members of the Committee, my name is Bob Crook. I'm speaking on behalf of the Coalition of Connecticut Sportsmen testifying on four bills very quickly. First one is 1094, large capacity

SB1096
SB1210
HB6490
SB353

ammunition. Now he's a felon. Doesn't make a lot of sense to me. It's also a cost to the state for this. Where are they going to store all this ammunition? I have friends who reload who may have 40, 60, 100,000 rounds in their house who shoot 40,000 rounds a year.

Where are they going to store all this ammunition? He has -- this one person has a whole basement full and he's a legitimate citizen, law abiding, has a pistol permit and is a major shooter.

Third one I'd -- I'd like to talk about very shortly is 1210, deadly force to defend residence -- one's home. You have my testimony. I think this is an excellent beginning. There are some proposals that I've made in addition to what's in -- what's in the proposal or in the bill.

The last one is procedure for relief from federal firearms prohibitions. There was good testimony on this from the state police. We fully support it. This is a needed bill and it would be -- it would be aberrant if the -- if the state gave up three to five million dollars worth of grants.

HB 1490

And that concludes my testimony.

REP. FOX: Thank you, sir. Thank you for -- for your testimony.

Senator Kissel.

SENATOR KISSEL: Thank you so much, Mr. Chairman.

Thank you, Bob, for -- for being here. Regarding the first bill, 1094, one of the concerns is that the way it's drafted is there's no grandfathering and there's no

So in a state that's facing, I don't know, a \$3.3 billion deficit just to maintain current operating expenses, opening itself to litigation, doesn't seem to me to be something that we shouldn't at least consider. But the fundamental question as does it make it right or wrong? No. It's just another piece of evidence in that we need to consider.

I think that all the statements that you've made in support of your position in opposition to the bill carry a tremendous amount of weight as well. You're a law-abiding citizen listening to public safety experts in the field. You've taken their advice and now you feel compelled to come here and argue against this. And I appreciate you taking time out of your day to do that. I learned a lot.

Thank you, Mr. Chairman.

REP. FOX: Thank you.

Are there other questions or comments?

Thank you very much for testimony.

JOSEPH HRICZO: Okay. Thank you. And I just want to say, I've learned a lot from watching you guys. I had no idea that you stayed so late.

REP. FOX: Well, you can stick around if you want because we might be here for a while.

Next is Andrew Jennison.

ANDREW JENNISON: Good afternoon, Mr. Chairman, members of the committee. My name is Andrew Jennison and I am the state liaison with the National Rifle Association. Quickly I wanted to touch upon House Bill 6490. The -- I

SB1094

believe the secretary of public safety spoke on it. That is actually a very important issue that the committee does need to look at.

After Virginia Tech the U.S. Congress passed the NICS Improvement Act which required all mental health adjudications be sent to the federal government for entry into the NICS check for firearms.

Two parts of the bill, the second part had a restoration of rights process which is a mandatory part of federal law now. So failure to do so -- obviously there will be a stick approach. You are mid, in the midfield of the curves. Some states have actually not done the relinquishing of adjudications and/or the restoration of rights, so they are behind the curve.

But what I'd really like to talk about is our opposition to S.B. 1094. You've heard many of the testimony before me, so I won't -- and they've all actually hit the salient points and potential impact, so I'd like to just circle back around to an issue that took place in Virginia at Virginia Tech.

After the incident Governor (inaudible) -- and I address this in my testimony -- set up a review panel to look at the causes and impact, causes and factors which led to the shooting. They looked at whether or not the assault weapons act of 1994 that was in effect that banned 15-round magazines, they looked at whether it would have made a difference in the incident or not if that federal law was still an act.

And I'll quote from the review panel which was comprised of nonpartisan judicious members. It actually said, the panel concluded that

**JOINT
STANDING
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HEARINGS**

**JUDICIARY
PART 14
4276 – 4609**

2011



STATE OF CONNECTICUT

OFFICE OF THE
PROBATE COURT ADMINISTRATORPAUL J. KNIERIM, JUDGE
Probate Court AdministratorTHOMAS E. GAFFEY
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To: Senate Co-Chair Eric Coleman
House Co-Chair Gerald Fox
Senate Ranking Member John Kissel
House Ranking Member John Hetherington
Honorable Members of the Judiciary Committee

From: Paul J. Knierim
Probate Court Administrator

Re: HB 6490, An Act Establishing a Procedure for Relief from Certain
Federal Firearms Prohibitions

Date: March 23, 2011

The Office of the Probate Court Administrator appreciates the opportunity to provide testimony on this bill. If the General Assembly determines that Connecticut should have a framework for relief from federal firearms prohibitions, we agree that the probate courts are an appropriate forum in which such matters would be heard. This office has worked in collaboration with representatives from the Department of Public Safety and the Judicial Branch to ensure that the procedures established under the bill are workable for the probate courts.

In 1993, Congress enacted the "Brady Handgun Violence Prevention Act," which established the national instant check system known as "NICS." Under that statute, persons who are determined to be incapacitated in conservatorship proceedings or who are involuntarily committed to a psychiatric facility are listed on the NICS database and are prohibited from purchasing firearms.

In 2008, Congress passed the National Instant Background Check System Improvement Act. The act calls upon the states to establish procedures under which individuals may seek the removal of their names from the NICS database. Federal grant money is contingent upon the implementation of such programs.

This bill would establish a procedure in the probate courts to review the petitions of persons seeking to be removed from the NCIS database. The Department of Public Safety would be a party to any such proceeding. A person may be removed from the NCIS database only if clear and convincing evidence is presented that the petitioner is not likely to act in a manner that is dangerous to public safety and that removal from the list is not contrary to the public interest.

We believe that the probate courts are the appropriate forum to handle such cases in Connecticut because the determinations in conservatorship and commitment proceedings are also within the jurisdiction of the probate courts. There can be no question that cases under the proposed procedure will give rise to challenging cases, but our courts are fully equipped to handle such sensitive matters.

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

Colonel Danny R. Stebbins
Acting Commissioner

March 23, 2011

Rep. Gerald M. Fox, Co-Chairman
Sen. Eric D. Coleman, Co-Chairman
Judiciary Committee
Legislative Office Building
Hartford, CT 06106

**HB 6490 AN ACT ESTABLISHING A PROCEDURE FOR RELIEF FROM CERTAIN FEDERAL
FIREARMS PROHIBITIONS**

The Department of Public Safety supports this bill.

The *National Instant Criminal Background Check* ("NICS") is a national computerized database that allows authorized users to check available records for an immediate response on persons disqualified from possessing firearms. In 2005, there were not any states (Connecticut included) that had procedures for entering the names of those disqualified from owning a gun because of mental disabilities into the NICS index. This created a significant public safety problem in that persons who could not purchase a gun in their own state, because of mental disabilities, could go to a neighboring state and purchase, because the NICS index would not show any disqualifiers. The federal government required all states to adopt procedures for getting the names of these individuals into the NICS index.

Pursuant to this requirement, the General Assembly passed Public Act 05-283, *AA Revising Statutes Relative to Firearms*, which required the Department of Public Safety ("DPS"), Department of Mental Health and Addiction Services ("DMHAS"), and the Judicial Department to enter into a memorandum of understanding ("MOU") with the Federal Bureau of Investigation to fully implement NICS in Connecticut. The act required DPS to report to the NICS Index, Denied Persons Files, the name, date of birth, and physical description of anyone barred from possessing guns under federal law, and to do so, in accordance with state and federal confidentiality laws. The required MOU was entered into and the names of the applicable individuals are now entered.

The federal government is now requiring that all states adopt a procedure for "relief from disabilities" by which a person whose name has been entered into the NICS index, because of mental disabilities, can seek relief. Federal Public Law 110-108, Section 105 enacted 1/8/08, NICS Improvement Amendments Act ("NIAA") requires a program for persons to petition for relief of firearms prohibitions for those prohibited from possessing or purchasing firearms due to various mental health adjudications as articulated in Title 18 U.S.C 922 d(4) and g(4).

The NIAA requires that a program for relief of firearms prohibitions due to mental health adjudications be enacted by each state that submits data regarding mental health adjudications to the NICS index as defined by Title 18 U.S.C 922 d and g. The NIAA provides that states which fail to create such a program, grant money, under the Omnibus Crime Control Act, would be decreased on a yearly basis by certain percentages until such a program is implemented.

There are due process and record requirements in the act that are specific and will require Connecticut to certify to the US Attorney General and the U.S. Department of Justice that it has met the minimum requirements for compliance.

Passage of this bill will meet all requirements of NIAA and bring Connecticut into full compliance. The bill creates the required program by state law, including procedures and fees. The language of this bill incorporates the recommendations of a working group which includes DPS, DMHAS, the Judicial Department, the Office of Policy and Management and Probate Court Administration.

This bill provides an avenue for affected individuals that would require them to demonstrate by clear and convincing evidence that the reason for the prohibitor no longer exists and that allowing them possession of firearms would not pose a threat to the public. This bill provides for a thorough review of the individual's mental health status, balancing public safety with individual rights.

The Probate Court is the best forum due to the fact that conservatorships are created there and the Probate Court has the ability to request assistance from DMHAS in review of the petitioner. Clear and convincing is the proper standard of review because it is the standard used in the process of reviewing "at risk" search and seizure warrants. The bill requires notification to all the proper parties: the petitioner, the Commissioner of Public Safety, the Attorney General and the court which rendered the adjudication, or commitment. The bill also requires that the court creates a recording of the testimony given at such hearing, to meet the requirements of the program for purposes of the federal grant monies.

Sincerely,



Colonel Danny R. Stebbins
ACTING COMMISSIONER

PROPOSED AMENDMENT**LCO 3067, Section 1, Subsection (e), Lines 46-48**

Failure to provide the requested information within such time period may [shall] result in a denial of the petition.

LCO 3067, Section 1, Subsection (j), Lines 82-85

The court shall grant relief under this section if it finds [In order to grant relief under this section, the court must find] by clear and convincing evidence that: (1) The petitioner will not be likely to act in a manner dangerous to public safety, and (2) granting the relief will not be contrary to the public interest.



STATE OF CONNECTICUT
DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES
A Healthcare Service Agency

DANNEL P. MALLOY
GOVERNOR

PATRICIA A. REHMER, MSN
COMMISSIONER

Memorandum:

TO: Judiciary Committee

FROM: Patricia Rehmer, MSN
Commissioner

DATE: March, 2011

SUBJECT: **H.B. 6490 An Act Establishing a Procedure for Relief from Certain Federal Firearms Prohibitions**

Senator Coleman, Representative Fox, and distinguished members of the Judiciary Committee we are writing to you today to support **H.B. 6490 An Act Establishing a Procedure for Relief from Certain Federal Firearms Prohibitions**

H.B. 6490 creates a mechanism for individuals to petition the probate court for relief from federal firearms prohibitions in place due to various mental health adjudications. This relief program is mandated by the National Instant Criminal Background Check System Improvement Amendments Act of 2007 (NIAA) signed into law by President Bush in January 2008. Failure to comply with this provision of the NIAA prevents Connecticut state agencies from being considered for various federal grant programs, and starting this year, places our state at risk of penalties to Byrne Grant funds we are already receiving.

This bill has been carefully prepared to place the burden on the petitioner to demonstrate by clear and convincing evidence that he or she is not likely to act in a manner that is dangerous to public safety and that granting relief from the federal firearms disability is not contrary to the public interest. Unless such relief is granted, this firearms disability is considered permanent by the FBI. The NIAA only requires a program in place for relief from the federal firearms disability; it does not require states to modify their own statutes restricting access to firearms. For example, this bill would not change the provisions of section 29-28 of our statutes, in which persons who are acquitted by reason of mental disease or defect may not be issued a gun permit within 20 years of their release from custody from that insanity acquittal, and persons who are committed to hospitals for psychiatric disabilities may not be issued a gun permit for 12 months after that commitment.

DMHAS submitted a grant application in 2010 for an upgrade to its computer system required for the purpose of submitting records to the NICS Index. That application was not considered because of the absence of a relief from federal firearms disability program in our statutes. We hope to pursue further grants in the future, because we are required to participate in the NICS Index under the provisions of PA 05-283, and our present system requires a mixture of paper and electronic records with no capacity for generating reports or performing audits.

We have been in constant contact with the federal government regarding the specific language in the legislation before you and we have learned that they are asking us to make a few changes. The Department of Public Safety has those changes and will present them to you. We ask that they be incorporated into this bill.

Thank you for your time and attention to this matter.



STATE OF CONNECTICUT

OFFICE OF THE
PROBATE COURT ADMINISTRATORPAUL J. KNIERIM, JUDGE
Probate Court AdministratorTHOMAS E. GAFFEY
Chief CounselHELEN B. BENNET
AttorneyDEBRA COHEN
Attorney186 NEWINGTON ROAD
WEST HARTFORD, CT 06110TEL (860) 231-2442
FAX (860) 231-1055

To: Senate Co-Chair Eric Coleman
House Co-Chair Gerald Fox
Senate Ranking Member John Kissel
House Ranking Member John Hetherington
Honorable Members of the Judiciary Committee

From: Paul J. Knierim
Probate Court Administrator

Re: HB 6490, An Act Establishing a Procedure for Relief from Certain
Federal Firearms Prohibitions

Date: March 23, 2011

The Office of the Probate Court Administrator appreciates the opportunity to provide testimony on this bill. If the General Assembly determines that Connecticut should have a framework for relief from federal firearms prohibitions, we agree that the probate courts are an appropriate forum in which such matters would be heard. This office has worked in collaboration with representatives from the Department of Public Safety and the Judicial Branch to ensure that the procedures established under the bill are workable for the probate courts.

In 1993, Congress enacted the "Brady Handgun Violence Prevention Act," which established the national instant check system known as "NICS." Under that statute, persons who are determined to be incapacitated in conservatorship proceedings or who are involuntarily committed to a psychiatric facility are listed on the NICS database and are prohibited from purchasing firearms.

In 2008, Congress passed the National Instant Background Check System Improvement Act. The act calls upon the states to establish procedures under which individuals may seek the removal of their names from the NICS database. Federal grant money is contingent upon the implementation of such programs.

This bill would establish a procedure in the probate courts to review the petitions of persons seeking to be removed from the NCIS database. The Department of Public Safety would be a party to any such proceeding. A person may be removed from the NCIS database only if clear and convincing evidence is presented that the petitioner is not likely to act in a manner that is dangerous to public safety and that removal from the list is not contrary to the public interest.

We believe that the probate courts are the appropriate forum to handle such cases in Connecticut because the determinations in conservatorship and commitment proceedings are also within the jurisdiction of the probate courts. There can be no question that cases under the proposed procedure will give rise to challenging cases, but our courts are fully equipped to handle such sensitive matters.



STATE OF CONNECTICUT
OFFICE OF POLICY AND MANAGEMENT
Criminal Justice Policy & Planning Division

Testimony in SUPPORT of

**HB 6490: AN ACT ESTABLISHING A PROCEDURE FOR RELIEF FROM
CERTAIN FEDERAL FIREARMS PROHIBITIONS**

Mike Lawlor, Under Secretary
Criminal Justice Policy and Planning Division
Office of Policy and Management

March 23, 2011

Good Morning Senator Coleman, Representative Fox and members of the Judiciary Committee:

HB 6490 reflects the consensus recommendation of our state's criminal justice community. It seeks to establish a simple process to protect the constitutional rights of citizens who are subject to a prohibition of firearms possession under state and federal law. It does not allow dangerous persons access to guns, and it does not further restrict the rights of any person who wishes to lawfully possess firearms.

Failure to enact this proposal would immediately jeopardize a number of substantial federal law enforcement and crime prevention grants which Connecticut hopes to receive this year and in future years.

The basic "due process" hearing provided for in this bill should have been a part of the General Assembly's original enactment, Public Act 05-283, *AN ACT REVISING STATUTES RELATIVE TO FIREARMS*. However, PA 05-283 contemplated only a Memorandum of Understanding (MOU) among two executive branch agencies, the Department of Public Safety and the Department of Mental Health and Addiction Services, and the Judicial Branch. Although such an MOU was agreed to and is now in effect, such an MOU cannot establish a statutory right of action, nor can it vest jurisdiction in the Probate or Superior Court. This bill will accomplish just that.

The parties to the MOU also urge you to adopt several minor changes to the bill in order to fully comply with the National Instant Criminal Background Check Improvement Act as set out in the Department of Public Safety testimony before you today.



**STATE OF CONNECTICUT
JUDICIAL BRANCH**

EXTERNAL AFFAIRS DIVISION

231 Capitol Avenue
Hartford, Connecticut 06106
(860) 757-2270 Fax (860) 757-2215

**Testimony of Deborah J. Fuller
Judiciary Committee Public Hearing
March 23, 2011**

**House Bill 6490, An Act Establishing a Procedure for Relief from Certain
Federal Firearms Prohibitions**

Thank you for the opportunity to submit testimony in support of House Bill 6490, An Act Establishing a Procedure for Relief from Certain Federal Firearms Prohibitions. This bill, which is the result of the collaborative efforts of the Judicial Branch, the Department of Public Safety, the Office of the Probate Court Administrator, the Department of Mental Health and Addiction Services and the Office of Policy and Management, is necessary in order to ensure that the state is eligible to receive federal funding under the NICS Improvement Act of 2007 (NIAA). The NIAA authorized new federal grant programs to assist states with their efforts to provide notice of persons who are disqualified from owning a firearm to the National Instant Criminal Background Check System (NICS), as required by federal law. The Act also authorizes penalties for non-compliance with its requirements, which include a reduction in state match funds under the National Criminal History Improvement Program and Byrne Justice Assistance Grant penalties.

In 2008, DMHAS, DPS, Judicial, and OPM collaborated to assess the overall impact of the NIAA on current state practices. The assessment identified several types of firearms disqualification records that are not available to the NICS. In an effort to make more court records available, the Judicial Branch applied for \$506,500 in federal grant assistance through the U.S. Department of Justice under the NICS Act Record

Improvement Program for States and State Courts (NARIP 2009). The Judicial Branch also collaborated extensively with the Office of Policy and Management, the Division of Criminal Justice (DCJ), and other agencies in support of DCJ's request for grant assistance under the NARIP in 2009. However, both grant requests were denied because the State of Connecticut did not have a relief from disabilities program in place.

Last year, Congress doubled the appropriation for the NARIP from \$10 million to \$20 million. At least three states were eligible for this funding after enacting legislation to implement relief from mental health disabilities programs; passage of this bill would make Connecticut also eligible. Compliance with the act is monitored by the Bureau of Alcohol, Tobacco and Firearms, and we have been communicating with them to ensure that any language enacted conforms to their requirements. Based on their feedback, we would respectfully suggest that the following underlined language be added to the bill:

Amend lines 46-48 as follows:

Failure to provide the requested information within such time period [shall] may result in a denial of the petition.

Amend lines 82-85 as follows:

[In order to grant relief under this section, the court must find] The court shall grant relief under this section if it finds by clear and convincing evidence that: (1) The petitioner will not be likely to act in a manner dangerous to public safety, and (2) granting the relief will not be contrary to the public interest.

Currently, the Judicial Branch is working with OPM and other state partners to develop an enhanced computer system for records that result in firearms disqualifications. To assist with this endeavor, a grant application is now being developed for the new state funding under the act. However, passage of this bill is necessary in order for the state to qualify for the grant. For this reason, I urge the Committee to act favorably on this proposal.

Thank you for your consideration.

COALITION OF CONNECTICUT SPORTSMENPABC 25
LINE 14

P.O. Box 2506, Hartford, CT 06146, (203) 245-8076

www.ctsportsmen.comccsct@comcast.net

Testimony presented to the JUDICIARY COMMITTEE

IN SUPPORT of H.B. No. 6490 (RAISED) AN ACT ESTABLISHING A PROCEDURE FOR RELIEF FROM CERTAIN FEDERAL FIREARMS PROHIBITIONS.

by Robert T. Crook, Director

03/24/11

This bill would establish a procedure so that people who are disqualified under federal law can get their Right to Keep and Bear Arms back in Connecticut.

One Attorney, and perhaps more, has a client right now who was incapacitated several years ago by a serious accident. He was unconscious for some period of time. Because of his mental state, a conservator was involuntarily appointed for him. The client has recovered fully, but under federal law he is forever disqualified from having firearms because he was once deemed by a court to be "mentally defective."

This bill would establish a way to undo this disqualification. It would allow persons to petition the probate court for the district in which such person resides for relief from a federal firearms disability, under 18 USC 922(d)(4) and 18 USC 922(g)(4), as a result of an adjudication or commitment rendered in this state.

This bill was addressed in 2010 but died on Judiciary Comm JF Deadline. A Proposed Amendment was offered, not called on the Firearms Bound Book bill which was not called on the House calendar the last day of the 2010 session. Support from both Chairmen of Public Safety was evident.

Compliments state statute with federal law. Last year testimony presented was this bill would help to ensure that the state qualifies for federal funding of up to \$3 million.

We urge Support.

S - 632

**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2011**

**VOL. 54
PART 21
6546-6914**

mhr/cd/gbr
SENATE

498
June 7, 2011

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Continuing on calendar page 14, Calendar 522,
House Bill Number 6303.

Madam President, move to place the item on the
Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Moving to calendar page 15, Calendar 523, House
Bill Number 6499.

Madam President, move to place the item on the
Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Continuing on calendar page 15, Calendar 524,
House Bill Number 6490.

Madam President, move to place the item on the
Consent Calendar.

THE CHAIR:

mhr/cd/gbr
SENATE

499
June 7, 2011

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Calendar page 15, Calendar 525, House Bill
Number 5780.

Madam President, move to place the item on the
Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Calendar page 15, Calendar 526, House Bill
Number 6513.

Madam President, move to place this item on the
Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Continuing on calendar page 15, one additional
item, Calendar number 5, Calendar 527, House Bill
Number 6532.

Madam President, move to place the item on the
Consent Calendar.

mhr/cd/gbr
SENATE

520
June 7, 2011

Mr. Clerk.

THE CLERK:

Immediate roll call's been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber. Immediate roll call's been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber.

THE CLERK:

Madam President, the items placed...

THE CHAIR:

I would ask the Chamber to be quiet please so we can hear the call of the Calendar for the Consent Calendar.

Thank you.

Please proceed, Mr. Clerk

THE CLERK:

Madam President, the items placed on the first Consent Calendar begin on calendar page 5, Calendar 336, House Bill 5697.

Calendar page 7, Calendar 421, Substitute for House Bill 6126.

Calendar page 8, Calendar 449, Senate Bill 1149.

mhr/cd/gbr
SENATE

521
June 7, 2011

Calendar page 10, Calendar 470, Substitute for House Bill 5340. Calendar 474, Substitute for House Bill 6274. Calendar 476, House Bill 6635.

Calendar page 12, Calendar 499, Substitute for House Bill 6638. Calendar 500, House Bill 6614. Calendar 508, House Bill 6222.

Calendar page 13, Calendar 511, House Bill 6356. Calendar 512, Substitute for House Bill 6422. Calendar 514, House Bill 6590. Calendar 515, House Bill 6221. Calendar 516, House Bill 6455.

Calendar page 14, Calendar 517, House Bill 6350. Calendar 519, House Bill 5437. Calendar 522, House Bill 6303.

Calendar page 15, Calendar 523, Substitute for House Bill 6499. Calendar 524, House Bill 6490. Calendar 525, House Bill 5780. Calendar 526, House Bill 6513. Calendar 527, Substitute for House Bill 6532.

Calendar page 16, Calendar 528, House Bill 6561. Calendar 529, Substitute for House Bill 6312. Calendar 530, Substitute for House Bill 5032. Calendar 532, House Bill 6338.

Calendar page 17, Calendar 533, Substitute for House Bill 6325. Calendar 534, House Bill 6352.

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SENATE

522
June 7, 2011

Calendar 536, House Bill 5300. Calendar 537, House
Bill 5482.

calendar page 18, Calendar 543, House Bill 6508.

Calendar 544, House Bill 6412. Calendar 546,
Substitute for House Bill 6538. Calendar 547,
Substitute for House Bill 6440. Calendar 548,
Substitute for House Bill 6471.

Calendar page 19, Calendar 550, Substitute for
House Bill 5802. Calendar 551, House Bill 6433.
Calendar 552, House Bill 6413. Calendar 553,
Substitute for House Bill 6227.

Calendar page 20, Calendar 554, Substitute for
House Bill 5415. Calendar 557, Substitute for House
Bill 6318. Calendar 558, Substitute for House Bill
6565.

Calendar page 21, Calendar 559, Substitute for
House Bill 6636.

Calendar page 22, Calendar 563, Substitute for
House Bill 6600. Calendar 564, Substitute for House
Bill 6598. Calendar 566, House Bill 5585.

Calendar page 23, Calendar 568, Substitute for
House Bill 6103. Calendar 570, Substitute for House
Bill 6336. Calendar 573, Substitute for House Bill
6434.

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SENATE

523
June 7, 2011

Calendar page 24, Calendar 577, Substitute for
House Bill 5795.

Calendar page 25, Calendar 581, House Bill
6354.

Calendar page 26, Calendar 596, Substitute for
House Bill 6282. Calendar 598, Substitute for House
Bill 6629.

Calendar page 27, Calendar 600, House Bill
6314. Calendar 601, Substitute for House Bill 6529.
Calendar 602, Substitute for House Bill 6438.
Calendar 604, Substitute for House Bill 6639.

Calendar page 28, Calendar 605, Substitute for
House Bill 6526. Calendar 608, House Bill 6284.

Calendar page 30, Calendar number 615,
Substitute for House Bill 6485. Calendar 616,
Substitute for House Bill 6498.

Calendar page 31, Calendar 619, Substitute for
House Bill 6634. Calendar 627, Substitute for House
Bill 6596.

Calendar page 32, Calendar 629, House Bill
5634. Calendar 630, Substitute for House Bill 6631.
Calendar 631, Substitute for House Bill 6357.
Calendar 632, House Bill 6642.

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SENATE

524
June 7, 2011

Calendar page 33, Calendar 634, Substitute for
House Bill 5431. Calendar 636, Substitute for
House, correction, House Bill 6100.

Page 34, Calendar 638, Substitute for House
Bill 6525.

Calendar page 48, Calendar 399, Substitute for
Senate Bill 1043.

Calendar page 49, Calendar 409, Substitute for
House Bill 6233. Calendar 412, House Bill 5178.
Calendar 422, Substitute for House Bill 6448.

Calendar page 52, Calendar 521, Substitute for
House Bill 6113.

Madam President, that completes the item placed
on the first Consent Calendar.

THE CHAIR:

Thank you, sir.

We call for another roll call vote. And the
machine will be open for Consent Calendar number 1.

THE CLERK:

The Senate is now voting by roll on the Consent
Calendar. Will all Senators please return to the
Chamber. The Senate is now voting by roll on the
Consent Calendar, will all Senators please return to
the Chamber.

mhr/cd/gbr
SENATE

525
June 7, 2011

Senator Cassano, would you vote, please, sir.

Thank you.

Well, all members have voted. All members have voted. The machine will be closed, and Mr. Clerk, will you call the tally?

THE CLERK:

Motion is on option Consent Calendar Number 1.

Total Number Voting	36
Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

Consent Calendar Number 1 has passed.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

We might stand at ease for just a moment as we prepare the next item..

THE CHAIR:

The Senate will stand at ease.

(Chamber at ease.)