ALBANY, NEW YORK

June 23, 1993

3:20 p.m.

REGULAR SESSION

SENATOR HUGH T. FARLEY, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT FARLEY: The Senate will come to order. Senators will please find their seats. If you will please rise with me for the Pledge of Allegiance to the Flag.

(The assemblage repeated the Pledge of Allegiance to the Flag.)

Today in the absence of visiting clergy, we'll bow our heads in a moment of silent prayer.

(A moment of silence was observed.)

The Secretary will begin by reading the Journal.

THE SECRETARY: In Senate, Tuesday, June 22nd. The Senate met pursuant to adjournment, Senator Farley in the Chair upon designation of the Temporary President. The Journal of Monday, June 21st, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT FARLEY: Hearing no objection, the Journal will stand approved as read. We'll go out of order with the report of

standing committees.

Presentation of petitions.

Reports of standing committees.

Senator Present. Senator Present.

SENATOR PRESENT: Do we have one?

ACTING PRESIDENT FARLEY: Want to recognize Senator Mega?

Senator Mega.

SENATOR MEGA: Yes, Mr. President, thank you. The Senate Judiciary Committee met this morning and this afternoon to consider the nomination or the reappointment of three nominations made by the Governor to the Court of Claims.

From the Governor dated April 8, 1993: I hereby nominate as judge of the Court of Claims, Herbert J. Lipp of New York City, reappointed for a term expiring on May 29th, year 2001.

Mr. President, after due deliberation by the Committee of the investigation that was conducted relative to

Judge Lipp's reappointment, the Committee unanimously voted to appoint the judge, reappoint the judge, as indicated, to a term which will expire on May 29th, year 2001.

The investigation that was completed is a very positive investigation. We contacted people who appeared before the judge, who worked in the court system on both sides of litigation. The judge has sat mostly in criminal cases and we contacted the district attorneys and the defense attorneys who appeared before the judge, and all of the information was very positive, that the judge does an outstanding job and this house should repoint him as indicated.

And at this point, I would state that the judge is present today with his wife, Diane, and I would yield to Senator Goodman who will move the nomination.

ACTING PRESIDENT FARLEY: Senator Goodman.

SENATOR GOODMAN: Mr. President. Thank you, Senator Mega.

Mr. President, Judge Lipp is a constituent of mine and, therefore, it gives me special personal privilege to be able to nominate him before this body. He was born in Brooklyn, served in the United States Navy, attended Pennsylvania State University, NYU Law School, was an adjunct professor of business law at Nassau County Community College, and a law lecturer, and has other academic distinctions. He has extensive legal experience, having served first on the Nassau County District Court, then was -- served on the County Court, then was confirmed by the Senate in 1988 subsequent to nomination by Governor Cuomo as a judge of the Court of Claims.

Today is the third occasion on which the judge's name has come before us and I'm delighted to say that on all three occasions he has gone through our screening process with flying colors.

A warm salute to his wife, Diane, and to the judge himself, and on that note, Mr. President, I wish to place his nomination before

the Senate.

ACTING PRESIDENT FARLEY: On the -- on the nomination. All in favor, say aye.

(Response of "Aye.")

Those opposed nay.

(There was no response.)

The nomination is confirmed. Judge Lipp is with us in the gallery. Congratulations on behalf of the New York State Senate.

(Applause.)

Senator Mega.

SENATOR MEGA: Mr. President, the Judiciary Committee also considered the reappointment of the following judge: From the Executive Chamber April 8, 1993: I hereby nominate as a judge of the Court of Claims, Ronald H. Zweibel of New York City, reappointed for a term expiring on May 6th, year 2001.

The vote was unanimous to recommend the reappointment by the entire Judiciary Committee. The judge is present in the gallery with his wife Eleanor and his ten

year-old son, Robbie.

The investigation that was conducted relative to the manner in which the judge conducts himself was extremely positive from all the people who were interviewed as indicated before. We contacted those people who appeared before the judge and we secured infor mation that indicates that the judge is doing an outstanding job.

The Committee, by unanimous vote, has recommended his reappointment and at this time I would yield the floor to Senator Leichter.

ACTING PRESIDENT FARLEY: Senator Leichter.

SENATOR LEICHTER: Mr. President, good. Thank you, Senator Mega.

It's my distinct pleasure to move the nomination of Judge Ronald H. Zweibel. One of the benefits of reapportionment is that I found that the good judge was one of my constituents. It's a particular pleasure to move that nomination because Judge Zweibel has

such extensive experience in the law, but he also worked in the Legislature. It's nice to see one of the people who labored in this granite building to be recognized for a position on the bench.

Before that, Judge Zweibel was chairman of the Crime Victims Compensation Board and acquitted the responsibilities of that important office with great distinction.

He has experience both on the defense and the prosecution side. He worked as an assistant district attorney, Bronx County, and he was the Director of Legal Affairs for the New York City Department of Correction. He has served on the Court of Claims since 1987.

I just want to say, Senator Mega has already pointed out that his wife, Eleanor, and his son, Robert, is here. I met Robert and Robert said that he came to Albany to see the dinosaurs. His father was quick to point out, at the museum, not in the chamber. So we're happy that they're here to join us.

Let me just say, Mr. President,

the point was well made yesterday by Senator Galiber how very fortunate we are that we do have really such dedicated, distinguished hard working members of the judiciary, people who serve with great understanding, skill and sensitivity, and that's certainly true of Judge Zweibel.

Let me say something else while I have the floor. I'm the ranking member of the Judiciary Committee. I guess I've been known once or twice to be a bit critical of this chamber of the Legislature, but let me say how proud I was to be part of the Judiciary Committee because of the exemplary professional way in which Chairman Mega ran the confirmation hearings, the care in which the investigations were conducted, the fairness of the proceedings, the non-partisan nature of the proceedings, the openness of the proceedings, the fact that it was inclusive, inclusive of Democrats, Republicans, really the very supportive work that we had of the staff, Ned Cole, and other members of the staff. It's really what we ought

to be doing all the time.

I guess it's difficult to achieve that sort of level of excellence. But let me say there is no legislative committee anywhere in the country, and I include Congress and particularly Congress, that could have acquitted the responsibilities that it had in regard to the confirmation of these judges in a more appropriate, fitting and successful manner than we did under Chairman Mega, and he deserves all the world of credit, and the thanks of the whole body for the way he did this.

Thank you. I move the nomination of Judge Zweibel.

ACTING PRESIDENT FARLEY: On the nomination of Judge Zweibel, Senator Gold.

SENATOR GOLD: Mr. President, thank you. We're talking about the Zweibel family, and I came here prepared to say how intelligent, compassionate R. Zweibel is, and then I realize it's not Robbie we're talking about, we're talking about your father, right, Robbie? All right.

Well, Robbie says he wants to go to college. He's ten years old. Understand today he wants to go to college, not in the future he wants to go to college. Robbie, if it was up to me, I'd send you right away.

Ron Zweibel is a wonderful gentleman and certainly deserves to be on the court. His experience, as we all know by now, is unique. There are not that many people on the bench who have worked for Legal Aid and worked for the prosecutor's office and also represented the crime victims of this state so well and so wonderfully as Ron Zweibel did for so many years as the chair of a New York State Crime Victims Compensation Board.

I know what his colleagues think of him, and he should be proud of that. I know what his neighbors think of him, and he should be proud of that also. He is a wonderful, wonderful gentleman and has those qualities of compassion, patience, understanding and intellect which we want on the judiciary, and I'm really proud to be one of those people who

has a chance to cast a vote in favor of this continued nomination.

SENATOR VELELLA: Mr. President.

ACTING PRESIDENT FARLEY: On the nomination, Senator Velella.

SENATOR VELELLA: Yes, Mr. President. I, too, would like to rise to second the nomination of Ron Zweibel. I worked with him in the district attorney's office many, many years ago, much longer than I like to think about, and matter of fact, in looking at the confirmation, it starts to make me realize how old we are when we're confirming people who will serve to the year 2001 and 2004 in some cases.

But certainly Ron, as Senator Gold has pointed out, has always demonstrated judicial temperament and has a well balanced approach to the problems that confront the court having worked both with the Legal Aid and the district attorney's office. He will be a credit to the judiciary, and I'm proud to second his nomination.

ACTING PRESIDENT FARLEY: On the

nomination, all in favor say aye.

(Response of "Aye.")

Those opposed nay.

(There was no response.)

The nominee is confirmed, and Judge Zweibel is with us in the gallery with also his wife and son, Robbie. Congratulations on behalf of the New York State Senate.

(Applause)

Senator Mega.

SENATOR MEGA: Mr. President, from the Governor of the state of New York Mario M. Cuomo, dated April 8, 1993: I hereby nominate as judge of the Court of Claims Dorothy A. Cropper, of New York City, reappointed for a term expiring on April 28, year 2001.

Judge Cropper appeared before the entire Judiciary Committee, both this morning, and the hearing went into the afternoon. Much testimony was taken, a record was made, and a vote was taken, and the vote for reappointment and confirmation was 15 to 2. There were two Senators who felt they could not vote for the

confirmation, the reappointment.

The Committee very judiciously looked at all the information that was before the Committee. Some of the information were allegations and not founded, some of the infor mation was perception. But there is a record which clearly indicates that the majority of the Committee felt that Judge Cropper should be reappointed.

The record should note that she was found approved -- her renomination was approved by the Association of the Bar of the City of New York, and I have a letter dated June 17th, 1993 which so indicates, that the Governor's New York State Judicial Screening Committee viewed and reviewed her record and interviewed her, and recommended and found that she was well qualified to continue as a judge of the Court of Claims.

She serves in the First Department and the Presiding Justice of the First Department, Justice Francis T. Murphy, indicated that she should be reappointed as a

judge by letter dated June 22nd. In addition to that a sitting Appellate Division judge in the First Department, Theodore R. Kupferman, by letter dated June 22nd, also indicated as such.

Justice of the top court of this state, the Court of Appeals, Associate Justice George Bundy Smith, came to the hearing and testified on the record concerning the ability of Judge Cropper.

There's no question that the judge is qualified by knowledge to be a judge. There was some question concerning her temperament and the manner in which she conducted her courtroom. But after a complete investigation and as indicated, the record will clearly state what was done to make the Committee ultimately feel that the judge should be reappointed and we voted accordingly.

At this time, I would yield the floor to Senator Galiber who will speak to the reappointment.

SENATOR GALIBER: Yes, thank you, Mr. President.

ACTING PRESIDENT FARLEY: Senator Galiber.

SENATOR GALIBER: First off, let me again reiterate, as my colleagues on the Judiciary Committee have made crystal clear, I want to congratulate the chairman for creating a solid record in this matter, and the way in which it was handled and the interest of the Committee for the first time in all the years that I have served on the Judiciary. I have never seen as complete meeting as we had and involvement and meaningful involvement, so I congratulate you as I did at the hearing, and also your staff for an excellent job.

Mr. President, I have -- or I'd like this body to know that I am extremely proud and privileged to move the nomination of someone who I have known for a long, long while. I wish there was the opportunity to read back the record on the other two occasions where I spoke on the nomination of Judge Cropper. My mind has not changed at all.

Judge Cropper, we recognize some

things come a little harder on occasion, but we have before us a strong, no-nonsense person, has been that way for along, long while. Percep tion, demeanor, a number of things which are not judged objectively have been done subjectively.

Colleagues, she has been the same person as I have known her through the years when we worked together while she was at Legal Aid, and I was with the Youth Council Bureau in the district attorney's office in Bronx County. I've watched the growth of an American dream, if you will, families who come to this great country of ours and say to themselves, and the family says to their children, work hard, make a success of yourself.

In the process of doing that, it becomes somewhat difficult from time to time. There is a highly qualified judge who happens to be a woman, who has excellence in terms of her work ethic, as far as her excellence is concerned in terms of what she has produced. There was never any question, if I remember correctly, Mr. Chairman, of the quality of work,

and we have to say that over again and again, the quality of work.

But in the process of doing things, there is another criteria, and I suspect that the fairness in which this hearing has been held. There were many who were concerned as I was about certain aspects of it. But I sat at the hearing this morning, and I heard judges and administrators and had letters read to me, none saying horrible things or even suggesting, people who went out of their way to come and testify not merely out of friendship, but because this person is a qualified person to sit but a third time in a Court of Claims.

So, Mr. President, I am proud as I started out and privileged to offer the nomination of justice -- Judge Dorothy Cropper, and with her today is her husband, Gene, who I had the occasion of going to City College together many, many years ago, and I might add to my colleagues, I've known this hard-working, sincere family for a long while, and the judge is deserving of our support and in nominating

her for the third occasion to the Court of Appeals.

I so move the confirmation, Mr. President.

ACTING PRESIDENT FARLEY: On the confirmation, Senator Velella.

SENATOR VELELLA: Mr. President, it's not a pleasant task when one has to rise to speak against a nomination for judicial appoint ment'. I serve on the Judiciary Committee. I'm a relatively new member of that Committee, and I want to make it very clear that my comments do not go to the integrity or to the competence of the judge about to be confirmed by the Senate. There has been no question that her legal knowledge and her integrity are unblemished in her career and are admirable.

But as we note when we have judicial confirmations, we hear the abstracts of the comments that are made by attorneys who appear before the judge and very often you will hear the chairman get up and speak about what those comments are by the very attorneys who try

cases every day in the courthouse before a judge.

As a practicing attorney, I myself have had a great deal of experience in the courts and, when I hear my colleagues at the bar making comments that have been made about this particular candidate, I seriously question whether or not the candidate possesses the judicial temperament -- comments that come from the lawyers that try cases every day, such as the judge is rude, sarcastic, discourteous to jurors and witnesses and attorneys. She does not appear to pay attention to testimony in court. She has testimony read back when there is an objection because she is not listening. The judge occasionally reads magazines and catalogues during trial testimony and frequently mumbles when speaking from the bench and when jurors or attorneys complain berates them publicly.

There is serious question about the time and the amount of time that this judge spends on the bench, and we have -- we have

reports from attorneys that have given this testimony to the investigators, that she has arrived -- she requires attorneys to arrive at 9:30 a.m., but does not take the bench until 10:30 and 11:30. When jurors are deliberating and seek a question, she's nowhere to be found in the courthouse. She frequently adjourns cases early in the afternoon and leaves the courthouse. Lawyers comment that this is an outrageous waste of money.

The judge has publicly been criticized for low bench time by various publications and has been rated by one publication as one of the ten worst judges.

While I'll agree that her integrity is unquestioned, and I agree that her competence is there, I certainly have a serious problem when these allegations come forward from attorneys who I know personally and attorneys who practice in Manhattan who would never say these kinds of things about judges knowing that they will probably have to reappear before her.

Certainly, I think this causes a

very serious question and regretfully, I will have to vote against the confirmation.

ACTING PRESIDENT FARLEY: On the confirmation, all in favor say aye.

(Response of "Aye.")

Those opposed nay. Negatives please raise your hands. Incidentally, the negatives are going to have to -- how do we handle that? You'll have to announce your negative vote for the record.

SENATOR MALTESE: Mr. President, may I be recorded in the negative on this confirmation?

ACTING PRESIDENT FARLEY: Senator Maltese is in the negative.

SENATOR SALAND: Mr. President, for those reasons which I stated during the course of the hearing of the Judiciary Committee earlier today, I, too, would vote in the negative.

ACTING PRESIDENT FARLEY: Senator Saland is in the negative.

Senator Spano.

SENATOR SPANO: Please record my vote in the negative on this nomination.

ACTING PRESIDENT FARLEY: Senator Mega.

Well, Senator Pataki.

SENATOR PATAKI: Mr. President please record my vote in the negative as well.

SENATOR MEGA: May I explain my vote?

ACTING PRESIDENT FARLEY: Senator Mega to explain his vote.

SENATOR MEGA: I would not like to leave this confirmation process with the comments that were just made by Senator Velella. I want the record to very clearly indicate that there was a stenographer present this morning, a hearing was held for close to three hours, that the nominee testified and she answered these allegations, perceptions and whatever, remembering that many of these statements are made in confidence and it's difficult to disprove some of the statements and if individuals wanted to come before the

Committee and testify, they had every opportunity to do so.

Again, remembering that the associate justice of the highest court who was an Appellate Division judge at the time, came in and testified on behalf of the nominee, remembering that Judge Joan Carey, who is the administrative judge of the court where this judge sits and works, came in and testified about the productivity of this judge and the work that she does, again, remembering that when you make a record, whatever that record is, you can take anything out of the record and deal with it in the abstract, and it may not sound proper, but in order to evaluate a record, whatever that record is, it all has to be considered.

You have to consider the testimony of the witness, in this case the judge, her demeanor. You have to consider the testimony of the individuals I just indicated. You have to consider the information that was given to you and how it was given and after you

look at all of it and you put it together, you make a determination, and 15 of the members of the Committee felt that this judge should be reappointed.

I have no problem with people voting against the reappointment for whatever reasons they have, but I want the record to be very clear that this reappointment was not done in the abstract. It was done securing all the information and covering all the allegations that were made and, based on that, we recommended reappointment.

I vote yes.

ACTING PRESIDENT FARLEY: Senator Galiber, then Senator Dollinger.

SENATOR GALIBER: Mr. President.

ACTING PRESIDENT FARLEY: Explain his vote.

SENATOR GALIBER: Mr. President, my chairman has said it all just about, and I just want to add on that the number of people who came before us, those who object to confir mations at a time on this floor historically in

the 20 years that I've been here or more, it's always been a troublesome process because as we go through the Committee, and this does not take the right away, I'm not suggesting that, but it's just sad that we have to go through this because we do not have the opportunity to list the number of people who said good favorable things, and the trouble with this process is that my hope is that none of the spirit is taken away from the person who has to now go back on the bench, because those of us who know and might have heard there's a person named Medeus in the court of Alexander the Great who used and enforced the notion of false accusations, on the theory that even if the bitten person's wound heals, the accusation remains, the scars remain.

So, Judge, I don't want this to happen, and I want you to go forward because as we weigh it out, there was much much more good than allegations that were made, unproven allegations. But it's just horrible that we have to use this process, which is not a perfect

process, to object to a confirmation of someone who has such quality as far as the work is concerned, excellence and strong family ties, and epitomizes what our system in America is really all about.

So I thank you again, Mr. Chairman, because you said it much better than I could ever have said it.

ACTING PRESIDENT FARLEY: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I rise to echo the comments of my colleague, Senator Galiber, and our chairman, Senator Mega.

I, too, want to commend him on the process utilized in this nominee's review. I think that when we review the nomination of a candidate, we set a certain standard for fairness, for justice, and for making sure that there's an opportunity to air concerns, give the nominee an opportunity to respond.

I think that was done in this case. I think it was done fairly, and I echo

the commendations of the chairman for his hand ling in this case.

But I also share Senator Galiber's view of the limitations, the necessary limitation, built into our process. This was not a trial. This was not an opportunity to cross-examine those who raised concerns about a nominee's courtroom demeanor or time on the bench, which were issues that were raised by Senator Velella.

We never had an opportunity to cross-examine those people who had raised ob jections. Our nominee never had an opportunity to stand there and look people who were questioning her on these issues, look them in the eye, the same thing that would happen in a courtroom.

We have a process that is not a courtroom. It's not a trial. I think it's grossly unfair to raise complaints made in an anonymous and confidential fashion to the level of, frankly, some kind of conclusion reached by someone or, frankly, by anyone on the Judiciary

Committee or by this body.

I, for one, am not willing to credit them to that extent because of the limitations built into our process, and I think it would be unfair for anyone to draw an inference from those that would affect their judgment in this debate.

I, for one, stand in favor of this nominee. I think that the concerns raised in the Judiciary Committee, I have confidence will be attended to, that this is a woman of character, a woman of legal competence who can perform adequately and well in the position of Court of Claims judge in this state, and I stand to vote in the affirmative, Mr. President, and I believe it's my pleasure to do that, and I'm privileged to be a member of this body to confirm this candidate.

ACTING PRESIDENT FARLEY: On the nomination.

SENATOR STAFFORD: Mr. President.

ACTING PRESIDENT FARLEY: Senator Stafford.

SENATOR STAFFORD: As one who has been chairman of the Judiciary Committee, I think I can probably as well as anyone compliment the chairman on the very fine job that he has done.

I would like to submit that I talked with a number of people, colleagues of Judge Cropper. They all had the highest praise, they respected her. She gets her work done. I would only say, Mr. President, that there is in this system, in this system, we have to compliment those who are willing to be in it and I think today is an example when coming to Albany.

The judge has taken part in the system and, frankly, I think we're most fortunate and I, too, and I can only second what the chairman has said, what Joe -- Senator Galiber has said. I underline, I emphasize it, and finally, as they pointed out, as they pointed out, I think what they were saying none of us are perfect, but when we have evidence so overwhelmingly in favor of a candidate, I

certainly think the candidate deserves our support, and I vote aye.

ACTING PRESIDENT FARLEY: On the nomination, all in favor say aye.

(Response of "Aye.")

Those opposed nay.

(There was no response.)

The nominee is confirmed. Judge Cropper is in the gallery with us with her husband, and congratulations on behalf of the New York State Senate.

(Applause)

Senator Present, we have a message from the Governor. Can we take that up?

SENATOR PRESENT: Take the message.

ACTING PRESIDENT FARLEY: The Secretary will read the message from the Governor. Senator Nolan will not be happy.

THE SECRETARY: The Governor returned without executive approval, Senate Bill Number 3438-A, Veto Number 6, by Senator Nolan,

an act to amend the city charter of the city of Cohoes, in relation to proceedings for collection of delinquent taxes, sewer and water rents, and repealing certain sections of such charter relating thereto.

ACTING PRESIDENT FARLEY: Lay the bill on the table.

I think we did messages from the Assembly. There were none. There were no petitions. Reports of standing committees. Do we have a report? Secretary will read a report of a standing committee.

THE SECRETARY: Senator Marino, from the Committee on Rules, reports the following bills directly for third reading:

Senate Bill Number 756, by Senator Waldon, city of New York to reconvey its interest in certain real property;

1779-A, by Senator Holland, amends Chapter 537 of the Laws of 1976;

2241, by Senator Paterson, authorizing the city of New York to reconvey its interest in certain real property;

3211-A, by Senator Padavan, Administrative Code of the city of New York;.

3355, by Senator Stachowski, re-opening of 20-year retirement plan;

3718, by Senator Kuhl, Public Officers Law;

3747, by Senator Spano, to allow Robert Lee to make application for disability retirement;

3763, by Senator Holland, allowing certain employees of the East Ramapo Central School District to transfer previous service credit;

3811-A, by Senator Wright, State Administrative Procedure Act;

4492-A, by Senator Tully, Insurance Law;

4593, by Senator Cook, making certain findings and determinations;

4645, by Senator Spano, relation to employees of the Mental Hygiene Legal Service;

4669-A, by Senator Velella,

Retirement and Social Security Law;

4709, by Senator Trunzo, amends Chapter 929 of the Laws of 1986;

4811, by Senator Stafford, Tax Law, in relation to cooperative members;

5004, by Senator Larkin, Real Property Tax Law;

5480, by Senator Cook, authorizing the town of Rosendale discontinue the use of certain park lands;

5567-A, by Senator Nozzolio, an act to amend the Town Law;

5692, by Senator Pataki, Retirement and Social Security Law;

5741, by Senator Spano, amends Chapter 166 of the Laws of 1991;

5817, by Senator Wright, State Administrative Procedure Act;

5818, by Senator Wright, State Administrative Procedure Act;

5819-A, by Senator Wright, State Administrative Procedure Act;

5820, by Senator Wright, State

Administrative Procedure Act;

5822, by Senator Wright, State Administrative Procedure Act;

5825, by Senator Bruno, allocation and utilization of certain monies;

5834, by Senator Seward, Environmental Conservation Law;.

5835-A, by Senator Sheffer, authorizing the village of LeRoy, county of Genesee to discontinue the use of certain park lands;

5838, by Senator Padavan, General Municipal Law;

5841-A, by Senator Mega, proposing amendments to the Constitution;

5891, by Senator Jones, certain findings and determinations with respect to certain revenue anticipation notes;

5909, by Senator Spano, Commissioner of General Services to sell certain lands in the county;.

5911, by Senator Stafford, an act to amend the Tax Law;

5913, by Senator Volker, General Business Law; and

5962, by the Senate Committee on Rules, amends Chapter 1040 of the Laws of 1981.

All bills reported directly for third reading.

ACTING PRESIDENT FARLEY: All bills are reported directly to third reading.

Senator Skelos.

SENATOR SKELOS: Mr. President, on page number 42, I offer the following amendments to Calendar Number 1068, Senate Print 2048, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Amendments are received; the bill will retain its place.

Senator Tully.

SENATOR TULLY: Mr. President, on page 29, I offer the following amendments to Calendar Number 1188, Senate Print Number 5602, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Amendments are received; the bill will retain its place.

Senator Mega.

SENATOR MEGA: Mr. President, on behalf of Senator Volker, I wish to call up his bill, Senate Print Number 3576-A recalled from the Assembly which is now at the desk.

ACTING PRESIDENT FARLEY: Secretary will read.

THE SECRETARY: By Senator Volker, Senate Bill Number 3576-A, an act to amend the Retirement and Social Security Law.

SENATOR MEGA: Now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 50.

SENATOR MEGA: I offer up the following amendments.

ACTING PRESIDENT FARLEY: Amendments are received; the bill will retain its place.

Senator Libous.

SENATOR LIBOUS: Mr. President, I wish to call up my bill, Print Number 5439-B, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT FARLEY: Secretary will read Senator Libous' bill.

THE SECRETARY: By Senator Libous, Senate Bill Number 5439-B, an act to amend the Vehicle and Traffic Law.

SENATOR LIBOUS: Thank you, Mr. President. I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 54.

SENATOR LIBOUS: Mr. President, I offer up the following amendments.

ACTING PRESIDENT FARLEY: Amendments are received; the bill will retain its place.

Senator Padavan, do you have a motion back there?

SENATOR PADAVAN: Mr. President, I wish to call up my bill, Print Number 5572, recalled from the Assembly.

ACTING PRESIDENT FARLEY: Secretary will read Senator Padavan's bill.

THE SECRETARY: By Senator Padavan, Senate Bill Number 5572, an act to amend the General City Law.

SENATOR PADAVAN: Mr. President, I now move to reconsider the vote by which this bill passed.

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT FARLEY: Bill is before the house.

SENATOR PADAVAN: I now offer up the following amendments.

ACTING PRESIDENT FARLEY: Amendments are received, the bill will retain its place on the Third Reading Calendar.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. On behalf of Senator Daly, would you place a sponsor's star on Calendar Number 1228, Senate Print 5530.

ACTING PRESIDENT FARLEY: Bill is starred at the request of the sponsor.

SENATOR KUHL: Thank you.

ACTING PRESIDENT FARLEY: Senator Saland.

SENATOR SALAND: Mr. President, on page 27, Calendar Number 1137, Senate 5499-A, I'd like to place a sponsor's star on that.

ACTING PRESIDENT FARLEY: Bill is starred at the request of the sponsor.

Are there any other motions on the floor?

We have some substitutions.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT FARLEY: Is there another motion? So many people standing here.

Senator Gold.

SENATOR GOLD: Thank you. Senator Dollinger, you have those numbers?

SENATOR DOLLINGER: Yes.

SENATOR GOLD: Yes, I'd ask you to please recognize Senator Dollinger, Mr. President.

ACTING PRESIDENT FARLEY: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, yesterday I was not in the chamber when three items were approved, and I just want the record to reflect that had I been present in the chamber, on Calendar Number 794, Printed Number 1099, I would have voted in the negative, and on 1069, Calendar Number 1069, Print Number 2275, I also would have voted in the negative, and then on Number 1107, Calendar Number 1107, Print Number 1313, I would have also voted in

the negative and finally there's one more, Mr. President, Calendar Number 1150, Print Number 5832, I would have also voted in the negative had I been present.

ACTING PRESIDENT FARLEY: The record will so state.

SENATOR DOLLINGER: Thank you, Mr. President.

ACTING PRESIDENT FARLEY: We have some substitutions. Secretary will read the substitutions.

THE SECRETARY: On page 16, Senator Spano moves to discharge the Committee on Rules from Assembly Bill Number 3562 and substitute it for the identical Third Reading 773.

ACTING PRESIDENT FARLEY: Substitution ordered.

THE SECRETARY: On page 31, Senator Espada moves to discharge the Committee on Rules from Assembly Bill 3646 and substitute it for the identical Third Reading 1240.

ACTING PRESIDENT FARLEY:

Substitution is ordered.

THE SECRETARY: On page 31, Senator Tully moves to discharge the Committee on Finance from Assembly Bill Number 4135 and substitute it for the identical Third Reading 1241.

ACTING PRESIDENT FARLEY: Substitution ordered.

THE SECRETARY: On page 32, Senator Farley moves to discharge the Committee on Rules from Assembly Bill Number 6023 and substitute it for the identical Calendar Number 1246.

ACTING PRESIDENT FARLEY: Substitution is ordered.

THE SECRETARY: On page 33, Senator Wright moves to discharge the Committee on Rules from Assembly Bill Number 6840 and substitute it for the identical Calendar Number 1258.

ACTING PRESIDENT FARLEY: Substitution is ordered.

Senator Present.

SENATOR PRESENT: Can we take up the non-controversial calendar, please.

ACTING PRESIDENT FARLEY: Non-controversial.

THE SECRETARY: On page 5, Calendar Number 165, by Senator Maltese.

SENATOR STACHOWSKI: Lay aside.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: On page 7, Calendar Number 322, by Senator Farley, Senate Bill Number 2730-A, an act to amend the Banking Law, in relation to interstate branching.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 395.

SENATOR STACHOWSKI: Lay aside.

SENATOR KUHL: Lay aside for the day, please.

ACTING PRESIDENT FARLEY: Lay aside for the day.

THE SECRETARY: Calendar Number 456, by Senator Saland.

SENATOR STACHOWSKI: Lay aside.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 746, by Senator Sears, Senate Bill Number 4345, an act to amend the Real Property Tax Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 753, by member of the Assembly Pillittere, Assembly Bill Number 5546-A, amends Chapter 766 of the Laws of 1992, amending the Canal Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54, nays one, Senator Sears recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1051, by Senator Sears.

SENATOR PRESENT: Lay aside for the day, please.

ACTING PRESIDENT FARLEY: Laid aside for the day.

THE SECRETARY: Calendar Number 1185, by Senator Masiello.

SENATOR STACHOWSKI: Lay aside for the day.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 1213, by Senator Padavan, Senate Bill Number 4704-A, Administrative Code of the city of New York?

SENATOR PADAVAN: Lay that aside, please.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 1217, by Senator Hannon, Senate Bill Number 4972, making an appropriation to the Department of Transportation.

SENATOR DOLLINGER: Lay aside, please.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number

1227, by Senator Levy, Senate Bill Number 5487-A, relation to authorizing a review of current drug impaired driving education.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1232, by Senator Levy, Senate Bill Number 5684, an act to amend Chapter 268 of the Laws of 1989.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Padavan, why do you rise?

SENATOR PADAVAN: I rise because I'm trying to see.

ACTING PRESIDENT FARLEY: Just stretching.

THE SECRETARY: Calendar Number 1234, by Senator Seward, Senate Print 5808, an act to amend the Public Service Law.

SENATOR STACHOWSKI: Lay it aside for the day.

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

ACTING PRESIDENT FARLEY: Laid aside for the day.

THE SECRETARY: 1236, by Senator Stafford, Senate Bill Number 5866,, create a motor carrier advisory council.

SENATOR STACHOWSKI: Lay aside.

ACTING PRESIDENT FARLEY: Lay that

bill aside.

THE SECRETARY: 1239, by Senator Stachowski, Senate Bill Number 1132-A, authorize the city of Buffalo to discontinue the use as park land of a portion of land as Tyler Park.

ACTING PRESIDENT FARLEY: Senator Stachowski has a home rule message at the desk. You can read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1240, substituted earlier today, by member of the Assembly Diaz, Assembly Bill Number 3646, authorizing the city of New York to reconvey its interest in certain real property.

ACTING PRESIDENT FARLEY: Senator Espada has a home rule message here at the

desk. You can read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1241, substituted earlier today, by member of the Assembly John, Assembly Bill Number 4135, an act to amend the Executive Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: 1242, by Senator Johnson, Senate Bill Number 2475, an act to amend the Banking Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1243, by Senator Spano, Senate Bill Number 3012-A.

SENATOR STACHOWSKI: Lay aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 1244, by Senator Present, Senate Bill Number 3104, Administrative Procedure Act.

ACTING PRESIDENT FARLEY: Read

the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1245, by Senator Cook, Senate Bill Number 3180, an act to amend the Real Property Tax Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number

1246, substituted earlier today.

SENATOR STACHOWSKI: Lay aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 1247, by Senator Present, Senate Bill Number 3674, an act to amend the Real Property Tax Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55, nays one, Senator Pataki recorded in the negative.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1248, by Senator Goodman, Senate Bill Number 3930, an act to amend the Vehicle -

SENATOR STACHOWSKI: Lay aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number 1249, by Senator Cook, Senate Bill Number 4220, Real Property Tax Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1250, by Senator Hannon, Senate Bill -

SENATOR PRESENT: Lay aside for the day, please.

ACTING PRESIDENT FARLEY: Lay that bill aside for today.

THE SECRETARY: Calendar Number 1251, by Senator Lack, Senate Bill Number 55 -

SENATOR PRESENT: Lay aside for the day.

ACTING PRESIDENT FARLEY: Laid aside. For the day or just -

SENATOR PRESENT: For the day.

ACTING PRESIDENT FARLEY: For the day.

THE SECRETARY: Calendar Number 1252, by Senator Masiello, Senate Bill Number 5362, an act to amend the Local Finance Law.

ACTING PRESIDENT FARLEY: Senator Masiello has a home rule message here at the desk. You can read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT FARLEY: The bill is -- the bill is passed.

THE SECRETARY: Calendar Number 1253, by Senator Farley, Senate Bill Number

5411-A, an act to amend the General Municipal Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1254, by Senator Holland, Senate Bill Number 5626-A, an act to amend the Social Services Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1255, by Senator Holland.

SENATOR HOLLAND: Lay aside for today, please.

ACTING PRESIDENT FARLEY: Lay it aside for today.

THE SECRETARY: Calendar Number 1256, by Senator Holland, Senate Bill -

SENATOR STACHOWSKI: Lay aside.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 1257, by Senator Bruno, Senate Bill Number 5805, an act to amend the Public Authorities Law.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act -- hold on before you do it. There's a home rule message here at the desk. You can -- now you can read it.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1258, substituted earlier today, by member of the Assembly Seabrook, Assembly Bill Number 6840, State Administrative Procedure Act.

ACTING PRESIDENT FARLEY: There's -- is this Senator Volker's -- read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1259, by Senator Volker, Senate Bill Number 5852, enable the county of LIvingston to acquire sites.

ACTING PRESIDENT FARLEY: I think Senator Volker has a home rule message here at the desk. Now, you can read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1260, by the Senate Committee on Rules, Senate Bill Number 5853, an act to amend the General -

SENATOR STACHOWSKI: Lay it aside.

ACTING PRESIDENT FARLEY: Lay that bill aside.

THE SECRETARY: Calendar Number

1261, by Senator Saland, Senate Bill Number 5881, an act to amend the the Family Court Act.

SENATOR STACHOWSKI: Lay aside.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 1262, by Senator Johnson.

SENATOR PRESENT: Lay aside for today, please.

ACTING PRESIDENT FARLEY: Laid aside for the day.

THE SECRETARY: 1263, by Senator Johnson.

SENATOR PRESENT: Lay that aside for the day.

ACTING PRESIDENT FARLEY: Lay that aside for the day.

THE SECRETARY: Calendar Number 1265, by Senator Trunzo, Senate Bill Number 5961, an act to amend the Executive Law.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

SENATOR GALIBER: Lay it aside, please.

ACTING PRESIDENT FARLEY: Senator Galiber, you said lay it aside?

SENATOR GALIBER: Yes.

ACTING PRESIDENT FARLEY: Lay it aside.

Senator Holland.

SENATOR HOLLAND: With unanimous consent, I'd like to be recorded in the negative on Calendar 1247, please.

ACTING PRESIDENT FARLEY: 1247, Senator Holland will be in the negative.

Senator Present.

SENATOR PRESENT: Can we call up Calendar 1256, please.

ACTING PRESIDENT FARLEY: 1256, the Senate -- the Secretary will read.

THE SECRETARY: Calendar Number 1256, by Senator Holland, Senate Bill Number 5687, an act to amend the Social Services Law, in relation to providing flexibility to social

services districts.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect immediately. Hold on. Explanation. Well, we tried.

Senator Holland, an explanation has been asked for.

SENATOR HOLLAND: Yes, sir.

Mr. President, the cost of Medicaid is a powder keg that threatens the very financial base of the state of New York. For years we have watched the fuse burn, fueled by health care cost increases, rapid growth in the elderly population, and New York State's generosity. Counties have experienced an explosive growth in their Medicaid costs. The program is the fastest growing portion of their budgets and has been growing historically at an average rate of 14 percent while some counties have grown at 28 to 37 percent.

Today the time has come for us to defuse the volatile bomb that could devastate

the wallets of every hard-working taxpayer in the state of New York. With the passage of this Medicaid legislation, the Senate begins its attempt to truly reform this system and to save taxpayers and local governments billions of dollars.

This bill takes over half the remaining share of local long-term care costs over the first three-year period. It also provides counties with the flexibility they need to be true partners in the fight to control Medicaid costs and, like the Governor's proposal, it relieves a local share by the year 2000.

Medicaid was originally meant to be a health plan in transition. It was not designed for long-term care. It was meant to be a temporary safety net, but has degenerated into a security blanket. This security blanket has left the average taxpayer unprotected from the rising cost associated with long-term care. Medicaid has become a bureaucratic giant with its own agenda imposing burdensome mandates on

providers, localities and the state, which are driving up the program costs. The sky-rocketing increase in costs has captured the attention of individuals, taxpayers groups and elected representatives.

In February and March of this year, I held statewide hearings to determine first hand exactly how the people of this state feel about the various Medicaid take-over proposals. From these hearings, I heard Raymond Meier, the County Executive of Oneida County, describe Medicaid as, and I quote, "the monster that's eating things like all the aid to libraries and cultural organization and public works projects."

Philips -- Philip Gile of Westchester County, Director of Government Relations, really summed it all up when he said, and I quote, "I think the Senate is taking the correct approach, that this debate is really a historic opportunity for the Senate to insist on cost containment control."

The legislation introduced today

is a result of those productive hearings. Long-term care is the most burdensome Medicaid component for local governments, and this legislation addresses that problem first. As I said before, this bill picks up half the remaining local share for long-term care over a three-year period. The county share presently is ten percent or approximately $650 million annually.

This legislation also provides local governments with much needed flexibility when providing optional Medicaid services. This flexibility, coupled with the incentives to enroll individuals in managed care programs, sets a firm base on which solid cost containment programs can be built. Through these cost containment programs localities will be able to reduce their Medicaid growth to a level where the state can responsibly assume Medicaid costs.

Putnam County Executive Robert Bondi states that, and I quote, this is a kind of arrangement that gives us the kind of

flexibility and the type of service that is needed in our county. Obviously, through this legislation, county executives will be relieved of their Medicaid-induced budget headaches. The Senate Majority is proud to have designed a plan that achieves real reform, not just the shifting of costs.

We have worked long and hard in order to assemble a fair, yet effective plan for the state assumption of local Medicaid costs. Through this program, we will be providing state taxpayers with a shelter that will address their needs, the needs of municipalities, and those of the state.

I want to take this opportunity to invite Governor Cuomo and the Assembly to follow the Senate's lead, insist on real reform in addition to this take-over.

Last section.

ACTING PRESIDENT FARLEY: Read the last section.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT FARLEY: Senator Dollinger.

SENATOR DOLLINGER: I believe there are a series of amendments to this bill which are at the desk.

ACTING PRESIDENT FARLEY: They are.

SENATOR DOLLINGER: I'd like to address the amendments if I can.

ACTING PRESIDENT FARLEY: Senator Dollinger on the amendments.

SENATOR DOLLINGER: Mr. President, I rise today with a series of amendments to the proposal from Senator Holland that I think will create real Medicaid take-over and real local property tax relief.

They are as proposed by Governor Cuomo, I think, the important first step in looking at our local communities and their substantial reliance on the property tax to cover this rising social service cost, and this bill represents something that is not contingent on a hypothetical cost reduction; it's not

contingent on something that might happen in the future; it's not contingent on some hypothetical cost containment tied to a, I think, hypothetically resolved 6.6 percent rise in the Consumer Price Index, the medical component of that, but instead, I think offers immediate and direct property tax relief for all the overburdened counties and other payers in this state.

It seems to me that, if what we want to do is bring the process of Medicaid take-over into reality, the only way to do it is with an approach, Mr. President, in which we trade the take-over for a trade of revenue back from the payers, the current payers under the system, and we also establish a hold harmless provision that would protect them, so that they're not exposed to additional cost, and we allow this state, through what we hope will be a series of other cost containment measures that are better done at a state level.

It seems to me that all of these things can be accomplished if this amendment

passes. If, instead, we don't pass this amendment and we have to deal with the current bill, we're going to have a system of Medicaid take-over which is purely and simply contingent; it's not real in any respect, it doesn't happen until a cost containment figure, which as I think the sponsor will even acknowledge, is much less than the growth in the Medicaid cost over the course of the last four or five years and is much, much less than the projected increase which will occur over the next four or five years.

With all due respect to the sponsor and I understand the sponsor's goal is to achieve property tax reduction in our communities as well, it seems to me that the formula proposed in the underlying bill is contingent, it is a hypothetical, it is one that I don't believe there's any firm indication that the current payors can meet.

Under the proposal of this amendment, we simply swap the revenue of the sales tax for the government -- the state

government's take over of the entire process. That can be phased in over time.

SENATOR DALY: Mr. President.

SENATOR DOLLINGER: It can achieve property tax relief over time.

SENATOR DALY: Mr. President.

ACTING PRESIDENT FARLEY: Sorry. Senator Daly.

SENATOR DALY: Will the Senator yield?

ACTING PRESIDENT FARLEY: Would you yield, Senator Dollinger?

SENATOR DOLLINGER: Yes, I will yield.

ACTING PRESIDENT FARLEY: Yes, he will.

SENATOR DALY: Senator, are you saying that this swap would be even up, in other words, for the money that the state would take from the counties in regards as far as the sales tax, that it would be equal to the monies that the county would save because they don't have to pay Medicaid/welfare?

SENATOR DOLLINGER: Mr. President, could I just ask the question be repeated so I make sure I understand it? With my apologies.

SENATOR DALY: Yes, sure. Well, let me just give you a hypothetical example if I may, Mr. President. Let us say that a county, and this is an actual example, Senator Dollinger, in western New York, takes in $19 million for every penny in sales tax, the actual cost that it would save in Medicaid take-over would be $12 million.

Now, here we have a county that's giving the state 19 million, saving 12 million. Now, is that what your bill -- your amendment would do?

SENATOR DOLLINGER: It's my understanding, Mr. President, that the bill would take over the actual cost at the start but, as that cost continues to grow, as in my county where the cost of, I believe the Medicaid -- the penny of sales tax revenue in Monroe County generates about 70 to $75 million, the

cost of the Medicaid take-over as proposed in this bill is, I believe, the estimate is somewhere in the vicinity of 110 to $120 million dollars. So we would assume greater costs in exchange for take -- taking the penny on the sales tax.

SENATOR DALY: Would the Senator yield for one more question?

ACTING PRESIDENT FARLEY: Senator Dollinger, would you yield to one more question?

SENATOR DOLLINGER: I will, Mr. President.

SENATOR DALY: Then what you're saying, Senator, is that it's not an even trade, that it's going to cost the state more than it will get back through the sales tax it receives?

SENATOR DOLLINGER: In certain instances, Mr. President, to respond to the question, there is a possibility that it will cost the state additional beyond what they will obtain through the penny in sales tax.

The other critical component that

I think addresses the first part of the question of is that the hold harmless and the savings cap guarantees that no county will pay more than it saves.

SENATOR DALY: Mr. President, would the Senator yield?

ACTING PRESIDENT FARLEY: Would you yield for another question.

SENATOR DOLLINGER: I will.

SENATOR DALY: Then what you're saying, Senator, if I understand it, is that this save harmless that you mention is a method by which the state will assure that the county will not lose any money; is that correct?

SENATOR DOLLINGER: Correct. That's correct.

SENATOR DALY: Now, would you tell me, Senator Dollinger, how much this save harmless feature will cost the state of New York?

SENATOR DOLLINGER: I believe the estimated cost of the state take-over of the Medicaid system is that the total cost to the

communities, current cost, and I'll have to look that up to respond, so I make sure I'm accurate.

SENATOR DALY: Please.

SENATOR DOLLINGER: Just want to make sure, but my understanding is that in the phased-in take-over of the tax the cost would be about a billion dollars.

SENATOR DALY: How much?

SENATOR DOLLINGER: But we'd also take in the penny revenue, the additional revenue from the communities in the form of the additional sales tax. It may also require, and I think it is acknowledged that, depending on the growth, what happens over time, it may cost the state more money if the number of Medicaid eligible people actually increases, and I'd point out to the Senator that that number, the Medicaid cost is growing, not only as a cost, as a consequence of the increased cost per person, but because of the increasing number of persons that are in the system, particularly in the long-term care system which continues to grow,

so I think from our point of view, the total cost to the state would be somewhere in the vicinity of about a billion dollars, and that would be the savings that would accrue to the local communities as well, but it's not hinged on hypothetical cost containment, which I think is very, very iffy, but instead the state would simply assume the cost over time.

SENATOR DALY: Would the Senator yield for one more question?

ACTING PRESIDENT FARLEY: Senator Dollinger, would you yelled for one more question?

SENATOR DOLLINGER: Yes, Mr. President.

SENATOR DALY: Senator, would you agree that the present cost of Medicaid/welfare to the counties total is four and a half billion dollars?

SENATOR DOLLINGER: That I don't know as well, Senator. I don't have those numbers right here in front of me.

SENATOR DALY: Well, Mr.

President, again, if the Senator will yield.

Senator, if you're going to propose an amendment like that, don't you think that we should know what this will cost the state or cost the counties? We have, and I - we have figures ourselves that we could present to you, but you're proposing this amendment.

The problem, don't you have a problem with the fact, Senator, that really you don't present nor has the Governor, in his proposal, presented to the state the exact figures involved, and particularly geographically in different parts of the state, because remember, Senator, that over 70 percent of this money goes to New York City, and if - with the state take-over, rhetorical -- well, I'll finish my question very -- in a brief way, in a short period if I can, with a state take over, that most of the savings would be in the New York City area where probably, our figures indicate that, for every dollar that New York City would save, they'd only have to pay the state back 58 cents.

Now, what does this mean to the people in the other part of the State, Senator?

SENATOR DOLLINGER: I think, Mr. President, the shorthand answer to that is that the total cost to the state of New York in Medicaid expenditure, the local cost was about $2.8 billion in 1992, and about $800 million of that cost was spent outside the city of New York.

So the answer to Senator Daly's question is that, if there were a take-over under this plan if the state assumed that cost, there would be an $800 million tax savings in the communities that he represents, that I represent, I don't know what the number is in Niagara County, I don't know what the number is in Orleans County, I have a pretty good idea what the number is in Monroe County, but all of those communities would be seeing proper - would see property tax relief because they would be relieved of the obligation to pay through property tax dollars the cost, the difference in cost between the sales tax revenues they get

with the penny and the total cost of their Medicaid, which is about $50 million in real property tax cost in Monroe County.

SENATOR DALY: Mr. President, would the Senator yield for another question?

First of all, Senator, we have different figures. I question the 2.8 billion, question it, and let me tell you why I question it. You take the total cost of Medicaid/welfare and the counties pick up 17 percent. The state picks up 34 percent and the fed's pick up 50 percent, that's of total spending.

But let's get back to Monroe County.

SENATOR DOLLINGER: I'd like to point out the difference there that maybe our figures in Medicaid, not in Medicaid-slash welfare number is the question that was asked.

SENATOR DALY: Anyay let's get back to Monroe County. You say you know, you have an idea of the figures in Monroe County. Now, let me ask how much under this proposal, how much would the -- would the county pay to

the state in sales tax and how much would the county save in regards to the Medicaid/welfare costs?

SENATOR DOLLINGER: My understanding, Mr. President, and again I don't have those figures right -- these are the numbers -- the name of the game is figures. Excuse me.

SENATOR DALY: I'm sorry. Go ahead, Senator.

SENATOR DOLLINGER: Excuse me. The actual numbers for the sales tax revenue, penny in sales tax, I believe, generates about $70 million dollars and the total, the 1992 share, let me just double check this if I can.

Mr. President, through you, the numbers that I have, and I want to make sure that we pulled out the right numbers to review this, is that the total cost of Medicaid anticipated in year 1998-99, which I believe would be the year of the final year of the phase-in of the take-over, that cost would be about $124 million. The revenue that would be

generated by a penny on the sales tax in the same year, assuming a reasonable increase in the sales -- projected sales tax revenue would be about $95 million at that time, so the total benefit to Monroe County taxpayers, if you had just the sales tax revenue, but you had to pick up the Medicaid cost, you'd use $95 million worth of sales tax revenue, you'd have to come up with approximately $30 million in real property taxes to cover the difference between the penny in the sales tax and the total cost of your Medicaid.

The consequence of adopting this amendment is, five years from now to give the people of Monroe County a $30 million tax saving which, according to the current number, the current number that's used for total real property tax collections in Monroe County is about $235 million, so it would be about a 15 percent reduction in their property taxes if this proposal took effect.

SENATOR DALY: Will the Senator yield for one more question?

ACTING PRESIDENT FARLEY: Senator Dollinger, would you yield for one more question?

SENATOR DOLLINGER: Yes, Mr. President, I would.

SENATOR DALY: Then you're saying, Senator, that Monroe County would save $30 million in a year; is that correct?

SENATOR DOLLINGER: $30 million again, that's projected out, Mr. President, to fiscal year 1999 -- 1998-99.

SENATOR DALY: And that's one county in the 57.

SENATOR DOLLINGER: That's the only question -- county I was questioned about, Mr. President.

SENATOR DALY: What I'm saying, 57 counties, and you're saying it would save the property taxpayers $30 million that year; is that correct, just so I understand you?

SENATOR DOLLINGER: Those are what the numbers indicate for the only county I was asked the question about, Mr. President.

SENATOR DALY: Where would the $30 million come from?

SENATOR DOLLINGER: From the state of New York.

SENATOR DALY: Then we have the state of New York picking up this additional cost; is that correct?

SENATOR DOLLINGER: That's what the take-over is all about, Mr. President; that's correct.

SENATOR DALY: No, that's what your take-over is all about, Mr. President, that's correct.

SENATOR DOLLINGER: I apologize. That's what the amendment would do. That's what the take-over that's suggested in the amendment would do.

SENATOR DALY: That's why your take-over is different than our take-over plan. Basically then, Senator, what you're saying is New York State is going to have additional cost statewide, statewide, because New York State is only one of 57 counties, which means then that

the taxpayers of the state of New York are going to have to pick up those additional costs; is that right?

SENATOR DOLLINGER: Again, Mr. President, I apologize to the questioner. I was listening to someone else to get an explanation and if you would repeat the question I'd be glad to answer it.

SENATOR DALY: I understand, Senator. I'll be glad to repeat the question.

Then what you're saying is the state of New York is going to make up this additional $30 million in this hypothetical case or in this case, and that means that that will be spread throughout the entire counties down into New York City and again realizing, Senator, that 70, 75 percent of the costs are in New York City, and we would estimate -- let me give you a figure, Senator, and then you can comment on it. We estimate that such a take-over as you just proposed would cost the state of New York in additional new monies, $4 billion, and I would ask the Senator, my last question: Where

would this money come from?

SENATOR DOLLINGER: Well, Mr. President, I think it's the advantage of the amended -- the amendments is that the same cost -- type of cost containment that's talked about in the underlying bill, the state of New York would attempt to achieve the same level of cost containment, that what would happen would be the cost containment measures that I think there's a growing consensus on the need for cost containment, and those kinds of measures would be a part of what this state, this Governor is committed to do, and that is to try to reduce that cost, to contain that cost.

The only difference, the major difference between the plan in the underlying bill and these amendments, is that it's not contingent upon the achievement of an unrealistic cost containment number, and I think the most recent information that we have from the Majority is that the 6.6 percent is acknowledged to be all but an unrealistic number.

This plan, as this plan stands under the amendments proposed today, we would achieve a take-over which will produce property tax relief without having it be contingent on a totally hypothetical ability for the counties to achieve cost containment.

My hope continues to be, Mr. President, I think that there is a growing consensus on both sides of the aisle for need of cost containment in the Medicaid area that can be best done at the state level. It can be best done with the unified system, with a single payer, with not having the local communities have to pick up the cost, and I think we've got a more realistic chance to achieve it through the amendments.

But the most important thing is, let's give our local communities property tax relief now. Let's begin the process, please don't make it based on a hypothetical cost containment that we're going to ask every county to do that some may achieve, others may not achieve, and we may end up in a very complicated

situation based on trying to figure out how we calculate that 6.6 percent.

I would strongly urge the adoption of the amendments, Mr. President, and I would ask everybody in this chamber to give the local communities a chance to take a sigh of relief, to give those local communities an opportunity to begin to realize that real property tax relief is right around the corner. If this is amended, it will hold them harmless. We will give them an opportunity to reduce their overall spending and their reliance on the property tax base. It's what they've been asking us for. These amendments represent a clear opportunity to do that.

ACTING PRESIDENT FARLEY: Senator Holland on the amendment or for a question?

SENATOR HOLLAND: No, I'd ask Senator if he would yield to a question.

ACTING PRESIDENT FARLEY: Would you yield to a question from Senator Holland?

SENATOR DOLLINGER: I would, Mr. President.

ACTING PRESIDENT FARLEY: Senator Holland.

SENATOR HOLLAND: Senator, we're trying to do exactly what you described and we're trying to do it through good management and controlled costs. Now, you have attacked the 6.1 percent cost containment. Do you know what the Governor is recommending as the annual increase in his proposal?

SENATOR DOLLINGER: My understanding is, Mr. President, that with the growing volume of people that will be in the system, the growing need for long-term care and for other reasons, that a more realistic projection would be in the 12 percent area.

SENATOR HOLLAND: That's correct. That's exactly what the Governor is suggesting, 12 to 13 percent.

One more question, if you don't mind. Do you know any tax in the state of New York that is growing at 12 to 13 percent that we can cover this expense with?

SENATOR DOLLINGER: No, not at

the current point, I don't.

SENATOR HOLLAND: So the real question is, do we contain costs or do we let costs get away from us with figures that we can not control through increased taxation?

SENATOR DOLLINGER: Through you, Mr. President, the real question that's posed here is that if we need those additional taxes, if for some reason cost containment doesn't work, doesn't achieve the limitation that I think both Senator Holland and I hope actually happens, the question is where are we going to get the revenue and who is going to benefit by the proposal contained in these amendments?

The benefit will accrue to the local communities in the form of reduced property taxes. I'm sure everyone in this chamber has heard the endless complaints about rising property taxes. But this will -

ACTING PRESIDENT FARLEY: Senator Holland.

SENATOR HOLLAND: What this will do, just to finish Mr. President.

ACTING PRESIDENT FARLEY: Oh, I'm sorry.

SENATOR DOLLINGER: This will reduce the property tax and if additional revenues are necessary, they'll come from the state of New York through other broad-based taxes.

SENATOR HOLLAND: Senator, I heard you speak about the cost, the increased costs of Monroe County. Do you know what the total cost would be over the six-year period under the take-over under the Governor's proposal, to the localities and to the state?

SENATOR DOLLINGER: The total cost -

SENATOR HOLLAND: -- of the amended proposal.

SENATOR DOLLINGER: -- of the Governor's recommendation.

SENATOR HOLLAND: To the localities and to the state combined.

SENATOR DOLLINGER: It's my understanding, and again I just want to make

sure I've got the absolute figures -- my understanding is and again, Senator, I just want to make sure of my numbers before I recite them, that the total cost that would be taken over by New York State under the amendments, the total cost would be about 21.2 billion over seven years.

The revenue that we would take in by virtue of the swap for the sales tax would be about 16.6 billion, and the net cost to the state of New York would be about $4.6 billion.

SENATOR HOLLAND: That's pretty close. I have different figures, very similar, 14 million plus 4.4 million, 18-point - billion, I'm sorry, thank you, John -- 18.5 billion approximately under the Governor's plan.

If we have cost containment, on the other hand, instead of the 18.2 billion, the cost under our proposal with cost containment which only makes sense in good management would be $6.6 billion less or approximately $12.8 billion.

SENATOR DOLLINGER: Well, and, Mr. President, I think the proposal put forth in these amendments, we haven't ruled out cost con taibnment. Cost containment could substantially reduce the $4.5 billion overall cost.

SENATOR HOLLAND: Senator, that's an excellent -

SENATOR DOLLINGER: Just that our proposal wasn't contingent upon achieving that cost. We did the property tax relief now and have the state manage the question of cost containment in the future.

SENATOR HOLLAND: Senator, that's a excellent suggestion, but the Governor never mentioned that. We've had three negotiating meetings with him, but he has never mentioned that or allowed that to come up, but your idea is an excellent idea. If we can agree on cost containment to some degree, then we can move this bill.

SENATOR DOLLINGER: Well, the question is whether we can agree on cost containment as a condition of the take-over. I

think the position of this amendment is that that shouldn't be the linchpin upon which we provide the property tax relief to the counties. We ought to go forward and give the property tax relief now and have the state deal with the question of whether, over the seven year period we can achieve the cost containment goals that I think your proposal addresses and that the Governor in his proposal would like to address as well.

The question is, do we make our property tax relief contingent upon that. This proposal says, don't do it that way. Let's get the property tax relief first.

ACTING PRESIDENT FARLEY: On the amendment, all in favor say aye.

SENATOR GOLD: Party vote in the affirmative.

ACTING PRESIDENT FARLEY: Party vote. Party vote, Senator Present.

SENATOR PRESENT: Negative.

ACTING PRESIDENT FARLEY: Call the roll on a party vote.

(The Secretary called the roll.)

THE SECRETARY: Ayes 22, nays 35, party vote.

ACTING PRESIDENT FARLEY: On the bill. Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes -

ACTING PRESIDENT FARLEY: Senator Jones to explain her vote?

SENATOR JONES: Yes. I just want to say that I am going to support this bill, but I do see good things in the Senate Republican bill. I also see some things in the Governor's bill that I would have liked to have seen. I guess what I wish is that we could have had a realistic compromise.

I have heard the same thing that you have heard from our counties, this is a tremendous drain, they are begging for this kind

of mandate relief. However, if there's one thing I've learned, even in the short time that I'm here if it isn't a bill that both the Assembly and the Senate have agreed upon it's kind of a -- what shall I say, lesson in futility what we're doing.

So while I'm going to support it, I think we're doing a disservice to our locality if this isn't a bill that is really going to come to pass and give our counties the relief that they're asking for.

ACTING PRESIDENT VOLKER: Senator Jones in the affirmative. Continue the roll.

I'm sorry. Senator Wright to explain his vote.

SENATOR WRIGHT: Mr. President, to explain my vote.

Having served in local government and having put together a number of local government budgets that have dealt with the increasing costs of Medicaid and that increasing annual burden, I can attest first hand to the need for cost containment and to simply shift

the cost from local governments to the state of New York really doesn't accomplish the under lying reform that needs to be accomplished in Medicaid.

The difficulty with the amendment is very simply a question of shifting that cost because you end up dealing with other local property taxes. If the state of New York has to take on additional burden, my concern very simply is that we jeopardize funding in such critical areas as school aid, which simply shifts another burden of state government back to the property tax; so while we may have relieved county government, and that will certainly please county officials, we've added additional burdens to the local property taxes in the form of school aid.

So I think the real issue is cost containment. That's what this bill does. I vote for cost containment and this bill. Thank you.

ACTING PRESIDENT VOLKER: Senator Wright in the affirmative. Senator Daly to

explain his vote.

SENATOR DALY: Explain my vote. The point was made that the percentage, the formula under this bill, is unattainable. I take exception to that, and I can point to a particular county which has held its increase in costs down to under seven percent.

Now, I won't read the letter, but I'll be glad -- it's Niagara County and, if you'll check with Social Services you'll find, Mr. President, that this is a model county and they have truly implemented all the cost saving programs that they can. They've done an exceptional job. Their cost and increase, total increase was 6.4 percent last year.

It can be done statewide, Mr. President, and this bill can help us do it.

ACTING PRESIDENT VOLKER: Senator Daly in the affirmative.

Senator DeFrancisco to explain his vote.

SENATOR DeFRANCISCO: Yes, I think it's extremely important to have cost

containment as a pre-condition. To leave the state of New York as the sole vehicle for cost containment is a little bit risky to say the least, in view of the history of the state over the last several years.

Moreover, what you do is reward those counties who have been effective in the cost containment and don't reward those who are just going for the ride based upon sales tax revenues that they're generating from other counties and, lastly, when we have over 60 counties, I believe in this state, attempting to do innovative things with respect to cost containment, we may come up with an idea that might be well worth using throughout the state of New York. Rather than having one group, the state of New York, responsible for this cost containment, we have many different counties coming up with locally innovative approaches, some of which may work and at least there's a better chance of getting something that works when there are that many people that have vested interests in doing so.

So I think it's extremely important that this legislation pass as is proposed.

ACTING PRESIDENT VOLKER: Senator DeFrancisco in the affirmative.

Senator Dollinger to explain his vote.

SENATOR DOLLINGER: Mr. President, my views on the legislation are known based on the debate. I would just rise in con travention of the point made by Senator DeFran cisco. He's correct there may be some counties that get property tax relief as a result of this bill, but there may be a lot of counties that won't, including the one I live in that has worked through a Democratic administration and a Republican administration, that has worked as aggressively on cost containment as it possibly can, but because of the numbers of people on the rolls and the rising volume which isn't taken into account in the formula in the underlying bill, the fact that there are going to be more people on the rolls especially as the economy is

in a questionable state, they won't see any tax relief as a result of this and the miracle that you're looking for, I submit, Senator, is one that has been looked at for a decade by Democrats and Republicans in our county and we can't get that cost down. It has defied our ability to do it. What you'll have is you'll have property tax relief in some counties, Mr. President, but they'll be very, very few. They won't be the counties that have significant problems that require Medicaid funds.

So the bill that is going to be passed today is not property tax relief in Monroe County. It isn't property tax relief where I live, and I suggest it won't achieve statewide property tax relief which is what the amendment would have done.

ACTING PRESIDENT VOLKER: Senator DeFrancisco in the negative.

SENATOR DOLLINGER: Dollinger.

ACTING PRESIDENT VOLKER: I'm sorry. Senator Dollinger in the negative.

SENATOR DeFRANCISCO: I take of

fense to that.

ACTING PRESIDENT VOLKER: I apologize.

THE SECRETARY: Those recorded in the negative on Calendar Number 1256 are Senators Connor, Dollinger, Espada, Gold, Halperin, Leichter, Montgomery, Ohrenstein, Onorato, Smith, Stavisky, and Waldon. Also Senator Oppenheimer. Ayes 44, nays 13.

ACTING PRESIDENT VOLKER: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President, will you call up Calendar 1265, Senator Trunzo's bill, which was inadvertently laid aside on the first reading.

ACTING PRESIDENT VOLKER: Clerk will read.

THE SECRETARY: Calendar Number 1265, by Senator Trunzo, Senate Bill Number 5961, an act to amend the Executive Law.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT VOLKER: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President, can we take up the controversial calendar now, please, in order.

ACTING PRESIDENT VOLKER: Clerk will read the controversial calendar.

THE SECRETARY: On page 5, Calendar Number 165, by Senator Maltese, Senate Bill Number 2114, an act to repeal section 114-a of the Correction Law.

SENATOR GOLD: Explanation.

ACTING PRESIDENT VOLKER: Senator Maltese to explain his bill.

SENATOR MALTESE: Mr. President, to refresh the recollection of my esteemed

colleagues, this bill was previously on the calendar, and I laid it aside in order to obtain additional information to respond to the inquiries of some of my colleagues, my Democratic colleagues.

The bill eliminates duplication of records at correction facilities. The section that it deletes requires correction facilities superintendents to keep daily records regarding rule infractions by employees, punishments inflicted upon inmates, and inmate complaints regarding food, clothing or cruel and unusual punishment.

This provision was originally enacted in 1929 and was intended for specific use by the Commissioner of Correctional Services. It is outdated and creates confusion on the parts of inmates. Moreover, all the records that it speaks about are kept on the - in the facility itself, and those records are available at the office of the superintendent.

In addition, Mr. President, I visited correctional facilities and observed the

method of record keeping with respect specifically to the areas that would be deleted. One of the inquiries concerned whether or not the entering of the data into computers then necessitated or called for the destruction of the original records.

I allay the fears of my colleagues in that those records are not destroyed and they are kept. I'd like to use as an example the inmate grievance process. This is a process that grew out of the post-Attica reforms and is accredited by the Department of Justice.

The grievance itself by the inmate is put forth on a -- on a specific form. I have here the form used by Shawangunk Correc tional Facility which is one of the correctional facilities that I visited. It is an involved and lengthy form that is in writing and which is retained. I have copies of the form here which I would be glad to make available to any colleague interested.

In addition, it spells out the

appellate procedure which goes through a grievance resolution committee at the facility itself and it is then subject to appeal to the superintendent of the facility. All those records are in writing prior to being entered into the computer.

I do wish to point out to my colleagues that the computer system that has been inaugurated facilitates the checking, cross-checking and retrieval of all these complaints, which includes the unusual incident reports, the hearing records, the inmate disciplinary history, unusual incident reports, a grievance log and grievance closed cases.

So I wish to point out to my colleagues that this system is far superior to anything that we had heretofore.

ACTING PRESIDENT VOLKER: Senator Waldon.

SENATOR WALDON: Mr. President, would the good Senator yield to a question?

ACTING PRESIDENT VOLKER: Senator Maltese, will you yield? Senator Maltese

yields.

SENATOR WALDON: Senator, is there any reason that we could not keep the original written records in a repository somewhere as reference material for that which is placed upon the computer?

SENATOR MALTESE: Mr. President, in response to the inquiry, there's no reason that it can't be kept, but one of the things that I did indicate is that they are, in fact, kept so that it isn't that they're destroyed. This section originally called for the keeping of a daily log, and the phrase "daily log" has not been kept strictly since the '30s as was explained to me.

What we have, instead, in place of a daily log are these different forms that are, in fact, written forms that are kept in the records of the correctional facility and are subject not only to retrieval or access by the inmate or the inmates involved in the grievance committee procedure, or they're subject to being obtained under freedom of information.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT VOLKER: Senator Waldon.

SENATOR WALDON: If I may continue.

ACTING PRESIDENT VOLKER: Yes.

SENATOR WALDON: Senator, are you saying that there is no chronological record of events between correction officers and prisoners maintained at the correctional facilities now?

SENATOR MALTESE: No, that isn't exactly what I'm saying. What I'm saying is that, if you wish to access the information, you can obtain that information by keying in various categories and, among those categories, they tell me, and which I have samples of here, under hearing dispositions -

SENATOR WALDON: Mr. President.

ACTING PRESIDENT VOLKER: Senator Maltese.

SENATOR WALDON: Senator Maltese, maybe I wasn't clear, and I apologize for that. I'm trying to ascertain from you whether or not

there's a running record of the incidents which cause prisons to erupt in violence, meaning where there's an allegation or, in fact, an occurrence where prisoners have acted out behaviorally or the correction officers have acted out behaviorally and -

SENATOR MALTESE: Yes.

ACTING PRESIDENT VOLKER: That's the gist and thrust of my question.

ACTING PRESIDENT VOLKER: Senator Maltese.

SENATOR MALTESE: Well, my understanding is that there is an incident record, and I have -- so it's more than an understanding.

SENATOR WALDON: But not a log.

SENATOR MALTESE: Based in fact, it is not a log. It is a series of incident reports that can be accessed by date, so if you wanted to obtain a series of incidents at a specific correctional facility, all you'd have to do is access the incidents record. You could get them as they're spelled out here on the

sheets and, in addition, the hard copies are retained at the correctional facility.

SENATOR WALDON: Mr. President, if I may.

ACTING PRESIDENT VOLKER: Senator Maltese continues to yield.

SENATOR WALDON: If I understand you correctly, you're saying that there are various and sundry incident reports prepared from time to time as the incidents occur, but there's no running daily log or record of everything that transitions in a particular day. It is very dissimilar, if I may -- if I may draw an analogy.

SENATOR MALTESE: Sure.

SENATOR WALDON: What you're saying is systemically, this is very dissimilar to the memo book required of police officers throughout the land.

SENATOR MALTESE: Mr. President, I think the difficulty here is that I have maybe the difficulty that a person of my generation has with the new computer systems which is why I

went through chapter and verse the various computer files and hard copy that was kept at the correctional facility.

If a person wanted to go through each incident at the time it is reported, is given an incident number. That incident number is arranged chronologically so, therefore, if you wanted to, you could obtain hard copies of each and every incident that takes place at that facility in hard copy, but even better, you could go directly to the computer, looking up incident numbers, and let's say I assume Incident Number 1 would be January 1st, 1993. You could then obtain chronologically every incident that took place from January 1st, 1993 on to date.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT VOLKER: Senator Waldon.

SENATOR WALDON: Is there support for your bill from the defenders' association?

SENATOR MALTESE: Well, I haven't received anything in opposition, Senator.

SENATOR WALDON: Those organizations other than the defenders' organizations which represent prisoners' rights, are they supporting your bill or are they in opposition?

SENATOR MALTESE: They -- Mr. President, they have not communicated any opposition.

I wish to point out to my distinguished colleague, that in going through these records, it's -- it appears to me as somebody who isn't exactly computer literate as they say, that the ease that you could cross check incidents with dates and occurrences and facilities and type of grievance report and resolution of grievance committees and so on, has been vastly facilitated by the entry into these computers.

SENATOR WALDON: Mr. President, on the bill, if I may.

ACTING PRESIDENT VOLKER: Senator Waldon, on the bill.

SENATOR WALDON: My fear, Senator

Maltese, is that in this age of high technology that a virus may attack the system in a particular prison and information that has gone onto the computer will be lost.

SENATOR MALTESE: Mr. President, if I might address myself specifically to that.

ACTING PRESIDENT VOLKER: Senator Waldon yield to Senator Maltese?

SENATOR WALDON: Yes, I'll suffer the interruption, yes.

ACTING PRESIDENT VOLKER Senator Waldon yields.

SENATOR MALTESE: In addition to the incident reports which are not destroyed, they make a daily tape, pull it from the commuter, make a printout -- it's a printout and then retain the printout. So if a virus destroyed everything in the computer, at the end of the day it would simply require going back to the written -- to the written papers and again putting it in on the day. So you do have hard copy available both in the computer records and in the -- in the original document submitted.

SENATOR WALDON: Mr. President, if I may.

ACTING PRESIDENT VOLKER: Senator Waldon.

SENATOR WALDON: I'm pleased with that information. When we debated this bill the last time, that substantive information was not forthcoming. What you are, in effect, saying is that there are several running records. There's the incident report, seriatim, there's the tape on a daily basis, and there are all of the computer entries, so we have three records which could be utilized as a daily log. That was not my understanding when we debated this bill the last time.

So, Senator Maltese, I must tell you that I applaud your effort. I applaud your stick-to-itiveness digging all of this information out and edifying us who are your colleagues, and I think that you have sufficiently convinced me that I may change my position in a few moments when we vote.

ACTING PRESIDENT VOLKER: Read

the last section.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT VOLKER: Oh, Senator Gold.

SENATOR GOLD: I just really - Senator Maltese, you've been very generous with your time, but I want to ask you one question. I just want it clear in my mind, I don't care what you call it, all right? It's not the name of it, but, for example, a police officer in the city of New York carries a book and you -- you can see the day as that police officer walked around and everything that happened in a chrono logical fashion. Now, if he makes an an arrest, obviously that's a different report and you could see what happened in that arrest.

Is there such a document that will survive your legislation with regard to the correctional department? In other words, you've explained in detail what would happen if you went to the computer and punched in various key words, but if I wanted to know, for example, what a particular correction officer was doing

or whether there were reports on a specific day, will there be anything that chronologically tracks, such as we were led to believe this daily log was, after your bill?

SENATOR MALTESE: Mr. President, the cross-check -

ACTING PRESIDENT VOLKER: Senator Maltese.

SENATOR MALTESE: -- would survive this bill, and it would survive it with respect to incidents. It would survive with respect to chronological report, and it would survive with respect to prison -- to inmates' or prisoners' names. They do not keep a separate listing as to employee complaints; in other words, there is not a listing by correctional employee's names. That's the only thing that is not kept.

By the way, I don't want to misunderstand, that is not kept in -- in inferring that it is destroyed. It is accessible, but it is not accessible by simply pressing a key on the computer. It is

accessible as far as the original documents are concerned, and I also wish the record to reflect that I will now have delivered to Senator Waldon, this voluminous material that I have gotten together now. I have retained a copy, so that in the future, hopefully I will be able to -- to answer his searching questions which will be made even more searching after he peruses these documents.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes -- those recorded in the negative on Calendar Number 165 are Senators Connor, Espada, Gold, Hoffmann, Ohrenstein, Solomon and Stavisky. Ayes 50, nays 7.

ACTING PRESIDENT VOLKER: The bill is passed.

THE SECRETARY: Calendar Number 456, by Senator Saland, Senate Bill Number 3286, an act to amend the Penal Law.

SENATOR GOLD: Will the Senator yield for a question?

ACTING PRESIDENT VOLKER: Senator Saland yields.

SENATOR GOLD: Senator, a similar bill, I believe, passed and was vetoed. Is there any difference in this bill?

SENATOR SALAND: Yes, there is.

SENATOR GOLD: Will you explain that to us?

SENATOR SALAND: There is a difference. The difference is found in the last couple of lines of the bill. Last year's version of the bill made reference to disposal of a firearm, and it was done in the context of providing the instructor who would be working with the -- with the applicant, freedom from liability as long as that person had a receipt from the licensing authority within the prior six months showing that the person did, in fact,

have a -- an application.

There was concern about the use of the word "disposal" for fear that it effectively would enable that instructor to sell the gun. If you look at the current language, the language has been changed to providing a firearm for such use by such unlicensed individual in an effort to get around the sale portion.

We believe we've addressed one of the problems, one of the significant problems. There's another problem in the bill which we think is a -- according to the Governor, which we feel is a little unrealistic that somebody who is predisposed to getting a gun for illegal purposes would go, get an application, pay the application fee and then attempt to then turn that weapon on his or her instructor and then use that weapon for nefarious purposes.

I think that's a bit of an illusory problem, somewhat imaginary.

SENATOR GOLD: Thank you. With that explanation, I just point out that Sentor

Mendez and Montgomery and Paterson, I think, had some problems last year. Last section.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT VOLKER: The bill is passed.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT VOLKER: Senator Leichter.

SENATOR LEICHTER: May I have unanimous consent to be recorded in the negative on Calendar 165, please.

ACTING PRESIDENT VOLKER: Senator Leichter, without objection, in the negative on 165.

THE SECRETARY: Calendar Number

1185, by Senator Masiello.

SENATOR GOLD: Lay it aside for the day.

ACTING PRESIDENT VOLKER: Lay the bill aside.

THE SECRETARY: Calendar Number 1213, by Senator Padavan, Senate Bill Number 4704-A, Administrative Code of the city of New York.

SENATOR PRESENT: Lay it aside, please.

ACTING PRESIDENT VOLKER: Lay the bill aside.

THE SECRETARY: Calendar Number 1217, by Senator Hannon, Senate Bill Number 4972, an act making an appropriation to the Department of Transportation.

SENATOR DOLLINGER: Can we get an explanation.

ACTING PRESIDENT VOLKER: Lay the bill aside.

SENATOR PRESENT: Lay it aside temporarily.

THE SECRETARY: Calendar Number 1236, by Senator Stafford, Senate Bill Number 5866, create a Motor Carrier Advisory Council.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

SENATOR GOLD: Hold on a second please. Explanation.

SENATOR PRESENT: Lay the bill aside.

ACTING PRESIDENT VOLKER: Lay the bill aside, withdraw the roll call.

THE SECRETARY: Calendar Number 1243, by Senator Spano, Senate Bill Number 1230 A, an act to amend the Civil Service Law.

ACTING PRESIDENT VOLKER: Read the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes -

ACTING PRESIDENT VOLKER: Franz.

THE SECRETARY: Ayes 55, nays 2, Senators Kuhl and Leichter recorded in the negative.

ACTING PRESIDENT VOLKER: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1243, it's ayes 55, nays 2, Senators Galiber and Kuhl recorded in the negative.

ACTING PRESIDENT VOLKER: Despite Senator Leichter's support, the bill is passed.

THE SECRETARY: Calendar Number 1246, substituted earlier today, by member of the Assembly Tonko, Assembly Bill Number 6023, allowing Alexandra J. Burns to apply for retroactive membership in the employees' retirement system.

ACTING PRESIDENT VOLKER: Read

the last section.

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

ACTING PRESIDENT VOLKER: Call the roll.

SENATOR GOLD: Mr. President, may I have my name called?

ACTING PRESIDENT VOLKER: Senator Gold to explain his vote.

SENATOR GOLD: Yeah, I told Senator Farley that I was not going to debate it and, Senator, I'm not but I just noticed in the notes, this bill passed last year and was vetoed, quotes, "because of failure to apply - the membership was not -- it was failure of evidence to show it was not the person's fault."

I mean what we're doing assuming the Governor is now undertaking this, is we've made a court out of the Governor's office. I mean this is just getting more and more absurd.

I vote in the negative.

ACTING PRESIDENT VOLKER: Senator

Gold in the negative, Senator Galiber, Leichter.

THE SECRETARY: Ayes 54, nays 3, Senators Galiber, Gold and Leichter recorded in the negative.

ACTING PRESIDENT VOLKER: The bill is passed.

SENATOR FARLEY: Just to explain my vote on this, if I might.

ACTING PRESIDENT VOLKER: Senator Farley to explain his vote. Withdraw the roll call.

SENATOR FARLEY: You know, I do that reluctantly, but the bill has been passed. Incidentally, that evidence has been supplied with this. The evidence that the Governor, as a result of his veto. We addressed his veto.

ACTING PRESIDENT VOLKER: The bill is now passed.

THE SECRETARY: Calendar Number 1248, by Senator Goodman, Senate Bill Number 3930, an act to amend the Vehicle and Traffic Law.

SENATOR GOLD: Senator Goodman yield to a question?

SENATOR GOODMAN: Yes, Senator.

ACTING PRESIDENT VOLKER: Senator Goodman yields.

SENATOR GOLD: Senator, the only question I have is, I was told -- and I wanted to verify this with you -- that we have been extending this, but that they don't put the program in.

SENATOR GOODMAN: They don't what?

SENATOR GOLD: Is there such a program in existence now?

SENATOR GOODMAN: Program?

SENATOR GOLD: Yeah, it says a traffic control signal; isn't this they're supposed to submit a report? Somebody told me that they weren't -- that it's not in effect right now?

SENATOR GOODMAN: What I think you're referring to, Senator, or, Mr. President, that there is a demonstration program in effect

which has been reported upon and which was a very significant success. It covered a 30-day period in the fall of 1990, during which time over a thousand summonses were issued and there was over a 70 percent conviction rate based upon the summonses.

So that the house knows what we're talking about, let me just say that this is in reference to an experiment in the city of New York, which refers to the use of a red - so-called red light camera. We've had a very high incidence of red light running with the result of some exceedingly serious accidents one of which, for example, involved a car which went through a red light, got hooked onto a baby carriage, dragged the carriage with the baby in it for some ten blocks, and the child was killed.

The camera's purpose is to act principally as a deterrent because if people realize that, when they run red lights, which is done with gay aban... with abandon in New York, we have a situation which obviously creates

great danger, but in addition to the deterrent aspect -

SENATOR GOLD: Mr. President, Mr. President.

ACTING PRESIDENT FARLEY: Senator Gold.

SENATOR GOLD: Yes. Senator Goodman, I understand fully the intent and how good it is. I was just asking the question -

SENATOR GOODMAN: I hope I've responded.

SENATOR GOLD: -- as it was raised in committee, is the program in effect?

SENATOR GOODMAN: The program or as you call it -- as I call it, the demonstra tion.

SENATOR GOLD: The demonstration.

SENATOR GOODMAN: Now, what the bill seeks to do is to have an additional two year period to continue the demonstration on an expanded basis. It will not become a totally pervasive program.

SENATOR GOLD: I just wanted to make sure that something was happening. The impression given in the committee, and I'm sure it was nobody's fault, is that they've done nothing with it, and we keep extending it waiting for them to do something.

SENATOR GOODMAN: That is not -

SENATOR GOLD: So they are doing something.

SENATOR GOODMAN: That is correct. Yes, they are.

SENATOR GOLD: That's all I want to know. Thank you very much.

SENATOR GOODMAN: You're very welcome.

ACTING PRESIDENT FARLEY: Read the last section.

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

THE SECRETARY: Call the roll.

(The Secretary called the roll.

THE SECRETARY: Ayes 57.

ACTING PRESIDENT FARLEY: The

bill is passed.

THE SECRETARY: Calendar Number 1260, by the Senate Committee on Rules, Senate Bill Number 5853, an act to amend the General Municipal Law.

SENATOR GOLD: Yeah. May we get one day on this, please? Thank you very much.

ACTING PRESIDENT FARLEY: One day. One day on it? Lay aside.

THE SECRETARY: Calendar Number 1261, by Senator Saland, Senate Bill Number 5881, an act to amend the Family Court Act.

SENATOR GOLD: Yeah.

SENATOR OPPENHEIMER: Explanation.

ACTING PRESIDENT FARLEY: Explanation has been asked for. Senator Saland.

SENATOR SALAND: Mr. President, this bill is a bill which we've entitled The Family Protection and Domestic Violence Intervention Act of 1993. Needless to say, and I think we would all be familiar with the

reality, in fact, that domestic violence is and should be treated much more as a crime than it has been presently.

Domestic violence destroys the illusion of the home as a safe place and a nurturing place, and it basically renders meaningless many of the things that we have placed value about within the sanctity of the home and despite the heightened public awareness over the past several years, perhaps the past six to eight years or more, it still to be an alarmingly present phenomenon.

According to statistics from the department -- the Division of Criminal Justice Services, DCJS, there was nearly some 30,000 incidents reported to them within the last reporting year, and nearly 70,000 family offense related matters reported through OCA.

If you go into an emergency room today, there's probably the likelihood that some 30 to 35 percent of the incidents that will be reported in that emergency room will be in the nature of domestic violence incidents.

If you'll look to some of the national figures according to the F.B.I. statistics, nearly 4,000 women in the United States are killed every year in domestic violence cases, and further, some 6 million women, according to the United States Department of Justice, are the subject of abuse by their partners.

What we're proposing to do here, Mr. President, is to take, in a very comprehens ive fashion, the enormity of the problem with which we're dealing and attempt to deal with it on several levels. We are proposing here what would amount to New York's first mandatory arrest law. There is currently, under no circumstances in the state of New York do you have a situation in which a mandatory arrest would occur.

We're proposing here also where there are instances in which there's been the use of physical force -- I'm sorry, where there's been physical injury, serious physical injury, the use of deadly physical force that

orders of protection which currently have a one-year span to them be extended to three years.

We're talking about enabling courts to consider, in the course of their deliberations whether or not they should remove firearms, where there's been battering in the course of a home. We're talking in addition, Mr. President, to expanding the family offense statute to include the stalking crimes. We're talking of the ability in addition to provide that, where there's been a violation of an order of protection, the person who has been the victim of that violation can go before the Family Court and request that the Family Court where there again has been an allegation of physical injury, serious physical injury or use of deadly physical force, to request that that matter be transferred to a criminal court and should that occur, the Family Court would still retain jurisdiction over the contempt proceeding.

We're also talking here about

dealing with children, children who are not the victims of abuse but have the misfortune of observing that abuse. Statistics will tell you also, and these are national statistics, that some 34 percent of people have viewed domestic violence occurring in their home. That's far more than the 19 percent of the people who have viewed violent crimes such as muggings and rapes.

What we're talking about here is requiring greater training of police, State Police and municipal police, to provide a greater degree of awareness and sensitivity to domestic violence.

This bill is, I would venture, perhaps the most comprehensive bill dealing with the subject of domestic violence that has been seen within either of our houses of this Legislature, certainly within my memory, and I would suspect within the past couple of decades.

It's a bill which I'm proud to say all of my Senate Republican colleagues have

joined me in sponsoring. It's a bill which I think is really and most appropriately an enormous step in the battle against domestic violence. It's a bill which I would hope that we might see some action on before the end of this session. It remains to be seen whether that will occur.

Thank you, Mr. President. I'll yield to any questions.

ACTING PRESIDENT FARLEY: Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you, Mr. President.

As Senator Saland notes, this is an issue that we have been very interested in on this side of the aisle too, taking a different -- a different look at the -- at the problem, basically looking at domestic violence from the health care -- woman's health care point of view, how we can intervene in the cycle which you do address, how we might be able to provide some relief to our emergency rooms where they are continually seeing the same victim back

again, and I might add enormous cost, not just hospital costs but, of course, a grave and serious cost to the woman. It's normally a woman, so we'll say woman.

And I must congratulate Senator Saland. This is a fine bill. It has a lot of very fine things in it which I will just briefly mention. The mandatory -- the pro-arrest policy is excellent as something we were looking into as well. The extending the Family Court order of protection, excellent. Really, a wonderful piece -- piece of legislation would be the removal of firearms from the batterer's home because that is often the weapon of choice of the batterer.

Particularly fine is compiling and providing to victims of the information concerning shelters, counseling, medical and legal advocacy. But having said that, I have a couple of questions.

If you would yield for a question, Senator Saland.

SENATOR SALAND: Certainly, Mr.

President.

SENATOR OPPENHEIMER: As I read this, it appears, and you'll have to correct me if I'm wrong, that this only deals with married couples or couples with a child, that it does not apply to people who co-habitate, so if you have co-habitation, and the man is beating up the woman, there -- this doesn't apply, the bill, is that true?

SENATOR SALAND: This is basically the same definition that has currently been used under the existing law. The law provides not only for spouses, battering between spouses, a -- people formally married, but also with an instance in which there is -- there are two people who are a -- who may have had a child born out of wedlock as the statute reads.

SENATOR OPPENHEIMER: I would ask if the Senator would yield again.

ACTING PRESIDENT FARLEY: Senator, would you yield again?

SENATOR SALAND: Certainly.

SENATOR OPPENHEIMER: Then if two

people are living together and don't have a child or if the man denies paternity of the child, then those two people aren't covered under this law. Do you think we should expand it to cover these people, since it's a common occurrence in today's society?

SENATOR SALAND: Well, we did a bill a bit earlier, I believe. I believe we've done the bill already which is going to, I would also add, make it easier to establish paternity which may bring a lot more people under the ambit of the out-of-wedlock section.

I can recall that particularly well because I introduced that bill back when I was in the Assembly and the -- the problem with -- with just dealing with people who may be, quote/unquote, living together, is it's a very hard term to define. Does that mean somebody who may be together for an evening? Does that mean somebody who is together for two days? Does that mean somebody who is together for a month, somebody who is together for three or four or five months?

So we're working within the construct of the existing statute, and we believe that, other than the fact that we reasonably expect it to be easier to establish paternity based on some of the changes we've made earlier on, which I think we're going to be having three-way agreement on, by the way, that the definitions will remain primarily as is.

SENATOR OPPENHEIMER: M-m h-m-m. I believe -- I'm uncertain -- that there is an Assembly bill that does determine or try and define co-habitation and amounts of time and that issue. Do you know if that's -- if there is an Assembly bill like that? Are you aware of that bill that tries to define co-habitation?

SENATOR SALAND: I'm -

SENATOR OPPENHEIMER: Oops, we even have a number, if you would be good enough to look into it, Senator. It's A. 3772.

SENATOR SALAND: Certainly take a look at it.

SENATOR OPPENHEIMER: It tries to deal with this problem because there are so many

couples now that co-habitate and don't marry. It's not like when I was a kid.

I have another question -

ACTING PRESIDENT FARLEY: Senator Saland, would you yield for another question?

SENATOR SALAND: Yes, Mr. President.

SENATOR OPPENHEIMER: I see that the pro-arrest section specifically states that an officer can arrest if there is an obvious evidence of abuse.

SENATOR SALAND: Basically -

SENATOR OPPENHEIMER: Yeah.

SENATOR SALAND: I'm sorry.

SENATOR OPPENHEIMER: But when a woman has an order of protection and that order is violated, will that officer be able to enforce the order of protection when the man is pounding on the door to come beat again or will the woman have to be beaten again a second time?

SENATOR SALAND: There are four instances in which the mandatory arrest would apply.

The first would be where the officer actually observes the occurrence of the incident. The second would be where the officer arrives at the scene in relative proximity to the occurrence of the event and has reason to believe that the victim is in danger. The third would be where there is an evidence of, and these terms are terms that are all defined in the Penal Law, Article X, Section 10 of the Penal Law, physical injury, serious physical injury or use of deadly physical force, and the fourth would be where that occurs where there's an outstanding order of protection.

So in that instance, if, for instance, that individual was in the process of attempting to break down the door, there's a question of whether or not that's the use of - of the kind of force, the use of deadly physical force, if he were to spray the door with bullets, I mean, you know, there -- there is certainly codified case law. There is certainly codified case law that defines when that would be applicable; so I would say that in most

instances where there was the threat of that type of an injury, the ability to have a mandatory arrest would occur.

SENATOR OPPENHEIMER: So then, just to clarify, you're saying that, if the woman has an order of protection and she's been battered once and the batterer is again at the door knocking very hard, that the opportunity for pro-arrest would again occur?

SENATOR SALAND: You're going to have to speak up just a little bit, Senator.

SENATOR OPPENHEIMER: That there had already been a pro-arrest because of one battery, and the woman had an order of protection now, and the batterer was again at the door pounding, that the police would come and arrest again, pro-arrest?

SENATOR SALAND: The police could come and, if they observed what was going on, they would have the ability to make the arrest. The question would be if they arrived at the scene and the man had left and the woman -- and we're talking women 95 to 98 percent of the time

here.

SENATOR OPPENHEIMER: Right.

SENATOR SALAND: -- and the woman was to say, "The guy was at my door, he's my husband, my ex-husband, and he was pounding away at the door, I was fearful for my life, I thought that the door was going to give," that would be somewhere within the gray area as to whether or not that amounted to deadly physical force.

If he were shouting out and the neighbors heard, I'm going to kill you, I'm going to kill you, and, you know, he -- someone saw him with the gun on his -- on his person or perhaps some other -- some other weapon, then you, I believe, have something that gets from gray closer to black.

SENATOR OPPENHEIMER: What - what concerns some of the women's groups is that it sort of becomes a potential two-beating process. You have to get beaten.

SENATOR SALAND: I'm sorry. I heard you say "potential".

SENATOR OPPENHEIMER: Potential -

ACTING PRESIDENT FARLEY: Senator Oppenheimer, if you could speak up a little bit.

SENATOR OPPENHEIMER: Speak up!

SENATOR SALAND: May be more of a problem of my hearing than your voice.

SENATOR OPPENHEIMER: Potentially a two-beating instead of a one-beating procedure and that's of concern to many women's groups.

Let me just mention one last thing, if you will yield again. Only in our state is it required that the woman choose between Criminal and Family Court. Now, you have put in a little more lenient time frames, but it still requires the woman to make a choice; she can not just bring it in Family or just bring it in Criminal or bring it in both at the same time as is available in every other state.

Could you explain why that isn't available?

SENATOR SALAND: Well, first let

me say that, going back to the examples I gave you, briefly, where there has been evidence of allegations of physical injury, serious physical injury, or use of deadly physical force, at that point you have the ability if you're the victim who is alleging that that has occurred, notwithstanding the fact that you started off in Family Court and notwithstanding the fact that the current three-day rule would prevent you from asking for a transfer to criminal court, under this bill whether it's three days, four days, five days, ten days, twelve days, you have the ability to make that application. The court can do it on its own because the court believes the allegations to be such as to warrant that transfer, and the court can still retain jurisdiction to handle the contempt for the violation of an order of protection, were there a prior order of protection, or you can do it yourself. So the court can do it on its own motion; the applicant can make the motion.

Now, under the two proceedings are two different proceedings. There is the

Family Court proceeding which is a civil court proceeding and the criminal court proceeding. You have a different standard of evidence in the Family Court proceeding than you do in the criminal court proceeding.

You have the ability if you are engaged in the Family Court proceeding to have anything you say or do used in the criminal court proceeding. So the reality is, such as occurs in child neglect -- or child neglect - more appropriately child abuse cases, that the pending proceeding in a Family Court family offense proceeding where there is any kind of serious allegations will be stayed because, number one, the defendant -- or respondent in the Family Court proceeding is not going to go forward because they have the risk of having whatever it is that they will say or whatever it is that they will admit in a court proceeding with a lesser standard of evidence used against them in a criminal proceeding.

So, as a practical matter, the Family Court proceeding will not go forward.

What we're saying is there are cases that are so outrageous that the victim -- and, again, I'm saying 95 and 98 percent of the time it's going to be a woman -- the victim should have the ability, notwithstanding the fact that she may have chosen Family Court initially, because of the injury, because of the use of deadly physical force, to not have to be forever bound when the sanctions of the criminal court would be more appropriate.

We think it's a blend of the two systems that realistically recognizes the practices as they occur in these courts today and gives those victims who have truly sustained the worst kinds of attacks, the worst kinds of injuries, those victims who have met with the use of deadly physical force, have sustained serious injuries or physical injury, to say, "We're out of here. You know, I was steered to the Family Court or I went to the Family Court on my own have volition, but this is more appropriately a criminal court action and I want to go there."

SENATOR OPPENHEIMER: Then, what you are saying, if I understand, is that the 72-hour provision that after that time has elapsed the victim can still choose to go to another jurisdiction?

SENATOR SALAND: In these instances that I discussed with you before.

That would not be the case, for instance, in a harassment situation. If it were harassment and you chose as your forum the Family Court, if the 72-hour period ran, that would not -- you would not be able to avail yourself of that option to go to the criminal court.

SENATOR OPPENHEIMER: If you would just yield one more time?

ACTING PRESIDENT FARLEY: If you would yield for one more question?

SENATOR SALAND: Yes. And let me just add that in this bill we also change the 72-hour period to a three-day period exclusive of court holidays and week ends. So it does expand that three-day period a bit longer.

SENATOR OPPENHEIMER: I guess one of the things that confounds me is why it isn't simply open indefinitely like it is in every other state?

I think I don't have a question. I think I will just talk on the bill for a moment.

This is a good bill, and I would urge my colleagues to vote for it. I think it can be improved. I am concerned that it is an omnibus bill and, therefore, probably will not be successful in the Assembly unless it is broken out into -- you know, the individual parts, because -

SENATOR SALAND: I can assure you, Senator, that we are genuinely interested, determined to negotiate. My fear is that given the amount of time left in this session that that might prove to be too difficult to accomplish, but that doesn't mean that we're not going to try.

SENATOR OPPENHEIMER: Well, I certainly wish you well and hope that you can

address some of the questions that I have raised. And also when you were -- I see in your bill you talk about the training of police officers which I think is very valuable because there is a lot that isn't done, a lot of more sensitivity that can be brought to this issue.

But I will be coming to you with bills that also would entail training of the medical profession and those people that see on the first instance these victims, because they need training too, and they have to be sensitized to the kind of questions that should be asked and the kind of help that you suggest should be offered through a resource and a referral system. So that's it.

SENATOR SALAND: Thank you.

ACTING PRESIDENT FARLEY: Senator Goodman and then Senator Jones. He asked for recognition first, Senator Jones.

Senator Goodman.

SENATOR GOODMAN: Mr. President, I would like to add my warm congratulations to Senator Saland for this very signal and

significant piece of legislation and to say that the Senate Investigations Committee, of which I am chairman, had occasion within the past two years to make an investigation and to issue a report on the matter of domestic violence.

It was the finding of this report and of other material that had been gathered by our committee that the largest single cause of injury to women in the United States is domestic violence.

I first became aware of this problem when a few years ago I had in my employ a secretary, and this secretary from time to time would come to the office, the district office, wearing sunglasses. On one particularly cloudy day when there was no glare, I inquired, "Why do I notice occasionally you are wearing sunglasses?" and she removed her sunglasses to reveal very heavy bruises about her eyes, and I said, "What happened to you?"

At that point, she said, "May I come in to see you privately for just a moment?" and she revealed that she was the victim of

repeated wife battering. And listening to her story was the first insight I ever had into the nature of this type of problem in which there is a curious ambiguity of sentiment that often envelops particularly women in this type of situation.

They cherish the original idea they had of a marriage of two loving people, of great reluctance to defend themselves in the conventional sense of the word, but in this particular case this involved a spouse, a husband, who was a repeated drinker and every time he imbibed beyond a certain point, he would become violent and thrash his wife.

It was partly because of that that we were impelled in the Investigations Committee to have a look at the broader problem, and we had a series of public hearings in which certain women came before us requesting anonymity so their identities were concealed, and they told a shocking series of stories about what had befallen them at the hands of their husbands.

Mr. President, we then proceeded to draft a package of bills, but upon learning that Senator Saland and his very expert staff, some of whom are alumni of Senator Mary Goodhue's staff, had been working on the problem, we readily acceded to them to take the lead in this matter, and I must say I'm glad we did because their expertise and the sensitivity and care with which they assembled the omnibus bill before us is an outstanding example of legislative accomplishment.

Also, I feel quite confident in suggesting that what will happen to this legislation will be because of a bipartisan understanding that this is a problem we cannot allow to fester and to molder and to delay further with a solution to. I think it's imperative that before this session of the Legislature concludes that we try to get some sort of assistance in the passage of this bill in both houses, because its approach simply reflects the basic common sense necessity of what to do to protect beleaguered women or

spouses. Indeed, there are about three or four percent of total instances involving the reverse situation in which the male is battered.

But the specific aspects of this bill involving more aggressive police and judicial intervention, involving longer orders of protection, and the surrender of firearms, immediate warrants of arrest and immediate arrest warrants issued by the court and a mandatory arrest policy for on-scene law enforcement intervention, and the ability that Senator Saland has just described very lucidly of transferring between the criminal and Family Court, principally from Family to criminal, where there are particular characteristic of violent -- characteristics of violence that demand police intervention mark this as a very major step forward in providing much needed protection.

I end as I began. Violence to women domestically is the largest cause of injury to women in the United States. We know the problem. We know what to do about it. It's

time to pass Senator Saland's excellent bill.

ACTING PRESIDENT FARLEY: Senator Jones.

SENATOR JONES: Yes. On the bill.

I, first of all, agree that Senator Saland should be congratulated because I'm told this is the first real effort on the part of the Senate to deal with this issue.

I've also been working with Senator Oppenheimer, including in my own city of Rochester where we've had hearings on this issue. I've not only found them enlightening but as well frightening to me and all the things that Senator Goodman said are certainly true.

What I have learned is it's not unique to poor, it's not unique to any kind of economic background, racial background. It's a very pervasive thing in our society and a very scary thing as it should be to all of us.

I'm a little concerned again that it seems around here we keep working in the vacuum. I've looked at some bills that have

already passed in the Assembly, and I guess I still continue to be concerned why we can't seem to get our efforts together here and really do something for these people.

I'm hoping. I was encouraged by hearing Senator Saland say that he is going to keep working on this. There are three bills that do deal with the issues that Senator Oppenheimer brought up that have already passed in the Assembly.

So, hopefully, we can either incorporate these into this or pass those as well that might tighten up some of the other loopholes.

I think the future of our society depends on us dealing with these issues now. There are children in these families that this cycle is going to continue if something isn't done. We need to give these women every bit of support we can, whether it's legally, medically or emotionally.

And I'm very pleased to be able to support this bill and hope it's only the

beginning of every effort we can make to correct this situation and help the victims of domestic violence.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 26.

ACTING PRESIDENT FARLEY: Oh, just a moment.

Senator Saland.

SENATOR SALAND: Mr. President, one comment if I may.

There are communities in this state that have adopted pro-arrest policies, and I just wanted the record to be clear that this certainly does not preempt those communities that have done that. Those that meet or exceed what's in this bill certainly will be free to continue those policies.

And I would be remiss if I didn't thank Senator Skelos and Senator Goodman and Senator Marino for their interest in this measure and their assistance in putting together the final bill.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 26. This act shall take effect January 1, 1994.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR MENDEZ: Mr. President.

ACTING PRESIDENT FARLEY: Senator Mendez.

SENATOR MENDEZ: To explain my vote.

ACTING PRESIDENT FARLEY: To explain her vote.

SENATOR MENDEZ: Thank you, Mr. President.

I really want to congratulate Senator Saland for beginning to deal with an issue that is increasingly horrible in the homes where women and children and lovers and whatever

do live, the problem of domestic violence.

I believe that this is a good start. However, I have a preoccupation, Mr. President, and that is that there are no provisions here to ensure that the batterer is removed, too, from the home and for the woman and the children to stay there.

Everybody knows that children that are growing up in a hell home of domestic violence, they suffer tremendous anxiety; however, they have their own little friends and they go to school, and during those hours the school serves as a buffer to the problems at home. By removing them and the women from their home and leaving the batterer there with whatever comforts exist there, we are not helping the children and we are not helping the women.

So, therefore, I hope that in the future Senator Saland would consider introducing legislation or working with the different women's groups to in fact ensure that the batterer also do have an option to receive

psychiatric care rather than just jail. There should be jail, but there should be the option of psychiatric care. And the women and the children should remain home.

So, Mr. President, I vote aye.

ACTING PRESIDENT FARLEY: We have some housekeeping, Senator Present.

Senator Sears.

SENATOR SEARS: Mr. President, on page 16, Calendar Number 753, Print Number 5546A, I inadvertently voted no on that bill. I would like to be recorded in the affirmative.

ACTING PRESIDENT FARLEY: The roll will so show.

Senator Marchi.

SENATOR MARCHI: Mr. President, Calendar Number 1158, I wish to remove a star. That is Assembly Print 2396A.

ACTING PRESIDENT FARLEY: 1158, the star is removed at the request of the sponsor.

Senator Johnson.

SENATOR JOHNSON: Mr. President,

I wish to call up bill Print Number 5540, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT FARLEY: Secretary will read it.

THE SECRETARY: By Senator Johnson, Senate Bill Number 5540, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT FARLEY: Senator Johnson.

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

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

(The secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT FARLEY: The bill is before the house.

Senator Johnson.

SENATOR JOHNSON: Mr. President, I now offer the following amendments.

ACTING PRESIDENT FARLEY: Amendments received. The bill will retain its place.

Senator Saland.

SENATOR SALAND: Mr. President, on page 15, I offer the following amendments to Calendar Number 729, Senate 3105C, and ask the bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: The amendments are received.

Senator Seward.

SENATOR SEWARD: Yes. On behalf of Senator Levy, I wish to call up his bill Print Number 5684, which has been recalled from the Assembly and now at the desk.

THE SECRETARY: By Senator Levy, Senate Bill Number 5684, amends Chapter 268 of the Laws of 1989.

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

ACTING PRESIDENT FARLEY: The

Secretary will call the roll on reconsideration.

(The secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT FARLEY: The bill is before the house.

Senator Seward.

SENATOR SEWARD: Mr. President, I now offer the following amendments.

ACTING PRESIDENT FARLEY: Amendments received. The bill will retain its place on the Third Reading Calendar.

Senator Mendez.

SENATOR MENDEZ: Mr. President, I request unanimous consent to be recorded on the negative on Calendar Number 165, 456 and 1-2-5-6. 165, 456, and 1256. Thank you.

ACTING PRESIDENT FARLEY: Thank you. The rolls will be corrected.

Senator Kuhl.

SENATOR KUHL: Mr. President, on page 12, I offer the following amendments to Calendar Number 648, Senate Print 3283A, and ask

that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Amendments are received. The bill will retain its place.

Senator Kuhl.

SENATOR KUHL: Yes. Also, Mr. President, on behalf of Senator Larkin, I wish to call up his bill, Print Number 4354, which was recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT FARLEY: The Secretary will read Senator Larkin's bill.

THE SECRETARY: By Senator Larkin, Senate Bill Number 4354, an act to amend the Education Law.

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

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 58.
ACTING PRESIDENT FARLEY: The bill is before the house.
SENATOR KUHL: I offer up the following amendments.
ACTING PRESIDENT FARLEY: Amendments are received. The bill will retain its place.
SENATOR KUHL: Thank you.
ACTING PRESIDENT FARLEY: Are there any other motions on the floor?
Senator Montgomery.
SENATOR MONTGOMERY: Yes. Mr. President, with unanimous consent, I would like to be recorded in the negative on Calendar 456.
ACTING PRESIDENT FARLEY: 456, Senator Montgomery will be in the negative.
SENATOR MONTGOMERY: Thank you.
ACTING PRESIDENT FARLEY: Seeing no other motions on the floor, I see Senator Present.
SENATOR PRESENT: Mr. President, I'd ask that the Senate stand at ease for a few

moments.

ACTING PRESIDENT FARLEY: The Senate will stand at ease for just a few moments.

(Whereupon, at 5:55 p.m., the Senate was at ease.)

(Whereupon, at 6:10 p.m., Senate reconvened.)

ACTING PRESIDENT FARLEY: Senate will come to order.

Senator Present, we have a message from the Assembly and from the Governor.

The chair hands down a message from the Assembly.

The Secretary will read.

THE SECRETARY: The Assembly sent the following bill for concurrence:

Assembly Bill Number 8645, by the Assembly Committee on Rules, an act to amend Chapter 576 of the Laws of 1974, amending the Emergency Housing Rent Control Law.

ACTING PRESIDENT FARLEY: Without objection, the bill goes to Third Reading.

Senator Present, there is a message.

SENATOR PRESENT: Mr. President, I understand there is a message from the Governor at the desk, and I move we accept that message.

ACTING PRESIDENT FARLEY: All in favor of accepting the message from the Governor, say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The message is accepted.

Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President, there being no further business, I move we adjourn until tomorrow at 1:30.

ACTING PRESIDENT FARLEY: The Senate will stand adjourned until tomorrow at 1:30.

(Whereupon, at 6:14 p.m., Senate adjourned.)