ALBANY, NEW YORK

January 31, 1994

3:01 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 find their places. Will you 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 for a moment of silence.

(A moment of silence was observed.)

ACTING PRESIDENT FARLEY: The Secretary will begin by reading the Journal.

THE SECRETARY: In Senate, Sunday, January 30th. The Senate met pursuant to adjournment, Senator Farley in the Chair upon designation of the Temporary President. The Journal of Saturday, January 29th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT FARLEY: Hearing no objection, the Journal will stand approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Present.

SENATOR PRESENT: Mr. President, in behalf of Senator Libous, on page 12, I offer the following amendments to Calendar 104, Senate Print 6490-A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: The bill is amended. The bill will retain its place.

Senator Present.

SENATOR PRESENT: Mr. President, I'd like to call an immediate meeting of the Rules Committee in Room 332.

ACTING PRESIDENT FARLEY: There will be an immediate meeting of the Rules

Committee in Room 332.

SENATOR PRESENT: And I ask that the Senate stand at ease.

ACTING PRESIDENT FARLEY: The Senate will stand at ease pending the Rules Committee report.

(The Senate stood at ease from 3:04 p.m. until 3:24 p.m.)

ACTING PRESIDENT KUHL: The Senate will come to order.

Senator Present.

SENATOR PRESENT: I believe we have a report of a standing committee, please.

ACTING PRESIDENT KUHL: Clerk 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:

Assembly Bill Number 9071-A - excuse me, Assembly Bill Number 9071-A, Senate Reprint Number 21006, an act -- the Omnibus Consumer Protection and Banking Deregulation Act of 1994.

Also Senator Skelos, from the Committee on Aging, reports the following bills directly for third reading: Senate Bill Number 6548, by Senator Skelos, an act to amend Chapter 208 of the Laws of 1992, relating to establishing the Alzheimer's Disease task force.

Both bills reported directly to third reading.

ACTING PRESIDENT KUHL: Without objection, third reading.

Senator Present.

SENATOR PRESENT: Mr. President, can we return to motions and resolutions.

ACTING PRESIDENT KUHL: Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of Senator Cook, on page 10, Calendar Number 92, Senate Print 3026, I ask -- I offer the following amendments, and I ask that it retain its place.

ACTING PRESIDENT KUHL: So

ordered.

SENATOR FARLEY: On behalf of Senator Cook -- Johnson, I'm sorry, on behalf of Senator Johnson, on page 10, Calendar Number 91, Senate Print 2999, I offer the following amendments, and I ask the bill retain its place.

On behalf of Senator Cook, on page 5, Calendar 37, Senate Print 2640, I offer the following amendments and ask that the bill retain its place.

On behalf of Senator Levy, on page 7, I offer the following amendments to Calendar 73, Senate Print 324, and I ask that that bill retain its place.

On behalf of Senator Skelos, on page 8, I offer the following amendments to Calendar 76, Senate Print 1605, and I ask that that bill retain its place.

On behalf of Senator Johnson, on page 8, I offer the following amendments to Calendar Number 80, Senate Print 2802, and I ask that that bill retain its place.

On behalf of Senator Velella, on page 6, I offer the following amendments to Calendar 59, Senate Print 2599-A, and I ask that that bill retain its place.

On behalf of Senator Farley, on page 9, I offer the following amendments to Calendar 85, Senate Print 6183, and I ask that that bill retain its place.

On behalf of Senator Johnson, Mr. President, I move that the following bills be discharged from their respective committees and recommitted with instructions to strike the enacting clause: Senate Print 909, Senate Print 1189, 5541, and 5654.

ACTING PRESIDENT KUHL: Without objection, so ordered.

Senator Present.

SENATOR PRESENT: Mr. President, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: Senate Print 1892-A.

ACTING PRESIDENT KUHL: Without

objection, so ordered.

THE SECRETARY: On page 11 of today's calendar, Senator Farley moves to discharge the Committee on Banks from Assembly Bill Number 7782-A and substitute it for the identical Third Reading 100.

ACTING PRESIDENT KUHL: Substitution is ordered.

Senator Present.

SENATOR PRESENT: Mr. President, I'd like to call up Senate Reprint 21006.

ACTING PRESIDENT KUHL: Clerk will read.

THE SECRETARY: Calendar Number 110, by the Assembly Committee on Rules, Assembly Bill Number 9071-A, with a Senate Reprint Number of 21,006, an act to enact the Omnibus Consumer Credit Disclosure and Deregulation Act of 1994, to amend the Banking Law.

SENATOR GOLD: Yeah, excuse me.

ACTING PRESIDENT KUHL: Last section.

SENATOR GOLD: No. No. Will Senator Farley yield to a question?

SENATOR FARLEY: Yes.

ACTING PRESIDENT KUHL: Senator Farley.

SENATOR GOLD: Senator Farley, it seems that as much as we try, we wind up with this same silly predicament year after year. Now, today is the last day, I believe, for this issue to be resolved. It's my understanding from what you said in the Rules Committee meeting, that there is not as yet three-way agreement on a bill. It's 3:30 in the afternoon. What -- why at this point are we passing a non-agreed upon bill?

SENATOR FARLEY: Let me give an explanation of the bill, and then I think you'll understand why we're passing this bill.

This is the omnibus banking bill and consumer protection bill, one that we have had under negotiation for over a year, and I mean active negotiation. It is basically the Governor's bill. It is 98.6 agreed to. There's

one point that is not agreed to by one house. I believe the Governor agrees with us on this. I don't want to speak for him, but that's what he told me.

Let me just explain what this bill does and what it is. Incidentally, when you talk about a banking deregulation bill, it's really a misnomer because it's the entire Banking Law for the state of New York. We have put it on a sunset and every now and then it keeps expiring and we keep coming back.

This year we're trying to make it permanent. Everybody wants to make it perman ent, all two houses and the Governor, but in order to make it permanent, we have put a lot of things in it, and let me tell you some of the things that are in it that have been -- all of these things are agreed to. I'll tell you the one thing that is not agreed to.

It prohibits geographic restrictions. It prevents banks from refusing to open a deposit account simply because the depositor does not live in the same city or

county which is ever larger.

It has lifeline checking. It requires banks to offer lower -- lower cost checking accounts. The account will provide for eight monthly checks or other withdrawal transaction. The maximum monthly fee, the minimum balance and deposit required will be set by the Banking Board.

Small -- incidentally, on that, I would suspect that they may follow this -- the New Jersey lifeline checking rules and regs which have been quite successful.

It also provides for credit card information program. It establishes a toll-free telephone number for the Banking Department for consumer -- where consumers can compare the in formation on credit cards. It requires current issuers to provide notice to their customers of this service. Notice will be provided on appli cations, solicitation and monthly billing.

It also provides small business loan figures. It collects and makes readily available to the public information on aggregate

numbers and amounts of small business and small farm loans being made by New York State institutions.

It gives credit card parity. It revises New York State's credit card laws to provide New York issuers with greater parity for competing with the out-of-state issuers who are dominant in this market.

These four restrictions provide specific authority for credit card introductory rates and rate sales, authorizes certain limited fees, provides flexibility in mailing arrangements in order to prevent credit card theft and fraud, and it strengthens New York's law to ensure that the provisions of the New York law can be exported to customers in other states.

It also contains a provision which the press has written much about, and there's agreement on it, motor vehicle leasing. It enacts -- what that has to do with banking always befuddles me, but it is in here. It enacts the Motor Vehicle Leasing Act which

provides provision for increased disclosures, prompt refunds, a process for determining liability for early termination and a process for resolving any disputes over excess wear and damages.

It also provides, which is a very significant part of the bill, for small business investment companies. It establishes two small business investment companies, one general for every small business in this state, for every one, and one that is specialized for certain disadvantaged persons. The banking industry, over time, will contribute up to $23 million to this. These funds will, in turn, leverage over 70 million, for a total of 93 million, to provide loans and equity capital to the needs of small businesses.

We're talking about two different companies -- companies. One company, the Small Business Investment Company, again, is open to everyone. That is all agreed to. The one disagreement in the bill is as to the New York Specialized Small Business Investment Company.

That's where we have a disagreement.

The Governor, in his proposal, said that -- used the federal language which said -- let me find this here. Said that "*** federal law provides that they may only invest in small businesses owned by persons whose par ticipation in the free enterprise system is hampered because of social or economic disadvantages. Although economically and socially disadvantaged is not specifically defined, federal guidance documents note that consideration should be given to minorities, handicapped persons, persons in economically deprived areas and persons of *** income or limited education."

The Governor's program bill, which this bill is still the Governor -- at the request of the Governor, was received early in January, provided for the purposes of this company they shall serve the needs of socially and economically disadvantaged persons pursuant to Section 301 (d) including minority-owned business enterprises and small businesses

located in the neighborhood-based alliance communities, economic development zones and highly distressed areas, individuals with disabilities, persons unable to compete effectively in a marketplace because of prevailing restrictive practices.

The Assembly bill, and this is our area of disagreement, would provide only for minorities, businesses, persons in highly distressed areas and persons who reside in a neighborhood-based alliance.

The Senate preferred the Governor's language. However, we took the Assembly list to broaden it -- that's what's in this bill -- to include -- just broadened it, used their language to include persons eligible for the income tax credit, the working poor.

It's that simple. 90 percent of the geography of this state is excluded from participation in this company unless they are minority under the Assembly language.

I think this is reasonable. I think it's something that we can work out. The

Governor has proposed three different -- I don't want to get into the negotiations too much here, but he's proposed three different additions, addendums to the language here, instead of making it just for minority businesses.

You have to realize that minority businesses have no means test, no means test at all. He would like to include it and so would we, to either the earned income tax credit being added on there or the economic opportunity zone added in there, one or any of them, or to use his original language, which I prefer.

Let me share with you, I had concern about their language, whether it would meet the test of the federal legislation. My director of the Banks Committee called the deputy counsel. He said, "No way would we approve that language. There would be nothing." We told that to the Assembly in negotiations. The next day a whole load of calls were made. Guess what? Somebody said, "We'll approve it."

I'm worried that we may be

jeopardizing the whole program. What we're trying to do is to make it a little bit more inclusive for the rest of New York State. That simple. It's a bill that is 98 or 99 percent agreed to. Yes, we are still in disagreement. The Assembly, it's my understanding, has just put out a three-year extender. I don't want an extender. "Denny" Farrell has said to me a thousand times he doesn't want an extender. The Governor told me not more than two hours ago, No way will I sign an extender. We should be doing this; we should have done it a long time ago.

Let me say that we've had agreement on scores of occasions and every time something new pops onto the table from the other house. They had to have the Comptroller on the board. They had to have the Comptroller on the board. Finally somebody said, "Has anybody asked the Comptroller?" So they asked the Comptroller. He says, "I don't want to be on the board."

Then, well, they wanted one thing after another, but let me say this and it was

concern too -- Senator Ohrenstein and the other side and to the Minority, we have put in this legislation giving the Minority of both houses appointments on all the boards. That's a first, something that I support and everybody. I know that there was concern expressed in the Banking Committee, and Senator Ohrenstein will have an appointment on this board, on all the boards, all three of them.

ACTING PRESIDENT KUHL: Senator Gold, you still have the floor.

SENATOR GOLD: Senator -

SENATOR FARLEY: Yes, sir.

SENATOR GOLD: Is there a memo on this bill, Senator Farley?

SENATOR FARLEY: Yes, there is.

SENATOR GOLD: The -- I realize it's reported out of committee a few minutes ago and limited to only 54 pages, but I thought it would be interesting to see if there was a memo.

SENATOR FARLEY: There certainly is. Let me hand deliver a memo to the Acting

Minority Leader.

SENATOR GOLD: If the record would reflect that we each walked halfway and he hand delivered the message.

ACTING PRESIDENT KUHL: I thought Senator Farley went three-quarters of the way there, Senator Gold.

SENATOR FARLEY: I've gone 90 percent of the way on this.

SENATOR GOLD: Based upon the merits of the bill, he should have gone 90 percent of the way.

Senator Farley, I appreciate your giving me the memoranda and there may be some other questions by other people, but maybe we can cut through a little of it. You say the bill deals with low cost checking. How do you define "low cost checking"? You said eight transactions or something?

How do you define "low cost checking"?

SENATOR FARLEY: The Banking Board will set the fees. Incidentally, in their

bill that we had to correct -

SENATOR GOLD: In other words, low cost checking means where the Banking Board sets the fees?

SENATOR FARLEY: That's correct.

SENATOR GOLD: So, in other words, wherever they set the fees.

SENATOR FARLEY: You want to set the fee in statute?

SENATOR GOLD: No, no, I'm asking you what "low cost checking" is. You say that's checking that the Banking Board -

SENATOR FARLEY: We have directed the Banking Board to -

SENATOR GOLD: Can you get it when we're both talking at the same time?

ACTING PRESIDENT KUHL: Gentlemen, just so that we keep this so the stenographer can take this all down, I'd ask that you direct your questions and answers through the Chair up here. Senator Gold, you had a question.

SENATOR GOLD: Yeah, I'm trying

to get the whole question out so that we could be more specific.

ACTING PRESIDENT KUHL: You asking Senator Farley to yield to a question?

SENATOR GOLD: I'm asking what you're defining as "low cost checking", as opposed to high cost checking.

SENATOR FARLEY: That means a fee for a checking account that would be substantially lower than a monthly checking account. The New Jersey plan for lifeline checking has been very successful. I mentioned that in my remarks and I suspect that the Banking Board will set -- will follow the New Jersey experience.

SENATOR GOLD: You -- you said that there will be a credit card information program. Is that the 800 number?

SENATOR FARLEY: That's correct.

SENATOR GOLD: And do you know how that works? I mean we have a number of 800 numbers now in the state, and a lot of them are useless because we don't fund them and you can't

get through on them anyway. One 800 number with one phone and you've got millions of people calling, and it doesn't do much good.

SENATOR FARLEY: That was not my idea, Senator Gold, and I had trepidations about it also, but it was an absolute insistence on the part of the Assembly to have this 800 number which would give you credit card information which we hope is up to date and which we hope is accurate and which we hope that they'll answer.

SENATOR GOLD: Well, I think it's a great idea. I'm just trying to find out whether we're funding it. I give the Assembly credit for giving this great idea. Now, I want to know whether the Senate gets any credit for funding it.

SENATOR FARLEY: Yes, that probably will be added in, in the budget, which we're working on right now.

SENATOR GOLD: O.K. You said that the bill has credit card parity so we get greater parity with other states. How does that work?

SENATOR FARLEY: How that works is that basically I would venture to say that the credit card that you have in your pocket is not a New York-based credit card. I'll bet you a nickel or more, whatever you wish. What this does -

SENATOR GOLD: Who's got credit cards?

SENATOR FARLEY: What this does is allow the few -- and boy, are we few - credit card companies that are still operating in New York State and not in Delaware or South Dakota, it allows -- it has four revisions here.

They've had a lot of problems with credit cards being stolen, fraud and theft. It allows them to mail the credit cards out to customers from different locations. It also provides for certain limited fees. It's similar to the score of other credit cards that are issued out of state and it provides for specific authority for credit card introductory rates and rate sales. In other words, that's

where it -- they'll give you a very low interest for a very short period of time or something like that. In other words, you know how a home equity line is that the first year you pay two percent and after that it goes up.

There are basically four revisions which all of the credit card companies that do not operate in New York State have. We've done that before.

SENATOR GOLD: Well, may -- if the Senator will yield to a question. Does it affect the interest rate that's put on it?

SENATOR FARLEY: Does it affect the interest rate? No, it does not, as far as I know. Does it affect the interest rate? No. We do nothing about the interest rate.

SENATOR GOLD: All right.

SENATOR FARLEY: That's a very competitive industry.

SENATOR GOLD: So when you say, if I understand you -- when you say "parity," are you saying that the parity comes from these basically promotional ideas, the initial

starting rate and the lower interest, the short period of time?

SENATOR FARLEY: Basically, what it does in that area is gives them the same law that -- it conforms the laws that are in the other states, in Delaware and South Dakota basically, where all the credit cards are issued where their operations are.

SENATOR GOLD: Yeah, but, Senator, that's what I'm talking about. You are well aware, Senator Farley, and I know you're a professor of law here, so you're doubly aware that our Constitution does not allow us to pass legislation just by referring to other states. We have to put it in language. So I'm asking you: What is the language; what is it that the other states have statutorily that we are conforming to?

SENATOR FARLEY: Hold on. We do not reference other laws.

SENATOR GOLD: No, I know you don't.

SENATOR FARLEY: Just a -- let me

finish. On page 13 of the bill, it spells out the answer to your question. I -- this is a summation, I won't read it to you, but the fees and charges permitted under this subdivision are interest under New York law and all terms and conditions and provisions of a retail install ment credit including that without limitation credit card charges, and fees, and so forth.

SENATOR GOLD: What does that mean? Senator, I don't want you to read it to me; I want you to tell me what it means. There's a reference to a section of the United States Code.

SENATOR FARLEY: It says -- well, if I can generalize, it says that credit card rates are deregulated because that's what New York State law says. It refers to New York State law; isn't that correct?

SENATOR GOLD: Well, Senator -

SENATOR FARLEY: We know, the interest rate in New York State is deregulated. In essence, that's what it says.

SENATOR GOLD: Yeah, if the

Senator will yield to a question.

SENATOR FARLEY: Yeah.

SENATOR GOLD: Senator, you just referred me to that page. I didn't pick the page out and ask you what it meant. What I'd like you to just tell me, when you say that we're creating parity and doing what other states do, what is -- what are other states doing that this bill will now do? You pointed me to the section, which makes no sense to me in answer to that question.

SENATOR FARLEY: Basically, Senator Gold, other states have deregulated the entire banking industry. We're not an island and we're deregulating -- deregulated also, that's basically what it is. It's the -- it means that it will conform to New York law.

Should we put -- should we put in a ceiling on credit card rates, this bill - this provision would -- would not negate that. Excuse me. This provision just says it will conform to New York State interest laws.

SENATOR GOLD: Senator, as I -

if the Senator will yield to a question, Mr. President.

ACTING PRESIDENT KUHL: Senator will.

SENATOR GOLD: Senator, I hear the words. I do hear your words. I just don't understand them in relationship to my question. You said that the bill creates credit card parity so that, when you deal with credit cards in New York State, they'll be competitive. Other states are getting all our credit card business, and all I want to know -

SENATOR FARLEY: That's only - all right. Go ahead.

SENATOR GOLD: Can I finish the question, Mr. President? All I want to know, Senator Farley, in plain English is what is the parity; what does it actually do that they will now be able to do in New York State that they're allowed to do in the other states that will make our credit card business competitive? That's all I'm asking.

SENATOR FARLEY: O.K. Let me try

again. I thought I explained this when I spoke. Incidentally, "credit card parity", quote, is just a term that I used to try to say that we want to conform the credit card issuers that are in this state with the 90 percent of the other credit cards that are around the country. A lot of New York banks have their operations in Delaware and South Dakota.

SENATOR GOLD: What do we have to do that?

SENATOR FARLEY: Let me finish, and then you can start reasking your question. What we're trying to do here is to give our credit card issuers, the employees that work in these credit card industries in New York State, a chance to keep working and not be non-competitive. We have had a terrible problem in New York State in certain areas in your city where credit cards have been stolen, where there's been terrific fraud, and we want to be able to vary where they can mail it from.

That's one of the provisions in this. All of these provisions that are in the

credit card, quote "parity", and I wish I hadn't used the word if it gets you so upset, is that we're trying to conform the laws or conform our credit card industry with the 90 percent of all credit cards that are issued around the United States.

SENATOR GOLD: O.K. Great, Mr. President, I want to thank him for that answer.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: I want the record to indicate I'm in favor of that. Senator Farley, will you yield to one question?

SENATOR FARLEY: Yes.

SENATOR GOLD: How do we do it? How does this bill do that? How does this bill conform it in 90 percent of the way? You're telling me you want to do it. I'm not arguing. You tell me you want to put people to work. I'm not arguing. Aside from allowing them to mail the cards from different locations, what else does the bill do? It's got 54 pages. It must do something.

SENATOR FARLEY: O.K. O.K. One provision was that they could only mail something from New York State, O.K.?

SENATOR GOLD: Yeah.

SENATOR FARLEY: They could only mail something from New York State. That was in our law. What this does, it gives them flexibility. They can mail it from New Jersey, a close neighbor of Senator Marchi's. They can mail it from Connecticut, if they wish to.

SENATOR GOLD: I love that.

SENATOR FARLEY: They can vary it. That's one of the changes. There's no restriction, and I guess there's no restriction on other credit card companies as to where they have to mail the stuff.

SENATOR GOLD: I appreciate -- is there any other conforming?

SENATOR FARLEY: Yes, there is.

SENATOR GOLD: The parity comes from the mailing, or is there anything else?

SENATOR FARLEY: It allows them specific authority for credit card introductory

rates. In other words, they can give you, and we couldn't do that before, our issuers could not. They now can have, if you want an intro ductory rate for a credit card and they can give you a very low interest for a short period of time, I guess, or maybe a long period of time if they wish to. They couldn't do that before. Other credit card issuers can do that.

Let me just say something to my colleagues, including you, Senator Gold. Last July -

ACTING PRESIDENT KUHL: Senator Farley, this is in response to Senator Gold's question?

SENATOR GOLD: Yes.

SENATOR FARLEY: Well, it's a little bit non-germane.

SENATOR GOLD: I don't mind. If it's important for you to say, I'm willing to hear it.

ACTING PRESIDENT KUHL: Senator Farley.

SENATOR FARLEY: I would like to

thank my colleagues in this house, and Senator Onorato and quite a few others. We passed in July a bill, 54 to 5, that was just a clean extension of the Banking Law. We had none of these provisions in it, and I thank my colleagues for that, because it helped us in negotiation.

SENATOR GOLD: Good. Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Will the Senator yield to a question?

ACTING PRESIDENT KUHL: Senator Farley, do you yield? Senator Gold.

SENATOR GOLD: Senator Farley, I think we're making real progress on this parity issue, and I know it's your word. We allow them to mail from any place outside of New York and we allow them to use introductory interest rates and promotional interest rates. Is there anything else in that area that we do that you would put under this category of parity?

SENATOR FARLEY: Yes. There is. To give you an example, if you lose three credit cards -- and I know that you would never do that -- if you lose three credit cards, they can charge you to give you a fourth one. That's one other item.

SENATOR GOLD: Anything else? I mean let's get it all out so we know what we're voting on.

SENATOR FARLEY: That's about it, Senator. There's not an awful lot. We have - I suppose you can come up with some more. If I can find some more parity things, I'd be willing to give it to our credit card issuers because we need the jobs.

SENATOR GOLD: Yeah, I'm for that. Will the Senator yield to one more question?

ACTING PRESIDENT KUHL: Senator will.

SENATOR GOLD: This also refers to what you described as the Motor Vehicle Leasing Act. How does that part of it work,

Senator?

SENATOR FARLEY: That is something that I have not been enthusiastic over, not because of regulating the leasing companies is not a good idea. That's really a bill that was in Consumer Affairs over there in the Assembly. Basically it's the Assembly's bill with a little -- with a couple wrinkles that have been changed, and we have agreed to allow it in the banking bill, and the change basically is the disclosures that would be involved.

Just a moment. The bill would add a new Article 9 to the Personal Property Law to require that every lessor to inform the consumer of the monthly payment, the number of months in the term, any payment due at the start of the lease, the residual value of the vehicle, the purchase option price formula, the disposition fee, the number of miles assumed under the lease, and the per mile charge for exceeding the assumed mileage and the formula under which a lessor would apply to determine a

consumer's early termination liability.

A consumer would also be informed of the cost of the insurance, the administrative fees, taxes, title charges and other fees. These would be available in a sample lease which would be made available to the consumer upon request, so that the consumer could compare the costs of the different leases.

If the lease application is rejected, the payment that the consumer made must be refunded within 15 days of rejection. If a consumer withdraws their offer, any vehicle that the consumer traded in and any payment that might have been made must be returned promptly.

A lessor may not transfer any vehicle offered in the trade until the lease is executed. A consumer would receive a complete and conspicuous notice separate from the lease itself, setting forth the consumer's obligation if the car is a total loss as a result of the theft or damage.

The bill would also permit the provision of gap insurance which would protect

consumers against financial liability for the difference between what they owe and what the car's insured worth is when it is deemed to be a total loss through the theft or damage.

The bill also provides for a dispute resolution process subject to the regulation by the Attorney General and permits consumers to bring suits in dispute.

SENATOR GOLD: Thank you. Will the Senator yield to another question?

ACTING PRESIDENT KUHL: Senator Farley will.

SENATOR GOLD: I'm trying, Senator, to listen to you and also digest the memo at the same time and do my best. On page 3 of your memo, it talks about -- it says Chapter 548 of 1987 provided that banking and other financial institutions which offered checking accounts shall offer an account on which canceled checks are returned to the customer. What -- what is that supposed to mean in reference to it? I know there's some banks -

SENATOR FARLEY: I still -

SENATOR GOLD: There are some banks where they have -

SENATOR FARLEY: That's the current law, Senator Gold.

SENATOR GOLD: I understand it. But what is the purpose of referencing it here? Was there some reason?

SENATOR FARLEY: It says you have to return checks.

SENATOR GOLD: What?

SENATOR FARLEY: You have to return checks. Banks have to return your checks.

SENATOR GOLD: That's not what it says. They must offer you that kind of an account. In other words, the bank can have that kind and another kind, is that correct?

SENATOR FARLEY: No. I guess they can have both, but don't they return checks?

SENATOR GOLD: Well, what I'm trying to understand, Senator, and as I say, I'm going -

SENATOR FARLEY: Well, my point of it is they can offer you an account where you don't want the checks returned. You say don't clutter up my house with canceled checks. If that's what you prefer, they can do that to you, but they have to offer to return your checks.

SENATOR GOLD: Right, but when you say, Senator, it's in the law today, that's what the memo says. The memo says Chapter 548 of 1987 voided that. What is -- why is the reference in here? In other words, if we don't pass this bill today, that would lapse, is that correct?

SENATOR FARLEY: That's correct.

SENATOR GOLD: All right. That's one of the provisions that would lapse. On page 4, it talks about authorizing the making of variable rate closed end installment loans and also I guess there's provisions for open ended. Can you tell me what -- what is that difference? I'm a layman on that. What is the difference, and how does this law affect that?

SENATOR FARLEY: You know what

I'll do, Senator Gold. I can understand your real interest in all of these specifics. That is the current Banking Law which you voted for a number of years ago. It's been on the books for a long time. I'll be happy to send you a copy of the entire Banking Law as it exists.

We're not changing any of that. We're just allowing it not to expire and, of course, if this keeps up, it may expire.

SENATOR GOLD: Yeah, it might. Mr. President, at this point -

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: -- if I could yield to Senator Dollinger. You have some questions? Yeah, I want to yield to Senator Dollinger. I'll read the memo in the meantime.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Senator yield to a question?

SENATOR FARLEY: I'd be happy to, Senator Dollinger.

SENATOR DOLLINGER: First of all, by way of reference, I'd like to commend the chairman of the Committee on Banks. I know it's quite frustrating to get to the Ivory soap point where it's 99 and 44/100ths pure, but you don't have the final.

SENATOR FARLEY: I took 98.6 but I'll take -

SENATOR DOLLINGER: It sounds to me like you're at the 99 and 44/100ths. What I'd like do through you, by way of question, Mr. President, is it my understanding that page 7, lines 6 through 18, are the provision that the chairman of the Banking Committee discussed that are currently in dispute with our colleagues in the Assembly, is that correct?

SENATOR FARLEY: 7, line 6. Just a second.

SENATOR DOLLINGER: I'm trying to make sure that I understand the provision that is currently contested.

SENATOR FARLEY: Yes, yes.

SENATOR DOLLINGER: O.K. Through

you again, Mr. President, I just want to make sure I understand the -- the way this works. Dealing with section (b) starting at line 6, it says, The purposes of the SBIC sheets are to provide, in effect, to facilitate small business ownership by minorities. Is the term "minorities" defined in the act?

SENATOR FARLEY: It would be - it's, Senator, that it's my understanding applies to the federal law, what the federal law allows as minorities.

SENATOR DOLLINGER: O.K., but there's no reference in the act, is there, to the federal definition of that term?

SENATOR FARLEY: No, there is not. Incidentally, just for your information, the federal law does not include women.

SENATOR DOLLINGER: Excuse me?

SENATOR FARLEY: It does not include women.

SENATOR DOLLINGER: Does not include women?

SENATOR FARLEY: The federal law

does not include women under the definition of "minority".

SENATOR DOLLINGER: Again through you, Mr. President, another question of the speaker, if the speaker will yield.

ACTING PRESIDENT KUHL: Senator Farley, will you yield?

SENATOR FARLEY: Sure.

SENATOR DOLLINGER: Where by reference do we incorporate the definition section of the federal law?

SENATOR FARLEY: Well, -- well, here's the problem. I think -- the original - the original language of the Governor's program bill, which this is at the request of the Governor, this particular bill, used the federal language almost in total. The Assembly has really changed that substantially. We have been desperately trying to make it more inclusive.

SENATOR DOLLINGER: Right.

SENATOR FARLEY: And this particular language, the only difference in this and the Assembly bill is that it might include

persons eligible for the earned income tax credit. That's basically the only thing that we're plugging into the Assembly language.

SENATOR DOLLINGER: Correct. Again through you, Mr. President.

ACTING PRESIDENT KUHL: Senator Farley continue to yield?

SENATOR FARLEY: Sure.

SENATOR DOLLINGER: The purpose of my question is, as I look downstream in this particular language, and I've got several other questions that deal with the particulars of it, is just to try to clarify what the terms mean so that, if this is some day challenged, that there will be some sense among the members of this body in passing this bill what those specific terms mean.

Is it my -- correct in my understanding that the intention here is to incorporate the federal SBIC law definition of the term "minorities"?

SENATOR FARLEY: Yes, and you have to be licensed by the federal -- by the

fed's before you can participate.

SENATOR DOLLINGER: O.K. So we're going to adopt, incorporate then federal definitions; is that correct?

SENATOR FARLEY: That's correct.

SENATOR DOLLINGER: All right. Through you, Mr. President, if the sponsor will continue to yield.

ACTING PRESIDENT KUHL: Senator Farley continue to yield?

SENATOR FARLEY: Yes.

ACTING PRESIDENT KUHL: He does.

SENATOR DOLLINGER: Senator, it's my understanding that minorities will continue to be eligible and then there's a second group of people that reside in highly distressed areas or highly distressed as defined in other sections of the act.

SENATOR FARLEY: Correct.

SENATOR DOLLINGER: And then through you, Mr. President.

SENATOR FARLEY: Of course, it excludes almost all of your Senate District.

SENATOR DOLLINGER: I'll take the chairman's word for that.

SENATOR FARLEY: The highly distressed area excludes about 90 percent of New York State.

SENATOR DOLLINGER: And then -

ACTING PRESIDENT KUHL: Senator Farley continue to yield?

SENATOR FARLEY: I certainly do.

SENATOR DOLLINGER: Through you, Mr. President. And then there's a third group of people, and those are the people entitled to an earned income tax credit, and it -- under an act -- it says under an enactment under -- under the Internal Revenue Code. What does that mean?

SENATOR FARLEY: That's just a reference to an act where that came from.

SENATOR DOLLINGER: O.K.

SENATOR FARLEY: Simply it allows people, poor people, to participate and possibly get into a small business. They're excluded without that language.

SENATOR DOLLINGER: Again through you, Mr. President.

ACTING PRESIDENT KUHL: Senator Farley continue to yield?

SENATOR FARLEY: Yes.

SENATOR DOLLINGER: Would the eligibility for the earned income tax credit apply in a single year?

SENATOR FARLEY: Yes.

SENATOR DOLLINGER: Just through you, Mr. President, for clarification, if you had something -

SENATOR FARLEY: It's on an individual return basis, yes.

SENATOR DOLLINGER: How long would the period of eligibility last?

SENATOR FARLEY: Well -- it would -- it would last in the year, let's hope that after they get into business, they won't need that, but I would presume it would be in the year in which they're applying they would take their earned income tax credit information and apply for a loan.

SENATOR DOLLINGER: O.K. Again through you, Mr. President.

ACTING PRESIDENT KUHL: Senator Farley continue to yield?

SENATOR FARLEY: Yes.

ACTING PRESIDENT KUHL: He does.

SENATOR DOLLINGER: Senator Farley, if I understand the purpose of this provision, I may be in agreement with it. My concern is you become eligible to apply for this assistance when you qualify for the earned income tax credit, is that correct?

SENATOR FARLEY: Yes.

SENATOR DOLLINGER: What happens if the first year you're in business you make enough money so you no longer qualify?

SENATOR FARLEY: You've already got the loan.

SENATOR DOLLINGER: So you can make repayments on the loan even though you qualify for the tax credit.

SENATOR FARLEY: I assume so.

SENATOR DOLLINGER: Is that

correct?

SENATOR FARLEY: That's correct.

SENATOR DOLLINGER: Was there any discussion during the deliberations on this bill -- Mr. President, again through you, Mr. President -- of the question of averaging on a five-year period of the earned income tax credit? They could -

SENATOR FARLEY: Good point. We can't even get the Assembly to even discuss it. The Governor thought it was a good idea.

SENATOR DOLLINGER: I'm not suggesting that it isn't. I'm simply trying to find out. The current language says that if you qualify for the EITC one year, you're then eligible to apply and regardless of your past or future income, you would apply for a loan through the SBIC or SSBIC and be able to qualify for the loan, is that correct?

SENATOR FARLEY: That's correct.

SENATOR DOLLINGER: O.K. The last question I have on that language, if Senator Farley will continue to yield.

ACTING PRESIDENT KUHL: Senator Farley continue to yield?

SENATOR FARLEY: For one last question.

SENATOR DOLLINGER: For one last question.

ACTING PRESIDENT KUHL: The Senator does.

SENATOR DOLLINGER: There's a language used immediately after the earned income tax credit which states whose participation in the free enterprise system is hampered to compete effectively in a marketplace because of prevailing restrictive lending practices.

SENATOR FARLEY: That's federal language.

SENATOR DOLLINGER: O.K. Is that clause designed to apply to all three categories of the people?

SENATOR DOLLINGER: Again through you, Mr. President, if Senator Farley would yield for one more question.

ACTING PRESIDENT KUHL: Senator Farley continue to yield for one more question? Senator does.

SENATOR FARLEY: The Board -- and on the question, I know what your question is going to be. Senator Ohrenstein will have an appointment -

SENATOR DOLLINGER: My further question, again through you, Mr. President, is how do they make that determination; is it made on the basis of each single application that comes in?

SENATOR FARLEY: Sure.

SENATOR DOLLINGER: And if so, again through you, Mr. President, what proof would be considered in determining whether or not an applicant who meets the EITC or a minority applicant or an applicant in an economically distressed area, what criteria would be applied to trigger the language that they have been denied effective participation in the capital system because of past restrictive practices?

I'm specifically making reference to the fact that this creates a need for a Richmond study to determine whether or not there have been discriminatory and restrictive practices sufficient to trigger the right of government to intervene on these bases in making these awards.

SENATOR FARLEY: That's determined by the criteria that is given to the board, somewhat of a judgment call, I would say, wouldn't you?

SENATOR DOLLINGER: Well, I guess I'm -- again through you, Mr. President.

ACTING PRESIDENT KUHL: Senator Farley, you continue to yield? Senator does.

SENATOR FARLEY: Yeah, I'll yield.

SENATOR DOLLINGER: So that my understanding, again through you, Mr. President, that the determination of whether or not a specific individual who is attempting to qualify for the earned income tax credit, the board in making its determination would have to decide

that that person had been unable to compete effectively for capital in the marketplace due to prevailing or past restrictive practices.

SENATOR FARLEY: Senator Dollinger, you're making my point. That is why it was better off to start with the -- to use the federal language in here because we're in uncharted waters many times with these -- with this language.

As I said earlier, I don't know whether you were here, there was a deputy counsel said that there's no way we would approve this language. I -- that bothers me. The Governor said to me that just, I guess several hours ago now, that he -- that his original language was the better way to go. It followed -- it tracked the federal language. I think that they may be gummin' up the works with this, but we've got to have a banking bill.

SENATOR DOLLINGER: I appreciate. Through you, Mr. President.

SENATOR FARLEY: How much do we have to give?

SENATOR DOLLINGER: Through you, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: I'm not disagreeing with Senator Farley. I'm simply trying to elucidate if there's a point at some time in the future as to what we intended in passing this bill and whether or not we intended to incorporate federal rules, whether or not we intended to incorporate the concept of creating a criteria, having to prove that you were a victim of prevailing or past restrictive practices as a criteria for eligibility on the basis of either income status or minority status. We may be required to do that as a matter of law. The board may be required to do it as a matter of law in order to justify it under the Richmond case from the United States Supreme Court.

If I could ask one more question through you.

ACTING PRESIDENT KUHL: Senator

Farley, do you yield to another question?

SENATOR FARLEY: You're on your third last question.

ACTING PRESIDENT KUHL: Senator Farley yields, Senator Dollinger.

SENATOR DOLLINGER: Well, I'm taking it from Senator Gold. Through you, Mr. President, I am familiar with the operation of small business investment companies under the federal rules. Those operations under the federal system have tended to try to leverage private capital to achieve small business in vestment goals. Do I understand correctly in this bill that the goal is to bring bank capital to work rather than private capital to work to achieve the goals of the SBICs?

SENATOR FARLEY: Well, yes, bank capital is private capital.

SENATOR DOLLINGER: Well, but -

SENATOR FARLEY: But they're going to put up what, 23 million? 23 million and will leverage about 70 million.

SENATOR DOLLINGER: Through you

again, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger asks Senator Farley to yield. Do you continue to yield?

SENATOR FARLEY: Yes, I will.

ACTING PRESIDENT KUHL: Senator does.

SENATOR DOLLINGER: Just explain to me, if you would, how that 23 million translates into 70 million; where does the other 47 million come from?

SENATOR FARLEY: Well, it's three to one, isn't it? There's a federal matching grant. Currently the SBIC can obtain a three-to-one leverage, the first 15 million obtained in private capital, the additional leverage is obtained for any private capital invested up to 45 million. The 45 million private investment will leverage the maximum amount of 90 million. We have asked -- we have set this up so it can leverage the maximum amount of money from the federal government.

SENATOR DOLLINGER: Now, so I

understand it, the other match is coming from the federal government; it's not coming from private sources?

SENATOR FARLEY: That's correct.

SENATOR DOLLINGER: O.K. Just one final question. This will be my final question. Did -- in the deliberations in the - the deliberations of the Committee and the discussions with our other colleagues in the other house, was the concept of allowing privately funded small business investment corporations who do not have bank resources but would use federal tie-in dollars in what I would call truly private capital dollars, not a bank coalition putting the cash in but instead private investors putting the cash in, was that considered as an option to take -

SENATOR FARLEY: Of course, you can already do that, Senator Dollinger. You can do that without this law.

SENATOR DOLLINGER: Well, I believe under the federal system but not necessarily under the state system.

SENATOR FARLEY: That's correct.

SENATOR DOLLINGER: Would there be no advantage in doing that under the state system?

SENATOR FARLEY: Because that can already be done privately. For instance, a small business person goes into a bank and gets a small business loan.

SENATOR DOLLINGER: I'm -

SENATOR FARLEY: Maybe I'm mis understanding you.

SENATOR MENDEZ: Mr. President.

SENATOR DOLLINGER: I have just one more question, Olga, to clarify this.

SENATOR FARLEY: We're not setting up a state system. We're just trying to leverage some federal money.

SENATOR DOLLINGER: O.K. I believe Senator Gold yielded.

ACTING PRESIDENT KUHL: Senator Dollinger, you still have the floor.

SENATOR DOLLINGER: Mr. President, I believe I took the floor from

Senator Gold. I will offer it back.

SENATOR GOLD: Yes, if you're finished, I know Senator Montgomery, Senator Mendez, whoever all, you've got it.

SENATOR DOLLINGER: If I could ask you to yield for one split second.

ACTING PRESIDENT KUHL: Senator Dollinger on the bill.

SENATOR DOLLINGER: I hope it's clear my colloquy with Senator Farley was just an attempt to elucidate the proposal that's in the bill and that I see being advanced in this house.

I generally favor the concept of a broader reach of this bill. I think that there are some technical problems with respect to the EITC and when it's used, whether it's averaged over a period of time which maybe could have effected a more direct linkage between the population attempting to be served and the funds we wanted to put into this system to attack these problems of under-development.

So I think there may be some

other options. I think this moves in a better direction, but my hope is that further discussion will produce a compromise with our colleagues across the way. I know it's been difficult. I commend the chairman of the committee for his hard work.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President.

I'd just like to ask the sponsor a couple of questions.

ACTING PRESIDENT KUHL: Senator Farley, do you yield?

SENATOR FARLEY: Yep.

ACTING PRESIDENT KUHL: Senator Farley yields.

SENATOR MONTGOMERY: Thank you, Senator Farley.

Senator Farley, I realize that you are -- the purpose is directed specifically at minority business entrepreneurs, and in distressed areas, as you say, in particular. Is

there a definition that you have for small businesses; the size in particular?

SENATOR FARLEY: Yes. This, again, is a federal definition.

SENATOR MONTGOMERY: O.K.

SENATOR FARLEY: And it is one - it is a business with a net worth of less than 6 million and an average net income which would not exceed 2 million for the preceding two years.

SENATOR MONTGOMERY: Would not exceed 2 million.

SENATOR FARLEY: For the preceding two years.

SENATOR MONTGOMERY: Is there - and there is no indication of the size other than that? In other words -

SENATOR FARLEY: Well, that's an indication of the size.

SENATOR MONTGOMERY: It's defined.

SENATOR FARLEY: It's the federal Small Business Administration generally defines

it to mean those businesses with a net worth of less than $6 million and an average net income which did not exceed 2 million for the preceding two years.

SENATOR MONTGOMERY: Do you know, for instance, in New York State, how many small businesses there are that fit into that category?

SENATOR FARLEY: I have -

SENATOR MONTGOMERY: That are minority in particular.

SENATOR FARLEY: I have no idea.

SENATOR MONTGOMERY: Do we have any record of that?

SENATOR FARLEY: I have no idea. I have no idea. I do know it's the only area of growth really in this state.

SENATOR MONTGOMERY: In minority businesses?

SENATOR FARLEY: No, small businesses.

SENATOR MONTGOMERY: Small business.

Senator, do you -- is there any indication as to what categories of businesses we would primarily be targeting this -

SENATOR FARLEY: No.

SENATOR MONTGOMERY: There's no limit, in other words, any -- any small business?

SENATOR FARLEY: Your imagination is your opportunity.

SENATOR MONTGOMERY: Including retail businesses, services.

SENATOR FARLEY: Retail, wholesale.

SENATOR MONTGOMERY: Service businesses?

SENATOR FARLEY: Yes, any business you've got in mind.

SENATOR MONTGOMERY: That's good to know. I didn't see that indicated in here.

Senator Farley, on the -- I see where one of the areas that the Small Business Investment Company, the investment company is made up of two-thirds of the -- of the board of

people who will be, in fact, investing, putting up the money?

SENATOR FARLEY: That's correct.

SENATOR MONTGOMERY: So those are either individuals or institutions?

SENATOR FARLEY: That's correct.

SENATOR MONTGOMERY: O.K. And the other third comes from where, did you say?

SENATOR FARLEY: Government; comes from our friend, the government.

SENATOR MONTGOMERY: So the state will be putting in another third of the money?

SENATOR FARLEY: That's correct.

SENATOR MONTGOMERY: And two thirds of the board will consist of the private.

SENATOR FARLEY: The private sector.

SENATOR MONTGOMERY: And the other third will consist of appointees by the Majority Leader, the Speaker?

SENATOR FARLEY: The Governor, the Majority Leader, Senator Ohrenstein -- the

Minority Leader, excuse me, Mr. Rappleyea.

SENATOR MONTGOMERY: All right. Can we assume then that the two-thirds investors will -- would primarily be people who are already involved in -- in the banking community by and large?

SENATOR FARLEY: It's going to be banking institutions that decide to participate.

SENATOR MONTGOMERY: So these - in other words we're talking about people who are part of the establishment banking industry by and large?

SENATOR FARLEY: We're talking about people who would be making a loan probably.

SENATOR MONTGOMERY: O.K. All right.

SENATOR FARLEY: They're anxious to participate in this. It's very nice to be able to lend the government's money.

SENATOR MONTGOMERY: You -

ACTING PRESIDENT KUHL: Senator

Farley, you continue to yield?

SENATOR MONTGOMERY: Oh, I'm sorry, Senator Farley. Will you yield?

ACTING PRESIDENT KUHL: Senator Farley, you continue to yield?

SENATOR FARLEY: Yes, I will.

ACTING PRESIDENT KUHL: Senator does.

SENATOR MONTGOMERY: Senator, on this page, the bill talks about -- I do have a memo, I'm sorry. The bill talks about the fact of the small business, this Small Business In vestment Company will participate in coordination with local -- with other state agencies, and banking -- other banking facilities, science and technology, UDC. Are we -- do we, is that not what the Small Business Centers do now? Is that -- that's what they do primarily?

SENATOR FARLEY: Give me that question again.

SENATOR MONTGOMERY: You have - this refers to, on page 8, line 40, beginning at

line 40, 41, the investment companies will as sist in coordination with assistance from local bankers, local economic development corpora tions, state Department of Economic Development and Job Development Authority.

SENATOR FARLEY: That's called spreading the word.

SENATOR MONTGOMERY: And do we - we already do that, do we not?

SENATOR FARLEY: We like to think we do.

SENATOR MONTGOMERY: Yes.

SENATOR FARLEY: But what the purpose of that is to get that information out there so the people can participate.

SENATOR MONTGOMERY: O.K. The - Senator Farley, I'd just like to ask you regarding -- Mr. President, if I may raise another question with Senator Farley?

ACTING PRESIDENT KUHL: Senator Farley, do you continue to yield?

SENATOR FARLEY: Yes, sir.

ACTING PRESIDENT KUHL: Senator

does.

SENATOR MONTGOMERY: It says on page 10, Senator Farley, line 3, the corporation may contact -- contract or otherwise affiliate with local development corporations and other local development organizations, including but not limited to not-for-profit corporations established pursuant to Article 9, so forth and so on. Does that mean that, for instance, there is a not-for-profit, and -- me rephrase that. I don't know if it's not-for-profit.

There is a community credit union that was recently chartered in my district and one of the activities of that credit union is to function as a local lending entity. It's -- and its board is made up of people who live in the area as well as who are -- who have various areas of expertise, and they do some small business lending primarily -

SENATOR FARLEY: Yes, I would think that under that clause that what you speak of, not knowing precisely the -- I think they could work with that community -- with that

credit union.

SENATOR MONTGOMERY: In other words, can the investment company make loans through that -- that credit union or that community credit union, or how would that work?

SENATOR FARLEY: No, they could make it to that credit union, but not through it.

SENATOR MONTGOMERY: But it is itself a lending institution.

SENATOR FARLEY: Yeah, but I don't think they're participating in it.

SENATOR MONTGOMERY: Does it -

SENATOR FARLEY: They could work with it, but no, I don't think they could make loans under this.

SENATOR MONTGOMERY: So does that credit union now have to compete with the SBIC in terms of access to funding which it then can -- can make loans?

SENATOR FARLEY: I guess you could -

SENATOR MONTGOMERY: Continue to

make loans?

SENATOR FARLEY: You could look at it from that perspective, but these are, generally speaking, providing funding to businesses which are viewed too risky by banking institutions. They're -- it's providing loans to people and small businesses that generally can't get loans. I mean if you mean that your -- I think that's a positive thing.

I think that your credit union that you're talking about would be delighted to see some of your larger banking institutions making loans to -- to poor people to start a business, don't you?

SENATOR MONTGOMERY: Well, they make loans to poor people too; that's the reason for their being. That's what I'm concerned about in terms of this bill.

SENATOR FARLEY: Well, I'll tell you, we need more like your credit union then.

SENATOR MONTGOMERY: Senator -

ACTING PRESIDENT KUHL: Senator Farley, you continue to yield? Senator does.

SENATOR MONTGOMERY: Yes, Mr. President. Let me just make a statement on it. Thank you, Senator Farley.

ACTING PRESIDENT KUHL: The floor is yours, Senator Montgomery.

SENATOR MONTGOMERY: Let me just say that I am very pleased, and I certainly hope that this -- that the results of this bill will be as -- as intended, once all of the small - the minor disagreements are worked out.

I would just like to go on record, being on record in saying that up until this point, our attempts in the state have been very, very disappointing to say the least as it relates to trying to direct money, direct access to resources to small businesses, minority business in particular, and part of that is, as I understand it, based on speaking to the state agency people who have been charged with that mission, as well as small business people themselves.

Part of the problem is one that the small businesses in our -- that we're

talking about, the small business that I'm talking about, minority businesses in my district, are one and two people oftentimes and three people. It's the one guy who is struggling desperately. He's a wonderful designer of hats. He makes his own hats, and he goes out and markets his own hats, and when he sells that bunch -- that batch, then he has to go back and make some more through his own manufacturing entity and what have you.

He's -- granted, he needs a lot of assistance, but certainly he does not often fit into the small business category that we're talking about when we say, you know, not more than 6 million and not more than 2 million in the last year. You know, he doesn't begin to fit that. It's one and two businesses who make leather garments and sell a few, would like to expand, people who really are at the very, very, very beginning rudiments of business development.

We have not been able to help those people, and I think that's where a lot of

the growth can take place if we're able to provide the kind of assistance that is -- that will allow them to grow. There is a mind set by the lending institutions and the people who have grown up in that atmosphere of mistrust, and so we have high risk loan -- revolving loan funds in the state of New York which never make it to the hands of the high risk businesses because the people making the loans have a mind set of the -- that does not include high risk businesses.

So I'm afraid that if we're establishing the board two-thirds with people from the industry, from the community where we've experienced the problem already, I'm not sure that they're going to be able to make that flip and be able to accommodate the various nuances of really little bitty businesses that I think about when I say small business.

So that certainly is a concern of mine, and I would hope that, as we look at what happens with the funding, I don't know where the funding will go when it's not used, but what

we've generally done is that it ends up being eaten up by something else because we blame the victim. The small businesses didn't get it, they didn't get it because they didn't deserve it somehow; they weren't eligible to receive it. The money is still sitting there, we weren't able to lend it. So it goes back into the pot, and it gets redirected, and I -- I'm not able to track it always, and I don't know, I always say it gets stolen by, you know, it's the food of the minnows being stolen by the whales. That happens too often, and I certainly hope that we won't allow that to happen to this program in terms of small business.

So, Senator Farley, I commend you but, as you can see, I do have some concerns about it and it's based on having worked very closely, being frustrated for many years with the economic development entities of our state who, with every good intention, do not, in fact, offer assistance to small businesses and the whole issue of the marketing and the coordinat ing and the workshops and all of these little

things that supposedly they do with the dog and pony shows with those small business centers.

I can tell you in no uncertain terms they do not serve small business people, people who have a bakery shop who need a loan to expand their bakery shop, or who have these kinds of problems do not have the time to go and sit and have a lecture and attend a workshop and travel up and down the state and receive certificates for being the wonderful business person of the year. They just don't have time. They're out there trying to eke out a living, and if we can't figure out how to help those people, then the whole issue of the state helping small businesses is a charade.

So I hope this doesn't end up being in that category.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Mendez.

SENATOR MENDEZ: Senator Farley yield for a question?

ACTING PRESIDENT KUHL: Senator

Farley, will you yield to a question? Senator does.

SENATOR MENDEZ: Senator Farley, about the effect of your bill, the small business investment, small business investment business community will give -- let me start over again. The SBIC will provide businesses monies lending -- would lend money to small businesses throughout the state of New York and the SSBIC will provide loans to small businesses that are located in very distressed or minority or poor areas.

O.K. My question along those lines is, if there is a small businessman located or a small businesswoman located in a - in a poor area, would that person have to apply only to the SSBIC or will that person be able to apply -

SENATOR FARLEY: No.

SENATOR MENDEZ: -- able to apply to both?

SENATOR FARLEY: No, no, no, can apply either place.

SENATOR MENDEZ: Either one. Good.

Secondly, the banks, the banks that are participating in the SBIC or the SSBIC, would they be able to qualify for CRA credit?

SENATOR FARLEY: Yes.

SENATOR MENDEZ: This is a good bill. It's a good bill because for years and years you have heard all of us here criticizing the banks for red-lining, even after that particular legislation they have not come up to par in terms of -- of doing what they're supposed to do in this area.

So that's the only thing that I think is very bad in this bill. I think that this bill should have taken -- that we should have taken notice of the bad track record in this area, in the area of CRA, and then give a credit after a certain period of time when the SSBIC or the SBIC have proven that they have foregone the bad record that up to now they have had in this area with red-lining.

That's the only bad, bad point

that I see in that bill. Otherwise, Senator Farley, I think that this bill is very badly needed in our communities. I am very happy to say that the businesses in our communities in the poor communities will be able to apply to either of these two financial entities, but the only thing, as I said before, that that is bad here, that the banks do not deserve to be receiving credit, the CRA credit with these new things because of the kind of record that they have had before.

I'm so sorry it's there but again I -- I congratulate you, and I think it's a good bill except for that.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to -

SENATOR FARLEY: If I might, I would like to pass the bill. The Governor's office has called me and wants to talk to me. The Assembly has adjourned after passing the extension which he has no intention -- which he has no intention of signing.

I would like to put this to

rest. I know that you've got an awful lot of questions. I don't know what the purpose behind these questions is, but I know that you've been asked to take as much time as you can, but I would like to bring some finality to this, my neighbor, Senator Connor.

ACTING PRESIDENT KUHL: Senator Connor.

SENATOR CONNOR: Will you yield to a question?

ACTING PRESIDENT KUHL: Senator Farley, will you yield to a question? Senator does.

SENATOR CONNOR: I only have 15 or 20 questions, Senator. No, just a couple on the motor vehicle, and that's why I focus on this.

SENATOR FARLEY: That's not my area of expertise, you realize that, my fellow Senator. But I'll do the best I can.

SENATOR CONNOR: Well, Senator, it's new. If you could explain, I understand there's an arbitration provision in there.

SENATOR FARLEY: To settle disputes.

SENATOR CONNOR: Right. Now, my question is, who -- that's a good use of an arbitrator. Seriously the -- it's the lessor though, I think, who can select its own internal arbitration -- arbitrator; is that correct?

SENATOR FARLEY: I beg your pardon?

SENATOR CONNOR: As I understand it, the bill provides an option to the lessor to designate its own internal arbitration procedure and arbitrator, is that correct?

SENATOR FARLEY: Yes, that's correct. It can be appealed, but -

SENATOR CONNOR: Well, yeah, that's my question. Can that be appealed?

SENATOR FARLEY: Yes.

SENATOR CONNOR: And if so how, if you could explain that.

SENATOR FARLEY: Well, anyway, I think it could be appealed at -- to a lower level court, a small claims court or to -- and

on up.

SENATOR CONNOR: Well, generally, Senator, isn't it true that when you appeal from an arbitration you have to show that the arbitrator's decision or the arbitrator acted arbitrarily and capriciously in order to overcome? I mean otherwise arbitration is binding.

SENATOR FARLEY: That doesn't stop you from appealing, though.

SENATOR CONNOR: Well, it makes your appeal short-lived though, Senator.

SENATOR FARLEY: I couldn't concur with you more, but -

SENATOR CONNOR: Now, in terms of these -- now, I often -- let me proffer my question. I've been seeing these ad's, too good to be true, $300 a month, drive a brand new Cadillac off, no down payment, and then at the end of the ad, there's often -- and since I hit 40 I can't read it, but before I was 40 I know the small print used to say, you know, you had to pay so many cents a mile after 8,000 miles

and the wear and tear, and so on, and I gather, Senator, the problem with this wear and tear is that people return the car and end up with a very, very large bill for wear and tear which is determined by the lessor.

Now, as I understand this bill, isn't it true that it provides that the -- does it provide any remedy for the lessee, I guess? You know, I read in the paper last week about some guy who said, oh, he went out and got his own estimates and they wouldn't even hear about it. What's a person in that situation to do under this bill?

SENATOR FARLEY: I guess the whole purpose of the bill is that he could take this model lease home with him and compare it with other leases. It gives them a little bit of comparison shopping.

SENATOR CONNOR: O.K. Well, Senator, that was my next question or the answer to my next question which was -

SENATOR FARLEY: Then you don't need to ask it.

SENATOR CONNOR: No.

ACTING PRESIDENT KUHL: Senator Connor, are you asking Senator Farley to continue to yield?

SENATOR FARLEY: You're getting me in trouble here. This is the third call from the Governor.

ACTING PRESIDENT KUHL: He does, Senator Connor.

SENATOR CONNOR: All right. Thank you. You have -- O.K. You say you can take the lease home and study it. Well, you know, I'm a big believer in doing away with all these legalese terms and having plain language, and I know we have adopted "plain language" bills in the past, but I recall you being a staunch supporter of "plain language" bills.

The question is, why not require in this bill that the lease be in plain language? You know, some people could take home something with all sorts of legal terms in it and they could study it for a week and it doesn't make it any clearer.

SENATOR FARLEY: We put that in one of your proposals and they rejected it out of hand.

SENATOR CONNOR: Who is "they," Senator?

SENATOR FARLEY: The Assembly.

SENATOR CONNOR: They rejected the proposal or the plain language proposal?

SENATOR FARLEY: The plain language proposal.

SENATOR CONNOR: Well, I'm shocked, Senator. If you had called me, I would have talked to anybody on the Assembly side and urged them to take -

SENATOR FARLEY: I will remember that.

SENATOR CONNOR: Next time, we're friends you know, Senator, just give a call.

Now, back to my question that I -- about the alternative. My real question is on the wear and tear, can the lessee go out and get their own estimates?

SENATOR FARLEY: Yes, they can.

SENATOR CONNOR: All right. So, now, switching back to the Small Business Investment Corporation, Senator. Switching off of this topic to the Small Business Investment Corporation, I'm just curious, as a member in this body who has been waiting for this banking bill for months and months and months, and we extended it to the end of January and here we are mere hours away from its expiration, just what -- what really is the political dispute about this? When was this provision in your bill in its present language, when was that put on the table? When was that put in the bill, Senator?

SENATOR FARLEY: Which provision?

SENATOR CONNOR: The provision to which there is no agreement.

SENATOR FARLEY: It's been in the agreement I would say since last -- we've had everything on the table asking them to try to in -- be inclusive. I don't think anybody in this chamber, and I can only speak for this chamber, would object to a poor person getting a

small business loan, and being excluded simply because they're not a minority, and we have put down economically and socially deprived, we've offered that. It's the Governor's language. We have offered the income tax credit language. We also have offered the economic development zone.

It -- it boggles my mind why none of these proposals have been accepted, so we have put in here the earned income tax credit provision that we felt was realistic. All it is is for poor people, working poor people that would maybe like to get a small business loan. That's basically it.

We -- every time we had agreement, Senator Connor, we had agreement after agreement after agreement, a new thing was thrown on the table. It was kind of like let's just keep this going on and on and on.

SENATOR CONNOR: Now, you, the Senator -- Mr. President, if the Senator would yield.

ACTING PRESIDENT KUHL: Senator

Farley, do you continue to yield?

SENATOR FARLEY: Yes.

ACTING PRESIDENT KUHL: Senator does.

SENATOR CONNOR: Senator, could you elucidate for me what exactly is the language that you say others -- the other house wishes to have in place of your language?

I think you've done a good job in explaining what your different proposals were as to qualifying language.

SENATOR FARLEY: Basically, the short version, the Assembly bill would only include minorities, persons who reside in highly distressed areas which is a very exclusive - well, that's not the right word, excluding - it's a very excluding area of New York State.

SENATOR CONNOR: Limited.

SENATOR FARLEY: "Limited" is a better word, I'm sorry. You're wearing me out here. And persons who reside in neighborhood based alliance communities. That's all. That's all. It does not include poor people.

SENATOR CONNOR: Now, that's for the second corporation, right?

SENATOR FARLEY: Yes, that's all we're talking about.

SENATOR CONNOR: That's all we're talking about. O.K. Thank you, Senator.

Mr. President, on the bill. I don't know what it is around here, and I'm not particularly criticizing this house or the other house, but why we always have to be under the gun, why we always have to be down to the final hours on any issue, it seems, any expiration, any sunset, end of session, four days past the budget deadline, Saturday night, 4th of July, there always seems to be that in order to do or to make a reasonable attempt at doing the people's business, these -- these -- this institution of the Legislature takes us down to the wire, forces us to deal with a very complex bill.

I mean I -- if my questions to Senator Farley about the leasing provisions weren't the most technically pointed or erudite,

it's because we just get down to the wire here and here it is a whole new provision on leasing. All I know about leasing cars is I once did it a number of years ago, and when I took it back, the guy wanted me to pay a lot of money for a couple of dents, and we negotiated it out.

But the fact of the matter is we get hit with that. We have all the other banking provisions, many of which have been discussed off and on over the last year. I'm not saying these proposals are a total surprise to anybody. They're not. But when you get a final piece of legislation, Mr. President, it's very important to weigh it as a legislator, it's very important to weigh it. It's very important to contrast, O.K., what's new in here from my point of view and the point of view of my constituents: What do we gain, what do we lose, and it's a balancing. And I'm not suggesting, Mr. President, the people who negotiated, Senator Farley and the people in the Assembly and the Governor's office, naturally as a

product of the negotiation they do that balancing, they do a balancing, and they decide they have agreement on whatever dozen or two provisions represent changes in a banking bill.

But really, Mr. President, that's the back room negotiating that characterizes the way this Legislature operates. As members, I believe we ought to have an opportunity to study a bill like this and evaluate if the system persists in having this negotiation by a handful, we ought to be able to evaluate what those compromises were, and the way we get down to the final hour, the way it's presented, and I know it was obvious that Senator Farley was under pressure to take some phone calls or something and would like to speed this process, but the fact of the matter is the rules allow us two hours and two hours is barely enough time to digest something like this and also to get feed back.

You know, how am I supposed to get feedback from my constituents about their - the effect on them and what their views are

about the inevitable compromises that are struck with respect to any but the simplest legislation, and this process doesn't afford us that opportunity. And so now here we are and the main sticking point is a difference in language, albeit an important one I suspect, between the two houses, and now we're told the other house is adjourned for a couple of hours, and I guess we're going to pass this probably and adjourn for a couple of hours and maybe we'll adjourn at the call of the Majority Leader, but I have a feeling we're going to be asked to stick around because while this state has been able to exist for weeks without a budget and this state has seemed to be able to exist for several days without a Tenant Protection Act and we've missed other deadlines and gone, Oh, my goodness, what's it mean that the last two days we haven't had a law on this or that?

I really suspect, for some reason, this Legislature is not going to let New York State exist for three minutes without a

banking bill, a bank regulation bill, and so I suspect we're in for a long night, and I can only deplore that that's the way we make laws. I don't think it adds to the credibility of the institutions that are supposed to be doing this kind of lawmaking and, you know, I haven't heard from many people in my district who lease vehicles either as lessee or lessors.

I don't know how this will affect businesses. I don't know how it will affect, more importantly I suspect in my district, consumers in the leasing business. We just are never given anything but a last minute, Oh, gee, I know you got a lot of good questions but jeez, we ought to hurry up and do this. Something is going to expire. And I don't like -- I've been seeing this for years. But I don't think that's the way we ought to do business, Mr. President.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Yeah, Senator Farley. I have been checking out the memo, and

I am curious about one comment that I think you made, and I want to clarify it. In terms -- if you will yield to a question, sir.

ACTING PRESIDENT KUHL: Senator Farley, will you yield to a question?

SENATOR FARLEY: Yes, I will.

ACTING PRESIDENT KUHL: Senator does.

SENATOR GOLD: In terms of the financing agency, as it's called, mailing from outside the state and still being considered an in-state issuer of the credit cards, the way I read that, Senator, we are, by that language, authorizing these companies to basically do a large part of their day-to-day business in other states and employ people and we're going to give jobs in other state. Isn't that exactly what's going to happen?

SENATOR FARLEY: That's exactly what's not going to happen.

SENATOR GOLD: I'd be glad to hear you explain that.

SENATOR FARLEY: Yes. You're

very specific here on page 13 starting with line 30. But basically, Senator Gold, all that allows them to do is to take physically and drop it in a mail box outside the state. It's to prevent theft and fraud and to kind of vary where they mail it from.

SENATOR GOLD: In other words, if I understand you, and it makes sense, I just want to make sure I understand it, in other words, Senator, the jobs, all the work would be done in New York State?

SENATOR FARLEY: That's correct.

SENATOR GOLD: But instead of people who are interested in theft knowing that it always gets deposited in the Elmira post office, that this way they could have a messenger go to Cortland, could go to New Jersey, could go to Vermont, and just put them in those; is that what it is?

SENATOR FARLEY: That's exactly it.

SENATOR GOLD: All right. I appreciate it, and thank you, and I think it's

the last question. The -- the part -- and I'm reading from this memo.

It permits charges for the additional services of replacement of stolen cards, replacement of sales slips and all of that. Those are, just so I understand it, situations which you say will make them competitive but will be now increased costs upon the card holder if they need those services.

SENATOR FARLEY: I -

SENATOR GOLD: In other words, now, those are services that go with the card?

SENATOR FARLEY: I gave you that example that they will now be able to charge you, I think, for your fourth lost credit card.

SENATOR GOLD: Well, but this also, Senator Farley, and I'm not saying it shouldn't be the law, but I want it on the record, it says for copies of sales slips, monthly statements and other documents not required by federal or state law governing billing disputes.

In other words, right now, as I

understand it, if you want a copy of a sales slip or whatever, you request it. Under this there may be a charge for it, and I'm not saying it should or should not be, but the way I'm reading this memo -

SENATOR FARLEY: That's correct.

SENATOR GOLD: All right. So and is -- and, Senator Farley, is that in the existing law that we're codifying or is that in addition to the new -

SENATOR FARLEY: That's in the existing law. It -- oh, this is a new law.

SENATOR GOLD: Yeah.

SENATOR FARLEY: That is not the -- that is not the current situation because banks in other states can charge those fees.

SENATOR GOLD: I apologize for that interruption. That is new language.

SENATOR FARLEY: Banks in other state, banks that have credit card operations can charge those fees. Whether they do or not depends on the credit card company. It's a very competitive business.

SENATOR GOLD: No, I understand. Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Gold, on the bill.

SENATOR GOLD: Yeah. Mr. President, I don't think there's any necessity to -- to be repetitious, and I would like very much to be associated with some of the final remarks made by our new Assistant Minority Leader, Senator Connor.

We have tried over the years and when I say "we," I mean all of us -- I'm not saying this as a Democrat/Republican issue. We tried to make some changes in some of the legislative processes, and I would hope that the reason we want to make the changes is because of some philosophy -- philosophical tie that we have to the people who sent us here, and the comment that Senator Connor made about giving people in the districts time for comment is a very, very well taken point.

We have in our Constitution a requirement, we can't even act on bills unless

they've been on our desks for three legislative days and, obviously, emergencies are taken care of. But it just seems, Senator Farley, that the only -- that we all know there's got to be a better way, but the only way you get it to be a better way is to do it. You know, sometimes I say the only way to do it is to do it.

Maybe at some point we just have to all of us stop it. It is ridiculous. This is an important issue and, Senator Farley, your explanations today certainly demonstrate that you are a very knowledgeable person in this field, and you're a good person to be speaking in this field.

Our main objection is that you shouldn't be subjected to having to fight on this issue within seven hours of its deadline and then we wind up in a situation where, unfortunately, laws are hard to undo. It's hard to make a law, but it's hard to undo that, and what many of us on this side of the aisle are concerned about is that some place in this 54 pages is something that maybe we didn't ask

about.

You certainly didn't hide it out of any venality, Senator Farley. You tried to be very open on it, but something that adversely will affect people or situations that we care very much about, and then we are stuck literally in the circumstance of trying to undo that with the same complicated three parties, our house, their house and the Governor, and it just isn't -- it isn't a good way to do it.

I would hope -- we understand the rush involved in this, and we're going to bring this to a vote, I assume, very, very, very soon, but I really would hope that it's the end of this. It just makes no sense. I look around this room, and I can tell you as I look at every face, I see people I respect, and somehow at sometimes I say to myself, how could these 60 other people who I respect, the 200 -- the 150 in the other house, the Governor, and all his staff, I look in their faces, I respect you all and we can not find a solution so that we deal with important issues in a more businesslike and

dignified way. It makes no sense to me.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to be heard on this bill?

(There was no response.)

Read the last section.

THE SECRETARY: Section 67. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Montgomery to explain her vote.

SENATOR MONTGOMERY: Yes, I would like to explain my vote, Mr. President.

I'm going to vote for this legislation because I think obviously we have to pass a bill, and I want to be responsible in that respect, but I do want to be on record as it relates to hopefully the memorandum of agreement that is called for in the legislation, and I would hope that it is considered -- that

it has considered some of the issues that I am raising here.

One is the size of small businesses. I think that really needs a very careful look and a more definitive classification for businesses in our state, and the amount and the size of the loans is also very important. The ability to -- to make small loans is sometimes very critical for small businesses, and that is not an -- an area that is dealt with oftentimes.

The representation of shareholders, I think, is extremely important and I do hope that the MOU will somehow indicate that that absolutely be reflective of the small businesss that we hope to provide assistance for. People from the small business community, people from the minority community, women, people with a very wide range of background and experiences and not just the financial institution community representation as we are inclined -- as it is inclined to be reflective, white and male primarily.

There is no targeting that is indicated, and I know this is a -- it's a curse word to many people, but it's -- I think we must say it. We must in our own minds understand the implications of it, that when you say minority, that in and of itself is very fluid, but then when you add all of the other -- the other criteria for being eligible to be assisted, if you don't say at least X percent of this program should be directed to minority businesses, it will not happen.

So I want to be on record for supporting that concept. I want it to be done within the context of the federal and state legal aspect of targeting or setting goals or somehow establishing that a percentage of the assistance or particularly the loans shall be directed to minority businesses and, just to lastly be very parochial about this, there is a very successful kind of community credit union in my district that was started by people who live in that community; it's Bedford-Stuyvesant where we have no banks, and the reason that the

credit union was started was because that is a community where banks have essentially fled and left us without financial institutions.

And so I don't want them to now be faced with the possibility of an entity that I'm voting for coming in and supplanting them and any other credit union that exists. There may be one or two others in the city of New York, because they came in when no one else was willing to invest in certain communities, in certain districts.

So with that, I say, Senator Farley, I do hope that we're able to address some of those extremely important issues because without an economic engine we can't hope to generate the kinds of jobs for the people in the community that this bill wishes to address.

ACTING PRESIDENT KUHL: Senator Montgomery, how do you vote?

SENATOR MONTGOMERY: I vote yes.

ACTING PRESIDENT KUHL: Senator Montgomery in the affirmative. Announce the results.

Senator Dollinger to explain his vote.

SENATOR DOLLINGER: Mr. President, I want to commend the Banking Committee again on this bill. This is a difficult bill and a difficult concept to deal with. I will, again, however, echo the comments of my colleague, Senator Montgomery, in that we are stepping down the road to increase the availability of funds to those who are in economic distress.

I appreciate the chairman's explanation of the broadening of that definition which this bill encompasses. My hope is that we will continue to look at this problem of whether or not the broadening of this definition is achieving the laudable goal that the chairman of the committee has articulated and my colleague, Senator Montgomery, has articulated to bring financial capital to those who can use it as a form of entrepreneurship, increase job oppor tunities in our distressed areas, broaden the base of wealth, generate new wealth in the

communities that desperately need it in this state.

My hope is, and I don't know whether the bill provides it, I haven't read all the details, my hope is that this will require not only a reporting requirement for the success of these small business banks and the specialized small business banks, but also that those reports come back to the Legislature so that we can evaluate whether these steps which appear to be going in the right direction are absolutely in reality moving us in that direction.

The last thing I would just mention, I asked a question about the incorporation concept. I've done some quick research on incorporation. I hope we don't run into a problem by incorporating both federal statutes and federal regulation into this act. It's something I have some concern about in doing some quick research.

I understand the intention is to rely on the federal principles with respect to

earned income credits. I hope we don't run into a problem with that. I can't quite tell based on my research, but I certainly see our intentions not to create any constitutional problem under this bill, but instead to simply use a system of federal accounting as a means to treat part of the targeted population and facilitate the delivery of improved capital and availability of capital to people in distress.

So I hope we don't create a problem with that. Maybe that's something we can talk about again, but I will vote in favor of this bill, Mr. President. I think it's a good step, and I hope we keep our eyes on it to make sure that it goes in the direction we want it.

ACTING PRESIDENT KUHL: Record Senator Dollinger in the affirmative.

Senator Onorato to explain his vote.

SENATOR ONORATO: Thank you, Mr. President.

Senator Farley, I want to con

gratulate you on a job very, very well done under very trying and difficult situations, and I personally want to thank you for including me in on many of your discussions.

While we passed an earlier straight out extender bill earlier this session, last session, this particular bill that we're voting on today is much more inclusive, including the auto leasing bill which was not part of the original bill, and there's a lot more in the banking bill that all of us should be appreciative, and I certainly want to assure my colleagues that it has not limited the scope of the banking institution to lend money to the small businesses in our community, but it has expanded it.

It has, as every one loves to use the phrase, leveled the ball playing field. I think our particular version levels it a lot more than the Assembly version, and I am urging my colleagues before this day is over beyond - on both sides not only of our house but in the other house, to move forward with a deregulation

bill that we can all live with.

I intend to vote in the affirm ative.

ACTING PRESIDENT KUHL: Record Senator Onorato in the affirmative. Announce the results.

SENATOR GOLD: Hold on a second.

ACTING PRESIDENT KUHL: Clerk will announce the results.

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Present, what's your desire?

SENATOR PRESENT: Thank you, Mr. President. Let's take up the non-controversial calendar, please.

ACTING PRESIDENT KUHL: The clerk will call the non-controversial Third Reading Calendar.

THE SECRETARY: On page 4, Calendar Number 13, by Senator Levy, Senate Bill Number -

SENATOR GOLD: Lay aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 25, by Senator Bruno, Senate Bill Number 1744-B, an act to amend the Executive Law.

ACTING PRESIDENT KUHL: Last section.

THE SECRETARY: Section 3. This act -

SENATOR GOLD: Lay aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 29, by Senator Bruno, Senate Bill Number 4615-B, an act to amend the Executive Law.

ACTING PRESIDENT KUHL: Last section.

THE SECRETARY: Section 3. This act shall take effect September 1st.

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 30, by Senator Bruno, Senate Bill Number 4616 B, an act to amend the Economic Development Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 31, by Senator Bruno, Senate Bill Number 4617 B, an act to amend the State Administrative Procedure Act.

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 47, by Senator Johnson.

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 49, by Senator Marino, Senate Bill Number 3237-A.

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 54, by Senator Volker, Senate Bill Number 4944-A, an act to amend the Civil Rights Law and the Criminal Procedure Law.

SENATOR GOLD: Yeah. Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 55, by Senator Skelos, Senate Bill Number 1156, an act to amend the Executive Law and the Penal Law.

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 63, by Senator Kuhl, Senate Bill Number 537, an act to amend the Agriculture and Markets Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 64, by Senator Kuhl, Senate Bill Number 4654, Agriculture and Markets Law, in relation to agricultural assessments.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 66, by Senate Kuhl, Senate Bill Number 3336-A, Agriculture and Markets Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar number 67, by Senator Kuhl, Senate Bill Number 3413-A, an act to amend the Agriculture and Markets Law.

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 68, by Senator Kuhl, Senate Bill Number 4426-B, Agriculture and Markets Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 69, by Senator Tully, Senate Bill Number 26-A, an act to amend the Public Health Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 70, by Senator Daly, Senate Bill Number 3137, an act to amend the Public Health Law, in relation to imitation controlled substances.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 72, by Senator Tully, Senate -

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 74, by Senator Johnson, Senate Bill Number 1357, an act to amend the Real Property Tax Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 75, by Senator Skelos, Senate Bill Number 1422 B, an act to amend the Economic Development Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 77, by Senator Johnson, Senate Bill Number 1703 A, an act to amend the Real Property Tax Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 78, by Senator Cook, Senate Bill Number 1654-A, Education Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 79, by Senator Farley, Senate Bill Number 2014-A, Education Law, in relation to efficiency study grants.

ACTING PRESIDENT KUHL: Last

section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 81, by Senator Daly, Senate Bill Number 4794-A, an act to amend the Education Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51, nays one, Senator Maltese recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 82, by Senator Kuhl, Senate Bill Number 6215-A, Education Law, in relation to school building aid.

ACTING PRESIDENT KUHL: There's a local fiscal impact note at the desk. Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 83, by Senator Bruno, Senate Bill Number 2186, an act to amend the Real Property Tax Law.

SENATOR DOLLINGER: Can we have an explanation?

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number

86, by Senator Levy, Senate Bill Number 74, an act to amend the Highway Law and the Executive Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 87, by Senator Levy, Senate Bill Number 78, an act to amend the General Business Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51, nays one, Senator DeFrancisco recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 88, by Senator Levy, Senate Bill Number 191, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT KUHL: Last -

SENATOR GOLD: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 89, by Senator Levy, Senate Bill Number 192, an act to amend the Highway Law.

ACTING PRESIDENT KUHL: There's a local fiscal impact note at the desk. Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 90, by Senator Stafford, Senate Bill Number 2778, an act to amend the Vehicle and Traffic Law, in relation to the operation of school buses.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51, nays - ayes 50, nays two, Senators Daly and DeFrancisco recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 93, by Senator Bruno, Senate Bill Number 3945, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 94, by Senator Levy, Senate Bill Number 4850, an act to amend the Highway Law, in relation to expenditures for repair.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 95, by Senator Johnson, Senate Bill Number 661, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 96, by Senator Johnson, Senate Bill Number 1303, Environmental Conservation Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 97, by Senator Daly, Senate Bill Number 6067-A, Environmental Conservation Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 98, by Senator Johnson, Senate Bill Number 6371, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT KUHL: Last

section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51, nays 1, Senator LaValle recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 99, by Senator Johnson, Senate Bill Number 2475, an act to amend the Banking Law and the Tax Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 100, substituted earlier today, by member of the Assembly Farrell, Assembly Bill Number 7782-A, an act to amend the Banking Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 102, by Senator Farley, Senate Bill Number 1616, an act to amend the Public Officers Law, in relation to the power of the state legislators.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 103, by Senator Stafford, Senate Bill Number 6384, an act to amend the Tax Law.

SENATOR DOLLINGER: Lay aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 104, Senator Libous moves to discharge the Committee on Investigations, Taxation and Government Operations from Assembly Bill Number 9231-B and substitute it for the identical Calendar Number 104.

ACTING PRESIDENT KUHL: Substitution is ordered. Last section.

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Excuse me. Ayes 51, nays one, Senator Dollinger recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 105, by Senator Saland, Senate Bill Number 2377, an act to amend the Family Court Act.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 106, by Senator Saland, Senate Bill Number 2378, an act to amend the Social Services Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 107, by Senator Saland, Senate Bill Number 3379, an act to amend the Family Court Act.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 108, by Senator Libous, Senate Bill Number 4473 A, an act to amend the Social Services Law.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 109, by Senator Saland, Senate Bill Number 4868, an act to amend the Family Court Act.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Present, that completes the non-controversial calendar.

SENATOR STAFFORD: Mr. President.

ACTING PRESIDENT KUHL: Senator Stafford.

SENATOR STAFFORD: I ask for unanimous consent to be recorded as abstaining on Calendar Number 110, Senate Print 2106.

ACTING PRESIDENT KUHL: Without objection, so ordered.

Senator Present.

SENATOR PRESENT: Mr. President, let's take up the controversial calendar, please.

ACTING PRESIDENT KUHL: Clerk will call the controversial Third Reading

Calendar.

THE SECRETARY: On page 4, Calendar Number 13, by Senator Levy.

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

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 25, by Senator Bruno, Senate Bill Number 1744 B, an act to amend the Executive Law.

SENATOR GOLD: Senator Bruno yield to a question?

ACTING PRESIDENT KUHL: Senator Bruno, will you yield to a question from Senator Gold?

SENATOR BRUNO: Yes.

ACTING PRESIDENT KUHL: Senator does.

SENATOR GOLD: Senator, this is a bill that we've had before and it's passed overwhelmingly but my notes indicate a memo in 1992 from DEA -- DEC. Are there any recent memos that you know of?

SENATOR BRUNO: Not that I have in my possession, Senator.

SENATOR GOLD: Last section.

ACTING PRESIDENT KUHL: Last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51, nays 1, Senator Ohrenstein recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 31, by Senator Bruno, Senate Bill Number 4617 B, an act to amend the State Administrative Procedure Act.

SENATOR GOLD: Hold on.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Could we have a short explanation, please?

ACTING PRESIDENT KUHL: Senator Bruno, explanation has been requested.

SENATOR BRUNO: Yes, Mr. President. This bill we have passed before in this chamber. It relates to negotiated rulemaking by state agencies. And, very simply, if a state agency is going to establish regulations, new regulations on business, or substantially change existing regulations, they must issue a notice and the office of ORMA, Regulatory and Management Assistance, would set up an arbitrator who would arbitrate the rulemaking before a committee of the industry or business to be regulated and the state agency. And this is of no real cost to the state, but what it really does is allow businesses to have some input before they are overly regulated by a state agency.

And what happens now, after the fact, they read about it. They get issued these regulations; and then, if they want relief, they end up in court. They end up with attorneys. They end up negotiating from weakness. So we're

trying to get in front of the process.

And I can tell you that the Governor, in his wisdom, has seen fit to institute something like this in the agencies now, but the difference in what he's done and in what we're proposing is that he says, when you are going to negotiate, the agency has total control. The agency sets the arbitrator. The agency establishes the rules. The agency has the reps. They say who will serve on the committee. And after the whole process is over, they don't have to accept one single thing that was proposed to them.

This legislation becomes law - and I encourage you to do it -- once agreement is reached by this arbitrator and the agency, then what they agree on must be included in the regs as they go forward, and the arbitrator also can encourage the agency not to go forward if, after discussions, it appears it's not in the best interests of the business community or those to be regulated.

ACTING PRESIDENT KUHL: Senator

Gold.

SENATOR GOLD: Will Senator yield to a question?

SENATOR BRUNO: Yes.

ACTING PRESIDENT KUHL: Senator Bruno, will you yield to a question?

SENATOR BRUNO: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR GOLD: Senator Bruno, an agency decides that it wants to have a rules change under your bill I assume they start out with some kind of a notice of publication.

SENATOR BRUNO: Yes.

SENATOR GOLD: All right. And who does the notice go to?

SENATOR BRUNO: The Office of Regulatory and Management Assistance, who then notifies, puts out a notice to the industry to be regulated that this process is going to take place and invites them to reach them to indicate an interest in serving on a committee, and the

management assistance group sets the arbitrator in place from an established list of people who are professionals in this work, so they are objective about what's going on.

SENATOR GOLD: Senator yield to a question?

SENATOR BRUNO: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR GOLD: Senator, when you take some of the large industries that have industry groups and well-known representatives, I can understand what you said so far, but supposing you have a -- I don't know whether you want to call it an industry, but you have people who are doing business in a certain area, and there is no filed lobbyist or huge organization, what is the -- how do the people in that business -- how are they made aware of the proposed regulations?

SENATOR BRUNO: How are they made aware?

SENATOR GOLD: Yes. In other words, who gets notified in such a situation? In other words, let's say there's a Petroleum Council. Well, I guess you notify the Petroleum Council. I'm not worried about the insurance industry, but there are, I don't know, maybe cleaning stores, I don't know, that may not have a huge group that represents them, as such. What does the management office do? Who do they contact? How do they get the notice out?

SENATOR BRUNO: Well, if these are major rules, major regulations that are going to affect an industry -- take the chemical industry -- I'm not sure that they have lobbyists here that represent them as an industry, but they are on file at the Secretary of State's Office as to what their business is and what their interests are. So the Office of Management Assistance would reach out into the industry through the records that are available for any company that's incorporated here in the state and creates a notice -

SENATOR GOLD: All right. So -

SENATOR BRUNO: -- and just invites participants.

SENATOR GOLD: So I understand it properly, it's the office's obligation to determine what is fair in terms of who they contact in order to stir up interest if it's out there.

SENATOR BRUNO: Or the state agency. If it's EnCon and they know who the rules are going to affect, then they would be helpful with Management Assistance in getting the word out to those people.

SENATOR GOLD: Well, Senator, you brought up EnCon. Supposing that there are new environmental regulations and it involves people who own certain types of land. These may be Average citizens that own land and they are going to now be affected. How does the notice get out to these people?

SENATOR BRUNO: Well, the Governor presently has a procedure in place that I described that isn't very effective and doesn't work. How does the Governor notify?

Through the State Registry, and they put out the notice in that way. The only difference is - and, Senator, what I'm saying is that there is an attempt to do this now, but it's meaningless. So they basically say we publish that we're going to establish these rules. We invite you to negotiate with us. Okay. But we, in essence, end up negotiating with ourselves because we're in total control of the process; and after we get through, we don't have to pay any attention to what you've had to say.

So that's very discouraging to businesses, but the notices go out presently, and there has been some exchange, but the results are poor.

SENATOR GOLD: Mr. President.

SENATOR BRUNO: And I believe, by the way -

SENATOR GOLD: Sorry.

SENATOR BRUNO: I'm sorry, but, Mr. President, the Governor in his "State of the State" message indicated that he wants to strengthen this process. He talks about an

ambassadorship program where there will be ambassadors with each state agency -- and we have legislation that relates to that -- to be the representative of the groups that are regulated within that agency. So this is the direction that even the Governor's office seems to think makes sense, so there isn't anything extraordinary about this. We're only trying to expedite the process because the business community desperately needs relief in this state.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Yes. Senator yield to a question?

SENATOR BRUNO: Yes.

SENATOR GOLD: But on the point we're talking about, "how notice gets out," I don't want to be facetious in any way, but I think what you're telling me is that the Governor has a process for notice which is insufficient, but that's the process, so you're adopting that process.

SENATOR BRUNO: No, the notice is -

SENATOR GOLD: I'm not talking about the hearing part of the process but the notice part.

SENATOR BRUNO: No, the notice gets out, and that's sufficient. It's the process that is insufficient that we are trying to correct. So the notice that the Governor's office presently puts out through his state agencies is fine.

SENATOR GOLD: Mr. President. On the bill.

ACTING PRESIDENT KUHL: Senator Gold on the bill.

SENATOR GOLD: We've had this bill before; and besides myself, Senator Ohrenstein and Senator Leichter, it seems to have been a good one to vote for by most of you. It's supported I think by the National Federation of Independent Businesses.

My problem with it, Senator, is really very simple. We are given the

responsibility of governing. The agencies are given delegated responsibility from the agency, and the process that Senator Bruno described indicates, as he says, that the agency reaches out but that they have the power.

The way I read your bill, first of all, the notice is really going to go to the fat cats, the big people. Those are the industry people who are known and who register. Certainly, when you deal with legislation that may affect smaller people or more diverse interests, I'm sure the notice provisions are such that they are not going to be affected under your bill or the Governor's, but what you are basically saying, the philosophy of your bill, Senator Bruno, which I understand, is that if people are going to be affected by legislation then they should be part of the process, the rulemaking process.

The problem with that, Senator Bruno, is that everybody I represent is affected by income taxes; but before we negotiate it, we don't bring them in and have 18 million, 17

million people voting on income taxes. We have the responsibility. They elect us, and then we get together and we deal with it, and that goes with every single issue.

And what we do, Senator, is we set up regulatory agencies that are supposed to regulate an industry, being fair to those people in the industry and also protecting the public interest which is their ultimate responsibility; and if they are not doing it well, then we should step in. If a Governor is not doing it well with his agencies, we step in.

But the concept, the basic philosophical concept that before an agency can involve itself in rulemaking, which is an extension of legislative authority -- and, by the way, must be very carefully done -- that the industry involved will then be a partner and it just legislatively and governmently in my opinion makes no sense. I realize that based upon last year's vote I am in a vast minority, but I think that's an important point to make because I think philosophically there is a major

problem with the bill.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Mr. President. On the bill.

And thank you, Senator Gold, and I know you are very sincere in your observations and your comments.

Let me just point out a major distinction in your understanding, and it is probably my inability to communicate accurately and well what this bill does.

When you talked about legislators legislate and you can't open up the process to 17 million people, you're right. That's what we are elected for. But regulators regulate, and they aren't elected by anybody. They are appointed and many times 18 tiers down, and they take it upon themselves to regulate businesses by their own thought process not by legislation, and the public has no way of getting back at those regulators other than to submit or seek legal relief which is expensive.

Now, the bottom line is this, Mr. President. Four out of ten jobs lost in this country in the last four years are from New York State. When surveys have been done of businesses in this state -- and this is important that we hear this finally - seventy-two percent of all of the small businesses in this state said that they think that government is hostile to their business. Forty-nine percent of them said they would leave if they could. Now, that's not what we in government ought to be all about. We shouldn't have businesses out there feeling that we in government are hostile to those businesses.

I, Mr. President, don't think it's an accident that, since 1980, we have led the country in job loss. Had we only kept pace in New York State with the rest of the country, 1.2 million more people would be employed in New York State today. Think about that. If we had kept pace with the rest of the country since 1980, 1.2 million more people would be employed in this state. In the last three years since

1990, the country has recovered their job loss. We in this state employ 8-1/2 percent less people than we did four years ago. We are not recovering with the rest of the country.

It is this kind of overregulation, oversimplification that has been stifling business, smothering business, closing businesses, driving them out of this state; and all we keep hearing from the second floor it's everybody in the world's fault except ours.

Now, I assume part of the responsibility because I have been serving here while a lot of this has been happening, but I'm not the chief executive of this state, and somebody has to be held accountable, and I think it's about time that we stopped just using words and that we start doing something to lead this state out of the recession and join the rest of the country in job recovery because people that are unemployed out there, people that are on welfare, have a right to work and we in government should support those people and not encumber them by overregulating the businesses

that keep them from employing people in this state.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Yes. I will be kind and I'll save my campaign speech for the re-election of Senator Cuomo until another time because, Senator Bruno, I know why our state has problems and everybody knows why it has problems, and that's why you no longer have a Republican in the White House in Washington, but let's not get involved in that.

The fact of the matter is, Senator Bruno, if I were a member of the Majority in this house and I had real political ambition, real political ambition -- you can have your leaderships and you can have your Finance Committee -- there is a place I would want to be, and Senator Present knows I have said this for years. I would want to be the chair of the Administrative Regulations Review Commission because that was created not only by

joint resolution but then by statute to do something -- to do something. And what was it supposed to do? It was supposed to create a mechanism whereby the Legislature -- a process whereby the Legislature would finally have some real oversight power. Let's see what the agencies are doing. Let's analyze this agency and that one. And if they are overregulating in this area, we're going to cut back because we all understand what the law is.

The law is simple. An agency may not legislate. They may only take a grant of authority from the Legislature and do some rulemaking within the law making that we have done; right? And, therefore, when I hear all of the arguments on the other side of the aisle about how the agencies are going way past that, here was the chance.

Not only did we set up an Administrative Regulations Review Commission but because nobody likes to talk to each other we wind up with two of them. Statute didn't say it. But the Republicans do their thing in this

house. The Democrats in the Assembly do their thing. We wind up with two of them.

Well, it's been a long time now. I think I may be still the only original member that's on that commission, but it's been a long time now. And what have we done? Well, we do things. And under the chairmanship of Senator Present -- I think Senator Sears may have had it for a while and Senator Cook. We have done some things. But I'm not talking treason here. We have the ability, the responsibility to do massive overseeing into that area.

Now, that's different than your bill which says, "I don't want to oversee it. I just want the business community to think or know that I like them, so I'm going to make them a partner." And now before you can have an agency exercise regulatory authority, granted it by you -- by you! -- you are going to tell them that they must sit down with the people being regulated and get their consent. Well, that is crazy.

SENATOR BRUNO: Will you yield?

SENATOR GOLD: In a minute. In a minute, and I will yield, certainly.

You know, we are all very sophisticated in this room, and we all understand that if you run for office you got to say you're against taxes and you got to say you're against this and say you're against that, and how you vote on the floor of the Senate doesn't seem to matter much. But be fair.

At least let's look each other in the eye and be honest and fair about it. There isn't one law in the State of New York enacted in the last twenty years or more that gives rulemaking authority to an agency that didn't receive the approval of you, the Republicans in this house. You've had the majority. You can structure that language as narrowly as you want so that every agency must stay within these very narrow guidelines and protect the consumers and protect the business community. I can only assume since I am looking at some very distinguished people on the other side who are very bright that you have structured that in a

way that you thought was accurate and would do the job. If you didn't think its job is being done, that's what you've got the Administrative Regulations Review Commission for.

Now, that's a far cry, Senator Bruno, than giving away the store. And in all respect to you, who I do respect, and I understand your philosophy, I think that it's a huge jump and it's a jump too far.

SENATOR BRUNO: Mr. President. Will Senator Gold stand for a question?

SENATOR GOLD: Yes, sir.

ACTING PRESIDENT KUHL: He will.

SENATOR BRUNO: Senator, Senator Johnson was refreshing my memory, and I am asking you. I ask if you would recall that in the "State of the State" by this Governor in '93 that he proposed just the kind of thing that's on the floor here today? Do you remember that, Senator?

SENATOR GOLD: No. No, Senator, I don't have the speech.

SENATOR BRUNO: Okay.

SENATOR GOLD: And I can say to you -- I can say to you, Senator, that speeches are language and principles. Bills are bills. If you're telling me there is a Governor's bill that does this, I will be glad to take a look at that as the Governor's bill.

Except, I'll tell you something. If the Governor proposes what you have in your bill, I would be -- certainly in a small minority, I'm sure, but one of those who would say philosophically it's wrong.

SENATOR BRUNO: And, Senator, you are very few times wrong?

SENATOR GOLD: Me?

SENATOR BRUNO: You, yes. Philosophically or otherwise -

SENATOR GOLD: I don't know. When was I wrong?

SENATOR BRUNO: -- and I respect that. I want to ask if you think that this bill requires the consent of those to be regulated before a regulation can be enacted?

SENATOR GOLD: The way that I

understand your explanation of your legislation, your legislation would place upon those being regulated what I believe to be an inordinate amount of power into the process. I believe that the current situation which gives them notice and invites their participation and takes from them the information that they have to give is a lot different than giving them a vote into a process. And I think that giving them a vote into a governmental process goes too far.

SENATOR BRUNO: Thank you, Senator Gold.

And I just want to correct because, again, I have trouble, sometimes, being clear because this is a complicated process.

This -- if this became law, it does not mandate that the input from those to be regulated must become part of the law or the regulation. It doesn't do that at all. It simply says that those to be regulated will have some input in the process. That's what it says. It doesn't say that their input must be accepted. So it simply opens up the process and

makes those to be regulated feel as if they are not just being dictated to, but they have something to say about the process.

Thank you.

ACTING PRESIDENT KUHL: Senator Stavisky.

SENATOR STAVISKY: Would the sponsor yield?

ACTING PRESIDENT KUHL: Senator Bruno, do you yield?

SENATOR BRUNO: Yes.

ACTING PRESIDENT KUHL: Senator does.

SENATOR STAVISKY: Senator, I wanted to ask you this question. When this bill was presented to us previously, did it have a provision defining consensus of the committee as two-thirds of the members of the committee?

SENATOR BRUNO: My recollection is that it did, Senator. Two-thirds of the committee that meets must consent in the regulation going forward as a recommendation. That represents a consensus. When two-thirds of

the committee agrees, that represents a consensus and that is recommended to the agency. The agency can accept or deny.

SENATOR STAVISKY: Senator Bruno, given that definition of a consensus, do you feel that we should have a two-thirds approval of any bill that is approved by the Senate of the State of New York?

SENATOR BRUNO: Well, as you know, Senator, there are some bills on this floor that do require a two-thirds vote.

SENATOR STAVISKY: I know, but I'm talking about a general rule.

SENATOR BRUNO: No, I don't, Senator.

SENATOR STAVISKY: It seems to me that you are imposing a higher standard for consensus, Senator Bruno, and I regret that I didn't recall this provision in the earlier vote. If you say that it was in there, in the earlier vote, I will accept that.

But we should not impose upon those involved in rulemaking a higher standard

of agreement than we ourselves are prepared to accept.

I heard the conversation on an earlier bill where there was the question, "If you do not like the decision, you can go to arbitration." I have often felt that maybe we should go to arbitration between the Senate and the Assembly, when we can't even get a consensus at times when only a single, simple majority is needed. If we in the Legislature, professional legislators, can not get a consensus, then maybe we need arbitration procedures, and maybe we ought to impose the same kind of standard to our own deliberations when we fail to reach agreement with the other house. Maybe there is something lacking in both houses, and a compulsory arbitration procedure should resolve the differences between the Senate and the Assembly. And throw the Governor in there, also. We shouldn't leave him outside.

I think you are establishing here in this proposed rulemaking procedure too high a standard of consensus. Consensus has always

been, with few exceptions in this chamber -- you are absolutely right. There are certain bills that require a two-thirds approval or 60 percent approval. We are establishing here a flawed definition of consensus.

Consensus means in general agreement not an extraordinary agreement, the kind that you would need for a constitutional amendment. We are not asking the regulators to amend the Constitution of the State of New York. We are asking them according to your procedure to come up with a consensus.

And I believe that if I had noted this previously, I guess I would have joined Gold, Leichter, and Ohrenstein in their negative vote. And with the consensus defined at two-thirds, I think I'm going to join them this time to.

ACTING PRESIDENT KUHL: Senator Wright.

SENATOR WRIGHT: Mr. President. On the bill.

I think it's important to point

out that when we are discussing negotiated rulemaking the whole emphasis is to ensure that the voice of the regulated community is heard in the process. And while we certainly hear that voice when we enact legislation, and that's our responsibility as elected officials, I don't share your confidence in the agencies doing likewise.

And as chair of the ARC, I have had numerous examples related to me where, in fact, the agencies don't listen to the regulated community, and they impose additional burdens on that community. They impose additional costs on the regulated community, and that in turn has cost jobs and raised the cost of doing business in this state.

And if you have any occasion to talk to the business community in this state, and it's not limited to the business community, if you have occasion to talk to local governments, they will tell you the same thing about the regulatory impact and what it's doing in this state. So it's very important that, in

fact, we have an additional oversight, a control, if you will, in this process when we are dealing with the agencies, because, unfortunately, the ARC does not have veto power.

The ARC does not have the ability to veto a regulation that we believe exceeds the statute, that we believe goes beyond and the agency takes substantially beyond the authority of this Legislature. We, in turn, have enacted legislation and proposed legislation over the past year that addresses a number of those concerns, ten of those bills joined with by members in the Assembly and sent to the Governor.

So, clearly, regulatory control is an issue recognized by both houses, recognized by the executive branch and an issue that we need to move ahead on.

I don't put the faith in the agencies. I think there needs to be the voice of the regulated community, and heard, particularly when you talk about the standard of

consensus. I would agree if those individuals in the agencies were elected, they could work to a lower standard, but they in fact are not. They do not have the input. They are appointed officials and, accordingly, should achieve a higher concensus in terms of working on the issue of regulations, and that is what it's all about, ensuring participation, ensuring that the regulated community has their voice heard; that when regulations are looked at, they can be implemented effectively. They can be implemented and enforced effectively.

That's the whole point of negotiated rulemaking, to create a more level playing field so we're not simply relying on the expertise of agencies but we're relying on the people who continue to do business in this state and their expertise. And on the basis of that, I would encourage my colleagues to support the bill.

ACTING PRESIDENT KUHL: Senator Stavisky.

SENATOR STAVISKY: Senator Wright

yield for a question?

ACTING PRESIDENT KUHL: Senator Wright, will you yield?

SENATOR WRIGHT: Certainly.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR STAVISKY: Would you apply the same standard, the two-thirds consensus, to other groups within the population? For example, consumers who are affected by regulations where rate increases are given, should consumers be tallied and, therefore, unless there is a two-thirds vote by a committee in which consumers are represented equally, there would be no rate increase in the utilities?

SENATOR WRIGHT: There is a mechanism for review of the utility rate increases. In terms of regulations that affect the consumers, this statute would apply equally to them. They would be identified as having participation in a particular rule that would adversely affect the consumer, and they would be

part of that negotiating process achieving the same degree of consensus.

So we're talking apples and oranges in terms of the examples that you are utilizing.

SENATOR STAVISKY: I didn't hear a clear yes or no to your answer. What about employees? After all, sometimes we impose settlements upon employees in the private as well as the public sector. Should we have a consensus of two-thirds, including the employee representatives, when we deny to the public employees, for example, a benefit that they wish and we decide that that benefit is not now - not supportable in terms of a public policy in the state at a given moment? Would you extend that to the working people as well as to the business people at two-thirds consensus definition?

SENATOR WRIGHT: Oh, I think there, in fact, are numerous examples that we can identify where there should be a super majority -- in fact, there are in statute where

additional majorities are required dependent upon a particular circumstance.

You know, there are many who advocate when taxes are being raised, when constitutional debt limits are being modified, there should, in fact, be super majorities, and I think those are issues that we have bills introduced we would like to see you also address.

SENATOR STAVISKY: Again, I didn't hear a -

ACTING PRESIDENT KUHL: Senator Stavisky, do you -- excuse me, Senator Stavisky.

SENATOR STAVISKY: Yes, sir.

ACTING PRESIDENT KUHL: Do you wish Senator Wright to yield to you, sir?

SENATOR STAVISKY: I want him to continue to yield until the questioning is over.

I did not hear a clear yes or no to that question, and I think that if you are going to give a special benefit to business, then be fair across the board. Give that

special benefit of consensus, consultation to consumers whom we do represent, remember, and to people who work for us in government or work for others in the private sector.

I don't see the clear willingness when there is regulation that imposes a burden upon other groups besides business. I don't see a willingness to accept that single standard. I'm not pressing for this. It may be a very good idea.

But if you believe that the super majority is needed, then let it be a super majority across the board no matter whose ox is being gored. There may be environmental people who would like to be consulted with a super majority before economic interests betray the environmental concerns and needs of the State of New York.

Be cautious when you impose a new standard in participatory democracy. Make certain that standard cuts evenly across the board and that it not benefits one sement of the population to the detriment of others.

ACTING PRESIDENT KUHL: Is there any other Senator who wishes to be heard on this bill?

(There was no response.)

Clerk will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 31 are Senators Galiber, Gold, Ohrenstein and Stavisky. Ayes 48. Nays 4.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 47, by Senator Johnson, Senate Bill Number 2372, an act to amend the Penal Law.

ACTING PRESIDENT KUHL: Senator

Johnson, an explanation has been asked for by Senator Gold.

SENATOR JOHNSON: Mr. President. This bill makes it illegal to possess an obscene sexual performance by a child or a sexual performance by a child makes this a class E misdemeanor. This bill has been debated three years prior, very interesting debates.

The fact is that the Supreme Court has held it legal to pass this type of law. Several years ago, 27 states had passed this law. I think there are several other states who since have joined, passed a similar law making it illegal to possess this material which is of interest to pedophiles primarily, used to show to children to entice them into doing similar sexual acts.

And I feel the majority in this house have felt in the past that this should be illegal to possess this. The only way to stop the production of this material is to stop the end market for it, and this is a good way, I feel, to do that.

Senator Gold?

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Yeah, Senator Johnson, I'd just like to ask you one question because I think you made a misstatement, and I just want to -

SENATOR JOHNSON: Really?

SENATOR GOLD: You said it makes it an E misdemeanor. It's an E felony.

SENATOR JOHNSON: An E felony, yes, of course. I have been reading it so many times, it's all going around in my head.

SENATOR GOLD: No problem. No problem.

SENATOR JOHNSON: It's a felony, yes, that's correct.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold on the bill.

SENATOR GOLD: As Senator Johnson has pointed out, this has been debated a number

of times. And I would like to point out with regard to that debate that we now have laws in this state which make it illegal to be involved in kiddie porn.

This bill does nothing along those lines. This talks about possession of a document. It isn't concerned about when it was ever created, whether the people involved in it could have been dead for 200 years, or whatever, and we've had this whole debate.

Senator Connor and myself and Senator Leichter and Montgomery and Ohrenstein, Paterson, Santiago, Smith, Stavisky and Waldon have voted against it in the past.

Last section.

ACTING PRESIDENT KUHL: Read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 47 are Senators Galiber, Gold, Ohrenstein, Santiago, Smith Stavisky and Waldon. Ayes 45. Nays 7.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Smith, are you asking to be recognized to explain your vote?

SENATOR SMITH: No, Mr. President. I think the vote has been counted. I would ask unanimous consent to be recorded in the negative on Calendar Number 31.

ACTING PRESIDENT KUHL: Without objection, so ordered.

SENATOR SMITH: Thank you, sir.

THE SECRETARY: Calendar Number 49, by Senator Marino, Senate Bill Number 3237A, an act to amend the Criminal Procedure Law.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Yes. This bill we had last year, also, and I just wanted to remind

Senators Leichter and Markowitz and Ohrenstein and Santiago that they voted in the negative, and that it was opposed last year by the Civil Liberties Union on the HIV testing issue and by the Gay Men's Health Crisis.

ACTING PRESIDENT KUHL: Senator Dollinger has asked for an explanation of the bill.

Senator Volker.

SENATOR VOLKER: Mr. President. This is a bill that, as I think Senator Gold explained briefly, is called the Rape Victims Services Act of 1994, which basically sets up a series of provisions relating to everything from addressed -- the address of a victim to statewide telephone services for rape victims, for evidence kits involving sexual offense evidence kits, provides a provision in here for improved prosecution programs at local defense attorney -- or local prosecutors.

It sets up a whole series of programs. In fact, let me just say to you that this is something that, personally, I feel very

strongly about; that I think it's really a crying shame that we have not been able to come to an agreement over the last couple years on a bill that passed here the other day sponsored by Senator DiCarlo and this bill in relation to the crime of rape.

I am extremely hopeful that before this session is out that we will develop an agreement with the Assembly on the issue of rape services and on the issue of increasing penalties in rape crimes.

If there is anything further that I can explain, I will be happy to do it. There's a whole series of provisions. This bill, by the way, passed the Assembly. Essentially, this is the same bill that passed the Senate, rather, last year; and I believe essentially the same bill passed the year before. There have been some fairly minor changes, but it's essentially the same bill.

Senator Dollinger.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Will the sponsor yield to a question?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: Senator Volker yields.

SENATOR DOLLINGER: Senator, I know we have been through this bill in committee. I just wanted to follow up an issue that came up in committee. Your counsel provided me with some additional information with respect to the HIV testing requirement.

SENATOR VOLKER: Right.

SENATOR DOLLINGER: As I understand it, again, through you, Mr. President, the bill permits an HIV test to be conducted at the request of the victim -

SENATOR VOLKER: Right.

SENATOR DOLLINGER: -- upon arrest and arraignment. Is that correct?

SENATOR VOLKER: Upon arrest and arraignment at the request of the victim, and it

provides for a test of the defendant. That's correct.

SENATOR DOLLINGER: Again, through you, Mr. President. Is that test mandatory? The Court can order that test of the defendant?

SENATOR VOLKER: I think what happens, if I'm not mistaken, is that upon the request that he have a hearing. The only difference, I think, is that since the statute here provides for a test, then I would think clearly the hearing would -- the defense attorney would then be in a position where he would have to show why the test should not be provided to the -- to the victim.

But it's true that that is the process for which -- if this bill were passed. And, by the way, I assume -- I think you are aware that because the State of New York does not provide for testing of such victims, we stand to lose a considerable amount of money under the drug laws or under the present - federal drug money, I'm sorry -- because of the

fact that we don't comply with federal standard that say that we should allow victims to be able to have testing in cases such as this.

SENATOR DOLLINGER: Again, through you, Mr. President, if Senator Volker will yield?

ACTING PRESIDENT KUHL: Senator Volker, will you continue to yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: He does.

SENATOR DOLLINGER: Again, just so I make sure I understand this. Is the event that triggers the ability of the Court to mandate the test the arraignment or a finding of probable cause of a felony indictment? What is the precursor determination by the Court in order to order the defendant, putative defendant, to undergo the test?

SENATOR VOLKER: Probable cause. In other words, there has to be a showing of evidence of a crime before the person can ask for the testing of the defendant by the victim.

SENATOR DOLLINGER: Again,

through you, Mr. President. Is it anticipated that that showing of probable cause would be either an indictment for a felony or a hearing on the probable cause if there were a misdemeanor allegation, or does it not apply to misdemeanors?

SENATOR VOLKER: It would just be a felony, and it would be a conviction or a hearing or an indictment on a felony, but it would not be in the case of a misdemeanor. It would only be in the case of a felony.

SENATOR DOLLINGER: Again, through you, Mr. President. Senator Volker, just one other question. My understanding - and I reviewed the materials that your counsel provided and they were helpful. My understanding is that the federal law currently requires that the testing for HIV only be conducted upon conviction and not prior to conviction. Is that correct?

SENATOR VOLKER: We believe that's correct, Senator. That's right. Yes. We're not saying, by the way, Senator, that this

provision here is the absolute necessary provision in order to comply with the law. This probably goes a little beyond what is necessary, admittedly, but some sort of testing provision if it is not based by the Legislature and signed by the Governor will create a real problem under the federal rules.

SENATOR DOLLINGER: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger on the bill.

SENATOR DOLLINGER: First of all, on the bill, and then I have, I believe, a series of amendments at the desk.

On the bill itself, the issue of the HIV testing is a very important one. I appreciate the chairman's consideration on this. This is a difficult issue from many perspectives. But at least in my reading of the federal statute, it simply requires that upon conviction the test must be conducted in order for us to get the federal drug money, and I agree with that concept.

I think that the potential danger that's included in this statute is that you could have someone tested upon a finding of probable cause, have a finding one way or another on an HIV test, have a trial in which the defendant is found not guilty, and the victim will have been put through a process of anticipation whether it's through HIV positive or negative, whatever the result of testing is, and may end up with an inclusive result at the trial, that is, the person is found not guilty of the conduct and there is no correlation in the victim's mind between guilt and the testing result.

I think there is a danger inherent in that process. From my point of view, I think that's something we have to look at in this bill very carefully, I think for a number of reasons because of the overall impact of this bill, I'm going to vote in favor of it, but I think that's a very critical determination, and I hope that in the discussions with our colleagues across the hall

that that issue will be looked at in even greater debate if this comes back; that the danger of a test result that is not followed by a conviction could be excessive trauma, frankly, on everyone's part, and something we should be aware of.

Mr. President. I believe there are also a series of amendments at the desk on this bill.

ACTING PRESIDENT KUHL: The Clerk indicates that there are two amendments at the desk.

SENATOR DOLLINGER: I'll call up number 1.

ACTING PRESIDENT KUHL: Are you asking -

SENATOR DOLLINGER: Ask to waive its reading, and ask that -

ACTING PRESIDENT KUHL: All right. You are asking an opportunity to explain it?

SENATOR DOLLINGER: Yes, Mr. President. Thank you.

ACTING PRESIDENT KUHL: Senator Present, why do you rise?

SENATOR PRESENT: Mr. President. I would like to make a point of order that Senator Dollinger's amendment to Senator Marino's bill is out of order since it violates Rule 6, Section 4 B, in that, it is not germane to the original object of the purpose of Senator Marino's bill.

Moreover, it seeks to amend completely different sections of the law than that addressed by Senator Marino's bill. Senator Marino's bill addresses the plight of rape victims, and Senator Dollinger's amendment offers nothing on that subject.

Therefore, I ask that you rule Senator Dollinger's amendment out of order.

ACTING PRESIDENT KUHL: The chair would rule, Senator Dollinger, that your amendments are out of order as not being germane -- the first amendment. That's the only amendment on the floor at this point.

SENATOR DOLLINGER: Yes, I

understand that, Mr. President. Can I appeal the ruling of the chair on that issue and be heard?

ACTING PRESIDENT KUHL: That you can.

SENATOR DOLLINGER: With respect to the issue before us, the amendments relate.

SENATOR DALY: Object. Mr. President. Is an appeal of the decision by the chair debatable? Is a decision by the chair debatable?

ACTING PRESIDENT KUHL: Senator, the Senator's motion has been ruled out of order as not being germane. He has appealed the decision of the chair, and that is debatable.

And the chair has recognized Senator Dollinger to indicate why he feels the chair ruled incorrectly.

Senator Dollinger.

SENATOR DOLLINGER: Mr. President. The issue of the amendments, and I believe the amendments deal with the action that this body was asked to take several weeks ago to

deal with the issue of banning assault weapons in the State of New York, and I would simply point out that a part of this bill which is currently before us relates to the provision of mace in the State of New York and allows a weapon that we have previously banned to now become available. We're dealing with weapons. This bill involves making a weapon available.

What the amendment seeks to do is take another weapon which is now freely available in this state, a far more dangerous weapon than mace and restrict it's availability to the people of this state, and I would simply point out that nothing could be more germane than, since we're dealing with weapons, to take another section of law that involves weapons and make an amendment in that section to restrict access to a weapon which, at least in my judgment, is far more dangerous, far more threatening to the public, and one I think this Legislature and this body should be on record in favor of restricting access to.

So for that reason, Mr.

President, I believe it is germane. It does relate to the topic at issue. It is part of something that will promote greater safety in this state, and I certainly think we ought to get on with the business of creating not only a restriction on -- removing restrictions on mace which I support but imposing restrictions on assault weapons, as well.

ACTING PRESIDENT KUHL: The Chair reminds members that a vote in the affirmative is to sustain the ruling of the chair. A vote in the negative is a ruling to overturn the rule of the chair.

Based on that, all those in favor of the sustaining the ruling of the chair, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(Response of "Nay.")

(Continuing response of "Aye.")

The ayes have it. The ruling of the chair is sustained.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Is there such a thing as a rebuttal aye after the nays have already out voted the ayes?

ACTING PRESIDENT KUHL: Senator Dollinger, do you wish to present amendment number 2?

SENATOR DOLLINGER: In view of the last vote, Mr. President, I will waive the presentation of amendment number 2, but I will be back.

ACTING PRESIDENT KUHL: Any member wishing to speak on the bill.

(There was no response.)

Clerk will call the last section.

THE SECRETARY: Section 27. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50. Nays 2. Senators Ohrenstein and Santiago recorded in

the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Present.

SENATOR PRESENT: Mr. President. I move that the Senate recess until 9:00 p.m.

ACTING PRESIDENT KUHL: The Senate stands in recess until 9:00 p.m.

(Whereupon at, 6:20 p.m., the Senate recessed.)

...At 12:19 a.m...

SENATOR PRESENT: I'd like to announce a Rules Committee meeting at 12:30 in Room 332. I would like to announce a Rules Committee meeting at 12:30 in Room 332.

...At 12:35 a.m....

ACTING PRESIDENT SPANO: Senate will come to order. Senator Present.

SENATOR PRESENT: Mr. President, can we return to reports of standing committees.

ACTING PRESIDENT SPANO: Reports of standing committees. Secretary will read.

THE SECRETARY: Senator Marino, from the Committee on Rules, reports the following bill directly for third reading: Senate Bill Number 6584, by the Committee on Rules, an act to amend the Banking Law and the Personal Property Law, in relation to making technical corrections.

ACTING PRESIDENT SPANO: Read -

SENATOR GOLD: No objection.

ACTING PRESIDENT SPANO: Read the

last section.

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

SENATOR PRESENT: Is there a message at the desk?

ACTING PRESIDENT SPANO: Message is at the desk.

SENATOR PRESENT: I move we accept the message.

ACTING PRESIDENT SPANO: All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted. Read the last section.

SENATOR DOLLINGER: Could we just have an explanation of the amendment.

ACTING PRESIDENT SPANO: Sure, Senator Dollinger.

SENATOR DOLLINGER: Just short and quick, please.

ACTING PRESIDENT SPANO: Senator

Farley.

SENATOR FARLEY: Yes.

SENATOR DOLLINGER: Got to make the night worthwhile.

ACTING PRESIDENT SPANO: Excuse me, Senator Present.

SENATOR FARLEY: Let's have some order here.

ACTING PRESIDENT SPANO: Can we please have some order in the chamber.

SENATOR PRESENT: Would you recognize Senator Montgomery.

ACTING PRESIDENT SPANO: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would like to ask unanimous consent to be recorded in the negative on Calendar Number 47.

ACTING PRESIDENT SPANO: Without objection.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT SPANO: Senator Farley for a brief explanation.

SENATOR FARLEY: Thank you.

The banking deregulation bill which this house passed 52 to nothing a few hours ago, several hours ago, has been passed and signed into law in the Assembly.

This is a chapter amendment to take care of the disagreement that we have in regard to the SSBIC portion of the legislation. What is added here on the front page is "*** provided, however, in approving applications for assistance, priority shall be given to minorities residing in neighborhood-based alliance communities, designated economic development zones and/or highly distressed areas" and, of course, the earned income tax credit is in there also, which gives inclusive ness throughout the state of New York.

The rest of the bill is technical corrections that were made -- that were made to the leasing portion of this bill. There even may be more coming on that at another date, but in essence, that's all that there is here. This is totally agreed to. It will be passed

unanimously, I think, in both houses.

SENATOR DOLLINGER: Mr. President, would Senator Farley yield to just one question?

ACTING PRESIDENT SPANO: Senator Farley, would you yield to a question?

SENATOR FARLEY: Yeah.

SENATOR DOLLINGER: Could you just explain to me, through you, Mr. President, just explain to me how the priority system works. Is it is a priority based on designated criteria; is it a $70 million pot that's going to be set aside designated for minorities in these categories, or how is the priority system going to work?

SENATOR FARLEY: That will be determined by the board, but this is the same language that we've had precedent for in the Jobs Bond Act and other places. In other words, it's language that has been consistent by both of these houses addressing this issue.

The board that will be appointed will make that decision as to the -- as to

priority.

ACTING PRESIDENT SPANO: Senator Dollinger.

SENATOR DOLLINGER: Just on the bill ever so briefly.

I appreciate the difficulty in arriving at this compromise, but one of the things we talked about earlier today was the question of regulation and the power of regulators. It seems to me we've given them a very, very broad field in which to play in trying to determine what the phrase "priority" means, and we may end up with the board and other people interpreting that term in such a fashion which may not achieve the goals that the legislation is designed to do, and I would just say that the danger of regulatory control and, in fact, talking with Senator Wright and Senator Bruno and some others, we're opening an awful big door here for them to drive through, and we don't know what this is going to look like.

I'm going to vote in favor of the chapter, Mr. President, but I'm expressing my

concern about how that will be interpreted.

ACTING PRESIDENT SPANO: Read the last section.

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

ACTING PRESIDENT SPANO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT SPANO: Senator Waldon to explain his vote.

SENATOR WALDON: Not really. I would like the record to show that had I been here last week when Calendar Number 57 was acted on, I would have voted in the negative.

ACTING PRESIDENT SPANO: Can we just wait until we finish the roll call.

THE SECRETARY: Ayes 51, nays one, Senator Padavan in the negative.

SENATOR STAFFORD: Mr. President, I'd like to request permission to abstain from voting, please.

SENATOR FARLEY: Results.

THE SECRETARY: Ayes 52, nays

one.

ACTING PRESIDENT SPANO: The bill is passed.

Senator Waldon.

SENATOR WALDON: Thank you, Mr. President.

My colleagues, I would like the record to reflect had I been here last week when Calendar Number 57 was voted upon, I would have voted in the negative.

ACTING PRESIDENT SPANO: So noted.

SENATOR WALDON: Thank you, Mr. President.

SENATOR PRESENT: Do we have any housekeeping to clean up here?

ACTING PRESIDENT SPANO: That's it.

SENATOR PRESENT: All right. Mr. President, there being no further business, I move that we adjourn until tomorrow at 3:00 p.m.

ACTING PRESIDENT SPANO: The Senate will stand adjourned until tomorrow at

3:00 p.m.

(Whereupon at 12:41 a.m., the hearing was the Senate adjourned.)