ALBANY, NEW YORK

June 5, 1995

3:00 p.m.

REGULAR SESSION

SENATOR MICHAEL J. HOBLOCK,JR., Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT HOBLOCK: The Senate will come to order. Ask everyone present to please rise and repeat with me the Pledge of Allegiance.

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

The invocation today will be given by our good friend, Reverend Peter G. Young of the Blessed Sacrament Church of Bolton Landing.

REVEREND PETER G. YOUNG: Dear God, as we gather today, may we again pray for your commitment and dedication to those in New York State. May we pray that you will guide us and direct our thought and our actions to the best benefit of our Empire State. Now and forever. Amen.

ACTING PRESIDENT HOBLOCK: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, June 4th. The Senate met pursuant to adjourn ment, Senator Hoblock in the Chair upon designa

tion of the Temporary President. The Journal of Saturday, June 3rd, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT HOBLOCK: With out objection, the Journal stands approved as read. Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Anything? Senator Rath.

SENATOR RATH: On behalf of Senator Skelos, please remove the sponsor's star from Calendar 588.

ACTING PRESIDENT HOBLOCK: Star Calendar 588.

SENATOR RATH: Remove the star.

ACTING PRESIDENT HOBLOCK: Remove the star.

SENATOR RATH: Remove the star.

ACTING PRESIDENT HOBLOCK: I'm sorry. That's better than starring.

SENATOR RATH: Mr. President.

ACTING PRESIDENT HOBLOCK: Yes, Senator Rath.

SENATOR RATH: On behalf of Senator Cook, please place a sponsor's star on Calendar 108.

ACTING PRESIDENT HOBLOCK: Calendar 108, replace the sponsor's star.

Senator Maziarz.

SENATOR MAZIARZ: Thank you, Mr. President. On page 36, I offer the following amendments to Calendar Number 977, Senate Print 2663, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT HOBLOCK: Amendments received.

SENATOR MAZIARZ: Mr. President, on page number 21, I offer the following amendments to Calendar 733, Senate Print Number 4017A, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT HOBLOCK: Amendments received.

SENATOR MAZIARZ: Mr. President, on page number 18, I offer the following amendments to Calendar Number 668, Senate Print Number 3456, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT HOBLOCK: O.K. Amendments received.

Senator Maziarz.

SENATOR MAZIARZ: Mr. President, I wish to call up my bill, Print Number 3325, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT HOBLOCK: Clerk will read.

THE SECRETARY: Calendar Number 502, by Senator Sears, Senate Print 3325, an act to amend the General Business Law, in relation to prohibiting presentment of a Social Security number.

ACTING PRESIDENT HOBLOCK: Senator Maziarz.

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

ACTING PRESIDENT HOBLOCK: Clerk will call the roll.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT HOBLOCK: Senator Maziarz.

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

ACTING PRESIDENT HOBLOCK: Amendments received.

Senator.

SENATOR MAZIARZ: Mr. President, I wish to call up my bill, Print Number 3325, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT HOBLOCK: Clerk will read.

THE SECRETARY: Calendar Number 858, by Senator Goodman, Senate Print 3466, an

act to amend the Transportation Law, in relation to disclosure by common carriers of liability and protection.

ACTING PRESIDENT HOBLOCK: Senator Maziarz.

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

ACTING PRESIDENT HOBLOCK: Clerk will call the roll.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 43.

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

ACTING PRESIDENT HOBLOCK: Amendments received.

Senator LaValle.

SENATOR LAVALLE: Mr. President, would you place a sponsor's star on Calendar Number 245, please.

ACTING PRESIDENT HOBLOCK: Calendar Number 245, place a sponsor's star.

We have a substitution from the Assembly. Clerk will read.

THE SECRETARY: Senator Maltese moves to discharge from the Committee on Rules Assembly Bill Number 4814A, and substitute it for the identical Calendar Number 279.

ACTING PRESIDENT HOBLOCK: Substitution ordered.

Senator Bruno.

SENATOR BRUNO: Mr. President, call for an immediate meeting of the Rules Committee in Room 332.

ACTING PRESIDENT HOBLOCK: There is an immediate meeting of the Rules Committee in Room 332.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up the non-controversial calendar.

ACTING PRESIDENT HOBLOCK: Clerk will read the non-controversial calendar.

THE SECRETARY: On page 4, Calendar Number 77, by Senator Levy, Senate

Print -

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT HOBLOCK: Bill laid aside.

THE SECRETARY: Calendar Number 195, by member of the Assembly Pfeffer, Assembly Print 4130A, an act to amend the Executive Law, in relation to empowering the state Office for the Aging to conduct a program of education.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 494, by Senator Cook, Senate Print 3155A, an act to amend the General City Law, the Town Law and the Village Law, in relation to cluster

development.

SENATOR PATERSON: Lay aside, please.

ACTING PRESIDENT HOBLOCK: Bill is laid aside.

THE SECRETARY: Calendar Number 595, by Senator Saland, Senate Print 2597, an act to amend the Family Court Act, in relation to restitution and community service.

ACTING PRESIDENT HOBLOCK: Read read the last section.

THE SECRETARY: Section 9. This act shall take effect on the 1st day of November.

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 596, by Senator Saland, Senate Print 3561, an act to amend the Family Court Act, in relation

to expanding the jurisdiction of the Family Court to enforce the compulsory attendance law.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 597, by Senator Saland, Senate Print 3943, an act to amend the Family Court Act and the Criminal Procedure Law, in relation to family offenses.

ACTING PRESIDENT HOBLOCK: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 1st day of November.

ACTING PRESIDENT HOBLOCK: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 598, by Senator Saland, Senate Print 4039, an act to amend the Social Services Law, in relation to the capacity of foster family boarding homes.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 654, by Senator LaValle, Senate Print 2790, an act to amend the Executive Law, in relation to

population requirements for municipalities wishing to establish Youth Bureaus.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 706, by member of the Assembly Kaufman, Assembly Print 2817, an act to amend the State Administrative Procedure Act, in relation to required index by name and subject of all written final decisions.

ACTING PRESIDENT HOBLOCK: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of October.

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 743, by Senator Seward, Senate Print 3827B, an act to authorize the city of Ithaca in the county of Tompkins to discontinue the use of certain real property owned for park purposes.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT HOBLOCK: There's no home rule message at the desk. The bill is laid aside.

THE SECRETARY: Calendar Number 854, by Senator Marchi, Senate Print 2379, an act to amend the Public Authorities Law, in relation to directing the Triborough Bridge and Tunnel Authority to establish a system of one directional toll collection on the Verrazano-Narrows Bridge.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT HOBLOCK: Bill is laid aside.

THE SECRETARY: Calendar Number 861, by Senator Spano, Senate Print Number 3975B, an acted to amend the Public Authorities Law, in relation to the cost of station operation and maintenance.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT HOBLOCK: Lay the bill aside.

THE SECRETARY: Calendar Number 868, by Senator Levy, Senate Print 4817, an act to amend the Vehicle and Traffic Law, in relation to the extension of time for the entry of default judgments for traffic infractions.

ACTING PRESIDENT HOBLOCK: Read the last section.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT HOBLOCK: Lay the bill aside.

THE SECRETARY: Calendar Number 937, by Senator Saland.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT HOBLOCK: Bill is laid aside.

THE SECRETARY: Calendar Number 947, by Senator Rath, Senate Print 3014, an act to amend the Domestic Relations Law, the Social Services Law, and the Surrogate's Court Procedure Act.

SENATOR RATH: Lay aside for the day.

ACTING PRESIDENT HOBLOCK: Bill is laid aside for the day at the request of the sponsor.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we now take up the controversial calendar.

ACTING PRESIDENT HOBLOCK: Secretary will read non... the controversial calendar.

THE SECRETARY: On page 4, Calendar Number 77, by Senator Levy, Senate Print 328B, an act to amend the Public Authorities Law and the Railroad Law, in relation to operating a self-propelled rail

passenger car.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT HOBLOCK: Explanation is asked for. Senator Levy.

SENATOR LEVY: Just lay it aside temporarily.

ACTING PRESIDENT HOBLOCK: Bill is laid aside temporarily. Clerk -- Secretary will read.

THE SECRETARY: Calendar Number 494, by Senator Cook, Senate Print 3155B, an act to amend the General City Law, the Town Law and the Village Law, in relation to cluster development.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT HOBLOCK: Explanation asked for. Bill is laid aside for the day.

SENATOR BRUNO: Lay aside.

THE SECRETARY: Calendar Number 743, by Senator Seward, Senate Print 3827B, an act to authorize the city of Ithaca in the county of Tompkins to discontinue the use of

certain real property owned for park purposes.

ACTING PRESIDENT HOBLOCK: Lay aside for home rule message.

THE SECRETARY: Calendar Number 854, by Senator Marchi, Senate Print 2379, an act to amend the Public Authorities Law, in relation to directing the Triborough Bridge and Tunnel Authority to establish a one-directional system of toll collection.

SENATOR PATERSON: How about an explanation?

ACTING PRESIDENT HOBLOCK: Explanation asked for. Lay that bill aside temporarily.

Secretary will read.

THE SECRETARY: Calendar Number 861, by Senator Spano, Senate Print 3975B, an acted to amend the Public Authorities Law, in relation to the cost of station operation and maintenance.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT HOBLOCK: Lay that bill aside temporarily.

THE SECRETARY: Calendar Number 868, by Senator levy, Senate Print 4718, an act to amend the Vehicle and Traffic Law, in relation to the extension of time for the entry of default judgments for traffic infractions.

SENATOR PATERSON: Explanation.

SENATOR LEVY: Yes, Senator Paterson. There was a huge backlog in Nassau County prior to the time that we created a Parking Violations Bureau as it related to those type of infractions that were pending and were not answered by the people that were -- either received tickets or summonses or even were arrested and we did -- we did the proposal that is contained in this bill previously. It had a sunset on it and last year, unfortunately, that sunset expired without us taking legislative action to extend this power to deal with this huge backlog.

Now, Nassau County has requested this bill and sought the extension of the power that existed before the sunset and that's what this bill does.

ACTING PRESIDENT HOBLOCK:

Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Levy would be kind enough to yield to a question.

ACTING PRESIDENT HOBLOCK:

Senator Levy, do you yield?

SENATOR LEVY: Yes.

SENATOR PATERSON: Senator Levy, I was just curious, you are extending this from two years to seven years to clear up this backlog. Do you think it's going to take seven ears years to get to all this? I would have thought it would have taken two or three years. How about a month? No.

SENATOR LEVY: All this bill does, Senator Paterson, is to reinstitute - reinstitute the power that expired on October the 1st of 1994.

SENATOR PATERSON: That isn't the question I asked, Senator.

SENATOR LEVY: It really is extending -- Senator Paterson, it really is an

extender through October the 1st of 1996, and the power for Nassau County will end on that date, but what it does is to permit -- to permit the pleas and the default judgments for the period set forth in the bill.

SENATOR PATERSON: The only other question I had, Senator, was regarding the fiscal impact that you would project to the state of extending it.

SENATOR LEVY: Well, the - Senator, by -- by permitting the extension, all this bill really does is permit the local government, when they have -- when they have given summonses, tickets or have arrested somebody for a violation and the people have ignored the process, to bring them into court. All it does is give them the opportunity of more time to bring about a conclusion to the case and the collection of monies that are owed -- owed both the county of Nassau and monies that the state shares in, so it's certainly more than revenue neutral because it's going to generate dollars both for the county and state through

the collection of the fine monies.

SENATOR PATERSON: Explanation satisfactory, Mr. President.

ACTING PRESIDENT HOBLOCK: Explanation satisfactory. The Secretary will read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48, nays one, Senator Solomon recorded in the negative.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 937, by Senator Saland, Senate Print 4009A, an act to amend the Tax Law and others, in relation to enacting the Omnibus Mandate Relief Act.

SENATOR PATERSON: Explanation.

VOICE: Lay aside for the day.

ACTING PRESIDENT HOBLOCK: Bill is laid aside for the day.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you call up Calendar Number 77, please, by Senator Levy.

ACTING PRESIDENT HOBLOCK: Secretary will read.

THE SECRETARY: Calendar Number 77, by Senator Levy, Senate Print 328B, an act to amend the Public Authorities Law and the Railroad Law, in relation to operating a self propelled rail passenger car.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT HOBLOCK: Explanation asked for.

SENATOR LEVY: Senator Paterson, this bill has, fortunately, been before this house for a number of years and, unfortunately, has yet to pass in the other house notwithstanding the fact that a couple of years back, and I know, I think Senator Goodman's committee went into an accident where we had a drunken motorman operating a train on the Transit Authority, and multiple deaths resulted

from that incident.

Our friends in Washington have set a .04 standard for the operation - operation of a train. What this bill does - and we worked with the federal Railway Administration in putting this bill together - is to say if you -- if you operate a train and you have greater than a .04 BAC, and there is an injury -- serious injury or death, we make that a felony in the state of New York.

SENATOR PATERSON: Thank you.

ACTING PRESIDENT HOBLOCK: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

I have a couple of questions for Senator Levy, if he is willing to answer them.

ACTING PRESIDENT HOBLOCK: Senator Levy, will you yield to a couple of questions?

SENATOR LEVY: Yes, certainly.

SENATOR PATERSON: Senator Levy, have we exceeded the federal standard by imposing this .04 delineation as to what would

be the standard of test for the motorman or the operator of the self-propelled vehicle?

SENATOR LEVY: Senator Paterson, we have not, and the language of this bill was cleared with the Federal Railway Administration which is in support of the legislation.

SENATOR PATERSON: Mr. President, if the Senator would continue to yield.

ACTING PRESIDENT HOBLOCK: Senator Levy, continue to yield?

SENATOR LEVY: Yes, I will.

SENATOR PATERSON: Senator, how are the tests conducted in these types of situations? The reason I raise a concern is that, if you had an accident and you conducted, say, for instance, a urine test rather than a blood test, and your bill seems to make all tests valid, sometimes medically the trauma of the accident might cause an individual to be incapable of responding to the test which would maybe accrue some kind of suspicion or some kind of stigma to the individual when, in fact, they're suffering from a medical injury.

SENATOR LEVY: Well, Senator, that would be litigated the same way, and those arguments are made in drunk driving and drunk impaired cases whenever we have a similar situation like this, Senator Paterson, so all this bill is really doing is -- is taking the law as it exists today as it relates to motor vehicles and transposing it over to someone who is operating a train in the state of New York.

SENATOR PATERSON: All right. Thank you very much, Senator Levy.

On the bill.

ACTING PRESIDENT HOBLOCK: Senator Paterson, on the bill.

SENATOR PATERSON: I understand what Senator Levy is saying, and it can be litigated in that particular way and particularly in an accident as severe as the one he described which occurred on 14th Street in Manhattan about two years ago. You had a situation where the inability to test the motor man was actually a factor, and it was a tragic accident in which many lives were lost.

But in other circumstances where there is just some kind of an accident and there is no injury, I would just caution all of us in the administration of this law that there are individuals who are traumatized in accidents and that, if we had an standardized test, I would suggest a blood test. We might be able to determine whether or not there was the kind of blood to alcohol ratio or any other substance that might be involved. I just think it would be greater protection for society and also greater protection for the individual who is not in violation of any codes or standards when these tests are actually conducted.

Otherwise, I suppose I would take note of the fact that the federal standard, I would tend to think, would -- would cover this, but because of the fact that these accidents are very severe and people who use the subways in New York City or use other vehicular transportation that are piloted by someone else are reasonably expecting that there would be a standard of care that would be demonstrated and

the test definitely establishes that.

ACTING PRESIDENT HOBLOCK: Secretary will read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 1st day of November.

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT HOBLOCK: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Yes, Mr. President. Can we at this time recognize Senator Maltese?

ACTING PRESIDENT HOBLOCK: Senator Maltese.

SENATOR MALTESE: Mr. President, as many of my colleagues are aware, this week end is -- has been the week end of the Italian American Legislators Conference. With 51 members, it is one of the largest conferences of

the state Legislature, and we're particularly honored at this particular conference with tonight's ceremony that we are honoring the Senate Majority Leader.

Present with us today in the chamber are a number of representatives, men and women representing constituencies from across the state, not only from the Conference of Italian-American legislators but from the UFT and from the New York City Central Labor Council, and I would ask most respectfully that you recognize them.

ACTING PRESIDENT HOBLOCK: Thank you, Senator Maltese.

It's a great pleasure to join you and others in recognizing these dignitaries and extend to them our courtesies, cordiality and hospitality. Thank you.

(Applause)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Skelos.

SENATOR SKELOS: I believe there

-- if we could return to reports of standing committees. I believe there's a report of the Rules Committee at the desk. I ask that it be read.

ACTING PRESIDENT HOBLOCK: Secretary will read.

THE SECRETARY: Senator Bruno from the Committee on Rules reports the following bills:

Senate Print 700, by Senator Saland, an act to amend the Tax Law, in relation to exempting coin-operated car wash receipts from the sales and compensating use tax;

3349, by Senator Skelos, an act to amend Chapter 846 of the Laws of 1970, amending the County Law, relating to payment in lieu of taxes for property acquired for park or recreational purposes;

3395, by Senator Rath, an act to amend the State Administrative Procedure Act, in relation to requiring agencies to enact written rules;

3847, by Senator Tully, an act to

amend the Environmental Conservation Law, in relation to lifetime resident combined hunting, fishing and big game licenses for senior citizens;

3848, by Senator Tully, an act to amend the Environmental Conservation Law and the State Finance Law, in relation to enacting the Voluntary Remediation Act of 1995;

3849, by Senator Tully, an act to amend the Environmental Conservation Law, and the Public Health Law, in relation to security interests in property;

3874A, by Senator Nanula, an acted to authorize the city of Niagara Falls to discontinue use of certain park land;

3921, by Senator Sears, an act to amend the Environmental Conservation Law, in relation to increasing civil penalties associated with the unlawful taking of fish and wildlife;

4408, by Senator Nozzolio, an act to amend the Civil Practice Law and Rules, and the Court of Claims Act and the Correction Law,

in relation to prisoner litigation reform;

4437, by Senator Lack, an act to amend the Estates, Powers and Trusts Law and the General Obligations Law, in relation to renunciations of certain property interests;

4439, by Senator Libous, an act to amend the Criminal Procedure Law, in relation to venue for an application for an order of retention of an incapacitated defendant;

4610, by Senator Lack, an act to amend the Surrogate's Court Procedure Act, in relation to transfer of actions or proceedings;

4617, by Senator Lack, an act to amend the Estates, Powers and Trusts Law, in relation to providing for payment of funds over $10,000;

4618, by Senator Lack, an act to amend the Surrogate's Court Procedure Act, in relation to the commissions of multiple executors;

4673, by Senator Tully, an act to amend the Environmental Conservation Law, in relation to exempting certain bakeries from

regulation pursuant to the Clean Air Act;

4680, by Senator Lack, an act to amend the Surrogate's Court Procedure Act, in relation to providing for an aunt or uncle of a decedent who dies intestate to act as a voluntary administrator;

4681, by Senator Lack, an act to amend the Surrogate's Court Procedure Act, in relation to the revocation, modification or suspension of letters testamentary;

4831, by Senator Maziarz, an act to amend the General Obligations Law, in relation to an owner's, lessee's or occupant's off-premises duty to keep premises safe for entry;

5103, by Senator Saland, an act to amend the Domestic Relations Law, in relation to special relief of matrimonial actions;

5107, by Senator Saland, an act to amend the Family Court Act, in relation to the submission of transcripts in Family Court;

5195, by Senator Skelos, an act to amend the Town Law, in relation to the

abolition of the additional office of supervisor of the town of Hempstead;

5212, by Senator Marcellino, an act to amend the Criminal Procedure Law, in relation to corrective remedies;

5221, by Senator Present, an act to amend the General Obligations Law, in relation to the powers of the development of railroad facilities by the county of Chautauqua; and

5220, by Senator Sears, an act to amend the General Business Law and the Personal Property Law, in relation to the cancellation of personal emergency response service agreements.

All bills ordered directly for third reading.

SENATOR SKELOS: Mr. President, I move we accept the report of the Rules Committee.

ACTING PRESIDENT HOBLOCK: Motion of Senator Skelos, all in favor of accepting the report of the Rules Committee signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The report is accepted.

Senator Skelos.

SENATOR SKELOS: Mr. President, at this time if we could return to motions and resolutions. I believe there is a resolution sponsored by Senator Holland at the desk. I would ask that it be read in its entirety and adopted.

ACTING PRESIDENT HOBLOCK: Secretary will read.

THE SECRETARY: By Senator Holland, Legislative Resolution, commending the students of the Ramapo Senior High School upon the occasion of their participation in the 1995 Humanitarian Relief Program for the children and people of Chernobyl.

WHEREAS, it is the sense of this legislative body to act in accord with its long standing traditions honoring the achievements of its promising citizens and leaders of tomorrow,

whose character and achievement best exemplify the ideals and values cherished by this great state and nation; and

WHEREAS, this legislative body is justly proud to commend the students of the Ramapo Senior High School upon the occasion of their participation in the 1995 Humanitarian Relief Program for the children and people of Chernobyl; and

WHEREAS, 17 students provided moral support for those still suffering from the effects of the Chernobyl nuclear accident by singing and dancing over a 12-day visit to Belarus;

The students raised the air fare money themselves by fund-raising in the school and community from the raffles, sale of cheese cakes, snow brushes, gift supplies and selling candy and fruit at various school activities, plus some very generous individual donations, the students were able to depart from JFK Airport on March 22nd, 1995 for the trip of a lifetime; with the continued support and

cooperation of Austrian Airlines, each student sacrificed a second piece of luggage so that, in addition to the two sea containers of medicines already sent ahead, additional medicines could be taken on the plane;

During their stay in Belarus, the students performed 13 times, visited and/or performed in six hospitals, visited and/or performed in six schools, and appeared on Belarus national television five times. Some highlights of their stay included performing for the Belarus Foreign Minister Vladimir Syanko, and U. S. Ambassador Kenneth Yalowitz at the American Embassy;

In addition, the students had lunch with, and performed for the Belarus Military who provided the group with a bus for their use during their stay in Belarus; hotel accommodations in Belarus were provided by the General Federation of Trade Unions. The American group was the first group of Americans to ever stay at the Trade Union Sanitorium; during one of their free evenings the students

put on a show for the residents, as well as participating in the disco afterward;

The students also had the opportunity to live in homes during the second Ramapo visit to a Kolkhoz or collective farm in the Nesvizh District, as well as be the first American delegation to visit and again stay in private homes in the town of Sharkovshina four hours north of Minsk;

Throughout their entire period of involvement, a period of purposeful learning and productive community service, the students of the Ramapo Senior High School stood constant in dignity and good grace representing the families and school community with honor and distinction; and

WHEREAS, rare indeed is the impressive dedication and accomplishment shown by these young people for the benefit of others which the students of the Ramapo Senior High School have displayed.

NOW, THEREFORE, BE IT RESOLVED that this legislative body pause in its

deliberations to accommodate the students of the Ramapo Senior High School upon the occasion of their participation in the 1995 Humanitarian Relief Program for the children and people of Chernobyl; and

BE IT FURTHER RESOLVED that copies of this resolution, suitably engrossed, be transmitted to Ramapo Senior High School and Don Cairns, President of the Board of Directors of the Ramapo Children for Chernobyl Fund.

ACTING PRESIDENT HOBLOCK: Senator Holland.

SENATOR HOLLAND: Thank you, Mr. President.

We are indeed honored to have some of the students from Ramapo High School here today, and it is my pleasure to introduce them to this house along with their instructors, Don Cairns and Patrick DeFrancisco. These young people have had an opportunity to visit Belarus for two weeks, almost two weeks, stay in cooperative or collective farms, see and visit the schools and the hospitals of Belarus, and

they are -- this program is ten years old.

They have been able to collect over $12 million worth of medical supplies and take them to the hospitals of Belarus and Moscow. It was all started when a group of these students were there during the Chernobyl explosion about 11 years ago, 12 years ago, 10 years ago. I congratulate these students. They've done a fantastic job. Their instructors and teachers have done a fantastic job. They are encouraging ties and communications and, as they said, hope and love between the students of Belarus in Russia and the students of the United States.

Many trips of students from Ramapo High School have gone over to Belarus in Russia and some Russian students have come back over here. I congratulate the whole program, all of the people who have been involved, all of the people who have donated medicines. As I said, I believe I was there three years ago with some of the students, and if you had been into a hospital in Belarus, or Russia, they are 1930 or

1940 editions of the hospitals here in the United States.

You people are doing a great job. I wish you would just stand up for one minute and let these people in the galleries say thanks for all the good work you do.

(Applause.)

ACTING PRESIDENT HOBLOCK: The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, on today's calendar, Calendar Number 854, by Senator Marchi, if we could lay that aside for the day.

ACTING PRESIDENT HOBLOCK: Calendar 854 laid aside for the day.

Senator Skelos.

SENATOR SKELOS: Yes, at this

time, Mr. President, if we could take up Supplemental Calendar Number 1, non-controversial.

ACTING PRESIDENT HOBLOCK: The Secretary will read the Supplemental Calendar Number 1, non-controversial.

THE SECRETARY: Calendar Number 1093, by Senator Saland, Senate Print 700, an act to amend the Tax Law, in relation to exempting coin-operated car wash receipts from sales and compensating use tax.

ACTING PRESIDENT HOBLOCK: A local fiscal impact note is at the desk. Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of September.

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT HOBLOCK: The the bill is passed.

THE SECRETARY: Calendar Number 1094, by Senator Skelos, Senate Print 3349, an act to amend Chapter 146 of the Laws of 1970, amending the County Law.

SENATOR PATERSON: Lay aside, please, Mr. President.

ACTING PRESIDENT HOBLOCK: Lay aside.

THE SECRETARY: Calendar Number 1095, by Senator Rath, Senate Print 3395, an act to amend the State Administrative Procedure Act, in relation to requiring agencies to enact written rules incorporating the principles of law.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT HOBLOCK: The

bill is passed.

THE SECRETARY: Calendar Number 1096, by Senator Tully, Senate Print 3847, an act to amend the Environmental Conservation Law, in relation to lifetime resident combined hunting, fishing and big game licenses.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1097, by Senator Tully, Senate Print 3848, an act to amend the Environmental Conservation Law and the State Finance Law, in relation to enacting the Voluntary Remediation Act of 1995.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT HOBLOCK: Lay

the bill aside.

THE SECRETARY: Calendar Number 1098, by Senator Tully, Senate Print 3849, an act to amend the Environmental Conservation Law and the Public Health Law, in relation to security interests in property.

ACTING PRESIDENT HOBLOCK: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 90th day.

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1099, by Senator Nanula, Senate Print 3874A, an act to authorize the city of Niagara Falls to discontinued use of certain park land.

ACTING PRESIDENT HOBLOCK: The home rule message is at the desk. Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1100, by Senator Sears, Senate Print 3921, an act to amend the Environmental Conservation Law, in relation to increasing civil penalties associated with the unlawful taking of fish and wildlife.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT HOBLOCK: The

bill is passed.

THE SECRETARY: Calendar Number 1101, by Senator Nozzolio, Senate Print 4408, an act to amend the Civil Practice Law and Rules, the Court of Claims Act and the Correction Law, in relation -

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT HOBLOCK: Lay the bill aside.

THE SECRETARY: Calendar Number 1102, by Senator Lack, Senate Print 4437, an act to amend the Estates, Powers and Trusts Law and the General Obligations Law, in relation to the renunciations of certain property interests.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT HOBLOCK: Lay the bill aside.

THE SECRETARY: Calendar Number 1103, by Senator Libous, Senate Print 4439, an act to amend the Criminal Procedure Law, in relation to venue for an application.

ACTING PRESIDENT HOBLOCK: Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1104, by Senator Lack, Senate Print 4610, an act to amend the Surrogate's Court Procedure Act, in relation to transfer of actions or proceedings.

ACTING PRESIDENT HOBLOCK: Read the last section.

THE SECRETARY: Section 3. This act shall shall take effect on the 30th day.

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number

1105, by Senator Lack, Estates, Powers and Trusts Law, in relation to providing for payment of funds over $10,000.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1106, by Senator Lack, Senate Print 4618, an act to amend the Surrogate's Court Procedure Act, in relation to the commissions of multiple executors.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1107, by Senator Tully, Senate Print 4673, an act to amend the Environmental Conservation Law, in relation to exempting certain bakeries from regulations pursuant to the Clean Air Act.

SENATOR PATERSON: Lay aside, please.

ACTING PRESIDENT HOBLOCK: Bill is laid aside.

THE SECRETARY: Calendar Number 1108, by Senator Lack, Senate Print 4680, an act to amend the Surrogate's Court Procedure Act, in relation to providing for an aunt or an uncle of decedent who dies intestate to act as a voluntary administrator.

ACTING PRESIDENT HOBLOCK: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1109, by Senator Lack, Senate Print 4681, an act to amend the Surrogate's Court Procedure Act, in relation to the revocation, modification or suspension of letters testamentary.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number

1110, by Senator Maziarz, Senate Print 4831.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT HOBLOCK: Lay the bill aside.

THE SECRETARY: Calendar Number 1111, by Senator Saland.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT HOBLOCK: Laid aside.

THE SECRETARY: Calendar Number 1112, by Senator Saland, Senate Print 5107, an act to amend the Family Court Act, in relation to the submission of transcripts.

ACTING PRESIDENT HOBLOCK: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1113, by Senator Skelos, Senate Print 5195, an act to amend the Town Law, in relation to the abolition of the additional office of supervisor of the town of Hempstead.

ACTING PRESIDENT HOBLOCK: The home rule message is at the desk. Read the last section.

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

SENATOR PATERSON: Lay that aside, please.

ACTING PRESIDENT HOBLOCK: At the request of Senator Paterson, the bill is laid aside.

THE SECRETARY: Calendar Number 1114, by Senator Marcellino, Senate Print 5212, an act to amend the Criminal Procedure Law, in relation to corrective remedies.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT HOBLOCK: Lay the bill aside.

THE SECRETARY: Calendar Number

1115, by Senator Present, Senate Print 5221, an act to amend the General Municipal Law, in relation to the powers of the development of railroad facilities by the county of Chautauqua.

ACTING PRESIDENT HOBLOCK: Read the last section.

SENATOR LEICHTER: Lay aside.

THE SECRETARY: Calendar Number 1116, by Senator Sears, Senate Print 5237, an act to amend -

SENATOR SEARS: Lay aside for the day.

ACTING PRESIDENT HOBLOCK: Bill is laid aside for the day by the sponsor.

Senator Skelos, that completes the non-controversial calendar.

SENATOR SKELOS: Yes, Mr. President. If we could take up the first supplemental calendar controversial.

ACTING PRESIDENT HOBLOCK: Secretary will read the controversial supplemental calendar.

THE SECRETARY: Calendar Number 1094, by Senator Skelos, Senate Print 3349, an act to amend Chapter 846 of the Laws of 1970, amending the County Law.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Home rule message is at the desk. Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1097, by Senator Tully, Senate Print number 3848, an act to amend the Environmental Conservation Law and the State Finance Law, in relation to enacting the Voluntary Remediation Act of 1995.

SENATOR OPPENHEIMER: Explana tion, please.

ACTING PRESIDENT HOBLOCK:

Explanation has been asked for. Senator Tully.

SENATOR TULLY: Yes, Mr. Presi dent. Will you lay that aside temporarily. I'm waiting for the bill file to come from the LOB.

ACTING PRESIDENT HOBLOCK: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 1101, by Senator Nozzolio, Senate Print 4408, an act to amend the Civil Practice Law and Rules, the Court of Claims Act and the Correction Law, in relation to prisoner litigation reform.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT HOBLOCK: Explanation has been asked for. Bill laid aside temporarily.

THE SECRETARY: Calendar Number 1102, by Senator Lack, Senate Print 4437, an act to amend the Estates, Powers and Trusts Law and the General Obligations Law, in relation to renunciations of certain property interests.

ACTING PRESIDENT HOBLOCK: Read the last section.

THE SECRETARY: Section 3. This

act shall take effect immediately.

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1107, by Senator Tully, Senate Print 4673, an act to amend the Environmental Conservation Law, in relation to exempting certain bakeries from the regulations pursuant to the Clean Air Act.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT HOBLOCK: Explanation has been asked for. Senator Tully.

SENATOR TULLY: Thank you, Mr. President. Will you lay that aside tempor arily. That's coming out of the oven; it'll be over here shortly.

ACTING PRESIDENT HOBLOCK: Bill is laid aside temporarily.

THE SECRETARY: Calendar Number 1110, by Senator Maziarz, Senate Print 4831, an

act to amend the General Obligations Law, in relation to an owner's, lessee's or occupant's of premises duty to keep premises safe.

SENATOR LEICHTER: Explanation, please.

ACTING PRESIDENT HOBLOCK: Explanation has been asked for. Senator Maziarz.

SENATOR MAZIARZ: Mr. President, section 9-103 of the General Obligations Law currently insulates property owners as well as lessees and occupants from liability for the injuries of persons who are on the property in order to engage in certain enumerated recrea tional activities.

This bill would add a new sub division which would expand the protections of the article in order to insulate owners from suits brought by person or persons who enter a property in order to commit a crime.

This bill is necessary because, as the law now stands, it is possible although it is very rare for a criminal who is injured in

the course of committing a crime to successfully sue the owner of a premises upon which he was injured. This bill would eliminate that possibility, Mr. President.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Leichter.

SENATOR LEICHTER: Yeah, Mr. President. If Senator Maziarz would yield, please.

ACTING PRESIDENT HOBLOCK: Senator Maziarz, you yield?

SENATOR MAZIARZ: Yes I would.

ACTING PRESIDENT HOBLOCK: He yields.

SENATOR LEICHTER: Senator, as I read this bill, you seem to eliminate the law of what's called "attractive nuisance", and what I'm concerned about is the situation which is not that rare in the city of New York where a building becomes abandoned for any variety of reasons, but usually because of poor upkeep.

Once that building is abandoned, and the landlord fails to take proper steps to seal off the building, it's very likely that homeless people will enter the building.

Now, if there are open air shafts or really other very dangerous conditions in that building which constitute or, under the current law, would constitute negligence having in mind that the landlord should know that people might very well take advantage of an abandoned building, even though by entering that building they're committing a crime. They're committing the crime of trespass, but nevertheless they're still entitled to some protection, and what I'm concerned about is that situation.

Now, if your bill doesn't eliminate the protection, I think these people should be entitled to, then in theory your bill has a certain appeal; in practice, I'm concerned about that situation I gave you. I wondered if you could respond to that, please.

SENATOR MAZIARZ: Well, certainly

someone who is seeking shelter, first of all, I would say that the owner may be committing a crime by not properly boarding up his building, leaving it wide open for someone to wander in. He must be in violation of some building code of some sort, but secondarily, I don't know that someone wandering in the building is coming in to engage in any particular criminal activity.

SENATOR LEICHTER: I'm sorry. I didn't hear your last comment.

SENATOR MAZIARZ: I said I don't know if someone just wandering into the building, since the intent of this is to protect the owner from someone who is coming into the building with some criminal activity in mind.

SENATOR LEICHTER: Well, trespass is a criminal activity.

ACTING PRESIDENT HOBLOCK: Is that a question to Senator Maziarz, Senator Leichter?

SENATOR LEICHTER: It is a question.

ACTING PRESIDENT HOBLOCK:

Senator Leichter.

SENATOR LEICHTER: Is it not? Is trespass not a criminal activity?

SENATOR MAZIARZ: Well, Senator, I'm not an attorney, but I don't think it's enough -- it's not -- trespass is not enough. It would have to be a -- it would have to be somewhat of a more serious crime, Senator.

SENATOR LEICHTER: Mr. President, if Senator Maziarz would continue to yield.

ACTING PRESIDENT HOBLOCK: Senator Maziarz, do you continue to yield?

SENATOR MAZIARZ: Yes. I believe trespass is a violation, Senator. I will continue to yield.

ACTING PRESIDENT HOBLOCK: Senator Leichter, he continues to yield.

SENATOR LEICHTER: Senator, I believe that trespass can constitute a Class B misdemeanor and that is a crime, but may I make this suggestion to you. If your intent is to deal with more serious crimes, say somebody comes in with a gun with the intent to rob

somebody and he trips on the steps because the carpeting is loose and then turns around and sues the person, I certainly agree with you that we don't want somebody like that to bring an action.

Why don't you -- why don't you amend the bill to provide, as I gather from what you say is your intent, that it covers more serious crimes instead of just using the word "crime." Why not say "felony" because to do an act which would constitute a felony and then I don't think any of us would have a problem with it.

SENATOR MAZIARZ: Senator, was there a question there? I -- I do not wish to amend the bill.

SENATOR LEICHTER: Excuse me.

SENATOR MAZIARZ: I do not wish to amend the bill.

SENATOR LEICHTER: All right. Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Leichter.

SENATOR LEICHTER: On the bill.

ACTING PRESIDENT HOBLOCK: On the bill.

SENATOR LEICHTER: I guess it's unfortunate, Senator Maziarz, occasionally, you know, suggestions are made for bills that have been written, even bills that have put out by the Majority, that can be improved, that could be made clearer, that could more perfectly achieve your intent and also could gain the support of all the members of this house and maybe give it a good chance of being passed in the other house.

There is something of a tradition here that once a bill is printed, it's on the floor, that it's as if it were sanctified by Moses coming down from the mount, it cannot be improved upon, but I think upon reflection you will see that we've had bills here that have indeed been improved.

Now, all I did in my suggestion was to take your very words. You said, Well, what I have in mind is serious crimes. However,

your bill doesn't say that. Your bill says committing a crime, so I made what I thought was a reasonable suggestion that you state that the crime which would obviate any grounds for civil cause of action would be felonies. Then I don't think any of us would have problems, because otherwise you do have the situation where in the example that I gave you, which is not that un common in the city of New York where a building is either not sealed off at all or poorly sealed off, homeless people will come in and they're entitled to some sort of protection. Similarly, children, as we know -- children, could be teenagers, do commit trespasses, and so on. Those could be considered crimes. They nevertheless ought to be entitled to some sort of basic protection. For, I don't know how many years, the common law has had the doctrine of attractive nuisance. I think it's made a lot of sense.

You're trying to eliminate that and change that totally and completely. That, I think, is going too far and that's why I suggest

to you that the bill would make a lot more sense, and I think would have a much better chance of passing in the Assembly if you provided that you're talking of felonies.

ACTING PRESIDENT HOBLOCK: Secretary will read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1110 are Senators Abate, Connor, Leichter, Markowitz, Montgomery, Paterson, Smith and Solomon. Ayes 45, nays 8.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1111, by Senator Saland, Senate Print 5103, an act to amend the Domestic Relations Law, in relation to special relief in matrimonial actions.

ACTING PRESIDENT HOBLOCK: Read the last section.

SENATOR PATERSON: Explanation.

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT HOBLOCK: Bill is laid aside for the day.

THE SECRETARY: Calendar Number 1113, by Senator Skelos, Senate Print 5195, an act to amend the Town Law, in relation to the abolition of the additional office of supervisor of the town of Hempstead.

ACTING PRESIDENT HOBLOCK: Home rule message is at the desk. Read the last section.

SENATOR PATERSON: Explanation.

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

ACTING PRESIDENT HOBLOCK: Explanation has been asked for.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Skelos.

SENATOR SKELOS: Mr. President, in the town of Hempstead in the county of Nassau, there is the position of presiding supervisor and supervisor. Because of the fact that commencing January 1st, 1996, Nassau County will be governed by a county legislature rather than by a board of supervisors system, where both the presiding supervisor and the supervisor of the town of Hempstead sat on that board, this legislation would eliminate one of those positions since they are no longer part of the board of supervisors, and there would now just be a supervisor of the town of Hempstead just as there is one in North Hempstead and the town of Oyster Bay.

ACTING PRESIDENT HOBLOCK: Senator Paterson.

SENATOR PATERSON: Yes. Mr. President, so, Senator Skelos, there used to be two. There used to be a local town official and the town supervisor and what we're doing is just taking one, taking the local one out because we have a county legislature now?

SENATOR SKELOS: Basically, yes. There was a presiding supervisor, supervisor, and they both sat on the board of supervisors. Since there's no longer going to be a board of supervisors, we're eliminating one of the supervisor positions, and there will now be just one supervisor from the town of Hempstead. Essentially, we're eliminating the presiding supervisor's position.

SENATOR PATERSON: One supervisor. You get all (inaudible). Thank you.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Leichter.

SENATOR LEICHTER: Yeah, Mr. President, if Senator Skelos would yield, please.

ACTING PRESIDENT HOBLOCK: Senator Skelos, do you yield?

SENATOR SKELOS: Yeah.

ACTING PRESIDENT HOBLOCK: Senator, who is the presiding supervisor now of

the town of Hempstead?

SENATOR SKELOS: Fred Peterson.

SENATOR LEICHTER: O.K. He's the presiding supervisor? And who is the supervisor?

SENATOR SKELOS: Richard Guardino.

SENATOR LEICHTER: And are they both from the same party?

SENATOR SKELOS: They're both from the same party.

SENATOR LEICHTER: O.K.

SENATOR SKELOS: As are the six councilmen in the town of Hempstead also.

SENATOR LEICHTER: Right. I mean I just want to make sure. I know that you ordinarily wouldn't put something forward that's not a good government measure.

SENATOR SKELOS: As a matter of fact, in the town of Hempstead, I don't think there's ever been other than a Republican supervisor and presiding supervisor.

SENATOR LEICHTER: And the -

this in no way will change the representation of any group within the town of Hempstead?

SENATOR SKELOS: No. Essentially it's saving the taxpayers the burden of one additional supervisor's position. The original charter to the county of Nassau, when they established the presiding supervisor's position, because the town of Hempstead had over 50 percent of the vote, they established the two positions, presiding supervisor and supervisor, so that one person would not be able to control essentially the entire county of Nassau.

Now that we're going to a county legislature, we're eliminating one of those positions.

SENATOR LEICHTER: Let me just ask you, if you would be good enough to yield: As a consequence of going to the county legislature, you still going to maintain the position of town supervisor?

SENATOR SKELOS: Sure.

SENATOR LEICHTER: And is that going to be a position that's going to have a

vote on the county legislature?

SENATOR SKELOS: No.

SENATOR LEICHTER: O.K. Thank you.

ACTING PRESIDENT HOBLOCK: Secretary will read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT HOBLOCK: The bill is passed.

THE SECRETARY: Calendar Number 1114, by Senator Marcellino, Senate Print 5212, an act to amend the Criminal Procedure Law, in relation to corrective remedies.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT HOBLOCK: Senator Marcellino, an explanation has been asked for.

SENATOR MARCELLINO: Mr.

President, this bill seeks to amend the Criminal Procedure Law with regard to the people's failure to serve on a defendant copies of witness statements.

At the request of the District Attorneys Association of the state of New York this bill -- I'm introducing this bill. It adds a new section 240.146 to the Criminal Procedure Law to provide that a defendant must demonstrate that his or her substantial rights would prejudice for failure to turn over copies of witness statements in order for reversal or modification of a judgment to be granted.

ACTING PRESIDENT HOBLOCK: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Marcellino would please yield for a question.

ACTING PRESIDENT HOBLOCK: Senator Marcellino, do you yield?

SENATOR MARCELLINO: Absolutely.

SENATOR PATERSON: Senator Marcellino, would you first explain to me why

you want to put the burden on the defendant to establish that the papers that might not have been filed were not germane to the actual case when the defendant may not know that informa tion but the fact is that the withholding of documents is a very serious matter in the criminal case.

SENATOR MARCELLINO: Senator, it would seem that, if there was deliberate intent to withhold material that would protect or help the defendant, then I could imagine that a judge would be able to say clearly that this was done with intent and that it should be overturned and the decision should be over turned.

In the case of a statement which occurred here in one of our examples, the witness statement that caused the overturning of a case actually pointed to the fact that the witness observed the defendant in the building where the crime was committed at the time the crime was committed. It had no effect -- would have had no positive effect from the defendant's standpoint.

The rule -- the Rosario rule, which governs these statements has apparently been turned into a situation where any error, whether it be by intent or just by oversight, whether it's for the defendant or against the defendant, will result in an immediate new trial. It would be my contention that, in order for any reversal to occur, that a defendant should show that cause -- that this statement would have helped from their perspective and let a judge decide if, in fact, that's the case. Defendant would have to prove, for example upon conviction that there was errors in the trial procedure in order to get the reversal - conviction reversal for a new trial; so the defendant has the same responsibility in either case.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Paterson.

SENATOR PATERSON: Mr. President, in the case that Senator Marcellino describes,

he may be actually correct, but what we do by requiring the burden be on the police is that we set a standard that can apply for all cases and the vast majority of them. If we were to pass this legislation, we would overturn the case of People v. Rangel, and one of the real important issues that came out in the dicta of the Rangel case is actually the fact that the defendant cannot always just meet some ambiguous standard by proving that a statement or some form of evidence that was not presented is necessarily going to overturn the case.

That becomes a very subjective determination and when we want -- when we open our criminal courts for the purposes of prosecuting criminals and also exonerating those who are not guilty, we don't want to have this kind of situation where you don't know when you're going over the line where there's a great ambiguity.

What we don't really understand, Senator Marcellino, with this particular legislation is, why the -- why the -- the reason

that the standard was set in the Rangel case, to be frank with you is to make sure that it is always a high priority on the part of the police to present this evidence, but if this evidence is not presented we deem it to be so important that we will make that an issue relating to the dismissal of the charges. If the evidence is not presented, if it's withheld in any way, whether it be deliberate or not deliberate, because that's how important it is that all of the information be available at trial. What we have to do in this situation where the burden is put on the defendant is we make the defendant come forward after the fact and try to prove something that made really be in many respects something that is now after the fact and is out of timing with the events that would have occurred at trial.

This is the reason that this leg islation, in my opinion, seriously jeopardizes the right of the defendant to get a fair trial and there are certain elements of a criminal trial where there are -- where the prosecution

is forced to bring certain evidence and to maintain -- to maintain certain standards and in an individual case, and there will be individual cases in our criminal justice system, where the prosecution doesn't meet the standard and yes, the defendant will go free, but the policy argument that we're making here is the argument that in the overwhelming number of cases, we want to set a uniform standard and that's what the Rangel case did, and that's why it really should be the duty of the police to bring that evidence forward.

To pass this legislation would set up a standard where we're not bringing the evidence forward, where we now have an ambiguous standard of what we're setting that -- and a very high burden of proof that the defendant has to demonstrate that but for the fact that this evidence was not presented, I would have been exonerated of the charges, in my opinion that is too high a standard to ask an individual who is alleged to be innocent until proven guilty beyond a reasonable doubt. It is too high a

standard for that individual to meet.

ACTING PRESIDENT HOBLOCK: Senator Gold.

SENATOR GOLD: Thank you.

Mr. President, this is a bill we've had before, and while the sponsor is new, the bill is not new and the issue is not new and the problem with the bill is a very simple one.

We assume that people who can do one job very effectively can also do every other job, and it's just not true, and there are some judges who are wonderful judges and very bright men and women, whom I wouldn't want to try a case for me on the other side of the bench.

A trial is a dynamic, and whether we like it or not, the fact of the matter is that records will indicate that people who have money sometimes can do better in a courtroom than other people. Matter of fact, you take a look at the debacle that's going on in California, even have a prosecutor who says he's fed up with the system, the point I'm making is that to say that a defendant must prove to a

judge who may or may not be his choice of trial lawyer, that having that statement in advance would have or would not have affected the preparation of the case, how the selection of the jury would have been handled, how the order of witnesses might have been handled for the defense, whether or not a defendant takes the stand or doesn't, whether you use private detectives to check out one witness or another. I mean these are real life dynamics of trying a case and preparing a case, and it's too simplistic -- and I don't mean that in any degrading way, Senator, believe me -- to suggest that the mere giving or not giving of a statement, because of its contents, would or would not affect an outcome, because of the way one judge or two judges view how they as a trial lawyer might use the contents of that statement.

The real problem with this bill is that it tampers with a very delicate balance. Two people in a courtroom may not speak at once, so we have determined that one

side will speak before the other. We have determined that one side will ask questions of juries before the other. We have determined that one side will sum up after the other, and we hope that in this whole balancing act there's a fair trial, fair for the prosecution, giving them an opportunity to really convict people who have committed crime, and a fair opportunity for people who have not committed a crime to have their day in court and perhaps be declared not guilty and, when we make these itsy-bitsy little changes, they're not so itsy-bitsy and what they wind up doing is changing the balance within the court.

Senator Volker, every year, puts forth a bill which would change the grand jury system because one prosecutor up in Erie County made a mistake one day. Now, since that time everything has gone great. His law, proposed law, has not passed and other prosecutors have not made that error.

Senator, we have a case which has been very well described by the Deputy Minority

Leader, and I don't see case after case happening. There are prosecutors throughout this state who understand their obligation. As a matter of fact, in the very case that was discussed by Senator Paterson, the statement, according to the court decision, would not have changed the outcome and helped the prosecution, so there's no reason why they should not have complied with the law and walked away with their conviction.

The bottom line of all of this is that you cannot take a -- any proposed law that would change the structure of a trial and look at it in a vacuum. You must look at it as part of a whole system of checks and balances and in that context, Senator, I think it is not a great idea, and I would go along with the suggestion, Senator Paterson, that we leave the law just the way it is.

ACTING PRESIDENT HOBLOCK: Senator Abate.

SENATOR ABATE: Yes, on the bill. On Friday night we passed a law which

overturned the Ryan decision because we felt that Court of Appeals case could be put a prosecutor in an unfair position to prosecute serious drug offenders.

This is a very different case. What the law would do, what the Rosario said that discovery is an important part of a fair trial right to counsel. It was an important part of the people's burden to prove a case beyond a reasonable doubt because the converse is, if the defendant doesn't get these prior inconsistent statements, doesn't get the statements of witnesses, it thereby jeopardizes the defendant's ability to prepare for trial. It jeopardizes the right to a fair trial, and it puts the defendant at an unfair burden.

So I agree with my colleague, this is a very different situation from what we faced on Friday night. That was clear this does change the rights of the defendant and, yes, it will be a case where the defendant, the district attorney, because of oversight has failed to give the material over to the defense; but the

burden isn't so great.

The D.A. on the case has those statements before them when they put that witness on the stand. It's usually neglect because it's very easy for them to turn over that information to the defense counsel, so that the burden -- and it's a heavy burden as well it should be -- should stay with the district attorney, and it should not shift to the defendant.

ACTING PRESIDENT HOBLOCK: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of November.

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT HOBLOCK: Senator Leichter.

SENATOR LEICHTER: Yes, if I may just explain my vote on this, Mr. President, maybe put it in a little bit philosophical

context.

I think that what is so wonderful about this country, what is so wonderful about our tradition of due process, is that we really do bend over backwards to make sure that we never convict the wrong person. We know that, as human beings, we're subject to making mistakes, we're fallible, and obviously, innocent people do get convicted, but we make every effort to make sure that a trial is fair and that we avoid making what is the gravest of mistakes in the law, and that is convicting an innocent person and that is, I think, why this, the law as it presently is, is so important and that is why this bill is such a radical departure really, such a basic change in the philosophy of the outlook, and I would say principle of tradition of this country.

Mr. President, I vote no.

ACTING PRESIDENT HOBLOCK: Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1114 are

Senators Abate, DeFrancisco, Espada, Gold, Leichter, Marchi, Mendez, Paterson, Smith, Solomon, Waldon, Wright, also Senator Montgomery -- excuse me, Senator Wright is voting in the affirmative. In the negative Senator Connor. Ayes 41, nays 13.

ACTING PRESIDENT HOBLOCK: The bill is passed.

Senator Wright.

SENATOR WRIGHT: Mr. President, can we return to motions and resolutions. I believe there is a resolution sponsored by Senator DeFrancisco at the desk and ask that the titled be read and the resolution adopted.

ACTING PRESIDENT HOBLOCK: Secretary will read.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution honoring Gregory R. Schneider, an eighth grade student at Driver Middle School in the Marcellus Central School District, for his participation in the 49th Senate District "Good News, Good Kids" student recognition program.

ACTING PRESIDENT HOBLOCK: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes. I rise to speak in support of this resolution. You know, oftentimes in these chambers we talk about things that are wrong with this state and may be with young people. We started a program a couple years ago called "Good News, Good Kids" in our district which honors groups of kids who do good things for the community, and this is one individual, I think had to be specially recognized, Gregory R. Schneider, who is here with his parents and grandmother and other relatives.

He, on his own, as an eighth grader, decided that an area behind the town of Marcellus Town Hall should be a park and made forever green and, on his own, he went to the town supervisor, appeared before the town board to get approval for this forever green park that was his idea, and the town board does what we do all the time. It approved it, but said there's no funds for it. You raise the money, so he

did.

He went out and got fund raisers, together, and at least at the time of this writing he raised about $7,000. Couldn't pay for an architect, didn't have enough money, so he convinced an architect to do a free archi tectural drawing, and then got a landscaping person to devote his time, and brought in other kids to help with the planting, the planting of the trees.

Talk about, you know, getting community service to happen in an eighth grader to do that. Well, I could tell you as of today that park is forever green. The trees, over a hundred trees have been planted, and they're working on the park benches and other things that are going to be forever in the town of Marcellus park because of an eighth grader by the name of Gregory Schneider.

We should honor him and all the kids like him who do good things and give us good things to talk about.

(Applause)

ACTING PRESIDENT HOBLOCK: Thank you very much, Senator DeFrancisco. The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

Senator Wright.

SENATOR WRIGHT: Mr. President, can we return to the reading of the controversial calendar.

ACTING PRESIDENT HOBLOCK: Secretary will read.

THE SECRETARY: Calendar Number 1115, by Senator Present, Senate Print 5221, an act to amend the General Municipal Law, in relation to the powers of the development of railroad facilities by the county of Chautauqua.

ACTING PRESIDENT HOBLOCK: Read the last section.

SENATOR LEICHTER: Mr.

President.

ACTING PRESIDENT HOBLOCK: Senator Leichter.

SENATOR LEICHTER: Is there a home rule message on this bill?

ACTING PRESIDENT HOBLOCK: Not one necessary, we're advised, Senator Leichter.

SENATOR LEICHTER: Well, let me ask Senator Present a question.

ACTING PRESIDENT HOBLOCK: Senator Present yield?

SENATOR PRESENT: Yes.

SENATOR LEICHTER: Senator Present, as I read this bill, in order for a particular IDA project to proceed or if it proceeds, then certain tax relief will be provided from the real estate tax and that will cover a period where the tax rolls have already been closed, is that correct?

SENATOR PRESENT: It will cover any taxes levied after September 15, 1995 with the exception of the school 1995-96 tax.

SENATOR LEICHTER: But, Senator,

if you would please continue to yield, is that because the tax rolls have been -- have been closed?

SENATOR PRESENT: Back in January of this year, we passed a statute that became Chapter 11 of the Laws of 1995 which authorized the IDAs in Chautauqua and Allegany Counties to purchase a portion of the CONRAIL line which runs -- that portion that runs from Hornell to the Pennsylvania-New York State line.

They were not able to negotiate that sale prior to March 1st, which is the normal tax status day, so they have asked that this be extended to September 15th, but not to apply to 1995-96 school district taxes.

It also says that it has to be with the consent of the taxing jurisdictions within that district.

SENATOR LEICHTER: Senator, does this -- is this -- I appreciate that no home rule message is here and none apparently is required, but is this something that the county asked us to do?

SENATOR PRESENT: Very much so, yes.

SENATOR LEICHTER: O.K.

SENATOR PRESENT: The two counties.

ACTING PRESIDENT HOBLOCK: Read the last section.

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

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT HOBLOCK: The bill is passed.

Senator Wright.

SENATOR WRIGHT: Mr. President, could we take up Calendar Number 1101.

ACTING PRESIDENT HOBLOCK: Calendar Number 1101, Secretary will read.

THE SECRETARY: Calendar Number 1101, by Senator Nozzolio, Senate Print 4408, an act to amend the Civil Practice Law and Rules

and the Court of Claims Act and the Correction Law, in relation to prisoner litigation reform.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT HOBLOCK: Explanation has been asked for, Senator Nozzolio.

SENATOR NOZZOLIO: Yes, Mr. President.

This measure is another of our attempts to present a comprehensive approach to prisoner reform, that this particular bill deals with prisoner litigation and it provides what I believe will be a disincentive to those inmates who wish to use the court system and make a mockery out of our system of justice by bringing meritless, frivolous, malicious and/or repetitive lawsuits of a civil nature, and I underscore, Mr. President of a civil nature. This deals with civil litigation.

It also seeks to prevent the filing of law suits by having such actions adjudicated in a more fair and expeditious manner with less case load, to bring justice to

those who may have a very valid lawsuit but, because of the clogged court system, cannot hear that -- that system cannot hear that suit.

Basically there are four purposes of the measure. It institutes a partial filing fee for prisoner litigation brought in state court, establishes a refundable filing fee for actions in the New York State Court of Claims. It requires inmates to exhaust their adminis trative remedies within the Department of Cor rectional Services prior to engaging in litiga tion, and it lastly permits the Commissioner of Corrections to establish sanctions for prisoners who bring meritless lawsuits upon judicial determination where they are found to be such frivolous, malicious or repetitive by a court.

ACTING PRESIDENT HOBLOCK: Senator Abate.

SENATOR ABATE: Yes. Would Senator Nozzolio yield for a question?

ACTING PRESIDENT HOBLOCK: Senator Nozzolio, do you yield?

SENATOR NOZZOLIO: Yes, Mr.

President.

SENATOR ABATE: We had some discussion around this bill -- I believe it's the same bill -- in Codes, and I had one concern. I was willing to support the bill if I could get a couple questions answered, and let me pose the same questions to you, Senator.

One was, is there any time limit set in terms of exhausting the administrative remedies because, if there's no time set, then years could go by and, in fact, this legislation would have a chilling effect for those inmates who do have meritorious claims because they would have to wait a long period of time before they could file their claims with a state court.

SENATOR NOZZOLIO: Section 3 of the bill deals with the exhaustion requirement, Senator.

SENATOR ABATE: See, I don't have the bill before me. Does it have anything - and I don't think the answer -- the question was asked the last time. Is there a 90-day limit, a

year limit, a reasonable period of time, because the exhaustion of administrative remedies, I think, is a very good idea because it would avoid litigation, particularly when some of these issues could be resolved at the administrative level, but you don't want it to have a chilling effect on all future litigation.

SENATOR NOZZOLIO: The exhaustion requirements established are only for those claims where there is recovery for personal property damages, Senators. We do not have any specific time limit where the Department of Corrections must act. However, I'm certainly sure that there will be another lawsuit filed if, for some reason, the Department of Corrections does not act in a timely manner.

I believe that to set an administrative -- you as a former commissioner, I don't think would have -- with a statutory requirement that an action must be reviewed within a short period of time would make sense administratively, that nonetheless the intention is that as all administrative remedies must be

exhausted when a private non-prisoner litigant must go to court if the court, within the claim of statute of limitations, that governs the time that action must be taken.

An exhaustion of remedies does not -- must be made within that administrative or that statutory framework of the statute of limitations of the case in question, the damages sought based on the statute of limitations of that particular case, so I believe that there is ample time certainly to do this, that I don't see the need to handcuff the administration with a specific period of time.

SENATOR ABATE: But, on the other hand, if in fact in the statute, it -- it would outline that an administrative resolution had to occur within a period of time, let's say 90 days, six months, even the Department of Correction would not be harmed by that because all that would occur is the person then would pursue their remedies in the court as well as administratively, but it would put some burden on the Department, DOCS, to move these adminis

trative cases, or they understand that the inmate has an opportunity to follow a second venue to remedy their situation.

That's one of my concerns, and I was hoping that could be addressed so I could support this.

Also, are you mindful that most of the cases that go before a judge, even though they may -- there may not be a ruling in favor of the inmates, most of them are found either to be non-meritorious, or found to be meritorious? Very few are found to be frivolous and this - and my understanding of this legislation that, if an inmate files a claim in court and it's non-meritorious, there would be no sanction against that individual.

Let's say they lose in court, but the court finds it's non-meritorious. That does not mean it's frivolous; is that right?

ACTING PRESIDENT HOBLOCK: Senator Nozzolio, do you yield?

SENATOR NOZZOLIO: Yes, Mr. President. That is correct.

SENATOR ABATE: And that is an important distinction. That's why I felt that I could support this legislation, but because there are no time limits, I feel that it really weakens the remedy that's provided to DOCS.

Would you consider, if this doesn't get passed by both houses, having a discussion with DOCS to find out if there is an internal time period to resolve these or putting in statute some additional rules and regulations?

ACTING PRESIDENT HOBLOCK: Senator.

SENATOR NOZZOLIO: Mr. President.

SENATOR STAFFORD: Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Stafford.

SENATOR STAFFORD: I apologize to the two individuals debating, but I'm sure they wouldn't mind because there will come a day when you visit here after you've served in such a dedicated manner. We've never been able to have

him come back on the floor, but we wouldn't let him leave today Albany, without introducing and wishing that he would come more often. He does quite well every time he comes to Albany, so maybe that will relieve that. Anyway it's Senator Doug Barclay.

(Applause)

ACTING PRESIDENT HOBLOCK: Good to see you, Senator.

SENATOR STAFFORD: Thank you. Thank you, Senator, Senator Nozzolio.

ACTING PRESIDENT HOBLOCK: Senator.

SENATOR NOZZOLIO: Mr. President, in responding to Senator Abate's question, I think that, Senator, of course, we would always be willing to listen to discussion, but the Department of Corrections under this legislation is required to promulgate appropriate rules governing the conduct of this, and certainly that input that could be made to the Department, and I would welcome some reasonable discussion on that issue.

SENATOR ABATE: And just on the bill, and in response to Senator Nozzolio, I believe DOCS has some protocol dealing with most grievance situations if those grievance situations haven't been resolved within 90 days. The property claim, there is no time limit.

ACTING PRESIDENT HOBLOCK: Excuse me. Excuse me, Senator Abate. I know this is a very important bill. Can we have some order in the chamber please, listen to Senator Abate on this very important bill.

Senator Abate. Thank you.

SENATOR ABATE: Yes, I believe the language that surrounds not only grievance cases, because already DOCS has some language that says that cases that are grievable must be resolved within 90 days. My concern has to do with property cases, property theft, property loss.

I do not believe that there's any administrative ruling or regulation that requires DOCS to resolve those cases in any

period of time. Without that, in -- this legislation becomes problematic. At any rate, I look forward to working with you on this legislation.

Thank you.

ACTING PRESIDENT HOBLOCK: Senator Waldon.

SENATOR WALDON: Thank you very much.

Would the Senator from Wayne County permit me to ask a question or two?

ACTING PRESIDENT HOBLOCK: Senator Nozzolio, do you yield?

SENATOR NOZZOLIO: Certainly, Mr. President.

SENATOR WALDON: Senator, it is my understanding, and I will accept your correction, because I know that you're much more on top of this than I am, but it's my understanding that the prisoners as a rule of thumb, before they begin instituting suits, have an internal process that they go through in the prison systems, a grievance process, is that

correct?

SENATOR NOZZOLIO: I mean there are grievance processes within each prison. That is correct.

SENATOR WALDON: And it is also my understanding that this move into the courts by prisoners oftentimes occurs after they have initiated the initial grievance process, is that your understanding?

SENATOR NOZZOLIO: Mr. President, no, it is not my understanding and sometimes that process is used and used legitimately in terms of the grievance process within each prison.

What we're hoping is that, by this legislation, that administrative process will be used more often because, frankly, we have a direct -- "go directly to court" mentality by many in terms of presenting grievances that really have no business in court.

So, Senator, I disagree with the comment of "often used". I think that it's not

often enough in terms of using the process and after that process is exhausted of going to court.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Waldon.

SENATOR WALDON: If the gentleman from Cayuga County would let me ask a couple more questions?

ACTING PRESIDENT HOBLOCK: Senator yield?

SENATOR NOZZOLIO: Mr. President, just for my colleague's benefit, I represent five counties, I can give each of them. I will give you each of them but that doesn't mean necessarily you ask five questions. You said Wayne and Cayuga. I got Seneca, Yates and Ontario.

SENATOR WALDON: And I didn't think the area you represent would have any bearing whatsoever on the questions you would respond to or the questions I would ask.

May I continue, Mr. President?

ACTING PRESIDENT HOBLOCK: Senator Waldon. Senator Nozzolio, you continue to yield? Senator Waldon, you may continue.

SENATOR WALDON: Anyway it's fun to be here sometimes on these issues. My concern is, Senator Nozzolio, and let me be specific and then we can cut right to the chase. If someone has, in their relief system, a legitimate cause that should be aired in court, I think it is un-American to take that away from them, but equally as important as taking away their right to go to court is to allow the particular superintendent and/or warden of the facility at which this person may find him- or herself, to be able to apply punishment by taking away privileges, maybe not necessarily cavalierly but at least it appears that they can cavalierly take away privileges because someone may feel that he or she has a right to sue.

These people are in prison, but should their rights be deterred to a greater extent than those who are outside of the

prisons? Isn't that what this accomplishes?

SENATOR NOZZOLIO: Mr. President, in response to my colleague's inquiry, I can say this, that your concern is certainly a valid one if the situation was stifled by this proposal before us; but, Senator, it is our intention to establish a system that is no better for those who are inmates than the system for those who are private citizens outside the prison in terms of accessing the courts.

There are provisions in this legislation for prisoners who are seeking recovery for certain damages to have a waiver of the court fee that we're asking them to pay, a fee, I might add, that is only a small portion of the fee that your citizens and your constituents and my constituents must pay to access courts for their own private litigation. I have to say "private litigation". This has nothing to do with any violations of civil or criminal rights, civil rights that inmates may claim.

Also there is, as I mentioned,

this fee could be waiveable or reduced depending on the type of action sought. The program is identical to a program that has existed for the last decade in the Northern District of New York in the federal court system that established a partial filing fee program for those who wish to bring litigation in federal court. We're modeling that fee program at the state court level now based on the federal court model, and we're trying to reduce the numbers of types of cases that are brought directly to court, and I think that, if you heard of the types of cases and the scope of the problem, if I may, Senator, in asking you to yield, just in terms of our dialogue here, that there are approximately, in terms of litigation right now, one lawsuit for every two inmates in the system. Approximately 65,000 inmates in the system today; we have almost 30,000 lawsuits pending, brought by inmates in the system. Many of those lawsuits may be meritorious, and we're not trying to stifle those. What we're saying though is, there are many lawsuits which have no merit

whatsoever, and those are the ones we're trying to focus.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Waldon.

SENATOR WALDON: May I continue, Mr. President?

ACTING PRESIDENT HOBLOCK: Senator Nozzolio continue to yield? Senator Waldon.

SENATOR WALDON: Yes, Mr. President.

Senator Nozzolio, I was going to ask you for statistics on the number of cases pending, et cetera, and you anticipated my question and shared that information with me. Being that you have that data clearly, you must have it there, I keep seeing you looking down at the paper and then speaking.

Can you tell us what percentage of those cases are state court, what percentage of those cases are in federal court, what percentage of those 30-plus-thousand cases have

been resolved and found to be frivolous, what percentage have been found to have merit, and what percentage do not fall under those two zones?

SENATOR NOZZOLIO: Mr. President, if I may attempt to answer some of Senator Waldon's questions: The 30,000 cases I referred to are those in state court. Those are not in federal court, that in terms of federal litigation, I can tell you that the Northern District, after hearing or establishing the fee structure, had a 46 percent decrease in merit less prison or frivolous prisoner litigation.

The backlog in the state courts are what we're trying to get to here, Senator, and we're looking at 30,000 cases, in other words, none of which are adjudicated because they are pending. These are pending lawsuits. I don't have statistics for you in terms of those that are -- have been prisoner litigation for X period of time that has been adjudged - adjudicated frivolous.

Senator Abate, in her comments,

mentioned that most cases are not per se determined frivolous, but I don't have that information. What I do have is the model of the -- the federal system, and I could share with you some of the types of cases that I'm trying to prevent.

I'm trying to prevent those types of cases, for instance a -- an inmate in the Mohawk Correctional Facility in this state sued for a million dollars, sued the New York State government taxpayers for $1 million because a guard refused to refrigerate his ice cream cone. Unfortunately, it melted. The prisoner sued you and I and the taxpayers of this state for a million dollars.

There are others like the suit against the state because an individual could not perform like Satanic rituals in their jail cells or because the view outside their cell window was not picturesque enough or the inmate who sued the state because prison meals did not include veal or lamb or oysters; that there was, of course, the infamous litigation in the North

Country in Senator Stafford's area where a prisoner sued the state claiming they were wrongfully accused of stealing a two-pound block of cheese. Now, that may end up not to be frivolous, but nonetheless it's the type of litigation that we're talking about.

Let me just conclude by the prisoner who sued the state of New York because there was razor ribbon on top of the prison fence, and he believed that that razor ribbon which is there to prevent escape, of course, as you well know, that prisoner claimed the razor ribbon was a violation of his civil rights.

Those are the types of litigation we're trying to stop with this proposal.

SENATOR WALDON: Senator, I can accept the information that you've just shared with myself and our colleagues with the exception of the ice cream. As you know, earlier in the session, Ben and Jerry's played a very important role in the deliberation of this body, so on that one situation alone, I might step back a bit from accepting on its face the

information you shared.

But to be serious, and I've been frivolous there and facetious, and I hope you will understand that. If I may, I have just one other area I need to cover to help me make my decision.

ACTING PRESIDENT HOBLOCK: Senator Nozzolio, you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

SENATOR WALDON: Let me preface my question to you if I may, Senator Nozzolio, with this statement. As I understand the practices of the court and courts, when you go before the court and you present your case, eventually the judge or the jury, whatever the forum, makes a decision and they say that you win or you lose and there's a resolution according to whether you've won or lost in terms of punishment meted out and/or a settlement of sorts when it is a situation that lends itself to settlement or an actual finding by the court of monetary damages, et cetera, et cetera.

The judge is able to determine what happens sometimes directed by the jury, but in this situation, the Commissioner of Correction, if I understand your bill correctly, will have the ability to take away time off the good behavior and to take away visitation rights if he deems that these actions are frivolous, and I want to know is that something that you support on its merits, do you see any immorality in that kind of ability on the part of the commissioner, or do you feel that that's really what the commissioner should be permitted to do?

SENATOR NOZZOLIO: Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Nozzolio.

SENATOR NOZZOLIO: In response to my colleague's question, I -- no, Senator, we are not entrusting with this bill the Department of Corrections as the overseer of those law suits and as the decider of whether or not those prisoners' lawsuits are, in fact, frivolous. We're suggesting and establishing sanctions for

prisoners who are determined by the courts to bring frivolous lawsuits, so the determination is made by the court, Senator, as I think you would like it to be, as I would like it to be, and they are the determining -- there the determining factor is the quality of the lawsuit. Then, if a determination is made by the court, it will be up to the commissioner to take sanctions against those who have brought frivolous litigation, the type of sanctions that you mentioned, eliminating or reducing time off for good behavior, also reducing the amount of visitation rights that a prisoner may have.

SENATOR WALDON: Last question if I may, Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Waldon. Senator Nozzolio, you continue to yield?

SENATOR NOZZOLIO: Yes, Senator.

SENATOR WALDON: Senator Nozzolio, are you saying that the commissioner can exact this penalty, taking time off for good behavior, et cetera, after one time that the

person is determined to have brought a frivolous suit or if it is when the person having been found guilty of bringing a frivolous action decides to do it again and again and again and again?

SENATOR NOZZOLIO: Mr. President, in response to my colleague, let me read page 3 of the proposed legislation. What we're suggesting by this law, proposed law, is that upon a determination by a court that a complaint or petition filed by a prisoner incarcerated within the state is frivolous, the court reports that finding to the commissioner. Then the commissioner, his representative have this authority by this legislation we are taking today to determine whether sanctions shall be applied, the sanctions we list. They may include but not be limited to limiting visitation privileges or eliminating recreational privileges or other activities, but we're also requiring the commissioner, however, to establish rules and regulations so that there is notice to the citizens of this state, to the

Legislature and to those prison inmates, the types of sanctions that could be proposed and enacted if a judicial determination is made that this litigation -- that this prisoner litigation is frivolous.

SENATOR WALDON: Thank you very much, Senator Nozzolio.

Mr. President, if I may, on the bill.

ACTING PRESIDENT HOBLOCK: Senator Waldon, on the bill.

SENATOR WALDON: Again, Senator Nozzolio, I appreciate your indulgence. The information you shared with me was enlightening in terms of your intent and what this proposal will accomplish.

I am very sensitive to the financial situation of the state of New York and I'm very sensitive to methods and means by which we should move to save money for the state of New York. We are in a crisis, a budgetary crisis and a fiscal crisis. However, I think of some things that we do portend and indicate that

we will have a disastrous result down the road.

This, in and of itself, will not create the disaster but I think in regard to our prison systems, our prison system, I should say, when you take away the educational opportunity and you compound that by instituting the policies which this proposal will surely result in, when you compound that with taking away the recreation, when you compound that with taking away something that's as silly as the weights that the prisoners use to exercise themselves, when you make the system so punitive, so aggressive, so repressive as it is in places like Tennessee in this state, I think we're creating a problem down the road and we will have Attica revisited.

I don't think that's your intent, Senator Nozzolio. I believe sincerely that you think that what you're doing is the right thing, but I believe that we must view these potentials in terms of the legislation we're proposing with a greater vision and a broader scope. I think that we are, with what we do in this chamber,

creating a potential for disaster in regard to the prisons and the prisoners and perhaps more importantly, although I'm sure the prisoners won't agree with this, the people who guard them, the correctional officers, and so I can not support this because I think it's another nail in the coffin of future disaster which may occur in our prisons, and I hope it doesn't happen.

Billy Wildey, a dear friend of mine, was at Attica with the publisher of the Amsterdam News and taking the pictures of the bodies stacked at Attica, and I think that was awful, and I hope it never happens again, but I think the potential from some of the things we do here is there.

So I will not be able to support you this time, Senator Nozzolio, in regard to this legislation.

Thank you, Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Dollinger.

SENATOR DOLLINGER: Mr.

President, will the sponsor yield to just one question?

ACTING PRESIDENT HOBLOCK: Senator Nozzolio, do you yield?

SENATOR NOZZOLIO: Certainly.

SENATOR DOLLINGER: Mr. Chairman we have, under the C.P.L.R., a section for frivolous lawsuits under section 8001 of the C.P.L.R. Do you know if that's been used in prisoner litigation and, if so, how extensively the sanctions have been used under that?

I would add, through you, Mr. President, I don't know whether that specific section applies to the Court of Claims, but I believe, my recollection is that it does, so I'm just trying to get information.

SENATOR NOZZOLIO: Senator, let me repeat your question so I understand it. You're asking if section 8 of the C.P.L.R. - rephrase the question, Senator.

SENATOR DOLLINGER: My question is this: The C.P.L.R. now contains a section, I believe it's section 8001, 8002 which allows the

courts to impose sanctions on frivolous law suits. My understanding is, and this is where I'm looking for some guidance from Corrections, my understanding is that that section applies to all claims of those brought in the Supreme Court. What I'm not sure of, whether it's ever been brought in the Court of Claims, and my question is, do you know whether it applies to the Court of Claims, number one, and number two, whether the Court of Claims has imposed those sanctions on frivolous prisoner litigation?

I'm trying to find out through you, Mr. President, whether there is already a disincentive in our system for the prisoner to file frivolous claims because those claims can be brought or those claims can be determined to be frivolous and sanctions and costs can be imposed on them.

SENATOR NOZZOLIO: Mr. President, in response to Senator Dollinger's question, I said I do not know specifically if a sanction currently exists in the C.P.L.R. that has any effect on prisoner litigation. What I certainly

can tell you is that whatever that -- if there is a sanction, it certainly is not having any effect on -- relative to the prisoner litigation issue and 30,000 cases now pending, that backlog is significant. It's compared with 16,000 cases pending only six short years ago, Mr. President, so that there has been a dramatic escalation of those lawsuits.

I'd have to say, in response to the Senator's question, whatever sanction is there now, it's either not being enforced or is not significant enough.

SENATOR DOLLINGER: Thank you, Mr. President.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Leichter.

SENATOR LEICHTER: Yes. If Senator Nozzolio would yield, please.

ACTING PRESIDENT HOBLOCK: Senator Nozzolio, do you yield?

SENATOR NOZZOLIO: Yes, Senator.

SENATOR LEICHTER: Senator Nozzolio, did I understand you to say that there are 30,000 cases pending?

SENATOR NOZZOLIO: Yes, Senator, I said 30,000 by former Attorney General Oliver Koppell's report last year. The Attorney General's backlog of cases, to be specific, was 29,122 lawsuits filed by prison inmates as of April.

SENATOR LEICHTER: Senator Nozzolio, if you would be good enough to continue to yield.

Senator, isn't it a fact that that figure does not include only active litigation, but does include notices of intent to sue the state?

SENATOR NOZZOLIO: In response to Senator Leichter's question, I'm not certain, Mr. President, how to define active litigation. If you're referring to those cases, Senator, if I may, in response to your question, whatever case is brought, the Attorney General is -- by prison inmates, the Attorney General is required

to defend and prepare, as you may well know, you have to prepare for a case regardless of its - whether it's in the middle of a trial or if there's a notice of claim.

So, Senator, by your question if you're suggesting that there may not be 30,000 cases now being tried, it's probably correct, but there are certainly 30,000 cases that must be defended and the preparation time and the effort for that defense must be taken by the nature of them being filed.

SENATOR LEICHTER: Senator, if you have would continue to yield.

ACTING PRESIDENT HOBLOCK: Senator Nozzolio, do you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Leichter.

SENATOR LEICHTER: This has been precisely my point. How many cases have to be defended? The fact of the matter is, Senator, that if it's a notice of intent to sue the

state, there, frankly, is actually nothing to defend.

How many cases have actually been commenced by the service of a summons and complaint? That's what starts a case, and I agree with you, once a summons and complaint has been filed, then it becomes the obligation of the Attorney General to take some action. Notice of intent to sue is usually just filed to preserve certain rights and so on, does not require any response by the Attorney General.

I think the 30,000 figure, Senator, I understand it doesn't come from you and you're just quoting Attorney General Koppell, but I think upon examination, there aren't 30,000 cases. These are not cases. Notice of intent to sue is not a case. Isn't that -- isn't that true?

SENATOR NOZZOLIO: Senator, let me respond to that question another way. Again, quoting the former Attorney General who says that 20 percent of his office's budget or about $15 million a year is exclusively required to

defend these cases, regardless of what stages they may be in.

SENATOR LEICHTER: Senator, I - if you'll please continue to yield.

ACTING PRESIDENT HOBLOCK: Senator Nozzolio, you continue to yield?

SENATOR NOZZOLIO: Sure.

SENATOR LEICHTER: Senator, I accept that as a meaningful figure. I have not seen that particular statement that came from the former Attorney General, but I just want to say that talking of 30,000 cases, and I appreciate the error is not yours, but I think there's been misleading and what I'm trying to find out is really how much of a burden is there on the courts, how much of a burden is there on the Attorney General's offers in defending these cases and, in that connection, Senator, have we received any memorandum from OCA saying the courts of this state are overburdened by inmate litigation?

SENATOR NOZZOLIO: Senator.

ACTING PRESIDENT HOBLOCK:

Senator Nozzolio.

SENATOR NOZZOLIO: I'd like this question to be answered this way, and I'll reiterate that it requires at least 20 percent of the Attorney General's effort to defend these matters. If it costs -- and I believe this to be a low estimate -- $15 million a year, if we had 16,000 cases pending six years ago, 29,000 pending today, I believe there's certainly a dramatic growth and a substantial sum of money used to defend inmate lawsuits.

SENATOR LEICHTER: Senator Nozzolio, if you continue to yield, the figure that you've just given me shows that, in fact, there was no increase in inmate litigation. You say that how many -- how many years ago was there 16,000?

SENATOR NOZZOLIO: Yes, Senator.

SENATOR LEICHTER: How many?

SENATOR NOZZOLIO: Six years ago 16,000 cases.

SENATOR LEICHTER: And how many inmates did we have this year?

SENATOR NOZZOLIO: This year 29,000 cases. That's one lawsuit for every two inmates in this state.

SENATOR LEICHTER: Senator, how many inmates did we have six years ago and how many inmates do we have now?

SENATOR NOZZOLIO: We have now about 64,000 inmates, 62,000 inmates in our system.

SENATOR LEICHTER: And how many did we have about six years ago?

SENATOR NOZZOLIO: I'm not sure, Senator.

SENATOR LEICHTER: Well, I'm taking a guess, Senator, but I would say it was roughly 45,000 something in that figure, so that in part, the increase in the number of cases just reflects the fact that you have so many more inmates, and when I just said that your figures do not show any increase, they do show some of because there's been an increase greater than the number of inmates, but the -- to a significant respect, the increase in the number

of cases is due to the fact that we're incarcerating more people, so it isn't as if the inmates who are currently in jail are filing many more lawsuits than they did before.

Senator, if you'd be good enough to continue to yield.

ACTING PRESIDENT HOBLOCK: Senator Nozzolio, do you continue to yield?

SENATOR NOZZOLIO: Yes.

ACTING PRESIDENT HOBLOCK: Senator Leichter.

SENATOR LEICHTER: Senator, I asked you a question of whether OCA or the chief judge or anybody from the court system had said these cases are a burden upon our courts?

SENATOR NOZZOLIO: I have no indication from the OCA saying that they're a burden on the courts. However, I can read, I can see 30,000 in front of my face, Senator, and say that 30,000 ice cream cones melting and razor ribbon wire being a violation of constitutional rights and Satanic rituals can't be held in my cell, I look at those individual

cases, Senator, whether they are 16,000 or 30,000, as being burdens on the court, look at the 20 percent of the Attorney General's time taken to defend these lawsuits, to me I don't need a number from OCA, Senator, telling us that this is a burden. I do not have for you a memo from OCA on this bill.

SENATOR LEICHTER: Mr. President, if Senator Nozzolio would continue to yield.

ACTING PRESIDENT HOBLOCK: Senator Nozzolio?

SENATOR NOZZOLIO: Yes, Mr. President.

SENATOR LEICHTER: You keep on mentioning the figure 30,000, but I thought that your dialogue and mine had established that there are not 30,000 cases. Cases, Senator Nozzolio, are where a summons and complaint has been filed. Many of these, if not most of these, involve notices of intent to sue, where you scribble on them, "I intend to sue." There is no follow-up. No action is required by the courts. No action is required by the Attorney

General, and you conceded that the 30,000 includes those notices of intent to sue.

So we don't have 30,000 cases, and we shouldn't use that figure because I think it is misleading, even if it comes from somebody as distinguished as the former Attorney General, who used to be my roommate, but he makes mistakes, too.

But let me ask you this, Senator. You keep on mentioning about the "ice cream" case, and when I first heard you talk about it, I said, "Oh, that's ridiculous, absurd."

Now that I take a look here at a memo from the Prisoners Legal Services, it says, and I'm quoting, "Even the 'ice cream' lawsuit, which was filed by the prisoner on his own and that was mentioned in a legislative memorandum, has not been dismissed by the federal court because it raises other substantial issues."

Is that your understanding?

SENATOR NOZZOLIO: I didn't hear the first part of your question, Senator. Could

you repeat it, please?

SENATOR LEICHTER: Well, the first part of my question is that the "ice cream" case that you referred to with a great deal of passion and vehemence, understandably, because, as you describe, it sounds like a misuse of the judicial process, but I have a memorandum here from the Prisoners Legal Services of New York which says that the federal court has not dismissed that case because it raises other substantial issues. It is not a frivolous case according to the federal court.

Is that your understanding?

SENATOR NOZZOLIO: It's not my understanding, Senator, and maybe there's two ice cream cones out there melting that we have litigation over.

I think the point, Senator, is one that you need not -- that you need not gloss over, that you made just this moment; that if the courts do not determine these cases to be frivolous, then there will be no sanctions taken; that we're not trying to impede anybody's

right to access the courts. We're only saying that let's use some prudence in accessing those courts, and let's put prisoners on a level playing field or on a more level playing field with your constituents and mine who are trying to access the courts with legitimate claims, yet they have to spend much more funds to do so.

SENATOR LEICHTER: Senator Nozzolio, if you will continue to yield.

You say you are not trying to impede prisoners? Of course you are trying to impede prisoners.

And, by the way, I have no problem in doing that if you can establish there's a problem. What I'm concerned about is you talk about 30,000 cases; then we find out there aren't 30,000 cases. You talk about this frivolous "ice cream" case; you find out the federal court said that it raises substantial questions. You talk about the great burden on our court system, and then we find out that OCA has never asked us to do anything about it.

Then you say that all you want is

a level playing field. Well, let me ask you this. If you or I want to bring an action in the Court of Claims, are we required to post any filing fee?

SENATOR NOZZOLIO: Let me refer to Section II of this bill that deals with Court of Claims. "The filing fee would not apply to any claimant filing for the appropriation of real or personal property or interest thereon."

So, Senator, in terms of an inmate accessing the Court of Claims for any taking of property or any seizing therefore would not be subjected to this filing fee. It would be also refundable if the inmate provided a motion, if it was, in fact, a successful claimant for some other conclusion of a cause of action that may have not directly enveloped the seizure of real or personal property; so, therefore, I believe if you look at that provision of the bill, see that the inmate is protected and is given those types of provisions in accessing Court of Claims actions, I think that you certainly would feel that your question

was answered.

SENATOR LEICHTER: Senator, if you would be kind enough to continue to yield because I want to clarify this point.

I read that section of the law, and you will agree that in some instances you require a $50 filing fee with the Court of Claims. Now, I am advised -- I don't practice in that court and, therefore -- so I base this just on what I've inquired and received an answer to -- that when you and I bring an action in the Court of Claims that we are not required to file any filing fee for any action in the Court of Claims. Is that the case?

SENATOR NOZZOLIO: There is a refund -- if I understand your question, Senator, you are asking under what provisions is there a refund available?

SENATOR LEICHTER: No, no, that wasn't my question at all.

Senator, let me repeat it. When you or I, not as inmates -- which we're not, although sometimes we feel we're inmates of a

different sort of institution. But when somebody who is not an inmate files an action in the Court of Claims, I am advised that there is no filing fee in the Court of Claims for any action by somebody who is not an inmate; and I'm asking you if that is correct?

SENATOR NOZZOLIO: It is my understanding, yes, Senator.

SENATOR LEICHTER: All right. Senator, you said that you were trying to create a level playing field, but is it a level playing field when you require fees by inmates when no fees are required by persons who are not inmates?

SENATOR NOZZOLIO: Senator, when a person accesses the Court of Claims, they are doing what a citizen does outside the prison system. They are doing so because of an appropriation of real or personal property or for any interest thereon. No fee is required for those citizens seeking redress. No fee is required under this bill for those inmates seeking the same type of action in the same

court for the same purpose. We're saying that's identical. It's level. It's the same.

SENATOR LEICHTER: But, Senator, with all due respect, I believe you're being a little disingenuous because we just established that there are other proceedings in the Court of Claims where a non-inmate will not pay a fee, but under your bill an inmate now will have to pay a fee; and, therefore, my question is, are you creating a level playing field, or are you creating an unlevel playing field by imposing a filing fee on inmates which non-inmates do not have to pay?

SENATOR NOZZOLIO: Senator. Mr. President, if I may respond.

The characterization of my answer as disingenuous, I think, is an effort to try to hide the matter here, Senator. I am talking about identical fees or lack of identical fees for identical actions. If you go into the Court of Claims and sue for the seizure of real or personal property, you do not pay a fee. If you go into the Court of Claims as a prison inmate

and sue for real or personal property or interest thereon, you will not pay a fee.

Senator, to characterize that as disingenuous is, I think, frankly, an insult. It is absolutely identical. Now, if a prison inmate is suing the State of New York for redress of another type of a grievance, not the seizure of real or personal property, then a fee is required.

Now, to say that that is an unlevel playing field I think is a disingenuous response on your behalf, to use your words.

SENATOR LEICHTER: Mr. President. Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Leichter.

SENATOR LEICHTER: If Senator Nozzolio will continue to yield.

ACTING PRESIDENT HOBLOCK: Continue to yield, Senator Nozzolio?

SENATOR LEICHTER: Senator Nozzolio, if I was disingenuous I will apologize, but let's see who is disingenuous.

What I was trying to establish and I thought you had really made it very clear by your answer which is that there are instances -- instances where non-inmates suing in the Court of Claims such as, let's say, an action against the State of New York for negligence will not have to pay a filing fee, where you are now imposing upon inmates a filing fee.

SENATOR NOZZOLIO: Senator, the fee is a $50 refundable fee. When the inmate who sues for negligence or sues for any other action not related to the seizure of property, that fee -- there is a fee, correct? My response is I hope I clarified this point for you and for the debate that there is a fee. That fee is refundable upon successful completion of that action.

SENATOR LEICHTER: Senator, but if the action is resolved other than upon a judgment in favor of the inmate, such as the case is settled and so on, then that fee would not be refundable. The point is, Senator, I think you -

SENATOR NOZZOLIO: Senator, did you say -- if you will yield, sir? Mr. President. If Senator Leichter will yield.

ACTING PRESIDENT HOBLOCK: Senator Leichter, do you yield?

SENATOR LEICHTER: Yes.

SENATOR NOZZOLIO: Thank you, Senator. Upon a motion, under the CPLR, a successful litigant in the Court of Claims can apply to have that filing fee refunded, Senator, in response to your question.

SENATOR LEICHTER: Mr. President. I thank Senator Nozzolio for being as courteous as he always is. I'm sorry if I implied that there was anything disingenuous about his answers. I think what is true to say it took us a long time, I think, to come to what is fairly clear and plain, which is, that you are imposing fees on inmates for certain actions in the Court of Claims where non-inmates do not have to pay the fee; and since you are doing this, there is no sense in trying to talk about, "Well, I'm not imposing this for actions of

appropriation of real property or personal property," or there is no reason in talking about refundable, "Well, it's refundable." The fact is you're doing it, and my objection is just to your saying you are creating a level playing field, when in fact what you're doing is the exact opposite, is not to create a level playing field; and the real issue is, is there a reason, is there a justification for saying inmates are going to be more restricted as to the lawsuits they bring?

The reason that you give is that there are 30,000 cases. Then we look at it and there aren't 30,000 cases. There are far, far fewer because most of these involve notices of intent to sue.

Then, when we look at it further, and I have a statement here from a judge from the Court of Claims who states that in the Court of Claims -- he says there are 1,158 prisoner cases pending as of June 1994.

The point is I don't think that the case has been made that the courts are

overrun with prisoner litigation to justify saying we're going to limit inmates as to the manner in which they bring you lawsuits.

I also point out that this bill sets up, I think, a somewhat cumbersome, administratively difficult procedure in the effort to try to deter inmates from bringing lawsuits, where they have to inquire how much money they have in their account and then they have to get a certified copy; and until they get that certified copy, they can't bring a lawsuit unless they file an affidavit. I submit that this is probably going to end up just creating more work.

If there is a real problem, a serious problem, then some action is justified. I don't think we have a serious problem. The courts are pretty well able to defend themselves against frivolous lawsuits. Let me tell you, I'm an attorney and it's not very difficult to defend a frivolous lawsuit. In fact, some years ago, I defended a frivolous lawsuit against a bank by somebody who kept on bringing lawsuits.

I went into court and the judge issued an order that this particular person could not start another lawsuit without getting permission of the court.

So the courts have a self-interest in protecting themselves. They have a means of doing it. They haven't asked for our help in this particular case, and I really don't see the reason or the justification for this bill and this hue and cry that, my God, we've got to protect ourselves against inmates bringing all sorts of unreasonable lawsuits, and we're talking about lawsuits not notices of intent to sue.

I think Senator Waldon made a very excellent point about the importance of not abridging inmates' constitutional rights to such an extent that you are going to create problems, and I think it's particularly important that in a system that by its very nature is closed, as a prison system is, that there be some safety valve, whether it's a Commissioner of Correction, whether it's an ombudsman, whether

its recourse to the courts, and that is important. And I think to abridge this absent a clear showing that there is a real problem that we've got to respond to, I don't think is justified.

I just finally want to say that another aspect of this bill that troubles me is that if an inmate brings a frivolous suit, then a whole range of administrative punishment can be imposed by the Commissioner. The ones that are listed in the bill are taking away recreation rights. That doesn't upset me that much; but it just points these out as among a whole range, and within that range are also taking away good time, probably solitary confinement, and so on. I think that's -- to my mind is far too draconian and it's far too strict a remedy. I don't think that -- to apply that sort of a sanction and to have that sort of a deterrence in an effort to keep inmates from challenging procedures that they feel are legally or constitutionally wrong, I don't think is something that we ought to do.

I don't see a problem. I see a remedy here or a so-called remedy which is very cumbersome and may be very punitive. I think the bill is a mistake.

ACTING PRESIDENT HOBLOCK: Senator Paterson.

SENATOR PATERSON: Mr. President. If Senator Nozzolio will yield for a moment?

ACTING PRESIDENT HOBLOCK: Senator Nozzolio, will you yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Paterson.

SENATOR PATERSON: Senator Nozzolio, I received in the mail a brief from an inmate who wants to overturn a murder convic tion. It was about 75 pages long, including his letter to me where he was complaining about the brief that his attorney wrote. The brief was about 40 pages, and eventually the attorney told the inmate that she was not going to submit his

brief because she didn't think the arguments were meritorious, and this is a dispute, and you get a lot of letters from inmates, and they are long and drawn out, and some of the issues don't really relate to the cases in the fashion that they wish that they would.

You have a few inmates generating a lot of cases in the litigious nature of continually challenging the court hoping that they will be successful, and so I understand the spirit of your legislation. But if you would yield for a question, I would certainly ask you if in a sort of a consent decree as there was in the case of Kaslowski versus Coughlin that the separation of powers would be violated by the passing of your bill in the sense that it would allow the Commissioner of the Department of Corrections to impose a penalty on visitation over an issue that does not generate from a violation of a visitation and which would really be very much opposite to what that case holds?

ACTING PRESIDENT HOBLOCK:

Senator Nozzolio.

SENATOR NOZZOLIO: Yes, Mr. President, in response to Senator Paterson's question.

Senator, the Commissioner under this bill before us is only empowered to provide sanctions at his discretion -- only if the courts have determined that there is, in fact, a frivolous lawsuit. That determination must be made by the judiciary and not by the Executive; and once that determination is made, the Execu tive must follow rules which are promulgated, that we need to ensure that those rules are not arbitrary and that those rules go through the same rule-making process that any other executive rule must undergo.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT HOBLOCK: Senator Paterson.

SENATOR PATERSON: I understand what the Senator is trying to accomplish; but, Senator, isn't it true that even though the decision is made by a court, the court is making

a decision with respect to frivolous lawsuits?

We are now asking the Commissioner to apply it in a way that is detrimental to the inmate's visitation time which does not relate to the lawsuits, and that's why I say that your legislation would probably be overturned based on this particular case.

Don't you think it's possible that it would be overturned?

SENATOR NOZZOLIO: Mr. President, in response to Senator Paterson's question, I say, Senator, that the inmate who presents a frivolous lawsuit just as the citizen of your district or my district who brings the same frivolous lawsuit would be charged with sanctions. The court, in a case of our constituent, would be charging the citizen with economic sanctions.

What we're saying is that the Commissioner of Corrections would have the right and authority under this law to provide sanctions after the Court determined that

sanctions were, in fact, in order. Those sanctions would be limited to the discretion of the Commissioner only in the areas of limitation of visiting privileges, limitation of recreational or other activities. We specify in the statute exactly what those sanctions could be if imposed upon an inmate who brings a frivolous lawsuit.

SENATOR PATERSON: Thank you, Mr. President.

Senator, what I would suggest is that I don't think that it will be possible to accomplish what you are seeking, but what I would think would be possible is that the exact same economic sanctions that you describe which are in a sense imposed on citizens be imposed on the inmates and that way you would be able to achieve exactly the purpose that you're trying to achieve without having to overreach the standard and subject this legislation to overturn on a constitutional basis.

Otherwise, on the bill, what I would say is the Attorney General reported

29,122 cases, but as Senator Leichter adroitly pointed out there were a number of these cases where there was a notice of an intent to sue but actually no lawsuit. Now, you can't defend against a lawsuit if you don't know what it is. Just a fact that there was a notice does not impose on the Attorney General's office any greater duty than existed previously, other than the fact that you know a lawsuit is coming.

What seems to be the case is that there is a significantly less number of cases than it might first appear. The doubling and tripling of cases over the last ten or fifteen years I think is attributable to the increase in the number of inmates and, therefore, an increase in the number of cases. I don't even know that the increases on a per capita basis would correspond to the corollary increase in the number of prisoners.

But what we do notice -- what Prisoners Legal Services submitted to us is their consulting with a Court of Claims Judge by the name of Donald Corbett, who said that in

June of 1994 that he could account for 1158 Court of Claims cases which is about 15,000 less than the Attorney General reported.

Now, I understand that the sponsor was using the Attorney General's figures to put this legislation together, so there is certainly no disingenuous behavior on the part of the sponsor. He's just relying on those figures, but the Attorney General's figures are incorrect in the sense that the number of notices are really what create the high number that there appears to be.

Also, there were only 78 cases in the Court of Claims that had existed for over two years, so that would demonstrate that the Court of Claims is dealing with these cases in a seasonable time period. So I think that the legislation would be really better placed at a point that we can establish that there really is a tremendous increase in the number of cases filed by prisoners and also where you have inmates filing frivolous cases.

I think there are a few

individuals -- few in number, but they generate a lot of cases; and I think, as Senator Leichter said earlier, that the courts can handle these cases by imposing the kind of admonition to the inmate that Senator Leichter was talking about earlier, where the inmate now would have to go through court before even getting the permission to sue.

There have been some obvious cases and there are always a few cases, where the charge that is being made or the contention that is being offered is so ridiculous that it really is an offense to all of us that the individual would bring such a case; but even in the rather spirited case of the melted ice cream, there were some other issues that were raised in that case that the court felt had some merit.

The stronger issue is the one in which we want to preserve our constitutionality and we want to give individuals, even when they are incarcerated in our state institutions, some redress if they think that they are being

treated in some dehumanizing way. We do not want to encourage the filing of false cases. We don't want to, in any way, facilitate it, but we do want to maintain that precious value that we have in this country where our court system is open and our court system is free.

We're not going to give special privileges to individuals who have violated the laws of society and rightly deserve to be where they are, but in situations where they have run out of administrative relief from the Department of Corrections, unless we can demonstrate that there is a true flooding of the system, I would recommend that we do not have the level of cases being filed that seems to be represented in the Attorney General's report.

ACTING PRESIDENT HOBLOCK: Secretary will read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 120th day.

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

SENATOR LEICHTER: May I have my name called, please?

ACTING PRESIDENT HOBLOCK: Sorry, Senator Leichter?

SENATOR LEICHTER: May I have my name called, please?

ACTING PRESIDENT HOBLOCK: Senator Leichter, do you want to explain your vote?

SENATOR LEICHTER: Yes, please.

ACTING PRESIDENT HOBLOCK: Please.

SENATOR LEICHTER: Mr. President, my colleagues, one of the really proudest moments, the most wondrous moments in the constitutional history of the United States was when an inmate by the name of Gideon scribbled on a note to the U.S. Supreme Court a claim that he had been falsely convicted because he was not represented by a lawyer, and the Supreme Court clerk -- with all of the momentous cases that came before the Supreme Court, the clerk passed that note on to the justices of the Supreme

Court and the justices of the Supreme Court felt that this was a case worthy for them to consider, and out of that note came the significant decision that everyone is entitled to be represented by attorneys in cases where they can end up in jail.

Now, if you pass bills of this sort, you are limiting that very basic right. Senator Nozzolio is correct, there's going to be inmates that take advantage of this, but again we've got to think of the overall framework for maintaining basic liberties, and one of the greatest liberties that exists in this country that even inmates have is access to the court. It's a wonderful, wonderful tradition that this country has; and unless a clear showing has been made, which I don't think it has been in this case, we should not abridge it.

Mr. President, I vote in the negative.

ACTING PRESIDENT HOBLOCK: Senator Nozzolio to explain his vote.

SENATOR NOZZOLIO: Thank you, Mr.

President.

Mr. President, my colleagues, by making prisoners exhaust their administrative remedies, pay a partial filing fee from their commissary account and be liable for sanctions, this bill places inmates on a more level playing field for those private actions taken in the courts of our state. Private parties are subjected to these requirements. We're simply on a broader scale asking the inmates of this state to pay, as well.

Thank you very much, Mr. President and my colleagues, for the debate on this issue, and I move its passage.

ACTING PRESIDENT HOBLOCK: Secretary will announced the results.

THE SECRETARY: Those recorded in the negative on Calendar 1101 are Senators Abate, Connor, Espada, Gold, Leichter, Montgomery, Paterson, Smith, Solomon and Waldon. Ayes 48, nays 10.

ACTING PRESIDENT HOBLOCK: The bill is passed.

ACTING PRESIDENT HOBLOCK: Senator DiCarlo.

SENATOR DiCARLO: Mr. President. On behalf of the sponsor, can we lay aside for the day Calendars 1097 and 1107?

ACTING PRESIDENT HOBLOCK: 1097 and 1107 are laid aside for the day.

Senator DiCarlo.

SENATOR DiCARLO: May we also now take up Calendar 494?

ACTING PRESIDENT HOBLOCK: Senator Stavisky.

SENATOR STAVISKY: Mr. President. I believe that 1114 was previously considered and, if so, I should like to be recorded, without objection, in the negative.

ACTING PRESIDENT HOBLOCK: Without objection, Senator Stavisky recorded in the negative.

Secretary will read.

THE SECRETARY: Calendar Number 494, by Senator Cook, Senate Print 3155A, an act to amend the General City Law, the Town Law and

the Village Law, in relation to cluster development.

ACTING PRESIDENT HOBLOCK: Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT HOBLOCK: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT HOBLOCK: The bill is passed.

Senator DiCarlo.

ACTING PRESIDENT HOBLOCK: Senator DiCarlo.

SENATOR DiCARLO: Mr. President. Is there any housekeeping at the desk?

ACTING PRESIDENT HOBLOCK: Yes.

Senator Sears.

SENATOR SEARS: Yes, Mr. President. On page 43, Calendar Number 471, Senate Print Number 3545, would you remove the star?

ACTING PRESIDENT HOBLOCK: The star is removed.

Senator Marcellino.

SENATOR MARCELLINO: Yes, Mr. President. On behalf of Senator Marchi, on page number 19, I offer the following amendments to Calendar Number 675, Senate Print Number 593.

ACTING PRESIDENT HOBLOCK: Amendments are received.

SENATOR MARCELLINO: Ask that this bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT HOBLOCK: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, on page number 29, I offer the following amendments, on behalf of Senator Levy, to Calendar Number 875, Senate Print Number 4985, and ask that the bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT HOBLOCK: Amendments are accepted.

SENATOR MARCELLINO: Mr.

President, on behalf of Senator Saland, on page number 46, I offer the following amendments to Calendar Number 945, Senate Number 2599, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT HOBLOCK: Amendments are accepted.

SENATOR MARCELLINO: And, Mr. President, on behalf of Senator Larkin, on page number 41, I offer the following amendments to Calendar Number 215, Senate Print 2090A, and ask that said bill retain its third reading order on the calendar.

ACTING PRESIDENT HOBLOCK: Amendments are received.

Senator DiCarlo.

SENATOR DiCARLO: Mr. President, there will be a meeting of the Rules Committee tomorrow morning at 9:30 in Room 332.

There being no further business, I move we adjourn until tomorrow, Tuesday, at 10:00 a.m.

ACTING PRESIDENT HOBLOCK: There

will be a meeting of the Rules Committee tomorrow, Tuesday, at 9:30 a.m. Session at 10:00 a.m. sharp.

Stand adjourned.

(Whereupon, at 5:38 p.m., the Senate adjourned.)